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Federal Register

Friday
June 28, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Archives and Records
National Archives and Records Administration

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Employee Benefit Plans
Labor-Management Standards Office
Pension and Welfare Benefit Programs Office

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Defense Department
General Services Administration
National Aeronautics and Space Administration

Honey
Agricultural Marketing Service

Imports
Animal and Plant Health Inspection Service

Income Taxes
Internal Revenue Service

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Life Insurance
Personnel Management Office

Loan Programs—Agriculture
Commodity Credit Corporation

Manpower Training Programs
Employment and Training Administration

Marketing Agreements
Agricultural Marketing Service

Mortgage Insurance
Housing and Urban Development Department

National Parks
National Park Service

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Organization and Functions (Government Agencies)
Customs Service
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Reporting and Recordkeeping Requirements
Alcohol, Tobacco and Firearms Bureau

Semiconductor Chip Products
Copyright Office, Library of Congress

Student Aid
Education Department

Television Broadcasting
Federal Communications Commission

Veterinarians
Animal and Plant Inspection Service

Warehouses
Agricultural Stabilization and Conservation Service

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.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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Presidential Documents

Title 3—

The President

Proclamation 5355 of June 26, 1985

Helen Keller Deaf-Blind Awareness Week, 1985

By the President of the United States of America

A Proclamation

The sights and sounds of the world around us are among the gifts we cherish most. But for approximately 40,000 Americans who are both deaf and blind, seeing and hearing exist only as dreams. Through an accident of birth or illness, these men and women may never gaze at the splendor of a spring garden or listen to the voices of their loved ones. Cut off from what most of us take for granted, people who can neither see nor hear live in a kind of solitary confinement.

This month marks the 102nd anniversary of the birth of an American who found herself in such a prison—and broke out of it. At the age of 19 months, Helen Keller lost her sight, hearing, and speech, and her formative years were spent in utter isolation. But she had two powerful forces on her side: an absolute determination to overcome her handicaps, and the devotion of one person, Annie Sullivan, who recognized the child's innate abilities and helped her construct a bridge to the world at large.

Today, the scientific and medical communities are showing great determination to build more bridges for deaf-and-blind individuals. Research on disorders that cause deaf-blindness is being conducted and supported on several fronts: by the Federal government through the National Institute of Neurological and Communicative Disorders and Stroke, and the National Eye Institute; by universities and other institutions of higher learning; and by voluntary health agencies and numerous groups in the private sector.

America can ill afford to lose the contributions of her deaf-and-blind citizens. Helen Keller became renowned for her writings and her civic spirit at a time when the study of deaf-blindness was in its infancy. Scientific progress will enable the deaf-and-blind to utilize their talents and ideas, and expand their educational and employment opportunities, thereby increasing their contributions to our society.

To focus public attention on deaf-blindness and the hope through research of someday averting this tragedy, the Congress, by Senate Joint Resolution 125, has designated the week of June 23 through 29, 1985, as "Helen Keller Deaf-Blind Awareness Week" and authorized and requested the President to issue a proclamation to observe this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 23 through June 29, 1985, as Helen Keller Deaf-Blind Awareness Week. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-15797
Filed 6-27-85; 12:09 pm]
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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, and 873

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance and Family Optional Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Final rules.

SUMMARY: The Office of Personnel Management (OPM) is implementing a further reduction in the premium for Basic coverage effective the first pay period beginning on or after August 1, 1985. OPM is also amending its regulations to permit an open enrollment period from June 1 through July 1, 1985, during which time employees otherwise eligible to participate in the Federal Employees' Group Life Insurance (FEGLI) Program will have an opportunity to add to their existing coverages or to enroll in the Program if they have previously waived all coverage.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 254–7052.

SUPPLEMENTARY INFORMATION: On April 18, 1985, OPM published in the **Federal Register** (50 FR 15428–15430) proposed regulations to reduce the rates for the Basic insurance coverage and to conduct an open enrollment opportunity for the FEGLI Program. Only three Federal agencies and one employee organization sent us written comments during the 30-day comment period. However, we also held a meeting at OPM on May 9, 1985, with the various agencies' designated life insurance officers to discuss the proposed open enrollment process. All the written and oral comments offered through May 20, 1985, expressed support for our proposal to reduce the premium rate for the Basic coverage and to conduct an open enrollment opportunity. The only major area of concern raised by the commenters focused on the requirement that an employee be in a pay and duty status for a prescribed number of hours before newly-elected coverage could become effective. Federal agencies generally expressed concern over what they perceived to be an excessive administrative burden placed on them to confirm that the pay and duty status requirement has been met before they could process the open enrollment election, Standard Form 2817.

In planning for the 1985 FEGLI open enrollment, we recognized that any open enrollment contains an element of risk to the Program because of adverse selection by ill and older employees who are not otherwise medically insurable. Following the March 1981 open enrollment period, it was obvious that a number of terminally ill employees returned to duty on or after April 1 solely to acquire or increase insurance coverage. In some instances, those employees were at work for as little as one hour or one day. They did, however, obtain coverage and subsequently returned home and died a short time later. We fully intended to strengthen the pay and duty status requirement in 1985 to prevent a re-occurrence of that situation.

Being in a pay and duty status to acquire or increase coverage has always been a feature of the FEGLI Program and practically every life insurance contract offered to employees in the private sector requires that they be "on duty" for a specific period of time before coverage attaches. The norm is in the range of one week on duty. Although some agencies view the requirement of checking to confirm that an employee has met the required time in a pay and duty status as a burden, we believe that it represents the most viable barrier to adverse selection against the Program short of imposing age restrictions or medical examinations. Projecting the exact financial impact of potential adverse selection is clearly impossible. However, we are convinced that the cost to the Program of dropping the minimum pay and duty status requirement would be far more significant than the burdens placed on agencies to administer it. Potential savings to the Program by retaining the proposed pay and duty status requirement can ultimately be passed on to insured employees in the future in the form of reduced premium levels or increased benefits. Therefore, as the administrator of the Program, we cannot adopt the suggestion to drop the proposed pay and duty status requirement.

One commenter asked if employees and annuitants could expect any reduction in premiums for the three forms of optional coverage or the rates for the post-65 reduction in Basic coverage after retirement. (Retiring employees can elect no reduction in Basic coverage after age 65 or a reduction of only one percent per month after age 65, rather than the standard two percent per month reduction, in exchange for a defined premium.) No reduction in premium for anything other than the Basic coverage is planned at this time. However, if we can avoid extensive adverse selection in the open enrollment period and if our claims experience remains favorable, additional rate reductions may be possible. This same commenter asked if employees regularly scheduled for furlough in June would be eligible to take advantage of the open enrollment period in June. Yes, all employees otherwise eligible for FEGLI coverage will be permitted to complete and submit a new election of coverage between June 1 and July 1, 1985. However, the effective date of the election will be delayed if the individual remains on furlough and does not return to a pay and duty status in time for the election to become effective with the first full pay period in August 1985. In that event, the election will become effective at the beginning of the next full pay period after the required time in a pay and duty status has been met.

Another commenter pointed out that the FEGLI '85 booklet, FE74–A, made clear that neither annual leave nor sick leave would serve to meet the required 32 hours in a pay and duty status for newly-elected coverage to become effective. This commenter suggested that the final regulations specifically address this point. We believe it is sufficient to confirm in this Supplementary Information section that neither annual nor sick leave constitutes a pay *and duty* status rather than further revising the regulations themselves. The term "leave" denotes that an individual has

been excused from attendance or granted permission to be absent from duty. The term "pay and duty status" has a clear and well defined meaning to agency personnelists who, generally, are quite familiar with the term.

This same commenter suggested that, in the future, OPM not have open enrollment opportunities during periods of high leave usage, such as during the summer months. It was our intent to make an open enrollment opportunity available to employees as soon as our experience showed that it was fiscally prudent and administratively feasible. In the future, we will still be motivated by these determinant factors. However, we will also take into consideration the experience drawn from conducting the 1985 open enrollment opportunity during a high leave usage period and its overall impact on both employees and agencies.

The enrollment period will run from June 1 through July 1, 1985. During this time, employees otherwise eligible to participate in the FEGLI Program may add to their existing coverages or enroll in the Program if they have previously waived all coverage. Elections filed during the open enrollment period will become effective at the beginning of the first pay period which begins on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. Part-time employees will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on their current SF's 50 for newly-elected coverage to become effective.

Detailed guidance is being provided agencies and employing offices in Federal Personnel Manual issuances and a Payroll Office Letter concerning the reduction in the premium rate for Basic coverage, the open enrollment material which must be provided all eligible employees and the mechanics of processing open enrollment elections.

Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make these amendments to the regulations effective in less than 30 days. The regulations are being made effective immediately so as not to delay the open enrollment opportunity and to make the reduction in the premiums for Basic FEGLI coverage effective at the earliest time practicable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees.

List of Subjects in 5 CFR Parts 870, 871, 872 and 873

Administrative practice and procedure, Government employees, Life insurance.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM is revising Part 870, 871, 872, and 873, of Title 5 of the Code of Federal Regulations as follows:

(1) The authority citation for Parts 870, 871, 872, and 873 continues to read as follows:

Authority: 5 U.S.C. 8716, unless otherwise noted.

PART 870—BASIC LIFE INSURANCE

2. In § 870.203, a new paragraph (d) is added to read as follows:

§ 870.203 Effective dates of insurance coverage.

* * * * *

(d) An open enrollment election of basic life insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first day period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

3. In § 870.204, a new paragraph (g) is added to read as follows:

§ 870.204 Cancellation of waiver of insurance coverage.

* * * * *

(g)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing waivers of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing waiver of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination. Basic life insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 870.203(d), to acquire coverage. Failure on the part of the employee to file an election within the 31 days prescribed in this paragraph shall be deemed a waiver of all coverage.

4. In § 870.401, paragraphs (a), (b) and (f)(1) are revised to read as follows:

§ 870.401 Withholdings and contributions.

(a) Effective August 1, 1985, during each pay period in which an insured employee is in pay status for any part of the period, $0.20 for each $1,000 of the employee's BIA shall be withheld from the biweekly pay of the employee. The amount withheld from the pay of an employee who is paid on other than a biweekly basis is determined at a proportionate rate, adjusted to the nearest one-tenth of one cent.

(b) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate of $0.20 for each $1,000 of the employee's BIA to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

* * * * *

(f)(1) Except as provided under paragraph (g) of this section, an insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under § 870.601(c)(2) or § 870.701(c)(2) (maximum reduction of 75 percent after age 65) shall have withheld from his or her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.433 for each $1,000 of the BIA or at the weekly rate

(for compensationers) of §0.10 for each $1,000 of the BIA.

* * * * *

PART 871—STANDARD OPTIONAL LIFE INSURANCE

5. In § 871.203, a new paragraph (c) is added to read as follows:

§ 871.203 Effective date of insurance.

* * * * *

(c) An open enrollment election of standard optional insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

6. In § 871.205, a new paragraph (g) is added to read as follows:

§ 871.205 Cancellation of declination.

* * * * *

(g)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing declinations of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing declination of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination. Standard optional insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 871.203(c) to acquire coverage. Failure on the part of the employee to file an election within the 31 days prescribed in this paragraph shall be deemed a declination of standard optional insurance.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

7. In § 872.203, a new paragraph (c) is added to read as follows:

§ 872.203 Effective date of insurance.

* * * * *

(c) An open enrollment election of additional optional insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

8. In § 872.205, paragraph (d) is added to read as follows:

§ 872.205 Cancellation of declination.

* * * * *

(d)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing declinations of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing declination of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within 31 days after he or she is advised of that determination. Additional optional insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 872.203(c) to acquire coverage. Failure on the part of the employee to file within the 31 days prescribed in this paragraph shall be deemed a declination of additional optional insurance.

PART 873—FAMILY OPTIONAL LIFE INSURANCE

9. In § 873.203, a new paragraph (c) is added to read as follows:

§ 873.203 Effective date of insurance.

* * * * *

(c) An open enrollment election of family optional insurance filed during the period from June 1 through July 1, 1985, is effective on the first day of the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for at least 32 hours. A part-time employee will need to have been in a pay and duty status for one-half of the regularly-scheduled tour of duty indicated on his or her current Standard Form 50 for newly-elected coverage to become effective. An employee who has no regularly-scheduled tour of duty or who is employed on an intermittent basis will have to have been in a pay and duty status for one-half of the hours customarily worked before newly-elected coverage can become effective. For the purpose of this subsection, employing offices can determine the number of hours customarily worked by averaging the number of hours worked in the calendar year quarter ending June 30, 1985.

10. In § 873.205, paragraph (e) is added to read as follows:

§ 873.205 Cancellation of declination.

* * * * *

(e)(1) An open enrollment period will be held from June 1 through July 1, 1985, during which time employees otherwise eligible for coverage may cancel their existing declinations of coverage by affirmatively electing to be insured on a form designated by OPM.

(2) An employing office may make a determination, within 6 months after the June 1 through July 1, 1985 open enrollment period, that an employee was unable, for cause beyond his or her control, to cancel his or her then existing declination of coverage by affirmatively electing to be insured during the 1985 open enrollment period. The employee shall be permitted to submit an affirmative election of coverage within

31 days after he or she is advised of that determination. Family optional insurance coverage in that case is retroactive to the first pay period beginning on or after August 1, 1985, which immediately follows a pay period during which the employee was in a pay and duty status for a sufficient length of time, as specified in § 873.203(c) to acquire coverage. Failure on the part of the employee to file an election within the 31 days prescribed in this paragraph shall be deemed a declination of family optional insurance.

[FR Doc. 85-15701 Filed 6-27-85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 522]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 290,000 cartons during the period June 30–July 6, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period June 30–July 6, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 25, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand continues to be good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. New § 910.822 is added to read as follows:

§ 910.822 Lemon Regulation 522.

The quantity of lemons grown in California and Arizona which may be handled during the period June 30, 1985, through July 6, 1985, is established at 290,000 cartons.

Dated: June 26, 1985.

Thomas R. Clark,

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

[FR Doc. 85-15759 Filed 6-27-85; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-72-AD; Amdt. 39-5073]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires structural inspections and repairs or replacement, as necessary, on certain high time Boeing Model 707/720 series airplanes to assure continued airworthiness. This AD is prompted by the increased incidence of fatigue cracks on these airplanes as they approach or exceed the manufacturer's original design life goal. A structural reevaluation has identified certain significant structural components in which cracks, if allowed to grow undetected, would result in loss of structural integrity.

EFFECTIVE DATE: July 5, 1985.

Compliance schedule as prescribed in the body of the AD. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of July 5, 1985.

ADDRESSES: The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information also may be examined at Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton A. Holmes, Airframe Branch, ANM-120S; telephone (206) 431–2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the inspection and repair, as necessary, of the Significant Structural Details (SSD) listed in Boeing Document D6–44860, Revision L, "Supplemental Structural Inspection Document" (SSID), was published in the **Federal Register** on November 14, 1984 (49 FR 45011). The comment period closed on January 7, 1985.

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

The Air Transport Association of America (ATA), on behalf of its member airlines, noted that the proposed rule did not allow adjustment of the inspection intervals in order to accommodate operators' scheduled maintenance programs. The FAA concurs with the comment to allow some adjustment of inspection intervals and the AD has been revised accordingly.

The ATA also suggested that paragraph F. does not provide a practical alternative to the AD, and should delete reference to paragraphs B. and C. The FAA does not concur with the suggestion, noting that paragraph F. provides specific conditions for exemption from the AD. These conditions include the requirements that thresholds not be extended in accordance with the procedures of Section 1.70 of Boeing Document D6–44860, Revision L, and that cracked or damaged structure be repaired or replaced. The FAA recognizes, however, that there may be alternate means of compliance which provide an acceptable level of safety, and paragraph E. provides for such alternatives.

Finally, the ATA suggested that paragraph C. provide, as an alternative, "repairs in accordance with the Boeing Structural Repair Manual," while the manufacturer recommended "repair in accordance with approved documentation since D6–44860 does not provide repair information." In addition, the manufacturer suggested that the AD allow replacement of cracked or damaged structure with an "approved replacement part provided by the manufacturer." The FAA concurs with each of these comments and the AD has been revised accordingly.

The manufacturer recommended the addition of the following under discussion of Significant Structural Details: "Each Significant Structural Detail is defined by a unique, 9 character identification number. Significant Structural Details are divided into two categories: those for which the repeat inspection program is imported by a Service Bulletin modification and which have a 5 as the sixth character of the identification number; and those for which the repeat inspection program is not impacted by a service bulletin modification and which have a zero as the sixth character of the identification number."

The manufacturer also recommended the addition of the following paragraph at the end of the Supplementary Information section: "Items without a history of service cracking are identified for fleet leader inspection. Thresholds are selected to ensure that a sufficient number of airplanes are included in the inspection program for these items."

In regards to thresholds and affected airplanes, the manufacturer noted that affected airplanes are not listed in the 707/720 SSID document but are, instead, defined by a threshold. Any airplane exceeding the threshold for particular Significant Structural Detail (SSD) is subject to the SSID inspection requirements for that detail.

The manufacturer suggested that thresholds listed in the 707/720 SSID, Boeing Document D6–44860, Revision L, for SSD items unaffected by service bulletins (i.e., sixth character of SSD identification number is "0") be adjusted as follows:

—Thresholds between 27,000 and 32,000 flights shall be altered to 25,000 flights.

—Thresholds between 17,000 and 26,000 flights shall be altered to 19,000 flights.

—Thresholds below 17,000 flights shall remain as listed in the SSID.

The manufacturer indicated that these thresholds will be included in the 707/720 SSID, Boeing Document D6–44860, Revision M, which has not yet been published, and that thresholds for SSD items affected by a service bulletin (i.e., sixth character of SSD identification number is "5") will remain as listed in Boeing Document D6–44860, Revision L, or later FAA approved revisions.

Although the manufacturer has proposed a revision to the 707/720 SSID, Boeing Document D6–44860, Revision L, to include the adjusted thresholds previously mentioned, the FAA considers these proposals beyond the scope of this rule as proposed. In the interest of allowing public comment on substantial changes which would impose increased limitations on affected operators, the FAA does not accept the manufacturer's recommendation regarding threshold adjustment. However, when the revised 707/720 SSID becomes available to interested parties, the FAA may consider an amendment to the AD which would embrace the manufacturer's suggestions.

Regarding implementation, the manufacturer suggested that all airplanes exceeding the thresholds, which have not been previously inspected, should have an initial inspection "within an established calendar time." It is likely that there are airplanes with Significant Structural Details which are near or beyond the thresholds specified in the 707/720 SSID. The rule as proposed did not address this condition and would have unintentionally grounded such airplanes. Recognizing this potential for undue hardship on operators, the FAA concurs with the comment regarding establishment of a time period for accomplishment of required inspections on such details. Therefore, a new paragraph C. has been added (other paragraphs have been redesignated) to specify one year for the accomplishment of inspections which are beyond their thresholds upon the effective date of the AD. Significant Structural Details which exceed a specified threshold during the first year after the effective date of the AD must, likewise, be inspected within this first year. All other Significant Structural Details, in accordance with paragraph A. as proposed, must be inspected on or before the thresholds specified in the 707/720 SSID.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

It is estimated that 18 airplanes of U.S. registry and 9 U.S. operators will be affected by this AD, and that implementation of the SSID program for a typical operator will take approximately 1000 manhours. Based on an average labor cost of $40 per hour, the cost to implement the 707/720 SSID program is estimated to be $360,000.

Based on the above figures, the total cost impact of this AD will be $360,000 for the first year, and $360,000 for each year thereafter. These economic impact figures include the effects of the removal of airplanes from service as a result of the 1985 noise rule.

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 707/720 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

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 with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

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

Authority: (49 U.S.C. 1354(a), 1421 through 1430, and 1502);

49 U.S.C. 106(g) (Revised P.L. 97-449, January 12, 1983); and 14 CFR 11.89; and 49 CFR 1.47.

Boeing: Applies to Model 707/720 series airplanes, certificated in all categories. Compliance is required as indicated in the body of the AD.

To ensure continuing structural integrity, accomplish the following, unless already accomplished:

A. Within one year after the effective date of the AD, incorporate a revision into the FAA approved maintenance inspection program which requires accomplishment of the inspection and repairs, as necessary, of each Significant Structural Detail (SSD) as listed in Boeing Document D6-44860, Supplemental Structural Inspection Document (SSID), Revision L, or later FAA approved revisions. The revision to the maintenance program must include procedures to notify the manufacturer when SSD's are found cracked. The inspection thresholds, repetitive intervals, inspection techniques, and terminating action for each SSD are listed in the SSID. Implement this revision to the maintenance program in accordance with paragraphs B., C., and D., below.

B. The increase of inspection intervals in accordance with Section 1.70 of Boeing Document D6-44860, is not permitted, except as provided in paragraphs F. and G., below.

C. Inspect each Significant Structural Detail (SSD) which has exceeded the initial threshold specified in Boeing Document D6-44860, Revision L, within one year after the effective date of this AD. Significant Structural Details which are below the thresholds specified in Boeing Document D6-44860, Revision L, must have an initial inspection within one year after the effective date of this AD or prior to reaching the threshold, whichever is later. Accomplish these inspections in accordance with Boeing Document D6-44860, Revision L, or later FAA approved revisions.

D. If cracks are found, prior to further flight: (1) Replace with a serviceable FAA approved part of the same part number, or an FAA approved replacement part provided by the manufacturer; or (2) repair in accordance with the Boeing Structural Repair Manual or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

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

G. Upon request of the operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD, if the request contains substantiating data to justify the increase for that operator.

H. Operators who have acceptably incorporated the requirements of paragraph A., above, into their approved maintenance program, including the limitations listed in paragraph B., C. and D., above, are exempt from the provisions of this AD.

I. Significant Structural Details (SSD) which are the subject of separate AD action are exempted from the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

The manufacturer's specification and procedures identified and described in the directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

This amendment becomes effective July 5, 1985.

Issued in Seattle, Washington, on May 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15508 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-11-AD; Amdt. 39-5083]

Airworthiness Directives; Canadair Models CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) to increase the repetitive inspection intervals of the outboard flap vane support structure on Canadair Model CL-600 and CL-601 airplanes. This action is appropriate since testing has shown that increasing the inspection interval from 100 hours time in service to 400 landings does not compromise safety.

EFFECTIVE DATE: July 26, 1985.

ADDRESSES: The applicable service information may be obtained from Canadair Limited, 1800 Laurentien Blvd., Saint-Laurent, Quebec H4R 1K2, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsisus, Aerospace Engineer, Airframe Section, ANE-172, New York Aircraft Certification Officer; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 S. Franklin Ave., Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: The Canadian Department of Transport (DOT) has advised the FAA that the repetitive inspection interval of the outboard flap vane support structure of 100 hours time in service, originally required by Canadian Airworthiness Directive CF 83-24R2 for all Model CL-600 and CL-601 airplanes, has been increased to 400 landings in an amendment to that directive.

Airworthiness Directive 84-13-03 (49 FR 26045; June 26, 1984), issued in the United States, also requires a 100 hours time in service repetitive inspection. Since the issuance of both directives, testing has shown that the inspecton interval can be increased to 400 landings without compromising safety. There have been no reports of flap vane service difficulties since the issuance of AD 84-13-03.

A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 84-13-03 to increase the repetitive inspection interval mentioned above was published in the **Federal Register** on March 19, 1985 (50 FR 10977). The comment period closed on May 5, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. Six comments were received. Five of the commenters supported the proposed amendment as written. The sixth commenter supported the inspection interval of 400 landings but recommend an initial inspection of 100 hours instead of 200 landings as was proposed since the Canadian AD now specifies a 100 hour threshold. The FAA considered this comment and has determined to use a threshold inspection of 200 landings. There have been no reported cracks since structural modification and it is believed, therefore, that a threshold inspection of 200 landings is appropriate.

It is estimated that 50 U.S. registered airplanes will be affected by this amendment, and since it is relieving, the economic burden on the U.S. fleet of Model CL-600 and CL-601 airplanes will be reduced by approximately $100,000 per year.

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 amendment as proposed.

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 Canadair Model CL-600 and CL-601 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the 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

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the 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); 14 CFR 11.89; and 49 CFR 1.47.

2. By amending Paragraph A of AD 84-13-03, Amendment 39-4882 (49 FR 26045; June 26, 1984), to read as follows:

"A. To detect possible fatigue cracks in the outboard flap vane support structure, accomplish the following inspections for cracks on each side of the aircraft within 200 landings after the effective date of this AD, unless already accomplished within the last 200 landings, and thereafter at intervals not to exceed 400 landings."

This amendment becomes effective July 26, 1985.

Issued in Seattle, Washington, on June 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15504 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-22-AD; Amendment 39-5086]

Airworthiness Directives; Cessna Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), superseding AD 81-11-05 (Amendment 39-4120), applicable to certain Cessna Model 402C and 414A airplanes. The results of Cessna conducted fatigue tests of the engine beams indicate that the visual inspections and in turn the temporary modifications specified in AD 81-11-05 for detecting engine beam cracks and eliminating crack growth are not completely adequate. This supersedure defines more comprehensive inspections and modifications necessary to ensure structural integrity of the engine mount beams and will preclude possible separation of the engine from the airplane during flight.

EFFECTIVE DATE: July 8, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-engine Service Bulletin MEB 85-3, dated March 1, 1985, applicable to this AD may be obtained from the Cessna Aircraft Company Customer Services, P.O. Box 1521, Wichita, Kansas 67201; Telephone (316) 685-9111. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence S. Abbott, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Engines on Cessna Models 402C and 414A airplanes are secured to the airframe by beams that are cantilevered from the wing. Reports of cracks developing at the engine rear mount attach point dictated issuance of AD 81-11-05, Amendment 39-4120, (46 FR 28148). It requires visual inspections and repair of the beams to ensure structural integrity. The AD addresses the possibility of these criteria being revised when fatigue tests, in progress at the time at Cessna, were finished. These tests have recently been completed. The results show that the visual inspections specified by Cessna Service Information Letter ME81-10, and in-turn AD 81-11-05, are inadequate for detecting all cracks. In addition, the stainless steel angle doublers provided in Cessna Service Kit SK414-17 were found to be ineffective for precluding crack growth. As a result Cessna has superseded these instructions and kit with Multi-engine Service Bulletin MEB85-3 and Service Kit SK414-19. The new kit adds a re-designed aft engine mount fitting in addition to the doubler angles. The initial and repetitive inspection requirements of Cessna Service Information Letter ME81-10 and AD 81-11-05 are retained except that on those airplanes not having the SK414-17 kit incorporated, fluorescent penetrant methods are required. Recurring radiographic inspections, not to exceed increments of 1600 flight hours, are to be conducted on airplances modified with SK414-17. If airplanes have the SK414-19 kit installed in the field, radiographic inspections are to be conducted every 9600 flight hours. Aircraft with factory installed SK414-17 kits require recurring radiographic inspections every 8000 flight hours. Cessna Multi-engine Service Bulletin MEB85-3 requires installation of Service Kit SK414-19 whenever either engine is removed for normal maintenance and overhaul.

AD 81-11-05 is not completely effective in precluding the unsafe condition described above. Since the condition is likely to exist or develop in engine mount support beams installed on other airplanes of the same type design, an AD is being issued, superseding AD 81-11-05, making mandatory the provisions of Cessna Multi-engine Service Bulletin MEB85-3, specifying repetitive inspections, and repairs and modifications if cracks are found. Furthermore, if an engine mount support beam crack exceeds 1.75 inches in length, the AD requires owners/operators to contact the manufacturer for special repair disposition.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. There are approximately 1009 airplanes affected by the AD. Labor and material cost is estimated at a total cost of $2,012,052 to the private sector. The cost of compliance is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of 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 regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

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; 49 CFR 1.47.

2. By adding the following new AD:

Cessna: Applies to Model 402C (Series Numbers (S/N 402C0001 through 402C0808) and Model 414A (S/N 414A0001 through 414A1206) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To insure the structural integrity of the engine mount beams, accomplish the following:

(a) For Model 402C (S/N 402C0001 thru 402C0468) and Model 414A (S/N 414A0001 thru 414A0646) airplanes inspect the engine beams for cracks in accordance with the following schedule:

(1) On all airplanes with 500 to 1000 hours time-in-service that do not have Cessna Service Kit SK414-17 incorporated, within the next 100 flight hours and each 200 hours time-in-service thereafter fluorescent penetrant inspect the engine beams in accordance with Cessna Multi-engine Service Bulletin (S/B) MEB85-3, dated March 1, 1985, Attachment, SECTION II: INSPECTION PROCEDURES—FLUORESCENT PENETRANT.

(2) On all airplanes with more than 1000 hours time-in-service that do not have Cessna Service Kit SK414-17 incorporated, within the next 50 flight hours and each 200 hours time-in-service thereafter fluorescent penetrant inspect the engine beams in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985, Attachment, SECTION II: INSPECTION PROCEDURES—FLUORESCENT PENETRANT.

(3) On all the above airplanes that have Cessna Service Kit SK414-17 incorporated, radiographic inspect the engine beams at intervals not to exceed 1600 flight hours from the time of installation.

(4) On all the above airplanes that have Cessna Service Kit SK414-19 incorporated, radiographic inspect the engine beams at 9600 flight hours intervals from the time of installation.

(b) For Model 402C (S/N 402C0469 thru 402C0808) and Model 414A (S/N 414A0647 thru 414A1206) airplanes inspect the engine beams for cracks in accordance with the following schedule:

(1) On all the above airplanes not having Cessna Service Kit SK414-19 incorporated, radiographic inspect the beams at 8000 flight hour intervals from the time of installation in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985, Attachment, SECTION III: INSPECTION PROCEDURES-RADIOGRAPHIC.

(2) On all the above airplanes having Cessna Service Kit SK414-19 incorporated after first engine overhaul radiographic inspect the beams at 9600 flight hour intervals from the time of installation in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985, Attachment, SECTION III: INSPECTION PROCEDURES-RADIOGRAPHIC.

(3) On all the above airplanes having Cessna Service Kit SK414-19 incorporated prior to first engine overhaul, no radiographic inspections are required.

(c) If cracks are found in the inspections of Paragraph (a) or (b) of this AD, prior to further flight perform the following in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985:

(1) If any cracks are found in the left side (vertical portion) of the left engine beam of either nacelle, contact the Cessna Aircraft Company Customer Services, Post Office Box 1521, Wichita, Kansas 67201; Telephone (316) 685-9111 for special repair disposition.

(2) If cracks found in the top (horizontal portion) of the beam are less than 1.75 inches, stop drill and install Cessna Service Kit SK414-19 in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985.

(3) If cracks found in the top (horizontal portion) of the beam are greater than 1.75 inches, but less than 2.75 inches, contact the manufacturer at the address in paragraph (c)(1) above for disposition.

(4) If cracks found in the top (horizontal portion) of the beam are 2.75 inches or longer, replace the engine beam in accordance with Cessna Multi-engine S/B MEB85-3, dated March 1, 1985.

(d) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the provisions of this AD can be accomplished.

(e) Any equivalent method of compliance with this AD must be approved by the Manager, Wichita Aircraft Certification Office, FAA, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company Customer Services, Post Office Box 1521, Wichita, Kansas 67201, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 81-11-05, Amendment 39-4120.

This amendment becomes effective on July 8, 1985.

Issued in Kansas City, Missouri, on June 18, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85-15505 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510]

Special Federal Aviation Regulation No. 38-2; Certification and Operating Requirements

Correction

In FR Doc. 85-13735 beginning on page 23941 in the issue of Friday, June 7, 1985, make the following correction:

On page 23941, in the third column, in the sixth line from the bottom, "39" should read "38".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 85-108]

Restatement of the New York Customs Region Geographical Boundaries

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the Customs Service field organization by restating the geographical boundaries of the New York Customs Region. The document is part of Customs continuing program to update and establish clear, well defined geographical boundaries for all of the Customs regions.

EFFECTIVE DATE: July 29, 1985.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to update and establish clear, well-defined geographical boundaries for all of the Customs regions, Customs is amending § 101.3(b), Customs Regulations (19 CFR

101.3(b)), by publishing a restatement of the geographical boundaries of the New York Customs Region.

The New York Customs Region is comprised of three administrative areas which were created by T.D. 71–19, published in the **Federal Register** on January 20, 1971 (36 FR 946), namely the Kennedy Airport Area, the Newark Area, and the New York Seaport Area. There have been two changes in these areas since their inception. Richmond County, New York, was transferred from the Newark Area to the New York Seaport Area by T.D. 76–59, published in the **Federal Register** on February 27, 1976 (41 FR 8473). In addition, Morris County, New Jersey, was transferred from the then Region III (Baltimore), to the Newark Area of the New York Region by T.D. 78–130, published in the **Federal Register** on May 9, 1978 (43 FR 19832).

Although there has been no change in the configuration of the New York Region since 1978, a review was recently completed by Customs officials of the geographical limits of these areas. The three purposes for performing the review were to: (1) Identify what the present limits are; (2) redefine the limits in terms that will assure that any future changes will be within Customs, rather than local government control; and (3) publish the new limits in a final document so that persons doing business in the region would be relieved of the complicated legal research now necessary whenever these limits come into question.

Customs published a notice in the **Federal Register** on January 9, 1985 (50 FR 1063), proposing the restated geographical limits of each of the three administrative areas of the New York Customs Region. The one comment received in response to the notice suggested that since the purpose of this project is to establish clear, well-defined geographical boundaries, any reference to non-geographic descriptions should be eliminated. Customs agrees. Accordingly, the geographical limits of each of these areas will be as follows:

Kennedy Airport Area

The geographical limits of the Kennedy Airport Area are defined as beginning at a point in the Atlantic Ocean at the foot of Beach 95th Street, Rockaway Beach, and proceeding north along the center line of Cross Bay Boulevard and its continuation, Woodhaven Boulevard, to Atlantic Avenue; then east along the center line of Atlantic Avenue to the Van Wyck Expressway; then north along the center line of the Van Wyck Expressway to Hillside Avenue (Route 24); then east along the center line of Hillside Avenue to 212th Street; then south along the center line of Route 24 (212th Street, Jamaica Avenue, and Hempstead Avenue) to the New York City limits, the boundary line between Queens and Nassau Counties; then along this boundary line to the Atlantic Ocean, and then along the shore line to the point of beginning. In addition, La Guardia Airport and the U.S. Naval Air Station at Floyd Bennett Field are designated as parts of the Kennedy Area.

Newark Area

The geographical limits of the Newark Area consist of the counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex, and Union, all in the State of New Jersey. The port of Perth Amboy, which is located approximately 30 miles south of Regional Headquarters, is organizationally aligned to report to the Newark Area.

New York Seaport Area

The geographical limits of the New York Seaport Area include all that part of the State of New York not encompassed by the Kennedy Airport Area, the Buffalo-Niagara Falls district, and the Ogdensburg district. The port of Albany, which is located approximately 155 miles north of Regional Headquarters, is organizationally aligned to report to the New York Seaport Area.

Where questions arise as to the concept of "port limits" in respect of Customs transactions under the jurisdiction of the New York Seaport and Newark Areas (exclusive of Albany), the port limits are construed to be coextensive with the boundaries of the so-called "Port of New York District" which was created by an agreement between the State of New York and the State of New Jersey, consented to by Congress, and precisely defined in 42 Stat. 175f, approved August 23, 1921 (T.D. 40809, dated April 25, 1925).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Authority

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

To reflect the changes, Part 101, Customs Regulations (19 CFR Part 101), is amended as set forth below:

§ 101.3 Customs regions, districts and ports. [Amended]

To reflect the restatement of the geographical boundaries of the New York Customs Region, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing "T.D. 71–19 and T.D. 76–59" in the last sentence under the column headed "Area" in the New York City, N.Y., Customs District of the New York Region, and inserting, in their place, "T.D. 85–108".

Executive Order 12291

Because this amendment relates to the organization of the Cutoms Service, pursuant to section 1(a)(3), of E.O. 12291, it is not subject to the Executive Order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs related activity in various parts of the country. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

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

William von Raab,

Commissioner of Customs.

Approved: May 23, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–15595 Filed 6–27–85; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-85-1094; FR-1590]

Second Mortgages or Liens on Properties With FHA-Insured Mortgages; Escrow Accounts Associated With Interest Buy-downs; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a section number (§ 235.32) that inadvertently duplicated the same number that was used in a final rule published earlier.

The Department published a final rule on May 21, 1984 (49 FR 21317) entitled "Single Family Mortgage Insurance Programs" in which it added a new 24 CFR 235.32. *See* 49 FR 21320. On May 21, 1985, the Department published another rule at 50 FR 20903, "Second Mortgages or Liens on Properties with FHA-Insured Mortgages; Escrow Accounts Associated with Interest Buy-downs", in which it inadvertently added another, but textually different, 24 CFR 235.32. *See* 50 FR 20908. This latter rule had the unintended effect of revising the May 21, 1984 rule. This document, therefore, corrects that mistake by changing the section number of the May 21, 1985 rule (50 FR 20903, 20908) from § 235.32 to § 235.33.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel, Office of General Counsel, Department of Housing and Urban Development, Room 10276; 451 Seventh Street SW., Washington, D.C. 20410. Telephone number (202) 755-7055. (This is not a toll-free number).

Accordingly, the following correction is made in FR Doc. No. 85-12182 appearing on page 20908 in the **Federal Register** issue of May 21, 1985:

On page 20908 in the first column, "§ 235.32 Mortgage lien" is corrected to read "§ 235.33 Mortgage lien".

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b. 17152z; Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 24, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-15530 Filed 6-27-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8031]

Income Tax; Taxable Years Beginning After December 31, 1953; Investment Tax Credit for Qualified Rehabilitated Buildings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the investment tax credit for qualified rehabilitated buildings. It reflects changes relating to the rehabilitation credit that were made to sections 38, 46, 47 and 48 of the Internal Revenue Code of 1954 by the Revenue Act of 1978 and the Technical Corrections Act of 1979, but does not reflect changes made to those sections by the Economic Recovery Tax Act of 1981. Given the fact that the Economic Recovery Tax Act of 1981 substantially amended the provisions pertaining to the rehabilitation credit, these regulations are generally not effective for expenditures incurred after December 31, 1981. A notice of proposed rulemaking published this day in the **Federal Register**, however, contains proposed regulations relating to these expenditures.

DATES: Effective June 28, 1985. The amendments are generally applicable with respect to qualified rehabilitation expenditures incurred after October 31, 1978, and before January 1, 1982.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention CC:LR:T, (202-566-3516, not a tollfree call).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46 and 48 of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to section 315 of the Revenue Act of 1978 (92 Stat. 2828) and section 103(a)(4) of the Technical Corrections Act of 1979 (94 Stat. 209).

Public comments on the proposed regulations were received. A public hearing was held on March 31, 1981. After consideration of all comments regarding the proposed amendments, these amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Under section 48(a)(1)(E), that portion of the basis of a qualified rehabilitated building which is attributable to qualified rehabilitation expenditures is treated as section 38 property. Section 48(g) (1) and (2) and the final regulations set forth several requirements for qualified rehabilitated buildings and for qualified rehabilitation expenditures.

One requirement for a qualified rehabilitated building is that a twenty-year period must have elapsed between the beginning of the rehabilitation and the later of: (1) The date the building was first placed in service; or (2) the date of any prior rehabilitation for which a credit was allowed under section 48(a)(1)(E).

Another requirement for a qualified rehabilitated building is that the building be rehabilitated. The regulations require that the rehabilitation of the building be substantial. In general, for the rehabilitation to be "substantial," it must either materially extend the useful life of the building, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value.

Section 48(g) also distinguishes between expenditures for new construction and for rehabilitation. Any expenditures attributable to an enlargement of an existing building are considered to be expenditures for new construction and, therefore, do not qualify for the credit. The final regulations contain rules defining an enlargement of a building and provide allocation rules for cases where expenditures are attributable to both a rehabilitation and an enlargement.

Another requirement for a qualified rehabilitated building is that at least 75 percent of the existing external walls of the building must be retained in place as external walls in the rehabilitation process.

Section 48(g)(1)(C), prior to its amendment by the Economic Recovery Tax Act of 1981, provided that where there is a separate rehabilitation of a major portion of a building, the major portion may be treated as a separate

building for purposes of the definition of a qualified rehabilitated building and the twenty-year requirement. These regulations provide that a major portion must consist of clearly identifiable parts of a building and lists factors that are taken into account in determining whether a part of a building is a major portion.

Rehabilitation activity that is done in phases may be considered a single rehabilitation. The final regulations provide rules for determining whether noncontinuous rehabilitation activity constitutes a single rehabilitation done in phases.

Under the version of section 48(g)(2) in effect prior to the amendments made by the Economic Recovery Tax Act of 1981, and the final regulations, the term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account, incurred after October 31, 1978, for property (or additions or improvements to property) with a useful life of five years or more, made in connection with the rehabilitation of a qualified rehabilitated building. The regulations have been revised to make clear that only expenditures for depreciable property qualify as qualified rehabilitation expenditures. The final regulations contain special rules for treating a transferee of a building as having incurred the qualified rehabilitation expenditures of a transferor if the building is acquired before the property attributable to such expenditures is placed in service. In addition, expenditures for property that is "section 38 property" (determined without regard to section 48(a)(1) (E) and (1)), the cost of acquiring an interest in a building, and the costs for an enlargement of a building are not qualified rehabilitation expenditures. Finally, expenditures to rehabilitate a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder) are not qualified rehabilitation expenditures unless the rehabilitation is a certified rehabilitation (as defined in section § 1.48-11(c)(8)).

Public Comments and Changes in Response to Comments

Enlargements

Several commenters suggested that the regulations should provide some leeway for enlargements that are *de minimus*. However, the statute clearly provides that expenditures for enlargements do not qualify. Also, since only the expenditures attributable to the enlargement of the building are excluded from the definition of qualified rehabilitation expenditure (*i.e.*, the entire rehabilitation is not necessarily disqualified), there is no need for a *de minimus* rule. Therefore, no change was made in the final regulations.

External Wall

A number of commenters requested that the rule defining an "external wall" be clarified. The proposed regulations contained the rule that a common wall was not an external wall. After careful consideration, the regulations are clarified to provide that an abutting wall (*i.e.*, a wall that abuts the wall of a separate building) and a shared wall (*i.e.*, a single wall serving two buildings) are external walls. An alternative rule, however, provides that if a taxpayer is adversely affected by the treatment of party walls in these final regulations, the taxpayer may continue to use the old definition of external wall.

Major Portion Test

In response to comments regarding the major portion provision, the "facts and circumstances" test in the proposed regulations is revised to include as a factor whether the portion rehabilitated constitutes a separate leasehold interest.

Phased Rehabilitations

A rule in the proposed regulations required that a written set of architectural plans and specifications describing the rehabilitation be in existence at the commencement of the project for a rehabilitation done in phases to qualify as a single rehabilitation. The final regulations provide that written plans generally describing all phases of the rehabilitation of the building are sufficient even though such plans are not architectural plans and specifications.

Timing of the Credit

The proposed regulations provided that the credit could be claimed only in the taxable year in which the property is placed in service. In response to comments, the final regulations make it clear that qualified progress expenditure treatment is available under section 46(d) if the requirements of that section are met.

Drafting Information

The principal author of these regulations is John G. Schmalz 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 participated in developing these regulations, both on matters of substance and style.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major legislative rule as defined in Executive Order 12291. Because the notice of proposed rulemaking for this final rule was published prior to January 1, 1981 (the effective date for the Regulatory Flexibility Act), this final rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 26 CFR 1.0-1—1.58-8

Income taxes, Tax liability, Tax rates, Credits.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

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

Authority 26 U.S.C. 7805 * * *.

Par. 2. Section 1.46-4(d) is amended by adding a new paragraph (d)(5) to read as follows:

§ 1.46-4 Limitations with respect to certain persons.

* * * * *

(d) *Noncorporate lessors.* * * *

(5) The requirements of this paragraph shall not apply with respect to any property which is treated as section 38 property by reason of section 48(a)(1)(E).

Par. 3. Section 1.48-1 is amended by revising the second sentence of paragraph (a), by revising the first sentence of paragraph (e)(1); and by adding a new sentence immediately after such first sentence of paragraph (e)(1), to read as follows:

§ 1.48-1 Definition of section 38 property.

(a) *In general.* * * * Except as otherwise provided in this section, the term "section 38 property" means property (1) with respect to which depreciation (or amortization in lieu of depreciation) is allowable to the taxpayer, (2) which has an estimated useful life of 3 years or more (determined as of the time such property is placed in service), and (3) which is (i) tangible personal property, (ii) other tangible property (not including a building and its structural components) but only if such other property is used as an integral part of manufacturing, production, or extraction, or an an integral part of furnishing transportation, communicati ons, electrical energy, gas, water or sewage

disposal services by a person engaged in a trade or business of furnishing any such service, or is a research or storage facility used in connection with any of the foregoing activities, (iii) an elevator or escalator which satisfies the conditions of section 48(a)(1)(C), or (iv) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures. * * *

* * * * *

(e) *Definition of building and structural components.* (1) Generally, buildings and structural components thereof do not qualify as section 38 property. See, however, section 48(a)(1)(E) and (g), and § 1.48–11 (relating to investment credit for qualified rehabilitated building). * * *

* * * * *

Par. 4. Section 1.48–2 is amended by adding a new paragraph (d) to read as follows:

§ 1.48–2 New section 38 property.

* * * * *

(d) *Special rule for qualified rehabilitated buildings.* Notwithstanding the rules in paragraphs (a) through (c) of this section, that portion of the basis of a qualified rehabilitated building attributable to qualified rehabilitation expenditures is treated as new section 38 property. See section 48(a)(1)(E) and (g), and § 1.48–11.

Par. 5. There is inserted immediately after § 1.48–10 the following new § 1.48–11:

§ 1.48–11 Qualified rehabilitated building; expenditures incurred before January 1, 1982.

(a) *In general.* Under section 48(a)(1)(E), that portion of the basis of a qualified rehabilitated building which is attributable to qualified rehabilitation expenditures qualifies as section 38 property. In general, property which is treated as section 38 property by reason of section 48(a)(1)(E) is treated as new section 38 property and therefore is not subject to the used property limitation. See § 1.48–2(d). Section 48(g)(1) and paragraph (b) of this section define the term "qualified rehabilitated building". Section 48(g)(2) and paragraph (c) of this section define the term "qualified rehabilitation expenditure". Paragraph (d) of this section provides guidance for coordination of these provisions with other sections of the Code.

(b) *Definition of qualified rehabilitated building*—(1) *In general.* The term "qualified rehabilitated building" means any building and its structural components—

(i) Which has been rehabilitated (within the meaning of paragraph (b)(3) of this section),

(ii) Which was placed in service (within the meaning of § 1.46–3(d)) by any person at any time before the beginning of the rehabilitation,

(iii) 75 percent or more of the existing external walls of which are retained in place as external walls (within the meaning of paragraph (b)(4) of this section) in the rehabilitation process, and

(iv) Which meets the twenty-year requirement in paragraph (b)(2) of this section.

In addition, a major portion of a building may be treated as a separate building for purposes of this paragraph if the requirements of paragraph (b)(5) of this section are met.

(2) *Twenty-year requirement*—(i) *In general.* A building is considered a qualified rehabilitated building only if a period of at least 20 years has elapsed between the date physical work on the rehabilitation of the building began, and the later of—

(A) The date the building was first placed in service (see § 1.46–3(d)) by any person as a building, or

(B) The date the building was placed in service by any taxpayer in connection with a prior rehabilitation with respect to which a credit was allowed by reason of section 48(a)(1)(E).

(ii) *Vacant periods.* The 20-year period includes periods during which a building was vacant or devoted to a personal use and is computed without regard to the number of owners or the identity of owners during the period.

(iii) *Physical work on a rehabilitation.* For purposes of this section, "physical work on a rehabilitation" begins when actual construction begins. The term "physical work on a rehabilitation" does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration (*e.g.*, placing boards over broken windows).

(iv) *Special rule.* If a part of a building meets the twenty-years requirement in subdivision (i) of this subparagraph and a part (for example, an addition) does not, a rehabilitation of that part that meets the requirement may qualify for a credit only if that part constitutes a major portion (as defined in paragraph (b)(5) of this section) of the building.

(3) *Rehabilitation*—(i) *In general.* For purposes of this paragraph, rehabilitation includes renovation, restoration, or reconstruction. However, the term "rehabilitation" does not include enlargement (within the meaning of paragraph (c)(7)(ii) of this section), new construction, or the completion of new construction after a building has been placed in service. For purposes of this paragraph (b)(3), whether expenditures are attributable to the rehabilitation of an existing building, or to new construction, is determined upon all the facts and circumstances.

(ii) *Substantial rehabilitation.* For a building to be considered rehabilitated, the rehabilitation must be substantial. Whether a rehabilitation is substantial is determined upon the basis of all the facts and circumstances. In general, to be substantial, the rehabilitation must do one of the following:

(A) materially extend the useful life of the building;

(B) significantly upgrade its usefulness (for either the same or a new use); or

(C) preserve it in a way that significantly improves its condition or enhances its historic value.

A substantial rehabilitation may vary in degree from gutting and extensive reconstruction of a building's major structural components to the cure of a substantial accumulation of major disrepairs. It may also include renovation, alteration, or remodelling for the conversion of a structurally sound building to a design and condition required for a new use. Cosmetic improvements alone, however, do not qualify as a substantial rehabilitation.

(iii) *Aggregation of rehabilitation.* In the case where qualified rehabilitation expenditures are incurred with respect to a rehabilitation of a building by more than one person (*e.g.*, a lessor and a lessee, several lessees, or several condominium owners), the substantial rehabilitation requirement in this paragraph (b)(3) shall be applied by aggregating all the rehabilitation work done by such persons.

(iv) *Special rule by qualified rehabilitation expenditures treated as incurred by the taxpayer.* In the case where qualified rehabilitation expenditures are treated as having been incurred by a taxpayer because of the application of paragraph (c)(3)(ii) of this section, the substantial rehabilitation test in paragraph (b)(3)(ii) of this section will be applied by aggregating the rehabilitation work done by the transferor and the transferee.

(v) *Examples.* The provisions of this subparagraph (3) may be illustrated by the following examples:

Example (1). Taxpayer A is the owner of a 30-year old building. The building is air conditioned by means of window air conditioning units. A replaces the window units with a central air conditioning system

and no other rehabilitation is performed by A. The expenditures incurred by A did not materially extend the building's useful life, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value. Although expenditures for replacement of window units with a central air conditioning system may constitute qualified expenditures as part of an overall rehabilitation, alone they do not qualify as a substantial rehabilitation and the building is not considered rehabilitated within the meaning of this subparagraph.

Example (2). Taxpayer B is the owner of a 10 story office building that is 35 years old. The building is in substantial disrepair and in order to modernize it as an office building B installs new plumbing, electrical wiring, and heating and air conditioning systems. In addition, the layout of each floor is changed by means of tearing down many existing interior walls and partitions and building new walls, partitions, and doors. Old plaster is removed from many walls and replaced by new wall covering. New windows and new flooring are installed throughout the building. The improvements made by B materially extend the useful life of the building and significantly upgrade its usefulness. The building is considered rehabilitated within the meaning of the facts and circumstances test in this subparagraph.

Example (3). Taxpayer C is the owner of a 100-year old building that has substantial historic character, although the building is not a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder). C uncovers and restores the original woodwork, wall coverings and moldings throughout the building. The windows and doors are replaced with replicas of the original. The improvements made by C significantly preserve the building and significantly enhance its historic value. Thus, the building is considered rehabilitated within the meaning of this subparagraph.

(4) *Retention of 75 percent of external walls*—(i) *In general.* A building meets the requirements set forth in paragraph (b)(1)(iii) only if 75 percent or more of the existing external walls (as measured by the total area of the existing external walls) are retained in place as external walls in the rehabilitation process. For this purpose, the area of existing external walls includes the area of windows and doors.

(ii) *External wall.* For purposes of this paragraph (b)(4), a wall includes both the supporting elements of the wall and the nonsupporting elements (*e.g.*, a curtain) of the wall. Except as otherwise provided in this paragraph (b)(4), the term "external wall" includes any wall that has one face exposed to the weather, earth, or an abutting wall erected on an adjacent property. An external wall also includes a shared wall (*i.e.*, a single wall shared with an adjacent building), generally referred to as a "party wall".

(iii) *Alternative rule.* Notwithstanding the definition of external wall contained in paragraph (b)(4)(ii) of this section, in any case in which the building being rehabilitated would fail to meet the requirements of a qualified rehabilitation building if the definition of external wall in paragraph (b)(4)(ii) of this section were used, then the term "external wall" shall be defined as a wall, including its supporting elements, with one face exposed to the weather or earth, and a common wall shall not be treated as an external wall.

(iv) *Retained in place.* An existing external wall is retained in place if the supporting elements of the wall are retained in place. An existing external wall is not retained in place if the supporting elements of the wall are replaced by new supporting elements. An external wall is retained in place, however, if the supporting elements are reinforced in the rehabilitation, provided that such supporting elements of the external wall are retained in place. An external wall is retained in place even though it is covered (e.g., with new siding). Moreover, the existing curtain may be replaced with a new curtain provided that the structural framework that provides for the support of the existing curtain is retained in place. An external wall is retained in place notwithstanding that the existing doors and windows in the wall are modified, eliminated, or replaced. A wall may be disassembled and reassembled so long as the same supporting elements are used when the wall is reassembled. Thus, for example, in the case of the brick wall, the wall is considered retained in place even though the original bricks are removed (for cleaning, *etc.*) and put back to form the wall.

(v) *Retention as an external wall.* For purposes of meeting the 75 percent requirement of this subparagraph (4), an existing external wall must be retained in place as an external wall. If an addition is made that results in an existing external wall being converted into an internal wall, the wall is not retained in place as an external wall.

(vi) *Special rule.* Solely for the purpose of meeting the 75 percent requirement of this subparagraph (4), the walls of an uncovered internal shaft designed solely to bring light or air into the center of a building which are completely surrounded by external walls of the building and which enclose space not designated for occupancy or other use by people (other than for maintenance or emergency) are not considered external walls. Thus, a wall of a light well in the center of an office building is not an external wall. However, walls surrounding an uncovered courtyard which is usable by the building's occupants, (*e.g.*, at lunch time) are external walls.

(vii) *Examples* The provisions of this subparagraph (4) may be illustrated by the following examples:

Example (1). Taxpayer A rehabilitated a building all of the walls of which consisted of wood siding attached to gypsum board sheets (which covered the studs). A covered the existing wood siding with aluminum siding in a part of a rehabilitation that otherwise qualified under this subparagraph. A satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (2). Taxpayer B rehabilitated a building the external walls of which had a masonry curtain. The masonry on the wall face was replaced with a glass curtain. The steel beam and girders supporting the existing curtain were retained in place. B satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (3). Taxpayer C rehabilitated a building which has two external walls measuring 75' x 20' and two other external walls measuring 100' x 20'. C tore down one of the larger walls, including its supporting elements, which accounted for more than 25% of the building's external walls and constructed a new wall. C has not satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (4). The facts are the same as in example 3, except C does not tear down any walls, but makes an addition that results in one of the smaller walls becoming an internal wall. In addition, C enlarged 8 of the existing windows on the larger walls, increasing them from a size of 3' x 4' to 6' x 8'. Since the smaller wall accounts for less than 25 percent of the total wall area, C has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process. The enlargement of the existing windows on the larger wall does not change the result.

(5) *Major portion treated as separate building*—(i) *In general.* Where there is a separate rehabilitation of a major portion of a building, such major portion shall be treated as a separate building. Thus, such major portion may qualify as a qualified rehabilitated building if the requirements of this paragraph are met with respect to such major portion. Expenditures for property that services both a major portion of a building and another portion must be specifically allocated to each portion to the extent possible. If it is not possible to make such an allocation, the expenditures must be allocated to each portion on some reasonable basis. What constitutes a reasonable basis for an allocation depends on factors such as the type of improvement and how the

improvement relates functionally to the building. For example, in the case of expenditures for an airconditioning system or a roof, a reasonable basis for allocating the expenditures would be the volume of the major portion served by the improvement relative to the volume of the other portion of the building served by the improvement.

(ii) *Major portion defined.* Whether a part of a building constitutes a major portion of the building is determined upon the basis of all the facts and circumstances. A major portion must generally consist of clearly identifiable parts of a building (*e.g.*, a wing of a building or the first 5 stories of a 7 story building). The following factors shall be taken into account:

(A) Whether the portion comprises an entire leasehold interest or an entire ownership (*e.g.*, condominium) interest;

(B) Whether the portion (as measured by volume) is sufficiently large that it would be reasonable to treat it as a separate building; and

(C) Whether the portion is functionally different from other parts of the building.

(6) *Special rule for rehabilitation done in phases.* If rehabilitation which is not continuous is determined under this subparagraph to be a single rehabilitation done in phases, the requirements of this paragraph (b) are to be applied with respect to the overall rehabilitation and not merely to a phase of the rehabilitation. In such case, a phase of a single overall rehabilitation will not be considered as "prior rehabilitation" for purposes of subparagraph (2)(i)(B) of this paragraph (b). Whether rehabilitation which is not continuous is a single rehabilitation that is done in phases is determined on the basis of all the facts and circumstances. Generally, however, to constitute a single rehabilitation that is done in phases, there must exist, prior to the time any rehabilitation work is commenced, a set of written plans describing generally all phases of the rehabilitation of the building and a reasonable expectation that all phases of the rehabilitation will be completed. Such written plans are not required to contain detailed working drawings or detailed specifications of the material to be used. In addition, the period between the time that physical work on the first phase of the overall rehabilitation begins and physical work on the last phase of the overall rehabilitation begins must be reasonable. In determining whether the rehabilitation is completed within a reasonable time, the fact that a building is occupied during the rehabilitation, the necessity of acquiring a lease (of additional portions of the building), and unforeseen delays shall be taken into account. Other factors that are relevant in determining whether rehabilitation is a single rehabilitation include the length of time between each phase of rehabilitation activities and the extent of rehabilitation activity in each phase.

(7) *Special rule for adjoining buildings that are combined.* For purposes of this paragraph (b), if as part of a rehabilitation process two or more adjoining buildings are combined and placed in service as a single building after the rehabilitation process, then all of the requirements of a qualified rehabilitated building in section 48(g)(1) and this section may be applied to the constituent adjoining buildings in the aggregate. Any party walls or abutting walls between the constitutent buildings that would otherwise be treated as external walls (within the meaning of paragraph (b)(4)(ii) of this section) would not be treated as external walls of the building; the substantial rehabilitation test in paragraph (b)(3)(ii) of this section would be applied to the aggregate rehabilitation work with respect to all of the constitutent buildings.

(c) *Definition of qualified rehabilitation expenditures*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, the term "qualified rehabilitation expenditure" means any amount—

(i) Properly chargeable to capital account (as described in subparagraph (2) of this paragraph),

(ii) Incurred after October 31, 1978, for depreciable or amortizable property (or additions or improvements to property) with a useful life of five years or more, and

(iii) Made in connection with the rehabilitation of a qualified rehabilitated building.

(2) *Chargeable to capital account.* For purposes of paragraph (c)(1)(i) of this section, amounts paid or incurred are chargeable to capital account if under the taxpayer's method of accounting they are property includible in computing basis under § 1.46-3. Amounts treated as an expense and deducted in the year they are paid or incurred are not chargeable to capital account.

(3) *Incurred by the taxpayer*—(i) *In general.* Generally, to qualify for a credit under section 48 (a)(1)(E), qualified rehabilitation expenditures must be incurred by the taxpayer after October 31, 1978. An expenditure is incurred for purposes of this paragraph on the date such expenditure would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense. If qualified rehabilitation expenditures are treated as having been incurred by a taxpayer under paragraph (c)(3)(ii)] of this section, the taxpayer shall be treated as having incurred the expenditures on the date such expenditures were incurred by the transferor.

(ii) *Qualified rehabilitation expenditures treated as incurred by the taxpayer.* (A) Where rehabilitation expenditures are incurred with respect to a building by a person (or persons) other than the taxpayer and the taxpayer acquires the building, or a portion of the building to which the expenditures are allocable, the taxpayer acquiring such property will be treated as having incurred the rehabilitation expenditures actually incurred by the transferor (or treated as incurred by the transferor under this paragraph (c)(3)(ii)) with respect to the acquired property, provided that—

(*1*) The building, or the portion of the building, acquired by the taxpayer was not used after the rehabilitation expenditures were incurred and prior to the date of acquisition by the taxpayer, and

(*2*) No credit with respect to such qualified rehabilitation expenditures is claimed by anyone other than the taxpayer acquiring the property.

For purposes of this paragraph (c)(3)(ii), use shall mean actual use, whether personal or business.

(B) The amount of qualified rehabilitation expenditures treated as incurred by the taxpayer under this paragraph is the lesser of—

(*1*) The qualified rehabilitation expenditures incurred before the date on which the taxpayer acquired the building (or portion thereof), to which the expenditures are attributable, or

(*2*) That portion of the taxpayer's cost or other basis for the property which is attributable to the qualified rehabilitation expenditures described in paragraph (c)(3)(B)(*1*) of this section incurred before such date.

For purposes of paragraph (c)(6)(ii) of this section, the amount of rehabilitation expenditures treated as incurred by the taxpayer under this paragraph (c)(3)(ii) shall not be considered to be part of the cost of acquiring a building or any interest in the building. The portion of the cost of acquiring a building (or an interest therein) which is not treated under this paragraph as qualified rehabilitation expenditures incurred by the taxpayer is not eligible for a

rehabilitation investment credit. See paragraph (c)(6)(ii) of this section.

(C) See paragraph (b)(2)(iv) of this section for rules concerning the application of the substantial rehabilitation test to expenditures treated as incurred by the taxpayer.

(iii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example (1). In 1978, taxpayer A, a cash basis taxpayer, commenced the rehabilitation of a 30-year old building. In June 1978, A signed contract with a plumbing contractor for replacement of the plumbing in the building. A agreed to pay the contractor as soon as the work was completed. The work was completed in September 1978, but A did not pay the amount due until November 1, 1978. The expenditures for the plumbing are not qualified rehabilitation expenditures because they were not incurred after October 31, 1978.

Example (2). B incurred qualified rehabilitation expenditures of $300,000 with respect to an existing building between January 1, 1980, and May 15, 1980, and then sold the building to C on June 1, 1980. If the property attributable to the expenditures was not placed in service by A during the period from January 1, 1980, to June 1, 1980, C will be treated as having incurred the expenditures.

(4) *Incurred for 5-year property.* An expenditure is incurred for depreciable or amortizable property if the amount of the expenditure is added to the basis of property which is depreciable or amortizable under section 167. The determination of whether property has a useful life of five years or more is made by applying the principles of § 1.46–3(e). In the case of expenditures for property made by a lessee, see sections 167 and 178 and the regulations thereunder for rules relating to whether improvements made to leased property are depreciable or amortizable.

(5) *Made in connection with the rehabilitation of a qualified rehabilitated building.* Expenditures attributable to work done to facilities related to a building (*e.g.*, sidewalk, parking lot, landscaping) are not considered made in connection with a rehabilitation of a qualified rehabilitated building.

(6) *Certain expenditures excluded from qualified rehabilitation expenditures.* The term "qualified rehabilitation expenditures" does not include the following expenditures:

(i) An expenditure for property which is "section 38 property" (determined without regard to section 48(a)(1) (E) and (l)).

(ii) The cost of acquiring a building or any interest in a building (including a leasehold interest) except as provided in paragraph (c)(3)(ii) of this section.

(iii) An expenditure attributable to enlargement of a building (as defined in paragraph (c)(7) of this section).

(iv) An expenditure attributable to rehabilitation of a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder), unless the rehabilitation is a certified rehabilitation (as defined in paragraph (c)(8) of this section).

(7) *Expenditures for enlargement distinguished*—(i) *In general.* Expenditures attributable to an enlargement of an existing building do not qualify as qualified rehabilitated expenditures. A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodeling is not considred an enlargement. Generally, the total volume of a building is equal to the product of the floor area of the base of the building and the height from the underside of the lowest floor (including the basement) to the average height of the finished roof (as it exists or existed). For this purpose, floor area is measured from the exterior faces of external walls (other than shared walls that are external walls) and from the centerline of shared walls that are external walls. In addition, a building is enlarged to the extent of any construction outside the exterior faces of the existing external wall of the building.

(ii) *Rehabilitation which includes enlargement.* If expenditures for property only partially qualify as qualified rehabilitation expenditures because some of the expenditures are also attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. This allocation should be made using the principles contained in paragraph (b)(5)(i) of this section.

(8) *Certified rehabilitation*—(i) *In general.* For the purpose of this paragraph (c) of this section, the term "certified rehabilitation" means any rehabilitation of a certified historic building in a registered historic district which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such building or the district in which such building is located.

(ii) *Revoked or invalidated certifications.* If the Department of Interior revokes or otherwise invalidates a certification after it has been provided to a taxpayer, the decertified property will cease to be section 38 property described in section 48(a)(1)(e). Such cessation shall be effective as of the date the activity giving rise to the revocation or invalidation occurred. See section 47 for the rules applicable to property that ceases to be section 38 property.

(d) *Coordination with other provisions of the Code*—(1) *Credit by lessees*—(i) *Rehabilitation performed by lessor.* A lessee may take the credit for rehabilitation performed by the lessor if the requirements of this section and section 48(d) are satisfied. For purposes of applying section 48(d), the fair market value of section 38 property described in section 48(a)(1)(E) shall be equal to that portion of the lessor's basis in a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures.

(ii) *Rehabilitation performed by lessee.* A lessee may take the credit for rehabilitation performed by the lessee, provided that the property (or improvements or additions to property) for which the rehabilitation expenditures are made is depreciable (or amortizable) by the lessee (see sections 167 and 178, and the regulations thereunder) and the requirements of this section are satisfied.

(2) *When credit may be claimed.* The investment credit for qualified rehabilitation expenditures is allowed generally in the taxable year in which the property to which the rehabilitation expenditures is attributable is placed in service, provided the building is a qualified rehabilitated building for the taxable year. See § 1.46–3(d). Under certain circumstances, however, the credit may be available prior to the date the property is placed in service. See section 46(d) and § 1.46–5 (relating to qualified progress expenditures).

(3) *Recapture.* If property described in section 48(a)(1)(E) is disposed of by the taxpayer, or otherwise ceases to be "section 38 property," recapture may result under section 47: Property will cease to be section 38 property, and therefore recapture may occur under section 47, in any case where the Department of Interior revokes or otherwise invalidates a certification of rehabilitation (see section 48(g)(2)(C)) after the property is placed in service because, for example, the taxpayer made modifications to the building inconsistent with Department of Interior standards.

(e) *Effective date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, this § 1.48–11 shall not apply to expenditures incurred after December 31, 1981.

(2) *Transitional rule.* This § 1.48–11 shall continue to apply to expenditures incurred after December 31, 1981, for the rehabilitation of a building if—

(i) The physical work on the rehabilitation began before January 1, 1982, and

(ii) The building does not meet the requirements of section 48(g)(1) of the Code as amended by the Economic Recovery Tax Act of 1981.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: June 18, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-15644 Filed 6-27-85; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-208; Ref: Notice No. 502]

Retention of Firearms Transaction Records

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

ACTION: Final rule, Treasury decision.

SUMMARY: Licensees are now required to keep records pertaining to firearms transactions indefinitely. These new regulations will liberalize that requirement, and provide that licensed dealers and licensed collectors will not be required to retain records for longer than 20 years and licensed manufacturers and licensed importers will not be required to retain disposition records for longer than 20 years.

EFFECTIVE DATE: July 29, 1985.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7591).

SUPPLEMENTARY INFORMATION:

Background

Since enactment of the Gun Control Act of 1968, the regulations have required that records of firearms transactions be permanently maintained by all licensees. Where a firearms business is discontinued and not succeeded by a new licensee, the permanent records must be delivered to ATF, unless State law or local ordinance requires otherwise. The record retention requirement has been based on two principal foundations. The maintenance of records on a permanent basis enables the Government to establish the movement of firearms in interstate or foreign commerce which is frequently critical in the prosecution of criminal cases, and allows the Government to trace the ownership of firearms used in criminal activity, a function particularly important in support of State and local law enforcement.

Notice of Proposed Rulemaking

The Bureau published a notice of proposed rulemaking on February 14, 1984 (49 FR 5628), proposing to amend the regulations by changing the length of time that records of firearms transactions will be required to be retained by licensees. All licensees are now required to maintain records of firearms transactions on a permanent basis.

ATF proposed that the requirement for the retention of permanent records for licensed dealers and licensed collectors be changed to a retention period of not more than 20 years beginning on December 16, 1968, the effective date of the Gun Control Act of 1968. Licensed manufacturers and licensed importers may dispose of their disposition records after retaining such records for 20 years beginning December 16, 1968. However, manufacturers and importers would be required to retain, on a permanent basis, their records of manufacture, importation and other acquisition of firearms.

Records of firearms transactions that occurred prior to December 16, 1968, with the exception of records of manufacture, importation or other acquisitions by manufacturers and importers, will no longer be required to be retained as a result of this change in the regulations.

Approximately 225,000 Federal firearms licensees have been faced with ever-increasing storage costs in order to maintain on a permanent basis the large volume of these records. In addition, ATF is experiencing increasing costs of storing and maintaining voluminous records of out-of-business licensees.

A study conducted by ATF established that relatively few requests for traces of guns involved transactions older than 20 years.

Accordingly, a 20 year record retention period would not have a significant impact on ATF's capability to trace crime-related firearms.

Because of the diminished frequency in utilizing records over 20 years of age in tracing firearms used in crimes, the requirement to maintain permanent records of all firearms transactions is not justifiable based on the cost and administrative burden to both the firearms industry and the Government.

Requiring licensed manufacturers and licensed importers to permanently maintain the records of the manufacture, importation, or other acquisition of firearms will enable the Government to continue to be able to prove the requisite interstate or foreign commerce element in the prosecution of felons and other prohibited categories of persons charged with unlawful shipment, transportation, receipt or possession of firearms. In addition, these records are very useful in determining the proper classification of firearms under Federal law, particularly in the areas of antiques and curios and relics.

Comments

During the 60 day comment period, 20 written comments were received. Three comments were received from associations and 17 were from individuals. Seven individuals stated a preference for a retention period of 10 years. Three of those persons stated no reason for their selection. One individual stated that he believed that a 10 year period would allay fears that the recordkeeping will be used as a data base for future firearms registration. One person believes that a trace of a firearm sold over 10 years ago is too "cold" to be effective. Two individuals stated that if a retention period of 20 years would save time and money, then, they reason, 10 years would save more.

An organization representing a large membership concurred in the change in the retention period, and also suggested a change in methods of retention. They suggested, in essence, that manufacturers and importers be designated repositories for handgun records that have been manufactured or imported by them. Transaction forms would be periodically sent to them by dealers for retention. This suggestion goes far beyond the proposed changes in the regulations and would create an excessive paperwork burden, particularly on importers and manufacturers.

Even though they did not comment on a particular time period, the International Association of Chiefs of Police, on behalf of its 14,000 members, responded to the notice with a copy of a resolution unanimously adopted at their annual conference supporting ATF's tracing capability. They recognize that the ability to trace firearms has been, and continues to be, an important element in the solution of crimes and the successful prosecution of criminals.

By changing the retention period from an indefinite to a definite period, ATF estimates that 7½ to 9 million forms may be disposed of each year beginning after 1988. On or after December 16, 1988, these forms can be discarded if

they reflect transactions more than 20 years old.

Statistical analysis of a recent year enables us to discern the impact upon our tracing capabilities of a decrease in the record retention period. Taking calendar year 1982 as our base, the following facts are presented.

ATF was asked by State, Federal and local entities to trace 32,206 firearms. Of these requests, 27,643 firearms were sold to the ultimate consumer within 20 years prior to 1982. If the 20 year retention period had been in effect in 1982, 4,563 firearms could not have been traced because they would have been outside of the retention period. This represents a loss of approximately 14%. Conversely, with a 20 year retention period 86% of the traces could be made.

With a retention period of five years; we would lose the ability to trace 59.1% of the firearms; with a period of 10 years, we would lose 35.3%; and with a period of 15 years, we would lose the ability to trace 20.3% of the requested traces.

Ninety-two percent of all the successful traces conducted in 1982 were of firearms sold in the years since enactment of the Gun Control Act of 1968. Eight percent of the successful traces would have been lost had the 20 year retention been in existence in 1982. Because we have no reason to believe that the statistics shown in 1982 are atypical, we can safely assume that future yearly statistics will follow the same general pattern.

By adopting a 20 year retention period we estimate that as many as 9 million Firearms Transaction Records (Forms 4473) can be destroyed by licensees. We will lose the ability to trace approximately 14% of the traces requested. ATF is of the opinion that this loss can be justified by the reduction in cost of the paperwork burden.

Regulation Change

This Treasury Decision changes the regulations to allow all licensed dealers and collectors to dispose of all records for transactions prior to December 16, 1968. Licensed manufacturers and importers may dispose of all disposition records prior to December 16, 1968. Licensed dealers and collectors may dispose of all records older than 20 years beginning on or after December 16, 1988. Licensed manufacturers and importers may dispose of all dispositions records older than 20 years beginning on or after December 16, 1988.

Drafting Information

The principal author of this document is J. Barry Fields, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

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

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact nor compliance burden on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this proposal has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act (OMB control number 1512—0129).

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and Forfeitures, Transportation.

Authority

Accordingly, under the authority in 18 U.S.C. 926 (82 Stat. 1226), 27 CFR Part 178 is amended as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for Part 178 continues to read in part:

Authority: 18 U.S.C. 921–928; 44 U.S.C. 3504(h) * * *.

Par. 2. The table of sections in 27 CFR Part 178 is amended by adding an entry for § 178.128 to read as follows:

Subpart H—Records

Sec.

* * * * *

178.128 Record retention.

* * * * *

Par. 3. Section 178.121 is amended to change the retention period for records in paragraph (a) and to revise the Office of Management and Budget control number. As revised, § 178.121(a) and the OMB control number at the end of the section read as follows:

§ 178.121 General

(a) The records pertaining to firearms transactions prescribed by this part shall be retained on the licensed premises in the manner prescribed by this subpart and for the length of the time prescribed by § 178.128. The records pertaining to ammunition prescribed by this part shall be retained on the licensed premises in the manner prescribed by § 178.125.

* * * * *

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 1512—0129; information collection requirements in paragraphs (b) and (c) approved by the Office of Management and Budget under control number 1512—0387)

Par. 4. Section 178.124(b) is revised to change the retention period for firearms transaction records to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(b) Licensees shall retain in alphabetical (by name of purchaser), chronological (by date of disposition), or numerical (by transaction serial number) order, and as a part of the required records, each Form 4473 obtained in the course of transferring custody of the firearms.

* * * * *

Par. 5. Section 178.125 is amended to change the retention period for firearms receipt and disposition records and to revise the Office of Management and Budget control number. As revised, the first sentence of § 178.125(e) and the OMB control number at the end of the section read as follows:

§ 178.125 Record of Receipt and Disposition

* * * * *

(e) *Firearms receipt and disposition.* Each licensed dealer and each licensed collector shall enter into a record each receipt and disposition of firearms or firearms curios or relics. * * *

* * * * *

(Information collection requirements in paragraph (e) approved by the Office of Management and Budget under control number 1512–0129; all other record keeping approved by the Office of Management and Budget under control number 1512–0387.)

Par. 6. Subpart H is amended by adding a new § 178.128 to read as follows:

§ 178.128 Record retention.

(a) *Records prior to Act.* Licensed importers and licensed manufacturers may dispose of records of sale or other disposition of firearms prior to December 16, 1968. Licensed dealers and licensed collectors may dispose of all records of firearms transactions that occurred prior to December 16, 1968.

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 for a period of not less than 20 years after the date of the transaction.

(c) *Records of importation and manufacture.* Licensed importers and licensed manufacturers shall maintain permanent records of the importation, manufacture or other acquisition of firearms. Licensed importers' records and licensed manufacturers' records of the sale or other disposition of firearms after December 15, 1968, shall be retained through December 15, 1988, after which records of transactions over 20 years of age may be discarded.

(d) *Records of dealers and collectors under the Act.* The records prepared by licensed dealers and licensed collectors under the Act of the sale or other disposition of firearms and the corresponding record of receipt of such firearms shall be retained through December 15, 1988, after which records of transactions over 20 years of age may be discarded.

(Approved by the Office of Management and Budget under control number 1512—0129)

Signed: January 17, 1985.

Stephen E. Higgins,

Director.

Approved: February 15, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–15529 Filed 6–27–85; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Parts 93, 94, 95, 96, 97, 97a, 97b, 98, and 99

Programs Under the Comprehensive Employment and Training Act of 1973

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; removal of regulations.

SUMMARY: The Department of Labor is issuing a final rule to remove the regulations found at 29 CFR Parts 93, 94, 95, 96, 97, 97a, 97b, 98, and 99, which were promulgated under the repealed Comprehensive Employment and Training Act (CETA).

The CETA regulations in Title 29, CFR, are primarily of historical value and do not affect the current operation of any program. Therefore, the Department of Labor has decided that it is no longer necessary to continue publication of the CETA regulations in future editions of Title 29, and the regulations are being removed from the CFR.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Roberts T. Jones. Telephone (202) 376–6604.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed into law the Job Training Partnership Act, Pub. L. 97–300 (JTPA), JTPA, among other things, repealed the Comprehensive Employment and Training Act (CETA). JTPA section 184(a)(1).

The CETA regulations in 29 CFR Parts 93 *et seq.* governed programs funded under the Comprehensive Employment and Training Act of 1973, as amended. Pub. L. 93–203; Pub. L. 93–567. In 1978, CETA was amended extensively and reauthorized. Pub. L. 95–224. As a result, the CETA regulations at 29 CFR Parts 93 *et seq.* were superseded in many particulars by the regulations implementing the 1978 CETA reauthorization. *See* 20 CFR Parts 675 *et seq.*

The CETA regulations in Title 29, CFR, are primarily of historical value and do not affect the current operation of any program. Therefore, the Department of Labor has decided that it is no longer necessary to continue publication of the CETA regulations in future editions of Title 29, and the regulations are being removed from the CFR.

This rulemaking does not affect the CETA regulations in Title 20, CFR. Those regulations are of use to the Government's and the CETA grantees' attorneys and representatives in closing out, settling, and litigating CETA grants.

Regulatory Impact

This document reflects the removal of regulations for which there is no current statutory authority. Therefore, this document is not a rule or regulation as defined in Executive Order No. 12291. In addition, this document was not preceded by a general notice of proposed rulemaking, and is not a rule as defined in the Regulatory Flexibility Act. 5 U.S.C. 601(2) and 604(a).

Catalog of Federal Domestic Assistance Number

This program was listed in the *Catalog of Federal Domestic Assistance* at 17.211, 17.218, 17.219, 17.228, 17.230, 17.232, 17.233, and 17.234.

List of Subjects in 29 CFR Parts 93, 94, 95, 96, 97, 97a, 97b, 98 and 99

Manpower training.

Promulgation of Final Rule

Accordingly, Title 29, Code of Federal Regulations, is hereby amended by removing Parts 93, 94, 95, 96, 97, 97a, 97b, 98, and 99.

Authority: Sec. 2, Pub. L. 95–524, 92 Stat. 1909 (29 U.S.C. 801 note); sec. 184 (a)(1), Pub. L. 97–300, 96 Stat. 1322, 1357.

Signed at Washington, D.C. this 25th day of June 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–15653 Filed 6–27–85; 8:45 am]

BILLING CODE 4510–30–M

Office of Labor-Management Standards

Office of Pension and Welfare Benefit Programs

29 CFR Parts 460, 461, 462, 464, 465, 485, 486, 2550, and 2580

Reorganization of Rules Relating to the Bonding of Employee Benefit Plan Officials; Removal of Obsolete Plan Reporting Regulations From the Code of Federal Regulations

AGENCIES: Office of Labor-Management Standards and Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule which redesignates certain regulations relating to the bonding of

employee benefit plan officials and removes obsolete regulations relating to welfare and pension plan reports from the *Code of Federal Regulations*. These changes are necessary as a result of a recent reorganization within the Department and should enhance the usability of the Department's regulations.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Pension and Welfare Benefit Programs, (202) 523-8671, or Kay Oshel, Office of Labor-Management Standards, (202) 523-7373.

SUPPLEMENTARY INFORMATION: .

Background

The Employee Retirement Income Security Act of 1974 (ERISA) places responsibility in the Department of Labor for the administration of a comprehensive program to protect the interests of participants and beneficiaries of private employee benefit plans. The Secretary of Labor's Order 9-77 (42 FR 4950, September 27, 1977) delegated authority for the ERISA program to the Assistant Secretary for Labor-Management Relations. The Secretary of Labor has terminated that delegation and assigned the authority for the ERISA program to the Administrator of the Office of Pension and Welfare Benefit Programs (OPWBP), making OPWBP a separate agency of the Department of Labor. These changes were effected by the Secretary of Labor's Order 1-84, which was signed on January 20, 1984 and published in the **Federal Register** on February 3, 1984 at 49 FR 4269.

On May 3, 1984, the Secretary of Labor's Order 3-84 (49 FR 20578, May 15, 1984) established in the Department an Office of Labor-Management Standards (OLMS), formerly the Office of Labor-Management Standards Enforcement, under the supervision of the Assistant Secretary for Labor-Management Standards. OLMS is responsible for, among other things, administration of the Department's regulations contained in Chapter IV of Title 29 of the *Code of Federal Regulations* (CFR).

ERISA section 412 requires generally that plan officials who handle funds or other property of employee benefit plans be bonded. On January 10, 1975, the Department published a temporary bonding regulation under ERISA section 412 (29 CFR 2555.1, redesignated as 29 CFR 2550.412-1 on May 12, 1975, at 40 FR 20654). Temporary regulation 29 CFR 2550.412-1 references selected portions of the bonding regulations issued under the authority of section 13 of the Welfare and Pension Plans Disclosure Act (WPPDA) and makes them applicable to plan officials under ERISA. Specifically incorporated are all of Subparts A through E of Part 464 except for § 464.2 (basic bonding requirements), Subpart B of Part 465 (exemptions from bonding requirements) and Part 485 (prohibition against bonding by parties interested in the plan) of Subchapter B of Chapter IV of CFR Title 29.

Temporary regulation 29 CFR 2550.412-1 did not extend the life of the WPPDA or the regulations issued thereunder past January 1, 1975, which is the date as of which the WPPDA was repealed. Rather, the temporary regulation incorporated the substance of selected portions of the WPPDA regulations pending the adoption of final bonding regulations under ERISA section 412. Since the WPPDA regulations in Subchapter B of Chapter IV of CFR Title 29 were issued under a statute which has been repealed, they presently have relevance only to the extent that portions of them are referenced in the temporary bonding regulation issued under ERISA.

Because the WPPDA bonding regulations do not pertain to matters now under the jurisdiction of OLMS, it is necessary that they be removed from Chapter IV of CFR Title 29 and transferred to Chapter XXV of CFR Title 29, which pertains to matters under the jurisdiction of OPWBP. In addition, it is necessary that those remaining WPPDA regulations which are not being transferred to Chapter XXV of CFR Title 29 be removed from the *Code of Federal Regulations*. Those WPPDA regulations that are being removed from the *Code of Federal Regulations* relate to matters which are now governed by ERISA and regulations issued thereunder.

Discussion of Final Rule

This final rule reorders portions of the Department of Labor's regulations to reflect the new organization of the Department. Under this rule, the WPPDA regulations which are referenced in temporary regulation 29 CFR 2550.412-1 are transferred from Subchapter B of Chapter IV of CFR Title 29 to Chapter XXV of CFR Title 29. Specifically, the rule transfers all of Subparts A through E of Part 464 (except for § 464.2), Subpart B of Part 465 and Part 485 of FR Chapter IV of CFR Title 29. The remaining WPPDA regulations in Subchapter B of Chapter IV of CFR Title 29 are removed from the CFR by this document. Also, the heading of Chapter IV is changed to "Office of Labor-Management Standards."

The transferred regulations are placed in Part 2580 of Subchapter I of Chapter XXV of CFR Title 29. This new Subchapter and Part are dedicated in their entirety to holding the transferred WPPDA bonding regulations pending the adoption of final bonding regulations under ERISA section 412. The section designations of the transferred WPPDA regulations are being changed to reflect their new location. This document contains a redesignation table correlating the new ERISA regulation section designations with the old WPPDA regulation section designations. This table will appear in the Finding Aids Section of the 1985 edition of CFR Title 29 (Part 1920 to End).

In addition, this document amends temporary regulation 29 CFR 2550.412-1 to make clear that the WPPDA bonding regulations referenced therein are now located in Part 2580 of Subchapter I of Chapter XXV of CFR Title 29, rather than in Chapter IV of CFR Title 29.

Publication in Final

This document does not represent a complete recodification and updating of the Department's regulations but is instead limited to those areas specifically identified above. The Department has determined that this reorganization of regulations need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA, 5 U.S.C. 553), since this rulemaking merely reflects agency organization, procedure and practice. It is thus exempt under section 553(b)(A) of the APA. Temporary regulation 29 CFR 2550.412-1, as amended by this document, will remain in effect until permanent bonding regulations under ERISA section 412 are adopted.

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned have determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive, and merely reflects agency organization, practice and procedure.

Executive Order 12291

This rule is not classified as a "rule" under Executive Order 12291 on Federal Regulation because it is a regulation relating to agency organization, management or personnel. See section 1(a)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirement.

List of Subjects in 29 CFR Parts 2550 and 2580

Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Welfare plans, Bonding.

Adoption of Amendments of Regulations

For the reasons set forth above, Chapters IV and XXV of Title 29, *Code of Federal Regulations*, are amended as follows:

CHAPTER XXV—OFFICE OF PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for § 2550 continues to read as follows:

Authority: Sec. 505, Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135), unless otherwise noted. Sec. 401b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332.

1a. The heading for Chapter XXV is revised as set out above.

§ 2550.412-1 [Amended]

2. The following references in the first sentence of paragraph (a) of § 2550.412-1 are changed as follows:

from "Part 464" to "Part 2580";

from "Subpart B of Part 465" to "Subpart F of Part 2580";

from "Part 485" to "Subpart G of Part 2580".

3. The parenthetical phrase "(except for § 464.2 thereof)" is deleted from the first sentence of paragraph (a).

4. The following sentence is added immediately after the first sentence of paragraph (a): "Part 2580 of Title 29 of the *Code of Federal Regulations* incorporates material previously designated as Subparts A through E of Part 464, Subpart B of Part 465 and Part 485 of Title 29 of the *Code of Federal Regulations*."

SUBCHAPTER I—TEMPORARY BONDING RULES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

5. A new Subchapter I, consisting of Part 2580, entitled "Temporary Bonding Rules Under the Employee Retirement Income Security Act of 1974", is added to Chapter XXV of CFR Title 29.

6. A new Part 2580 (redesignated from Parts 464, 465, and 485), entitled "Temporary Bonding Rules", is added to the new Subchapter I of Chapter XXV of CFR Title 29.

7. The material shown in the table below in Parts 464, 465, and 485 of Chapter IV of CFR Title 29 is redesignated as material in Part 2580 of Subchapter I of Chapter XXV of CFR Title 29, with the new designations specified in the following table. The left-hand column contains the former section designations. The right-hand column contains the new section designations.

Former part 464, 465 or 485 section designation	New part 2580 section designation
464.1	2580.412-1
464.3	2580.412-2
464.4	2580.412-3
464.5	2580.412-4
464.6	2580.412-5
464.7	2580.412-6
464.8	2580.412-7
464.9	2580.412-8
464.10	2580.412-9
464.11	2580.412-10
464.12	2580.412-11
464.13	2580.412-12
464.14	2580.412-13
464.15	2580.412-14
464.16	2580.412-15
464.17	2580.412-16
464.18	2580.412-17
464.19	2580.412-18
464.20	2580.412-19
464.21	2580.412-20
464.22	2580.412-21
464.23	2580.412-22
465.15	2580.412-23
465.16	2580.412-24
465.17	2580.412-25
465.18	2580.412-26
465.19	2580.412-27
465.20	2580.412-28
465.21	2580.412-29
465.22	2580.412-30
465.23	2580.412-31
465.24	2580.412-32
485.1	2580.412-33
485.2	2580.412-34
485.3	2580.412-35
485.4	2580.412-36

8. A Table of Contents is added for the new Part 2580, reading as follows:

PART 2580—TEMPORARY BONDING RULES

Subpart A—Criteria for Determining Who Must Be Bonded

Sec.

2580.412-1 Statutory provisions.
2580.412-2 Plans exempt from the coverage of section 13.
2580.412-3 Plan administrators, officers and employees for purposes of section 13.
2580.412-4 "Funds or other property" of a plan.
2580.412-5 Determining when "funds or other property" belong to a plan.
2580.412-6 Determining when "funds or other property" are "handled" so as to require bonding.

Subpart B—Scope and Form of the Bond

2580.412-7 Statutory provision—scope of the bond.
2580.412-8 The nature of the duties or activities to which the bonding requirement relates.
2580.412-9 Meaning of fraud or dishonesty.
2580.412-10 Individual or schedule or blanket form of bonds.

Subpart C—Amount of the bond

2580.412-11 Statutory provision.
2580.412-12 Relationship of determining the amount of the bond to "handling".
2580.412-13 The meaning of "funds" in determining the amount of the bond.
2580.412-14 Determining the amount of funds "handled" during the preceding reporting year.
2580.412-15 Procedures to be used for estimating the amount of funds to be "handled" during the current reporting year in those cases where there is no preceding reporting year.
2580.412-16 Amount of bond required in given types of bonds or where more than one plan is insured in the same bond.
2580.412-17 Bonds over $500,000.

Subpart D—General Bond Rules

2580.412-18 Naming of insureds.
2580.412-19 Term of the bond, discovery period, other bond clauses.
2580.412-20 Use of existing bonds, separate bonds and additional bonding.

Subpart E—Qualified Agents, Brokers and Surety Companies for the Placing of Bonds

2580.412-21 Corporate sureties holding grants of authority from the Secretary of the Treasury.
2580.412-22 Interests held in agents, brokers and surety companies.

Subpart F—Exemptions

Bonds Placed With Certain Reinsuring Companies

2580.412-23 Exemption.
2580.412-24 Conditions of exemption.

Bonds Placed with Underwriters at Lloyds, London

2580.412-25 Exemption.
2580.412-26 Conditions of exemption.

Banking Institutions Subject to Federal Regulation

2580.412-27 Exemption.
2580.412-28 Conditions of exemption.

Savings and Loan Associations Subject to Federal Regulations

2580.412-29 Exemption.
2580.412-30 Conditions of exemption.

Insurance Carriers, Service and Other Similar Organizations

2580.412-31 Exemption.
2580.412-32 Conditions of exemption.

Subpart G—Prohibition Against Bonding by Parties Interested in the Plan.

2580.412-33 Introductory statement.
2580.412-34 General.
2580.412-35 Disqualification of agents, brokers and sureties.
2580.412-36 Application of 13(c) to "party in interest".

Authority: Sec. 505, Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135), sec. 412(e), Pub. L. 93-406, 88 Stat. 889 (29 U.S.C. 1112).

Note.—Sections 2580.412-1 through 2580.412-36 were redesignated from Parts 464, 465 and 485 of Title 29 of the *Code of Federal Regulations*.

9. All internal references in the newly redesignated part are revised as appropriate to reflect the new section designations.

§ 2580.412-26 [Amended]

10. 29 CFR 2580.412-26 is amended by changing the name "Office of Labor-Management and Welfare-Pension Reports" wherever it appears to read "Office of Pension and Welfare Benefit Programs".

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

12. The title of Chapter IV of CFR Title 29, now reading "Office of Labor-Management Standards Enforcement, Department of Labor" is changed to read "Office of Labor-Management Standards,

SUBCHAPTER B—WELFARE PENSION REPORTS

PARTS 460 THROUGH 486 [REMOVED]

13. The regulations in Subchapter B of Chapter IV of CFR Title 29 (Parts 460, 461, 462, 464, 465, 485 and 486) are removed and the Subchapter and Part headings relating thereto are vacated.

Dated: June 24, 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Wefare Programs.

Ronald J. St. Cyr,

Acting Assistant Secretary for Labor-Management Standards.

[FR Doc. 85-15490 Filed 6-27-85; 8:45 am]

BILLING CODE 4510-29-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of Additional 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 by reference 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, 1985, to September 30, 1985.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; 202-254-4860 (2020-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On May 31, 1984, the Pension Benefit Guaranty Corporation (the "PBGC") published 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 on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 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 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").

Since the regulation incorporates by reference 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. See 50 FR 12790 (April 1, 1985). This amendment adds to this appendix a new interest rate of 10 percent, which will be effective from July 1, 1985 to September 30, 1985. This rate is based on the prime rate in effect on June 17, 1985, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by 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, innovation 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 by 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, Pensions.

PART 2644—[AMENDED]

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

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

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93-406, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302 and 1236-1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

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)
* * *	*	*	
07/01/85	09/30/85	06/17/85	10.00

Effective Date: June 28, 1985.

Issued at Washington, D.C., on this 24th day of June, 1985.

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-15548 Filed 6-27-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85-09]

Regatta; Seattle Seafair Triathon

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes an area of controlled navigation upon the waters of Lake Washington on Sunday, July 21, 1985. This is necessary due to the number of swimmers participating in the ¾ mile swim as part of Seattle's Seafair Triathon. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event.

EFFECTIVE DATE: This Regulation is effective on July 21, 1985.

FOR FURTHER INFORMATION CONTACT: LT T. Mitchell, Chief, Boating Standards Branch, Thirteenth Coast Guard District, (206) 442-7355.

SUPPLEMENTARY INFORMATION: On May 20, 1985, the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (50 FR 20802). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulations are LT T. Mitchell, USCG, project officer, Thirteenth Coast Guard District Boating Standards Branch, and LCDR D.G. Beck, USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Comments

No comments were received. Minor editorial changes were made in the final rule by the drafters to improve the overall clarity of the rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulations affect only spectators and participants and applies to a small area of Lake Washington. In addition, it will be in effect for only a portion of one (1) day—this day being a Sunday. There is no commercial traffic in this area of the lake.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

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

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

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

2. 33 CFR Part 100 is amended by adding section 100.35-1305 to read as follows:

§ 100.35-1305 Lake Washington 1985 Seattle Seafair Triathon.

(a) On July 21, 1985, this regulation will be in effect from 6:00 a.m. until 10:00 a.m. or until one half hour after the conclusion of the swimming portion of the Triathon race (whichever is later).

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is: The waters of Lake Washington (known as Andrews Bay) bounded by Bailey Peninsula, the western shore of Lake Washington, and bounded on the North by an East-West line drawn tangent to the Northern tip of Bailey Peninsula.

(c) The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard Vessels. The Coast Guard patrol of this area is under the direction of a designated Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels or persons on or in the designated waters on adjoining waters during the periods this regulation is in effect.

(d) Only authorized vessels or persons may be allowed to enter the area during the hours this regulation is in effect.

(e) A succession of sharp, short signals by whistle, siren, or horn from vessels partrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: June 17, 1985.

R.R. Garrett,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 85-15606 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD3 85-041]

Drawbridge Operation Regulations; Bronx River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the Westchester Avenue drawbridge, mile 1.5 at New York City, because the bridge has been removed and rebuilt as a fixed bridge. Notice and public procedure have been omitted from this action because the bridge is no longer capable of being opened and closed.

EFFECTIVE DATE: This rule becomes effective on June 28, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are William C. Heming, project manager, and Mary Ann Arisman, project attorney.

This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that has been changed to a fixed bridge. Consequently, this action cannot be considered to be a major rule under Executive Order 12291. Furthermore, it

has been found to be nonsignificant under the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–2–80), and does not warrant preparation of an economic evaluation. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.771 is amended by revising section § 117.771(b) to read as follows:

§ 117.771 Bronx River.

* * * * *

(b) The draw of the Conrail bridge, mile 1.6 at New York City, need not be opened for the passage of vessels. The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gauges shall be so placed on the bridge that they are plainly visible to the operators of vessels approaching the bridges either up or downstream.

Dated: June 20, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 85–15604 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD3 85–040]

Drawbridge Operation Regulations; Delaware River (Back Channel), NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the Cities Service Co. drawbridge, mile 117.0 between Petty Island and Camden, NJ, because the bridge has been converted to a fixed bridge. Notice and public procedure have been omitted from this action because the bridge is no longer capable of being opened and closed.

EFFECTIVE DATE: This rule becomes effective on June 28, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are William C. Heming, project manager, and Mary Ann Arisman, project attorney.

This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that has been changed to a fixed bridge. Consequently, this action cannot be considered to be a major rule under Executive Order 12291. Furthermore, it has been found to be nonsignificant under the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–2–80), and does not warrant preparation of an economic evaluation. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 117.

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.717 [Removed]

2. Section 117.717 is removed.

Dated: June 20, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 85–15602 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD3 84–31]

Drawbridge Operation Regulations; Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Connecticut Department of Transportation, the Coast Guard is changing the regulations governing the Route 1 Bridge across Mystic River at Mystic, CT by allowing only hourly openings at quarter past the hour beginning at 7:15 a.m. during the boating season, and by amending notice requirements from November 1 through April 30. This change is being made because of early morning vehicular traffic congestion during the boating season, and because of minimal nighttime openings during the non-boating season. This action will continue to relieve the bridge owner of the burden of having a person constantly available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 29, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: On March 21, 1985, the Coast Guard published proposed rules (50 FR 11382) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated April 1, 1985. In each notice interested persons were given until May 6, 1985 to submit comments.

Drafting Information

The drafters of this notice are Lucas A. Dlhopolsky, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

Twelve responses were received on the proposed rule to require the bridge to allow hourly openings at quarter past the hour beginning at 7:15 a.m. rather than 8:15 a.m. from May 1 through October 31; and to require eight hours notice for openings between 7:15 p.m. and 5:15 a.m. from November 1 through April 30. One response from another federal agency indicated no objection to the proposal. Another respondent made no comment in favor or opposed to the proposed regulation but merely requested to be notified if a public hearing would be held. A public hearing is not required in this case. One person

felt that vehicular traffic control problems were more responsible for traffic back-ups than bridge openings. Three respondents expressed concern for vessel's safety when located between the two bridges (the other being the railroad bridge at mile 2.4) while waiting for the Route 1 bridge to open during an advance notice period or for the quarter past the hour opening. The proposed regulations are extending the existing time period for once hourly openings between May 1 and October 31 by only one hour (to begin at 7:15 a.m. versus 8:15 a.m.). The existing regulation has been in effect since 1965 and, except for early morning vehicular traffic congestion, has generally proven satisfactory to both vehicular and marine traffic. During advance notice periods, vessels should experience minimal delays in bridge openings for which they have made an appointment. Further, there is no indication that congestion on the waterway is greater before, than after 8:15 a.m. A couple of respondents suggested elimination of the hourly bridge openings during peak traffic periods, between 7:00 a.m.–8:15 a.m.; 4:30 p.m.–5:30 p.m.; and 12:15 p.m., in order to relieve vehicular traffic congestion. The proposed regulations did not include a change of this type. A separate Notice of Proposed Rulemaking would have to be issued after review, analysis and a determination that sufficient justification exists to warrant said change. Seven of the respondents cited the need for passage through the bridge for emergency and commercial vessels at any time. Sections of the existing regulations, which will not be changed by this rule, already require the bridge to be opened for certain vessels including those state and local vessels used for public safety and commercial vessels. One of these seven also pointed out the possibility of emergency vehicles on land being delayed because of a bridge opening. Existing regulations provide than when a draw tender is informed by a reliable source that an emergency vehicle is due to cross the draw, the draw tender shall take all reasonable measures to have the draw closed at the time the emergency vehicle arrives at the bridge.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. No vehicular/navigational conflict is expected to occur because the regulations for the boating season will only extend by one hour regulations already in effect most of the day. Additionally, the eight hours notice at night, November through April, would not pose a problem since there are few vessel openings and minimal vehicular traffic. Also most of the openings outside the boating season can be rescheduled slightly to conform with times the bridge opens on signal, thereby avoiding notice periods. Only recreational vessels will be affected by these regulations and only to a minimal extent. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.211(b) is revised to read as follows:

§ 117.211 Mystic River.

* * * * *

(b) The draw of the US 1 bridge, mile 2.8 at Mystic, shall open on signal, with a maximum delay of 20 minutes; except:

(1) From May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour.

(2) From November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight hours notice.

* * * * *

Dated: June 21, 1985.

Robert T. Nelson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85–15610 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD3 85–42]

Drawbridge Operation Regulations; Corrections and Miscellaneous Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction and miscellaneous amendments.

SUMMARY: This document corrects and makes miscellaneous amendments to a final rule which reorganized the Coast Guard regulations for drawbridges across navigable waters of the United States published in the **Federal Register** on Tuesday, April 24, 1984 (49 FR 17450). This action is necessary to correct typographical errors, omission of words and phrases, and omission of previously published regulations. Certain of these are due to various final rules published in the **Federal Register** by the Third Coast Guard District shortly before and after the final reorganization document was published. This document makes no substantive changes to the omitted material.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668–7994.

SUPPLEMENTARY INFORMATION: On April 24, 1984, the Coast Guard published a final rule in the **Federal Register** (49 FR 17450) which completely reorganized 33 CFR Part 117 containing requirements relating to the use and operation of drawbridges across the navigable waters of the United States. The revision was designed to simplify the use of these regulations by grouping all of the general rules into a single subpart and by arranging the provisions pertaining to individual drawbridges alphabetically by state and waterway. Since publication, various persons have pointed out errors in and material omitted from the revisions. Three documents have been published which corrected some of these errors and omissions (49 FR 26721, June 29, 1984; 49 FR 37381, September 24, 1984; and 49 FR 43457, October 29, 1984). Additional corrections are contained in this document.

Drafting Information

The principal persons involved in drafting this document are William C. Heming, project manager, and Mary Ann Arisman, project attorney.

Discussion of Amendments

None of the amendments in this rule make substantive changes not already contained in existing Coast Guard regulations. This rule merely incorporates the material omitted, as well as corrects certain errors, without change other than for organization and formatting purposes. The sections affected and the reasons for amending them are listed below:

Sections 117.205, 117.207(b), 117.213(b), 117.219, 117.237, 117.723(a) 117.734, 117.734–1, 117.739, and 117.903 are added or amended to include material found in the Code of Federal Regulations which was inadvertently omitted from the April 24, 1984 revision and subsequent corrections or to clarify ambiguous language in the revision.

Sections 117.723(c), 117.736 and 117.795 are removed or revised to conform to the format used throughout Part 117.

Section 117.231(a) is removed because the bridge referred to has been removed and the regulation was previously deleted.

Section 117.733 is amended to correct errors in paragraph designation due to multiple amendments which appeared in the **Federal Register** shortly before or after the correction document of October 29, 1984 (49 FR 43457).

Sections 117.217, 117.777(a), and 117.791(e)(1) are amended to correct spelling errors and names of bridge and bridge owners to properly identify the bridge and location.

This rulemaking action is purely administrative in nature and merely corrects typographical errors, and incorporates without substantive change existing regulations omitted from the Part 117 reorganization. Therefore, the Coast Guard finds that notice and public procedure thereon are unnecessary and that they rule may be made effective in less than 30 days under 5 U.S.C. 553(d).

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follow:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.205 is revised to read as follows:

§ 117.205 Connecticut River.

(a) The draws of the Amtrak Old Saybrook—Old Lyme Bridge, mile 3.4, and the Conrail Middletown Bridge, mile 32.0, shall open on signal:

(1) For commercial vessels except as described below:

(i) Amtrak Bridge, mile 3.4, when a westbound train scheduled to cross the bridge without stopping has passed Old Lyme and Blackhall Station, or an eastbound train has passed Saybrook Junction Station, and is in motion toward the bridge, the draw shall be opened as soon as the train has crossed the bridge.

(ii) Conrail Middletown Bridge, mile 32.0, when a westbound train scheduled to cross the bridge without stopping has passed Portland Station, or an eastbound train has passed Middletown Station, and is in motion toward the bridge, the draw shall be opened as soon as the train has crossed the bridge.

(2) For all other vessels which cannot pass the closed bridges the draws shall be opened as soon as practicable, but in no case shall the delay be more than 20 minutes from the time of request.

(b) All openings of the draws shall afford full horizontal and vertical clearance, regardless of the size or requirements of the passing vessel.

3. By revising § 117.207(b)(2) to read as follows:

§ 117.207 Housatonic River.

(b) * * *

(2) A delay in opening the draw shall not exceed 20 minutes for the passage of approaching trains from the time of the request.

4. By revising § 117.213(b) to read as follows:

§ 117.213 New Haven Harbor, Quinnipiac and Mill Rivers.

* * * * *

(b) Public vessels of the United States, state or local vessels used for public safety, commercial vessels and vessels in distress, shall notify the operator of the Tomlinson and the Ferry Street bridges and shall be passed through each of the bridges listed in this section as soon as possible at anytime.

* * * * *

§ 117.217 [Corrected]

5. By correcting "Conrail bridge," in § 117.217(b) to read "Metro-North "WALK" bridge,"

6. By revising § 117.219 to read as follows:

§ 117.219 Pequonnock River.

(a) Public vessels of the United States and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(b) The draw of the Stratford Avenue Bridge, mile 0.1 at Bridgeport, shall open on signal; except that, the draw need not open for passage of vessels from 6:45 a.m. to 7:15 a.m. and 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m. and 4:30 p.m. to 6:10 p.m. The opening signal is one prolonged blast followed by one short blast.

(c) The draw of the Metro-North "PECK" bridge, mile 0.3 at Bridgeport, shall open on the signal of three blasts as follows:

(1) From 5:45 a.m. to 9 p.m. except:

(i) From Monday through Friday, excluding holidays or emergencies, the draw need not be opened from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., and 4:30 p.m. to 6:10 p.m.

(ii) From Monday through Friday, excluding holidays or emergencies, the draws need not be opened more than once during the periods 5:45 a.m. to 6:45 a.m., 7:15 a.m. to 7:45 a.m., 8:15 a.m. to 9 a.m., and 6:10 p.m. to 8:15 p.m.

(2) From 9 a.m. to 5:45 a.m., the draws shall open on signal if at least eight hours notice is given.

(3) The draw need not open on signal if a train is approaching so closely that it may not be safely stopped; however, the delay in opening the draw shall not exceed 7 minutes from time of the request.

(d) The draw of the Congress Street Bridge, mile 0.4 at Bridgeport, shall open on signal as follows:

(1) From 8 a.m. to 9 p.m.; except that the draw need not open for the passage of other than commercial vessels from 11:45 a.m. to 1:15 p.m. and for all vessels from 4:30 p.m. to 6:10 p.m.

(2) From 9 p.m. to 8 a.m., if at least eight hours notice is given; except that the draw need not open for the passage of vessels from 6:45 a.m. to 7:15 a.m.; and from 7:45 a.m. to 8 a.m.

(3) The opening signal is two prolonged blasts followed by two short blasts.

(e) The draw of the East Washington Street bridge mile 0.6, shall open on the signal of one prolonged blast followed by two short blasts if at least 24 hours notice is given.

(f) The draw of the Grand Street bridge mile 0.9 at Bridgeport need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within 12 months after notification by the District Commander to do so.

§ 117.231 [Amended]

7. By removing § 117.231(a) and removing the designation of paragraph (b).

8. By revising § 117.237(a) to read as follows:

§ 117.237 Christina River.

(a) The owners of the bridges on this waterway:

(1) Shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to the operator of each vessel approaching the bridge either up or downstream.

(2) Shall open on signal except that the draw of a railroad bridge need not be opened when a train is in the bridge block, approaching the bridge, or within 5 minutes of the passage of a passenger train; but in no event shall the opening of the draw be delayed more than 10 minutes.

* * * * *

9. By removing § 117.723(c) in its entirety and adding § 117.723(a)(6) to read as follows:

§ 117.723 Hackensack River.

(a) * * *

(6) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes except as provided in paragraph (a)(1) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

10. By revising § 117.733 to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

(a) The following requirements apply to all bridges listed in this section:

(1) Except as otherwise provided in this section, these bridges need not stay open for more than 10 minutes for the passage of vessels nor need they stay closed for more than 10 minutes for the passage of land traffic.

(2) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle shall open on signal; except that, from Memorial Day through Labor Day on Saturdays, Sundays, and Federal holidays from 10 a.m. to 8 p.m., the draw need only open on the hour and half hour. The draw shall open at all times as soon as possible for passage of a public vessel of the United States or for a vessel in distress.

(c) The draw of the County Route 528 bridge across Barnegat Bay, mile 6.3 at Mantoloking shall open on signal; except that on Saturday, Sunday, and Federal holidays from Memorial Day through Labor Day from 9 a.m. to 6 p.m., the draw need be opened only on the hour, twenty minutes after the hour, and forty minutes after the hour. The draw shall open at all times as soon as possible for a public vessel of the United States, a vessel in distress or for a vessel with tow.

(d) The draw of the S37 bridge across Barnegat Bay, mile 14.1 at Seaside Heights, shall open on signal except as follows:

(1) From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened.

(2) From Memorial Day through Labor Day from 10 a.m. to 2 p.m. Saturdays, Sundays, and Federal holidays, the draw need only be opened on the hour and half hour, except that it shall open at any time for the passage of vessels with tows.

(e) The draws of the New Jersey Transit Rail Operations railroad bridge across Beach Thorofare, mile 68.9 at Atlantic City, shall open on signal from 11 p.m. to 6 a.m. From 6 a.m. to 11 p.m., the draw shall open on signal from 20 minutes to 30 minutes after each hour and remain open for all awaiting vessels.

(f) The draw of the Albany Avenue (US40–322) bridge across Inside Thorofare, mile 70.0 at Atlantic City, shall open on signal, except that from June 1 through September 30 from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw shall open on signal only on the hour and half hour and from 4 p.m. to 6 p.m., the draw need not be opened.

(g) The draw of the Dorset Avenue bridge across Inside Thorofare, mile 71.2 at Ventnor City, shall open on signal; except that, from June 1 through September 30, from 9:15 a.m. to 9:15 p.m., the draw need be opened only on the quarter and three-quarter hours. Public vessels of the United States and vessels in distress shall be passed at any time.

(h) The draw of the Route 52 (Ninth Street) bridge, mile 80.4 at Ocean City, shall open on signal; except that, from Memorial Day through Labor Day from 11 a.m. to 5 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour. Public vessels of the United States, vessels with another vessel in tow, and vessels in distress shall be passed at any time.

(i) The draw of the Stone Harbor Boulevard Bridge across Great Channel, mile 102.0 at Stone Harbor, shall open on signal except:

(1) From October 1 through March 31 from 10 p.m. to 6 a.m. the draw need only open if at least eight hours notice is given.

(2) From Memorial Day through Labor Day, from 6 a.m. to 6 p.m. on Saturday, Sunday and holidays, the draw need open only for waiting vessels on the hour, 20 minutes after the hour, and 20 minutes before the hour.

(3) The draw shall be opened at all times as soon as possible for a vessel with a tow, a public vessel of the United States or a vessel in distress.

(j) The draw of the Cape May County Bridge Commission bridge, mile 104.0 between Stone Harbor and Nummy Island, shall open on signal from May 15 through October 15 from 6 a.m. to 10 p.m., and from 10 p.m. to 6 a.m. if at least four hours notice is given. From October 16 through May 14, the draw shall open on signal if at least 24 hours notice is given. Public vessels of the United States shall be passed as soon as possible at any time.

11. By adding § 117.734 to read as follows:

§117.734 Navesink River (Swimming River).

The owners of all bridges over the waterway shall provide and keep in good legible condition two broad gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

12. By redesignating § 117.735 as § 117.736 and by adding a new § 117.735 to read as follows:

§ 117.735 Newark Bay.

The following requirements apply to all bridges across this waterway:

(a) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed through the draw without delay. The opening signal from these vessels is

four or more short blasts of a whistle or horn or a radio request.

(b) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(c) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

13. By adding § 117.738 to read as follows:

§ 117.738 Overpeck Creek.

(a) The draws of the Conrail and the New York, Susquehanna and Western railroad bridges, mile 0.0 both at Ridgefield Park, NJ, operate as follows:

(1) The draws shall open on signal if at least 24 hours notice is given.

(2) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(3) The owners of these bridges shall provide and keep in good legible condition two boad gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

14. By revising § 117.739 to read as follows:

§117.739 Passaic River.

(a) The following requirements apply to all bridges across the Passaic River:

(1) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes except as provided in paragraph (c) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (m) of this section the draws shall open on signal.

(b) The draw of the Jackson Street Bridge, mile 4.6, at Harrison, shall open on signal; except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(c) The draw of Amtrak's Dock bridge, mile 5.0 at Harrison, need not be opened from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m. Monday through Friday except Federal holidays. At all other times, an opening may be delayed no more than 10 minutes, unless the draw tender and the vessel operator, communicating by radiotelephone, agree to a longer delay.

(d) The draw of the Bridge Street Bridge, mile 5.6 at Harrison, shall open on signal except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(e) The draw of New Jersey Rail Operations Morristown Line bridge, mile 5.8 at Harrison, need not be opened from 7:23 a.m. to 9 a.m. and 4:30 p.m. to 6:50 p.m. Monday through Friday except Federal holidays.

(f) The draw of the Route 280 (Stickel Memorial) bridge, mile 5.8 at Harrison, shall open on signal if at least eight hours notice is given. In an emergency, the draw shall open as soon as possible but not more than two hours after the opening request.

(g) The draw of the Clay Street Bridge, mile 6.0 at Harrison, shall open on signal except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(h) The draw of the New Jersey Transit Rail Operations bridge (West Arlington), mile 8.0 at Kearney, shall open on signal from 7 a.m. to 11 p.m. if at least eight hours notice is given. From 11 p.m. to 7 a.m., the draw need not be opened.

(i) The draw of the Avondale Bridge, mile 10.7 at Lyndhurst, shall open on signal except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(j) The draw of the New Jersey Transit Rail Operations bridge, mile 11.7 at Lyndhurst, shall open on signal from 8 a.m. to 4 p.m. if at least six hours notice is given. From 4 p.m. to 8 a.m., the draw need not be opened.

(k) The draw of the Route 3 bridge, mile 11.8 at Rutherford, shall open on signal if at least six hours notice is given.

(l) The draw of the Union Avenue bridge, mile 13.2 at Wallington, shall open on signal; except that, from midnight to 8 a.m., the draw shall open on signal if at least eight hours notice is given.

(m) The draw of the following bridges need not be opened for the passage of vessels:

(1) Gregory Avenue bridge, mile 14.0 at Wallington.

(2) Second Street bridge, mile 14.7 at Wallington.

(3) West Eighth Street bridge, mile 15.3 at Garfield.

§ 117.777 [Corrected]

15. By correcting "The draw of the Long Island Railroad bridge, mile 1.1 at New York City," in § 117.777(a) to read "The draws of the Long Island Railroad bridges, mile 1.1 both at New York City."

§ 117.191 [Corrected]

16. By correcting "before 4:30 p.m. to the time" in § 117.791(e)(1) to read "before 4:30 p.m. of the time."

17. By revising § 117.795 to read as follows:

§ 117.795 Jamaica Bay and Connecting Waterways.

(a) The draw of the Marine Parkway bridge, mile 3.0 over Rockaway Inlet, shall open on signal Monday through Friday from 8 a.m. to 4 p.m. At all other times, the draw shall open on signal if at least eight hours notice is given; however, the draw shall open on signal

if at least a one hour notice is given for the passage of U.S. Navy or National Oceanic and Atmospheric Administration vessels.

(b) The draws of the New York City highway bridge, mile 0.8 across Mill Basin on Belt Parkway, need not be opened for the passage of vessels from noon to 9 p.m. on Sundays from May 15 to September 30, and on Memorial Day, Independence Day, and Labor Day. However, on these days, from two hours before to one hour after predicted high tide, the draw shall open on signal. For the purpose of this section, predicted high tide occurs 15 minutes later than that predicted for Sandy Hook, as given in the tide tables published by the National Oceanic and Atmospheric Administration. At all times, public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(c) The draws of the New York City Cross Bay Boulevard bridge, mile 10.0, and the New York City Transit Authority bridge, mile 10.6 both across the North Channel at Hamilton Beach, need not be opened for the passage of vessels.

18. By revising § 117.903 to read as follows:

§ 117.903 Darby Creek.

(a) The owners of the bridges on this waterway shall provide and keep in good legible condition two board gages painted white with black figures, nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the Conrail railroad bridge, mile 0.3, and the Reading railroad bridge, mile 0.3 both at Easington, shall operate as follows:

(1) From May 15 through October 15:

(i) From 11 p.m. to 7 a.m., the draw need not be opened for the passage of vessels.

(ii) Between 7 a.m. and 11 p.m., the draw shall open on signal at 7:15 a.m., 10:30 a.m., 1 p.m., 3 p.m., 7:30 p.m., and 10:30 p.m. and at all other times during these hours, if an opening will not unduly delay railroad operations.

(2) From October 16 through May 14, the draws shall open on signal if at least 24 hours notice is given.

(3) Any vessel which has passed through one of these bridges shall be passed through the draw of the other bridge without delay. When open for the passage of any vessel, these bridges shall remain open sufficiently long to permit the passage through both bridges of all vessels waiting to pass.

(4) The draws shall open as soon as possible for an emergency or vessel in distress.

Dated: June 21, 1985.

Robert T. Nelson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85-15605 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 211

[Docket RM 84-6A]

Mask Work Protection; Implementation of the Semiconductor Chip Protection Act of 1984

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Congress is issuing final regulations establishing a new Part 211 to 37 CFR Ch. II. These regulations implement certain provisions of the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620 (Nov. 8, 1984). The Act establishes a registration system for mask works to be administered by the Copyright Office and authorizes the Office to establish regulations in several cases, including the registration of claims of protection in mask works, the recordation in the Copyright Office of documents pertaining to mask works and the mask work notice. Part 211 of 37 CFR Chapter II sets forth specific requirements for filing applications for registration of mask work claims and for the recordation of documents. The regulations also provide examples of methods of affixation and placement of the mask work notice. Portions of interim rules published January 3, 1985 at 50 FR 263 are herein modified.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287-8380.

SUPPLEMENTARY INFORMATION: On November 8, 1984, the President signed into law the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620. The Act creates a new form of intellectual property law separate and apart from any earlier law. The legislation consists of an amalgam of patent and copyright principles, but also contains new features. The law is codified as chapter 9 of title 17 of the U.S. Code and is primarily administered by the Copyright Office. Noteworthy is the requirement in section 908(a) of the Act that registration in the Copyright Office of a claim of protection in a mask work must be made within two years of first commercial expoitation of the work anywhere in the world or protection under the Act terminates. The Act also provides for a notice of mask work protection; however, unlike the copyright notice, this notice is not a condition of protection.

On October 4, 1984, the Copyright Office issued a Notice of Inquiry and of Public Hearing in the **Federal Register** to advise the public that the Office would institute a rulemaking proceeding to implement certain provisions of the Semiconductor Chip Protection Act of 1984, and to invite public comment, views and information to assist it in the preparation of regulations (49 FR 39171). The Copyright Office was particularly interested in receiving public comment on a registration form, filing fee for registration and fees for other services, application for registration, deposit of identifying material, mask work notice and publication of registrations made by the Copyright Office.

At the public hearing on implementation of the Semi-conductor Chip Protection Act of 1984, held at the Copyright Office on October 18, 1984, representatives of the Semiconductor Industry Association [hereinafter SIA] testified on the issues raised in the Notice of Inquiry and submitted a written statement for the record. During the course of the hearings, the Copyright Office circulated for information and comment a preliminary draft form, Form MW, to be used for registration of a claim of protection in a mask work. Following the hearing, supplemental comments were received from SIA and from other interested parties. The comment period was held open until October 31, 1984.

On January 3, 1985, the Copyright Office issued interim regulations implementing the Semiconductor Chip Protection Act of 1984. (50 FR 263). The regulations were made immediately effective since owners of mask works were entitled to file applications for registration on January 7, 1985. A lengthy comment period was provided in order to encourage public participation in the rulemaking process.

Approximately simultaneously with publication in the **Federal Register** of the interim regulations, the Copyright Office issued Form MW and an information circular. A mask work examining unit

was also formed within the Examining Division of the Copyright Office.

The Copyright Office received eleven comments on the interim regulations. In addition, one claimant, in submitting several mask works for registration, petitioned the Copyright Office to modify its regulations in two areas—the deposit regulation governing mask works containing trade secrets and the "intermediate forms" regulation. The portion of these petitions which addressed modification of Copyright Office regulations were treated as comment letter purposes of analysis.

The subject which appeared to be the most controversial was the "intermediate form" regulation. Five submissions were received on this issue. The deposit provision produced eight comments. The requirement that eligibility based on a transfer of rights consist of a transfer of the totality of rights drew four comments. Registration under a section 914 Order drew two comments. Line eight of Form MW (Nature of Contribution) drew two comment. The mask work notice drew one comments. The effect of the deadline date of July 1, 1985, on claims requiring correspondence drew one comment. The special handling provision drew one comment.

1. *Intermediate forms.* A "semiconductor chip product" is defined in section 901 of the Act as including "the final or intermediate form of any product * * *." A mask work cannot be protected under the Act until it has been fixed in such a product.

In interim regulation § 211.4 (c) and (d), a principle was advanced allowing only one registration for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. Under interim regulation § 211.4(e) special rules were established for registering mask works fixed as intermediate forms of a semiconductor chip product. Under this provision, registration in intermediate form was possible only if fixation had occurred solely in intermediate form and the intermediate form represented twenty percent or more of the intended final form.

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

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

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

> Granted, the mask work owner can apply for registration of a final chip product containing the mask work of intermediate form or gate array. However, assume the final chip product contains 24 layers of which 17 are the gate array. As long as the pirate must copy all 17 layers and a court concludes that a chip product containing 17 of 24 layers is substantial[ly] similar, 37 CFR 211.4(e) has no substantive effect on the outcome of an infringement action. But, what if the pirate needs to only copy 12 of the 17 layers so that the "infringing" product only contains 12 of the 24 layers, will a court hold this number of layers to be substantially similar? If it doesn't so hold, 37 CFR 211.4(e) has a substantive effect on the outcome of an infringement action because the applicant would have preferred to have filed for registration on only the 17 layers of the gate array. SIA believes that the Copyright Office's reasons for 37 CFR 211.4(e) are not sufficient to warrant such a possible unjust decision, especially when the Act clearly includes protection for intermediate forms such as gate arrays. [1]

Commentators also expressed other concerns. The requirement that registration could not be sought for intermediate forms of mask works fixed in final forms was seen as limiting the registrability of gate arrays and cell libraries. Commentators asserted that the legislative history of the Act favors the registration of these intermediate forms.

The Copyright Office has concluded that the basic policy of the interim regulation in favor of one registration per work is a sound policy. In implementing this policy, however, the Copyright Office has decided to adopt a number of changes. Under the approach of the interim regulation, artificial distinctions were arguably fostered between "intermediate forms" and final forms. Therefore, the Copyright Office has decided to recast the language of § 211.4(e) to require applicants to register mask work contributions in their most complete form.

The twenty percent rule as an absolute bar to registration has been eliminated. However, in cases where an applicant seeks registration of a contribution of less than 20 percent of the intended final form, a full disclosure deposit is required.

The reasons underlying these policy decisions are as follows:

(a) *Discretionary subdivision of claims.* It appears from the general structure of the Act and the nature of the testimony in the Congressional hearings that the concept of intermediate form was inserted in the definition of "semiconductor chip product" in recognition of the lengthy testing period applicable to most semiconductor chip products. In many instances semiconductor chip products will be field tested before they are made generally available. In addition, semiconductor chip products are often offered for sale several months before the testing is complete. In such circumstances it is conceivable that a semiconductor chip manufacturer would need protection before a semiconductor chip product is completed in final form. The Copyright Office believes the reference to "intermediate forms" was intended to address this problem.

Essentially the proponents of discretionary subdivision of claims urge that this is necessary to prevent judges from misconstruing the Act. It appears more likely, however, that much greater confusion would flow from permitting multiple registrations of largely completed semiconductor chip products. If discretionary subdivision of claims were permitted, each manufacturer would be tempted to divide his mask works into as small a portion as possible in order to maximize his level of protection. Moreover, under the interim deposit regulation, applicants were not required to disclose fully the content of their mask work contribution due to trade secret concerns. It appears clear from the comment letters received that claims in very small portions of semiconductor chip products will be advanced. SIA, for instance, took the position that "a very simple cell of a couple dozen transistors in a cell library" might meet the standards of

[1] SIA Comment (No. 5) at 11–12.

originality under the Act.[2] Without policies discouraging discretionary subdivision of claims, in order to adjudicate the protection of only one semiconductor chip product, federal judges could be required to take account of multiple registrations based on deposits which were calculated to obscure the nature of the claim. The registration and the public record would be of minimal assistance to the court, if helpful at all.

Discretionary subdivision of claims would lead to substantial problems in applying numerous statutory provisions of the Act. The commentary to the interim regulation identified these provisions as the originality provision of section 902(b), the duration provision of section 904, the reverse engineering provision of section 906, and the statutory damages provision of section 911(c). The courts will ultimately determine the proper construction of these provisions of the Act. However, in framing the registration practices for mask works, the Copyright Office believes the practices should advance all of the Act's policies to the greatest extent possible. If Congres intended to permit the practice of discretionary subdivision of claims, the Copyright Office believes it would have made some adjustments in sections 902(b), 904, 906, and 911(c) since these provisions are obviously affected. Without a clear indication in the language of the Act that Congress intended to permit discretionary subdivision of claims, the Copyright Office believes sound administration of the Act requires some limits on the practice.

(b) *Most Complete Form.* Under interim regulation § 211.4(e) registration of an intermediate form was permitted only if fixation occurred solely in intermediate form. Final regulation § 211.4(e) continues this general policy by requiring that "claimants seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product." The most complete form is defined as "the stage of the manufacturing process which is closest to completion."

The development of semiconductor chip products is clearly an evolutionary process. What gives semiconductor chip products their value are the functions they can perform after all of the manufacturing stages are complete. The Copyright Office believes the best representation of an original mask work is its most advanced form in the manufacturing process. The Copyright Office sees no compelling reason why applicants should be allowed indiscriminately to select earlier versions of intermediate forms when they have in their possession more complete versions.

(c) *Gate arrays and cell libraries.* The complaint from commentators that the interim regulations preclude registration of gate arrays and cell libraries appears exaggerated. In general, semi-custom gate arrays contain an array of unconnected cells which can be customized to create a wide variety of semiconductor chip products. Cell libraries are collections of parts of semiconductor chip products stored in computer memory tape which are used by chip designers to create new semiconductor chip products.

Under the interim regulations, it has been possible to register claims in gate arrays—both in the base layers and in the customization or "personality" layers. Under the final regulations this registration practice will continue.

To the extent that there have been problems with registration of cell libraries, these appear to stem from the requirements of the Act and not the regulations of the Copyright Office. Mask works protectible under the Act must be fixed in a semiconductor chip product. House Report No. 98–781, 98th Cong., 2d Sess. 16–17 (1984) identifies semiconductor materials as "silicon, germanium, and gallium arsenide." The Report further indicates that fixation solely in computer tapes does not meet the fixation requirement for purposes of eligibility.

The Copyright Office believes under its final regulations, all intermediate forms eligible for protection under the Act are eligible for registration under the regulations. Registration must be sought, however, for the most complete form of the intermediate form in existence.

(d) *The Twenty Percent Rule.* The Copyright Office has decided to eliminate the "twenty percent" rule as an absolute bar to registration. Nevertheless, the Copyright Office believes different policy considerations apply to registration of mask works that represent small portions of semiconductor chip products which generally do not arise where registration is sought for the complete mask work as fixed in an entire product. For this reason the Copyright Office has established a full disclosure deposit requirement under § 211.5(b)(2)(ii), to apply in instances where registration is sought for a mask work contribution consisting of less than twenty percent of the area of the intended final form of the semiconductor chip product.

The essence of the full disclosure requirement is the deposit of visually perceptible representations "which reveal the totality of the mask work contribution to a person trained in the state of the art." It is contemplated that the type of material deposited under this provision would be of a similar nature to the material an engineer would send to a colleague for purposes of comment and evaluation.

The Copyright Office is aware of the dual Congressional concern over trade secret material which may be embodied in mask works fixed in semiconductor chip products, and the importance of a clear public record. The present deposit provision grants applicants considerable discretion in withholding material from the deposit of visually perceptible representations. However, where registration is sought for small portions of semiconductor chip products, the necessity of a clear public record to facilitate adjudication of the originality of mask work claims predominates. The Senate Memorandum (Explanatory Memorandum—Mathias-Leahy Amendment to S. 1201, 130 Cong. Rec. S12917 (daily ed. Oct. 3, 1984)) states that in most instances assertions of invalidity due to a lack of originality will be raised in court. In circumstances where only a small portion of the mask work contribution has been registered, the likelihood of invalidity due to a lack of originality is substantially increased. The Copyright Office believes a full disclosure deposit is necessary to allow judges and defendants to ascertain the nature of the plaintiff's mask work contribution.

The general public also benefits from a clear public record. *See House Explanatory Memorandum of Senate Amendment to H.R. 6163,* 130 Cong. Rec. E4433 (daily ed. Oct. 10, 1984). If the Copyright Office were to permit registration of small portions of semiconductor chip products without a full disclosure, litigation over small combinations of elements could arise where the nature of the combination was obscured from the deposit.

2. *Deposit of identifying material.* The most significant change in § 211.5 from the interim regulation is the introduction of a full disclosure deposit requirement under section 211.5(b)(2)(ii) where the mask work contribution represents less than twenty percent of the area of the intended final form. Since the policy

[2] The Copyright Office takes no position on whether a combination with as few as 24 transistors meets the originality standard of the Act. Citation to the SIA statement is made for purposes of analysis and evaluation.

reasons for this addition have been discussed in the preceding section, no further elaboration on that provision will be made here.

Issues relating to deposit of identifying material include the following:

(a) *Trade Secret protection under § 211.5(c).* Most of the comments about the deposit provision were concerned about accommodation for trade secret material. A number of proposals have been adopted. For example, the proposal of SIA for allowing two layers to be withheld for each five layers of commercially exploited mask works has been adopted. In addition, the opportunity to deposit visually perceptible representations with blocked out portions has been introduced.

One proposal which was not adopted is the suggestion of SIA to substitute the phrase "made available to the public" in place of "commercially exploited," throughout § 211.5. SIA argues that the phrase "made available to the public" is more consistent with trade secret principles. This consideration, however, is not a sufficient reason to depart from statutory language. The concept of "commercially exploited" is firmly grounded in the Act itself. Applicants can refer to a statutory definition and legislative history to ascertain its meaning. Adoption of the SIA proposal would inject into federal law a concept which is not grounded in the statute. Presumably the meaning of "made available to the public" could only be derived by referring to an amorphous body of trade secret law. In addition, since trade secret law is based upon state law, what is "made available to the public" in one state may not be "made available to the public" in another state. For these reasons, the proposal of SIA was not adopted.

(b) *Permissive deposit of chips for mask works not commercially exploited.* The Copyright Office believes that chips deposited with the Copyright Office may become significant evidentiary material in litigation concerning mask works. For this reason the Copyright Office has added an express provision which allows owners of mask works not commercially exploited to deposit chips in addition to visually perceptible representations. We had allowed such deposit by practice even under the interim regulations.

(c) *Defective chips.* The Copyright Office has added a provision clarifying that "defective" chips are acceptable if the mask work contribution would be revealed in a reverse dissection process. Chips which do not reveal the mask work contribution are not acceptable since they would have little or no evidentiary value should litigation concerning the chips arise.

(d) *Deposit of chips containing classified material.* One comment expressed concerns about depositing mask works which are classified for national security reasons.

The Copyright Office believes that the principle of 17 U.S.C. 705(b) must be applied to mask work deposits; consequently, the Office will make available for public inspection the visually perceptible representations of registered mask works. In addition, the Copyright Office is not equipped to provide the kind of security necessary for classified mask works. For these reasons, owners of classified mask works should not deposit any material which might jeopardize national security. Should an owner wish to register a classified mask work, he or she should first write a letter of inquiry under the special relief provision of § 211.5(d).

3. *Eligibility under a transfer of all rights under the Act.* Section 902(a)(1) of the Act establishes as one of the tests of eligibility that "the owner of the mask work is a national or domiciliary of the United States * * *." Section 901(a)(6) of the Act defines owner as the person to whom "all the rights under this chapter" are transferred.

Copyright Office interim regulation § 211.4(b)(2)(ii) implements these provisions by basing eligibility on a transfer of the totality of rights. Therefore, a U.S. subsidiary of a foreign corporation receiving a transfer limited to U.S. rights was prohibited from registering on the basis of ownership.

The commentary accompanying the interim regulation noted that:

> If the ownership criterion of section 902(a)(1)(A) includes licensees of United States rights, it would be fairly simple for a foreign owner to retain all rights outside the United States, and license a subsidiary, parent, or third party to claim rights in the United States before first commercial exploitation. In some cases, the conveyance might constitute a license of United States rights without further qualifications; in other cases, the conveyance might purport to require a license-back to the original foreign owner.
>
> Congress established a unique transitional procedure in section 914 apparently because it believed the general eligibility criteria would foreclose registration of most foreign-owned chips. An overbroad interpretation of the general eligibility criteria will largely, if not completely, eliminate the incentive to seek section 914 Orders or bilateral agreements. The United States would in effect offer unilateral protection for mask works with no assurance of protection for United States mask works in foreign countries. (50 FR 268).

The interpretation of the Copyright Office was criticized in three comment letters. The major thrust of the comments was that the term "all rights under this chapter" plainly meant U.S. rights. It was further argued that the interpretation did not follow traditional intellectual property practices.

The Copyright Office has concluded that there is doubt about the correct interpretation of the Act on this point, and we should therefore not refuse registration. The concerns of the Copyright Office regarding the disincentive such a construction may have on the advancement of mask work protection for U.S. nationals abroad remain. The Copyright Office has decided, however, to change § 211.4(b)(2) to reflect the statutory language under the Act. If the United States public becomes dissatisfied with the protection afforded U.S. works abroad, the Congress may wish to narrow the eligibility criteria of this law.

4. *Registration under a section 914 Order.* Certain issues concerning registration under a section 914 Order involve a classic case of conflicting statutory policies. Sections 908 and 913(d)(1) apply clear statutory deadlines for the securing of protection under the Act. Under section 908(a) registration must be sought within two years of first commercial exploitation. Under section 913(d)(1) mask works first commercially exploited between July 1, 1983 and November 8, 1984, must be registered before July 1, 1985. How these deadlines apply to section 914 Orders which are backdated in accordance with Section 914(c) is not specified under the Act.

Under interim regulation § 211.4(f)(4) it was required that an Order be issued before the statutory deadline in order for a mask work to be eligible for protection. Under this interpretation, claims from foreign owners received in the Office before the statutory deadline which were waiting for a 914 Order could not be registered after expiration of the statutory deadline on the basis of an Order issued after the expiration of the statutory deadline. Backdating was to be permitted if the Order was timely. The reason for this policy was the belief that Congress did not intend the discretion under section 914 to be applied in a way which would waive the explicit statutory deadlines.

The Copyright Office received two comments on this issue criticizing this position. It was argued that the time constraints placed on foreign governments to secure issuance of a 914 Order posed a hardship in light of the complexities of the issue. In addition, it was argued the authorization to issue

backdated Orders under section 914 was the most pertinent indication of Congressional intent.

Under a proposal of the Electronic Industries Association of Japan (hereafter EIAJ) foreign applications made during the pendency of a possible section 914 Order would not be permanently denied registration upon expiration of the statutory deadlines. Instead, they would be held in abeyance. If the pending Order were later issued and backdated to before the expiration date, the registration would be made. Applications received in the Copyright Office after the expiration date, however, would be denied registration.

This issue presents a dilemma for the Copyright Office. Under the interim regulation, some claims in chips associated with a foreign country whose mask works the Secretary of Commerce arguably deems worthy of protection may be denied registration. Such a policy might generate ill will in the foreign country to which the provision was applied because issuance of the Order would presumably be based on the availability of protection for U.S. works in that country.

The policy of holding in abeyance foreign claims awaiting a section 914 Order even after expiration of the statutory deadlines has serious drawbacks, however. Under such a policy, the certainty stemming from registration within the statutory deadlines is eliminated. In addition, a de facto form of protection would probably be extended for chips held in abeyance since there would exist a *possibility* of protection under the Act. In circumstances where an Order is never issued this de facto protection will be achieved without securing eligibility under the Act. As a result, foreign claims which are found underserving of a section 914 Order by the Secretary of Commerce may be given a de facto form of protection for a period of the authority of the Secretary.

Ultimately, only a court can resolve this statutory conflict. The Copyright Office is inclined to believe that the better interpretation of the Act is one which applies the statutory deadlines, while recognizing discretion to backdate Orders, as long as the statutory deadlines are observed. This was the interpretation adopted in the interim regulations. The Copyright Office continues to hope that it will be possible for the Secretary of Commerce to act upon section 914 petitions within the statutory deadlines. Nevertheless, in light of the Act's favorable stance towards establishment of international mask work protection, the Copyright Office has decided to allow registration for whatever it may be worth, should the Secretary of Commerce backdate an Order issued after a statutory deadline expires, pending court guidance. The Copyright Office notes that the authority of the Secretary of Commerce to issue section 914 Orders will expire on November 8, 1987. If Congress considers extending this authority, it is hoped the policy regarding the statutory deadlines will be clarified.

5. *Comments on Space 8 of Form MW.* Two comments were received criticizing the descriptive language contained at Space 8 of Form MW regarding Nature of Contribution.

The statement at Space 8 is intended to secure information about the original material on which the owner bases its claim. The statement should exclude significant preexisting material and mask work contributions owned by others.

The Copyright Office is open to suggestions as to how the descriptive language at Space 8 can be improved. When revision of Form MW is undertaken, these suggestions will be taken into account.

6. *The mask work notice.* The Boston Patent Law Association (hereafter BPLA) advanced two suggestions on the mask work notice. One suggestion was that the Copyright Office establish a registry for abbreviations of names of mask work owners. Another suggestion concerned expanding the methods of affixation to include placement within the semiconductor chip product.

The Copyright Office has decided not to adopt these proposals. The test for validity of an abbreviation under the statute is whether the abbreviation is generally recognizable. The proposed registry in the Copyright Office could not make an unknown abbreviation "generally recognizable." For this reason it could have little legal effect, and would likely prove misleading because owners would rely on it to validate their choice of an abbreviation.

Under section 909, the validity of the notice is determined by whether it gives "reasonable notice" of protection. The examples in the regulation are only illustrative and not exhaustive. Under the proposal of BPLA, only engineers conducting a reverse engineering of the chips would be aware of the notice. It may be that a court will find a notice contained in the semiconductor chip product meets the statutory test under section 909. The Copyright Office, however, has not adopted the proposal because it feels members of the general public may have an interest in knowing that a chip is protected under the Act.

7. *The effect of the deadline date of July 1, 1985 on claims requiring correspondence.* The law firm of Skjerven, Morrill, MacPherson, Franklin & Friel urged that mask works commercially exploited between July 1, 1983 and November 8, 1984 which are in correspondence on July 1, 1985, be considered for an effective date as of the original date of receipt under certain conditions. These conditions included a certification from the applicant's attorney that the applicant believed in good faith that the application and deposit was complete.

Ultimately, it is the responsibility of the applicant to deliver the materials necessary for registration to the Copyright Office before expiration of the statutory deadlines. The effective date of registration is established by the receipt of an acceptable deposit, application and fee. Where a valid claim is established by the original filing, correspondence relating to errors or inconsistencies in the application or minor problems with the deposit material will not normally affect the effective date of registration. In cases where the original submission does not establish that a valid claim exists, the effective date of registration will be the date on which corrective material is received.

8. *Special handling.* Under a policy statement published in the **Federal Register** special handling may be requested "in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate." (49 FR 39742). The Electronic Industries Association of Japan urged these criteria be enlarged to include cases involving section 914 Orders. Under regulation § 211.4(f)(2) foreign claims waiting for a section 914 Order are processed by the Copyright Office. As a result, there should normally not be a significant delay in the issuance of a certificate once the Order has been issued. For this reason, the Copyright Office has decided not to enlarge the present criteria for special handling.

9. *Regulatory Flexibility Act Statement.* With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S.

Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[3]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyright has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 211

Mask works, Semiconductor chip products.

Final Regulations

In consideration of the foregoing, Chapter II of 37 CFR is amended in the manner set forth below.

PARTS 205–210—[RESERVED]

1. Parts 205–210 are added and reserved.

2. A new Part 211 is revised to 37 CFR Ch. II as follows:

PART 211—MASK WORK PROTECTION

Sec.

211.1 General provisions.
211.2 Recordation of documents pertaining to mask works.
211.3 Mask work fees.
211.4 Registration of claims of protection in mask works.
211.5 Deposit of identifying material.
211.6 Methods of affixation and placement of mask work notice.

Authority: 17 U.S.C.—701; 908.

§ 211.1 General provisions.

(a) Mail and other communications with the Copyright Office concerning the Semiconductor Chip Protection Act of 1984, Pub. L. 98–620, chapter 9 of Title 17 U.S.C., shall be addressed to: Library of Congress, Department MW, Washington, D.C. 20540.

(b) Section 201.2 of this chapter relating to the information given by the Copyright Office, and Parts 203 and 204 of this chapter pertaining to the Freedom of Information Act and Privacy Act, shall apply, where appropriate, to the administration by the Copyright Office of the Semiconductor Chip Protection Act of 1984, Pub. L. 98–620.

(c) For purposes of this part, the terms "semicomductor chip product," "mask work," "fixed," "commercially exploited," and "owner," shall have the meanings set forth in section 901 of Title 17 U.S.C.

§ 211.2 Recordation of documents pertaining to mask works.

The conditions prescribed in section 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to mask works under section 903 of Title 17 U.S.C.

§ 211.3 Mask work fees.

(a) The following fees or charges are established by the Register of Copyrights for services relating to mask works:

(1) For filing an application for registration of a mask work claim	$20.00
(2) For recordation of a document consisting of six pages or less covering no more than one title	$10.00
(3) For recordation of each page over six and each title over one	$.50
(4) For a certifed copy of a certificate of registration	$4.00
(5) For certifications of photocopies of other Copyright Office records	$4.00
(6) For the issuance of a receipt of a deposit	$2.00
(7) For each hour or fraction of an hour consumed in the making and reporting of a routine search, and for any related services	$10.00
(8) For special handling of an application for registration of a claim	$200.00
(9) For any special services not listed above requiring a substantial amount of time or expense, the fees will be fixed on the basis of the cost of providing the service	

(b) Section 201.6 of this chapter on the payment and refund of Copyright Office fees shall apply to mask work fees.

§ 211.4 Registration of claims of protection in mask works.

(a) *General.* This section prescribes conditions for the registration of claims of protection in mask works pursuant to section 908 of Title 17 U.S.C.

(b) *Application for registration.* (1) For purposes of registration of mask work claims, the Register of Copyrights has designated "Form MW" to be used for all applications submitted on and after January 7, 1985. Copies of the form are available free upon request to the Public Information Office, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559. Applications submitted before January 7, 1985 will be dated January 7, 1985.

(2) An application for registration of a mask work claim may be submitted by the owner of the mask work, or the duly authorized agent of any such owner.

(i) The owner of a mask work includes a party that has obtained the transfer of all of the exclusive rights in the work, but does not include the transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights.

(ii) For purposes of eligibility to claim mask work protection pursuant to section 902(a)(1)(A) of 17 U.S.C., the owner of the mask work must be either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Act.

(3) An application for registration shall be submitted on Form MW prescribed by the Register under paragraph (b)(1) of this section, and shall be accompanied by the registration fee and deposit required under 17 U.S.C. 908 and §§ 211.3 and 211.5 of these regulations. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (i) A declaration that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge; and (ii) the handwritten signature of the applicant, accompanied by the typed or printed name of that person.

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

(d) *Registration as a single work.* For purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single mask work:

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

(2) In the case of a mask work that has been commercially exploited: All original mask work elements fixed in a semiconductor chip product at the time

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

that product was first commercially exploited and in which the owner or owners of the mask work is or are the same.

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

(f) *Section 914 Orders.* (1) For purposes of this section, the terms "Commissioner" and "Order" shall have the meaning given them in the *Guidelines for the Submission of Applications for Interim Protection of Mask Works Under 17 U.S.C. 914* (49 FR 44517; Nov. 7, 1984) as follows:

(i) "Commissioner" means the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

(ii) "Order" means an action by the Commissioner issuing or terminating an Order extending to foreign nationals, domiciliaries and sovereign authorities the privilege of making interim registrations for mask works pursuant to Chapter 9 of title 17, U.S.C.

(2) In the case of a mask work which is eligible for registration only after issuance of an Order of the Commissioner pursuant to section 914, 17 U.S.C., applications for registration under section 908 may be submitted, along with the proper identifying material and fee, if a request for issuance of an Order has been made in accordance with the *Guidelines.* The Copyright Office will process and examine the claims, but will not issue a certificate of registration unless and until an Order is issued pursuant to 17 U.S.C. 914.

(3) The effective date of any registration premised on a section 914, 17 U.S.C. Order shall not be earlier than the effective date of the Order.

(4) Registration premised on a section 914, 17 U.S.C. Order will be refused unless the Order is given an effective date before, and the proper application, deposit of identifying material, and fee are received in the Copyright Office before:

(i) July 1, 1985, in the case of mask works first commercially exploited between July 1, 1983, and November 8, 1984; or

(ii) the expiration of two years following first commercial exploitation, in the case of a mask work commercially exploited on or after November 8, 1984.

(5) Subject to paragraph (e)(4) of this section, registration of a claim premised on a section 914, 17 U.S.C. Order will be made even after the termination or expiration of an Order, provided that a proper application, deposit of identifying material, and fee are received in the Copyright Office while the Order is in effect, and the claim is otherwise entitled to registration under chapter 9 of Title 17 U.S.C.

(g) *Corrections and amplifications of prior registration.* Except for errors or omissions made by the Copyright Office, no corrections or amplifications can be made to the information contained in the record of a completed registration after the effective date of the registration. A document purporting to correct or amplify the information in a completed registration may be recorded in the Copyright Office for whatever effect a court of competent jurisdiction may later give to it, if the document is signed by the owner of the mask work, as identified in the registration record, or by a duly authorized agent of the owner.

§ 211.5 Deposit of identifying material.

(a) *General.* This section precribes rules pertaining to the deposit of identifying material for registration of a claim of protection in a mask work under section 908 of Title 17 U.S.C.

(b) *Nature of required deposit.* Subject to the provisions of paragraph (c) of this section, the deposit of identifying material to accompany an application for registration of a mask work claim under § 211.4 of these regulations shall consist of:

(1) In the case of a commercially exploited mask work, four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited. Defective chips may be deposited under this section provided that the mask work contribution would be revealed in reverse dissection of the chips. The four reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of:

(i) Sets of plastic color overlay sheets;

(ii) drawings or plots in composite form on a single sheet or on separate sheets; or

(iii) a photograph of each layer of the work fixed in a semiconductor chip product.

The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8½ x 11 inch format, and shall be reproduced at a magnification sufficient to reveal the basic circuitry design of the mask work and which shall in all cases be at least 20 times magnification.

(2) In the case of a mask work that has not been commercially exploited, one of the following:

(i) Where the mask work contribution in which registration is sought represents twenty percent or more of the area of the intended final form, a visually perceptible representation of the work in accordance with paragraph (b)(1)(i) or (ii) of this section. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor product.

(ii) Where the mask work contribution in which registration is sought represents less than twenty percent of the area of the intended final form, a visually perceptible representation of the work which reveals the totality of the mask work contribution to a person trained in the state of the art. The visually perceptible representations may consist of any combination of plastic color overlay sheets, drawing or plots in composite form, or a photograph or photographs of the entire mask set. If the visually perceptible representation fails to identify all of the elements of the mask work contribution, they may be accompanied by additional explanatory material. The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8½ x 11 inch format and shall be of sufficient magnification and completeness to reveal all elements of the mask work contribution. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor chip product.

(c) *Trade secret protection.* Where specific layers of a mask work fixed in a semiconductor chip product contain information in which trade secret protection is asserted, certain material may be withheld as follows:

(1) *Mask works commercially exploited.* For commercially exploited mask works no more than two layers of each five or more layers in the work. In lieu of the visually perceptible representations required under

paragraph (b)(1) of this section, identifying portions of the withheld material must be submitted. For these purposes, "identifying portions" shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or (ii) visually perceptible representations in accordance with paragraph (b)(1) (i), (ii), or (iii) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out.

(2) *Mask work not commercially exploited.* For mask works not commercially exploited falling under paragraph (b)(2)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(2) of this section, "identifying portions" shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, in which sensitive information maintained under a claim of trade secrecy has been blocked out or stripped, or (ii) visually perceptible representations in accordance with paragraph (b)(2)(i) with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out. The identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product in which the sensitive information maintained under a claim of trade secrecy has been blocked out, provided that the blocked out portions do not exceed the remaining portions.

(d) *Special relief.* The Register of Copyrights may decide to grant special relief from the deposit requirements of this section, and shall determine the conditions under which special relief is to be granted., Requests for special relief under this paragraph shall be made in writing to the Chief, Examining Division of the Copyright Office, Washington, D.C. 20559, shall be signed by the person signing the application for registration, shall set forth specific reasons why the request should be granted and shall propose an alternative form of deposit.

(e) *Retention and disposition of deposits.* (1) Any identifying material deposited under this section, including material deposited in connection with claims that have been refused registration, are the property of the United States Government.

(2) Where a claim of protection in a mask work is registered in the Copyright Office, the identifying material deposited in connection with the claim shall be retained under the control of the Copyright Office, including retention in Government storage facilities, during the period of protection. After that period, it is within the joint discretion of the Register of Copyrights and the Librarian of Congress to order its destruction or other disposition.

§211.6 Methods of affixation and placement of mask work notice

(a) *General.* (1) This section specifies methods of affixation and placement of the mask work notice that will satisfy the notice requirement in section 909 of title 17 U.S.C. A notice deemed "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be affixed "in such manner and location as to give reasonable notice" of protection. As provided in that section, the examples specified in this regulation shall not be considered exhaustive of the methods of affixation and positions giving reasonable notice of the claim of protection in a mask work.

(2) The acceptability of a mask work notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination.

(b) *Elements of mask work notice.* The elements of a mask work notice shall consist of:

(1) the words "mask work", the symbol "*M*", or the symbol "Ⓜ" (the letter M in a circle); and

(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(c) *Methods of affixation and placement of the notice.* In the case of a mask work fixed in a semiconductor chip product, the following locations are acceptable:

(1) A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle for the product; or

(2) A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.

Dated: June 21, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-15514 Filed 6-27-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[OA-FRL-2855-4]

Statement of Organization and General Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document updates the statement of organization and general information to reflect the current organization of the U.S. Environmental Protection Agency.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Gary M. Katz, Director, Management and Organization Division, Office of Administration, 202-382-5000.

List of Subjects in 40 CFR Part 1

Organization and functions (Government agencies).

Dated: June 20, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Part 1 of Title 40 of the Code of Federal Regulations is revised as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A—Introduction

Sec.
1.1 Creation and authority.
1.3 Purpose and functions.
1.5 Organization and general information.
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1.33 Office of Administration and Resources Management.
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1.43 Office of Pesticides and Toxic Substances.
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Subpart C—Field Installations

Sec.
1.61 Regional Offices.

Authority: 5 U.S.C. 552.

Source: 43 FR 28479, June 30, 1978, unless otherwise noted.

Subpart A—Introduction

§ 1.1 Creation and authority.

Reorganization Plan 3 of 1970, established the U.S. Environmental Protection Agency (EPA) in the Executive branch as an independent Agency, effective December 2, 1970.

§ 1.3 Purpose and functions.

The U.S. Environmental Protection Agency permits coordinated and effective governmental action to assure the protection of the environment by abating and controlling pollution on a systematic basis. Reorganization Plan 3 of 1970 transferred to EPA a variety of research, monitoring, standard setting, and enforcement activities related to pollution abatement and control to provide for the treatment of the environment as a single interrelated system. Complementary to these activities are the Agency's coordination and support of research and antipollution activities carried out by State and local governments, private and public groups, individuals, and educational institutions. EPA reinforces efforts among other Federal agencies with respect to the impact of their operations on the environment.

§ 1.5 Organization and general information.

(a) The U.S. Environmental Protection Agency's basic organization consists of Headquarters and 10 Regional Offices. EPA Headquarters in Washington, D.C. maintains overall planning, coordination and control of EPA programs. Regional Administrators head the Regional Offices and are responsible directly to the Administrator for the execution of the Agency's programs within the boundaries of their Regions.

(b) EPA's Directives System contains definitive statements of EPA's organization, policies, procedures, assignments of responsibility, and delegations of authority. Copies are available for public inspection and copying at the Management and Organization Division, 401 M Street SW., Washington, D.C. 20460. Information can be obtained from the Office of Public Affairs at all Regional Offices.

(c) EPA conducts procurement pursuant to the Federal Property and Administrative Services Act, the Federal Procurement Regulations, and implementing EPA regulations.

§ 1.7 Location of principal offices.

(a) The EPA Headquarters is in Washington, D.C. The mailing address is 401 M Street SW., Washington, D.C. 20460.

(b) The addresss of (and States served by) the EPA Regional Offices (see 1.61) are:

(1) Region I, U.S. Environmental Protection Agency, Room 2203, John F. Kennedy Federal Building, Boston, MA 02203. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)

(2) Region II, U.S. Environmental Protection Agency, Room 900, 26 Federal Plaza, New York, NY 10278. (New Jersey, New York, Puerto Rico, and the Virgin Islands.)

(3) Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107. (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.)

(4) Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

(5) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604. (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.)

(6) Region VI, U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, TX 75270. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

(7) Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101. (Iowa, Kansas, Missouri, and Nebraska.)

(8) region VIII, U.S. Environmental Protection Agency, 999 18th street, One Denver Place, Denver, CO 80202. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.)

(9) Region IX, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. (Arizona, California, Hawaii, Nevada, American Samoa, Trust Territories of the Pacific Islands, Guam, Wake Islands, and the Northern Marianas.)

(10) Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101. (Alaska, Idaho, Oregon, and Washington.)

Subpart B—Headquarters

§ 1.21 General.

EPA Headquarters is comprised of (a) the Office of the Administrator; (b) two Associate Administrators and four staff offices which advise the Administrator on cross-cutting Agency headquarters and regional issues and conduct programs with respect to EPA's interface with other national and international governmental organizations; (c) the Office of Inspector General; (d) the Office of General Counsel; (e) and nine operational offices, each headed by an Assistant Administrator, responsible for carrying out EPA's major environmental and administrative programs.

§ 1.23 Office of the Administrator.

The Environmental Protection Agency is headed by an Administrator who is appointed by the President, by and with the consent of the Senate. The Administrator is responsible to the President for providing overall supervision to the Agency, and is assisted by a Deputy Administrator also appointed by the President, by and with the consent of the Senate. The Deputy Administrator assists the Administrator in the discharge of Agency duties and responsibilities and serves as Acting Administrator in the absence of the Administrator.

§ 1.25 Staff Offices.

(a) *Office of Administrative Law Judges.* The Office of Administrative Law Judges, under the supervision of the Chief Administrative Law Judge, is responsible for presiding over and conducting formal hearings, and issuance of initial decisions, if appropriate, in such proceedings. The Office provides supervision of the Administrative Law Judges, who operate as a component of the Office of Administrative Law Judges, in certain Agency Regional Offices. The Office provides the Agency Hearing Clerk.

(b) *Office of Civil Rights.* The Office of Civil Rights, under the supervision of a Director, serves as the principal adviser to the Administrator with respect to EPA's civil rights programs. The Office develops policies, procedures, and regulations to implement the Agency's civil rights responsibilities, and provides direction to Regional and field activities in the Office's area of responsibilities. The Office implements and monitors the Agency's equal employment opportunity program; provides advice and guidance to EPA program officials and Regional Administrators on EEO matters; serves as advocate for furthering career opportunities for minorities and women; and processes complaints of discrimination for Agency disposition. The office assures: (1) Maximum participation of minority business enterprises under EPA contracts and grants; (2) equal employment opportunity under Agency service

contracts, construction contracts, and grants; (3) compliance with the Davis-Bacon Act and related acts; (4) compliance with the provisions of laws affecting Agency programs requiring nondiscrimination on account of age and physical handicap and; (5) services or benefits are dispensed under any program or activity receiving Agency financial assistance on a nondiscrimination basis.

(c) *Science Advisory Board.* The Science Advisory Board, under the direction of a Director, provides expert and independent advice to the Administrator on the scientific and technical issues facing the Agency. The Office advises on broad, scientific, technical and policy matters; assesses the results of specific research efforts; assists in identifying emerging environmental problems; and advises the Administrator on the cohesiveness and currency of the Agency's scientific programs.

(d) *Office of Small and Disadvantaged Business Utilization.* The Office of Small and Disadvantaged Business Utilization, under the supervision of a Director, is responsible for developing policy and procedures implementing the Agency's small and disadvantaged business utilization responsibilities. The Office provides information and assistance to components of the Agency's field offices responsible for carrying out related activities. The Office develops and implements a program to provide the maximum utilization of women-owned business enterprises in all aspects of EPA contract work; in collaboration with the Procurement and Contracts Management Division, develops programs to stimulate and improve involvement of small and minority business enterprises; and recommends the assignment of technical advisers to assist designated Procurement Center Representatives of the Small Business Administration in their duties. The Office represents EPA at hearings, interagency meetings, conferences and other appropriate forums on matters related to the advancement of these cited business enterprises in EPA's Federal Contracting Program.

§ 1.27 Offices of the Associate Administrators.

(a) *Office of International Activities.* The Office of International Activities, under the supervision of an Associate Administrator, provides direction to and supervision of the activities, programs, and staff assigned to the Office of International Activities. All of the functions and responsibilities of the Associate Administrator are Agencywide, and apply to all international activities of the Agency. The Office develops policies and procedures for the direction of the Agency's international programs and activities, subject to U.S. foreign policy, and assures that adequate program, scientific, and legal inputs are provided. It conducts continuing evaluations of the Agency's international activities and makes appropriate recommendations to the Administrator. The Office advises the Administrator and principal Agency officials on the progress and effect of foreign and international programs and issues. The Office serves as the Administrator's representative in contacts with the Department of State and other Federal agencies concerned with international affairs. It negotiates arrangements or understandings relating to international cooperation with foreign organizations. The Office coordinates Agency international contacts and commitments; serves as the focal point for responding to requests for information relating to EPA international activities; and provides an initial point of contact for all foreign visitors. The Office maintains liaison with all relevant international organizations and provides representation where appropriate. It establishes Agency policy, and approves annual plans and modifications for travel abroad and attendance at international conferences and events. It provides administrative support for the general activities of the Executive Secretary of the U.S. side of the US–USSR/PRC agreements on environmental protection and of the U.S. Coordinator for the NATO Committee on the Challenges of Modern Society. The Office supervises these programs with respect to activities which are completely within the purview of EPA.

(b) *Office of Regional Operations.* The Office of Regional Operations, under the supervision of an Associate Administrator, reports directly to the Administrator and Deputy Administrator. The Office serves as the primary communications link between the Administrator/Deputy Administrator and the Regional Administrators. It provides a Headquarters focus for ensuring the involvement of Regions, or consideration of Regional views and needs, in all aspects of the Agency's work. The Office is responsible for assuring Regional participation in Agency decision-making processes, assessing the impact of Headquarters actions on Regional operations, and acting as ombudsman to resolve Regional problems on behalf of the Administrator. The Associate Administrator coordinates Regional issues, organizes Regional Administrator meetings and work groups; and coordinates Regional responses to specific issues. In addition, the Office is responsible for working with the Regional Offices to further the consistent application of national program policies by reinforcing existing administrative, procedural, and program policy mechanisms as well as through initiation of reviews of significant Regional issues of interest to the Administrator. It continually monitors responsiveness and compliance with established policies and technical needs through formal and informal contact and free dialogue. The Office initiates and conducts on-site field visits to study, analyze, and resolve problems of Regional, sectional, and national scale.

§ 1.29 Office of Inspector General.

The Office of Inspector General assumes overall responsibility for audits and investigations relating to EPA programs and operations. The Office provides leadership and coordination and recommends policies for other Agency activities designed to promote economy and efficiency and to prevent and detect fraud and abuse is such programs and operations. The Office of the Inspector General informs the Administrator, Deputy Administrator, and Congress of serious problems, abuses and deficiencies relating to EPA programs and operations, and of the necessity for and progress of corrective action; and reviews existing and proposed legislation and regulations to assess the impact on the administration of EPA's programs and operations. The Office recommends policies for, and conducts or coordinates relationships between, the Agency and other Federal, State and local government agencies, and nongovernmental entities on all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered by the Agency.

§ 1.31 Office of General Counsel.

The Office of General Counsel is under the supervision of the General Counsel who serves as the primary legal adviser to the Administrator. The office provides legal services to all organizational elements of the Agency with respect to all Agency programs and activities and also provides legal opinions, legal counsel, and litigation support; and assists in the formulation and administration of the Agency's policies and programs as legal adviser.

§ 1.33 Office of Administration and Resources Management.

The Office of Administration and Resources Management is under the supervision of the Assistance Administrator for Administration and Resources Management who provides services to all of the programs and activities of the Agency, except as may be specifically noted. In addition, the Assistant Administrator has primary responsibility Agencywide for policy and procedures governing the functional areas outlined below. The major functions of the Office include resources management and systems (including budget and financial management), personnel services, occupational health and safety, administrative services, organization and management analysis and systems development, information management and services, automated data processing systems, procurement through contracts and grants, and human resources management. This Office is the primary point of contact and manages Agencywide internal controls, audit resolution and follow up, and government-wide management improvement initiatives. In the performance of the above functions and responsibilities, the Assistant Administrator for Administration and Resources Management represents the Administrator in communications with the Office of Management and Budget, Office of Personnel Management, General Accounting Office, General Services Administration, Department of the Treasury, and other Federal agencies prescribing requirements for the conduct of Government budget, fiscal management and administrative activities.

(a) *Office of Administration and Resources Management, Research Triangle Park, North Carolina, (RTP).* The Office of Administration and Resources Management (OARM), RTP, under the supervision of a Director, provides services to all of the programs and activities at RTP and certain financial and automated data processing services Agencywide. The major functions of the Office include personnel services, financial management, procurement through contracts, library and other information services, general services (including safety and security, property and supply, printing, distribution, facilities and other administrative services) and providing both local RTP and Agencywide automated data processing systems services. The Director, OARM, RTP, supervises the Office of Administration, Financial Management and Data Processing, RTP.

(b) *Office of Administration, Cincinnati, Ohio.* The Office of Administration at Cincinnati, Ohio, under the supervision of a Director, provides and administers personnel, procurement, safety and security, property and supply, printing, distribution, facilities, and other administrative service programs at Cincinnati and other specified geographic locations.

(c) *Office of the Comptroller.* The Office of the Comptroller, under the supervision of the Comptroller, is responsible for Agencywide budget, resources management and financial management functions, including program analysis and planning; budget formulation, preparation and execution; funding allotments and allocations; and developing and maintaining accounting systems, fiscal controls, and systems for payroll and disbursements. The Assistant Administrator's resource systems responsibilities are administered by this Office.

(d) *Office of Administration.* The Office of Administration, under the supervision of a Director, is responsible for the development and conduct of programs for personnel policies, procedures and operations; organization and management systems, control, and services; facilities, property and space management; personnel and property security; policies, procedures, and operations related to procurement through grants, contracts, and interagency agreements; and occupational health and safety.

(e) *Office of Information Resources Management.* The Office of Information Resources Management (OIRM), under the supervision of a Director, provides for an information resource management program (IRM) consistent with the provisions of Pub. L. 96–511. The Office establishes policy, goals and objectives for implementation of IRM; develops annual and long-range plans and budgets for IRM functions and activities; and promotes IRM concepts throughout the Agency. The Office coordinates IRM activities; plans, develops and operates information systems and services in support of the Agency's management and administrative functions, and other Agency programs and functions as required. The Office oversees the performance of these activities when carried out by other Agency components. The Office performs liaison for interagency sharing of information and coordinates IRM activities with OMB and GSA. The Office ensures compliance with requirements of Pub. L. 96–511 and other Federal laws, regulations, and guidelines relative to IRM; and chairs the Agency's IRM Steering Committee. The Office develops Agency policies and standards; and administers or oversees Agency programs for library systems and services, internal records management, and the automated collection, processing, storage, retrieval and transmission of data by or for Agency components and programs. The Office provides national program policy and technical guidance for: The acquisition of all information technology, systems and services by or for Agency components and programs, inculding those systems and services acquired by grantees and contractors using Agency funds; the operation of all Agency computers and telecommunications hardware and facilities; and the establishment and/or application of telecommunications and Federal information processing standards. The Office reviews and evaluates information systems and services, including office automation, which are operated by other Agency components; and sets standards for and approves the selection of Agency personnel who are responsible for the technical management of these activities. The Office coordinates its performance of these functions and activities with the Agency's information collection policies and budgets managed by the Office of Policy, Planning and Evaluation.

(f) *The Office of Human Resources Management.* The Office of Human Resources Management (OHRM), under the supervision of a Director, designs strategies, plans, and policies aimedat developing and training all employees, revitalizing EPA organizations, and matching the right people with the right jobs. The Office is responsible for developing and assuring implementation of policies and practices necessary for EPA to meet its present and future workforce needs. This includes consideration of the interrelationships between the environmental protection workforce needs of EPA and State governments. For Senior Executive Service (SES) personnel, SES candidates, Presidential Executive Interchange Participants, and Management Interns, OHRM establishes policies; assesses and projects Agency executive needs and workforce capabilities; creates, establishes, and implements training and development strategies and programs; provides the full range of personnel functions; supports the Performance Review Board (PRB) and the Executive Resources Board (ERB); and reassigns SES personnel with the concurrence of the

ERB. For the areas of workforce management and employee and organizational development, OHRM develops strategies, plans, and policies; coordinates Agencywide implementation of those strategies, plans, and policies; and provides technical assistance to operating personnel offices and States. OHRM, in cooperation with the Office of the Comptroller, evaluates problems with previous workyear use, monitors current workyear utilization, and projects future workyear needs in coordination with the Agency's budget process. The Office is the lead office for coordination of human resources management with the Agency's Strategic Planning and Management System. The Office develops methodologies and procedures for evaluations of Agency human resources management activities; conducts evaluations of human resources management activities Agencywide; and carries out human resources management projects of special interest to Agency management. The Office coordinates its efforts with the Office of Administration (specifically the Personnel Management Division and the Management and Organization Division), the Office of the Comptroller, the Office of Information Resources Management, and the Office of Policy, Planning and Evaluation.

§ 1.35 Office of Enforcement and Compliance Monitoring.

The Office of Enforcement and Compliance Monitoring, under the supervision of the Assistant Administrator for Enforcement and Compliance Monitoring, serves as the principal adviser to the Administrator in matters concerning enforcement and compliance; and provides the principal direction and review of civil enforcement activities for air, water, waste, pesticides, toxics, and radiation. The Assistant Administrator reviews the efforts of each Assistant and Regional Administrator to assure that EPA develops and conducts a strong and consistent enforcement and compliance monitoring program. The Office manages the national criminal enforcement program; ensures coordination of media office administrative compliance programs, and civil and criminal enforcement activities; and provides technical expertise for enforcement activities.

§ 1.37 Office of External Affairs.

The Office of External Affairs, under the supervision of the Assistant Administrator for External Affairs, serves as the senior adviser to the Administrator for the functional areas within this Office. The functions and responsibilities assigned to the Assistant Administrator are Agencywide, and except as specifically noted, apply to the provision of advice and direct support to the Administrator as well as policy direction and assistance to all of the programs and activities of the Agency. The major functions of the Office include public information, press services and audio-visual support; congressional liaison; communication and coordination with State and local governmental groups; preparation, review, and clearance of proposed legislation and reports on legislation; and serving as the EPA focal point for Environmental Impact Statement (EIS) functions and activities involving interaction with other Federal agencies. The Office staff consults on and provides assistance to senior policy and program officials and other offices in the Agency. In addition to the performance at Headquarters of the functions assigned to them, each of the offices within the Office of External Affairs is responsible for the policy and operational guidance for the performance of those functions at Agency field establishments.

(a) *Office of Federal Activities.* The Office of Federal Activities is headed by a Director who reports to the Assistant Administrator for External Affairs and supervises all the functions of the Office. The Director acts as national program manager for five major programs that include: (1) The review of other agency environmental impact statements and other major actions under the authority of Section 309 of the Clean Air Act, (2) implementation of EPA's responsibilities under Section 404 (dredge and fill permits) of the Clean Water Act, (3) EPA compliance with the National Environmental Policy Act (NEPA) and related laws, directives, and Executive policies concerning special environmental areas and cultural resources, (4) compliance with Executive policy on American Indian affairs and the development of programs for environmental protection on Indian lands, and (5) the development and oversight of national programs and internal policies, strategies, and procedures for implementing Executive Order 12088 and other administrative or statutory provisions concerning compliance with environmental requirements by Federal facilities. The Director chairs the Standing Committee on Implementation of Executive Order 12088. The Office serves as EPA's principal point of contact and liaison with other Federal agencies and provides consultation and technical assistance to those agencies relating to EPA's areas of expertise and responsibility. The Office administers the filing and information system for all Federal Environmental Impact Statements under agreement with the Council on Environmental Quality (CEQ) and provides liaison with CEQ on this function and related matters of NEPA program administration. The Office provides a central point of information for EPA and the public on environmental impact assessment techniques and methodologies.

(b) *Office of Public Affairs.* The Office of Public Affairs is under the supervision of a Director who serves as chief spokesperson for the Agency and as a principal adviser, along with the Assistant Administrator for External Affairs, to the Adminstrator, Deputy Administrator, and Senior Management Officials, on public affairs aspects of the Agency's activities and programs. The Office of Public Affairs provides to the media adequate and timely information as well as responses to queries from the media on all EPA program activities. It assures that the policy of openness in all information matters, as enunciated by the Administrator, is honored in all respects. Develops publications to inform the general public of major EPA programs and activities; it also develops informational materials for internal EPA use in Headquarters and at the Regions, Labs and Field Offices. It maintains clearance systems and procedures for periodicals and nontechnical information developed by EPA for public distribution, and reviews all publications for public affairs interests. The Office of Public Affairs provides policy direction for, and coordination and oversight of EPA's community relations program. It provides a system for ensuring that EPA educates citizens and responds to their concerns about all environmental issues and assures that there are opportunities for public involvement in the resolution of problems. The Office supervises the production of audio-visual materials, including graphics, radio and video materials, for the general public and for internal audiences, in support of EPA policies and programs. The Office provides program direction and professional review of the performance of public affairs functions in the Regional Offices of EPA, as well as at laboratories and other field offices. The Office of Public Affairs is responsible for reviewing interagency agreements and Headquarters purchase request requisitions expected to result in contracts in the area of public information and community relations. It

develops proposals and reviews Headquarters grant applications under consideration when public affairs goals are involved.

(c) *Office of Legislative Analysis.* The Office of Legislative Analysis, under the supervision of a Director who serves in the capacity of Legislative Counsel, is responsible for legislative drafting and liaison activities relating to the Agency's programs. It exercises responsibility for legislative drafting; reports to the Office of Management and Budget and congressional committees on proposed legislation and pending and enrolled bills, as required by OMB Circular No. A-19 and Bulletin No. 72-6; provides testimony on legislation and other matters before congressional committees; and reviews transcripts of legislative hearings. It maintains liaison with the Office of Congressional Liaison on all Agency activities of interest to the Congress. The Office works closely with the staffs of various Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors in accordance with established Agency procedures, in the development of the Agency's legislative program. The Office assists the Assistant Administrator for External Affairs and the Agency's senior policy officials in guiding legislative initiatives through the legislative process. It advises the Assistant Administrator for Administration and Resources Management in matters pertaining to appropriations legislation. It works closely with the Office of Federal Activities to assure compliance with Agency procedures for the preparation of environmental impact statements, in relation to proposed legislation and reports on legislation. The Office coordinates with the Office of Management and Budget, other agencies, and congressional staff members on matters within its area of responsibility; and develops suggested State and local environmental legislative proposals, using inputs provided by other Agency components. The Legislative Reference Library provides legislative research services for the Agency. The Library secures and furnishes congressional materials to all EPA employees and, if available, to other Government agencies and private organizations; and it also provides the service of securing, upon request, EPA reports and materials for the Congress.

(d) *Office of Congressional Liaison.* The Office of Congressional Liaison is under the supervision of a Director who serves as the principal adviser to the Administrator with respect to congressional activities. All of the functions and responsibilities of the Director are Agencywide and apply to the provision of services with respect to all of the programs and activities of the Agency. The Office serves as the principal point of congressional contact with the Agency and maintains an effective liaison with the Congress on Agency activities of interest to the Congress and, as necessary, maintains liaison with Agency Regional and field officials, other Government agencies, and public and private groups having an interest in legislative matters affecting the Agency. It assures the provision of prompt response to the Congress on all inquiries relating to activities of the Agency; and monitors and coordinates the continuing operating contacts between the staff of the Office of the Comptroller and staff of the Appropriations Subcommittees of Congress.

(e) *Office of Private and Public Sector Liaison.* The Office of Private and Public Sector Liaison is under the supervision of a Director who serves as the principal point of contact with public interest groups representing general purpose State and local governments, and is the principal source of advice and information for the Administrator and the Assistant Administrator for External Affairs on intergovernmental relations. The Office maintains liaison on intergovernmental issues with the White House and OMB; identifies and seeks solutions to emerging intergovernmental issues; recommends and coordinates personal involvement by the Administrator and Deputy Administrator in relations with State, county and local government officials; coordinates and assists Headquarters components in their handling of broad-gauged and issue-oriented intergovernmental problems. It works with the Regional Administrators and the Office of Regional Operations to encourage the adoption of improved methods for dealing effectively with State and local governments on specific EPA program initiatives; works with the Immediate Office of the Administrator, Office of Congressional Liaison, Office of Public Affairs, and the Regional Offices to develop and carry out a comprehensive liaison program; and tracks legislative initiatives which affect the Agency's intergovernmental relations. It advises and supports the Office Director in implementing the President's Environmental Youth Awards program.

§ 1.39 Office of Policy, Planning and Evaluation.

The Assistant Administrator for Policy, Planning and Evaluation services as principal adviser to the Administrator on Agency policy and planning issues and as such is responsible for supervision and management of the following: policy analysis; standards and regulations; and management strategy and evaluation. The Assistant Administrator represents the Administrator with Congress and the Office of Management and Budget, and other Federal agencies prescribing requirements for conduct for Government management activities.

(a) *Office of Policy Analysis.* The Office of Policy Analysis is under the supervision of a Director who performs the following functions on an Agencywide basis: economic analysis of Agency programs, policies, standards, and regulations, including the estimation of abatement costs; research into developing new benefits models; benefit-cost analyses; impact assessments; intermediate and long-range strategic studies; consultation and analytical assistance in the areas described above to senior policy and program officials and other offices in the Agency; development and coordination proposals for major new Agency initiatives; liaison with other agencies; universities, and interest groups on major policy issues and development of a coordinated Agency position; and development of integrated pollution control strategies for selected industrial and geographical areas.

(b) *Office of Standards and Regulations.* The Office of Standards and Regulations is under the supervision of a Director who is responsible for: involving the Office of Policy, Planning and Evaluation (OPPE) in regulatory review; conducting technical and statistical analyses of proposed standards, regulations and guidelines; serving as the Agency focal point for identifying, developing and implementing alternatives to conventional "command and control" regulations; conducting analyses of Agency activities related to chemical substances and providing mechanisms for establishing regulatory priorities and resolving scientific issues affecting rulemaking; ensuring Agency compliance with the Paperwork Reduction Act; evaluating and reviewing all Agency information collection requests and activities, and, in cooperation with the Office of Administration and Resources Management and the Office of Management Systems and Evaluation,

evaluating Agency management and uses of data for decision-making.

(c) *Office of Management Systems and Evaluation.* The Office of Management Systems and Evaluation is under the supervision of a Director who directs and coordinates the development, implementation and administration of Agencywide systems for planning, tracking, and evaluating the accomplishments of Agency programs. In consultation with other offices, the Office develops a long-range policy framework for Agency goals, and objectives, identifies strategies for achieving goals, establishes timetables for objectives, and ensures that programs are evaluated against their accomplishments of goals.

§ 1.41 Office of Air and Radiation.

The Office of Air and Radiation is under supervision of the Assistant Administrator for Air and Radiation who serves as principal adviser to the Administrator in matters pertaining to air and radiation programs, and is responsible for the management of these EPA programs: program policy development and evaluation; environmental and pollution sources' standards development; enforcement of standards; program policy guidance and overview, technical support or conduct of compliance activities and evaluation of Regional air and radiation program activities; development of programs for technical assistance and technology transfer; and selected demonstration programs.

(a) *Office of Mobile Sources.* The Office of Mobile Sources, under the supervision of a Director, is responsible for the mobile source air pollution control functions of the Office of Air and Radiation. The Office is responsible for: characterizing emissions from mobile sources and related fuels; developing programs for their control, including assessment of the status of control technology and in-use vehicle emissions; for carrying out, in coordination with the Office of Enforcement and Compliance Monitoring as appropriate, a regulatory compliance program to ensure adherence of mobile sources to standards; and for fostering the development of State motor vehicles emission inspection and maintenance programs.

(b) *Office of Air Quality Planning and Standards.* The Office of Air Quality Planning and Standards, under the supervision of a Director, is responsible for the air quality planning and standards functions of the Office of Air and Radiation. The Director for Air Quality Planning and Standards is responsible for emission standards for new stationary sources, and emission standards for hazardous pollutants; for developing national programs, technical policies, regulations, guidelines, and criteria for air pollution control; for assessing the national air pollution control program and the success in achieving air quality goals; for providing assistance to the States, industry and other organizations through personnel training activities and technical information; for providing technical direction and support to Regional Offices and other organizations; for evaluating Regional programs with respect to State implementation plans and strategies, technical assistance, and resource requirements and allocations for air related programs; for developing and maintaining a national air programs data system, including air quality, emissions and other technical data; and for providing effective technology transfer through the translation of technological developments into improved control program procedures.

(c) *Office of Radiation Programs.* The Office of Radiation Programs, under the supervision of a Director, is responsible to the Assistant Administrator for Air and Radiation for the radiation activities of the Agency, including development of radiation protection criteria, standards, and policies; measurement and control of radiation exposure; and research requirements for radiation programs. The Office provides technical assistance to States through EPA Regional Offices and other agencies having radiation protection programs; establishes and directs a national surveillance and investigation program for measuring radiation levels in the environment; evaluates and assesses the impact of radiation on the general public and the environment; and maintains liaison with other public and private organizations involved in environmental radiation protection activities. The Office coordinates with and assists the Office of Enforcement and Compliance Monitoring in enforcement activities where EPA has jurisdiction. The Office provides editorial policy and guidance, and assists in preparing publications.

§ 1.43 Office of Pesticides and Toxic Substances.

The Assistant Administrator serves as the principal adviser to the Administrator in matters pertaining to assessment and regulation of pesticides and toxic substances and is responsible for managing the Agency's pesticides and toxic substances programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act; the Toxic Substances Control Act (TSCA); and for promoting coordination of all Agency programs engaged in toxic substances activities. The Assistant Administrator has responsibility for establishing Agency strategies for implementation and integration of the pesticides and the toxic substances programs under applicable Federal statutes; developing and operating Agency programs and policies for assessment and control of pesticides and toxic substances; developing recommendations for Agency priorities for research, monitoring, regulatory, and information-gathering activities relating to pesticides and toxic substances; developing scientific, technical, economic, and social data bases for the conduct of hazard assessments and evaluations in support of toxic substances and pesticides activities; directing pesticides and toxic substances compliance programs; providing toxic substances and pesticides program guidance to EPA Regional Offices; and monitoring, evaluating, and assessing pesticides and toxic substances program operations in EPA Headquarters and Regional Offices.

(a) *Office of Pesticide Programs.* The Office of Pesticide Programs, under the management of a Director and Deputy Director are responsible to the Assistant Administrator for leadership of the overall pesticide activities of the Agency under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act and several provisions of the Federal Food, Drug, and Cosmetic Act, including the development of strategic plans for the control of the national environmental pesticide situation. Such plans are implemented by the Office of Pesticide Programs, other EPA components, other Federal agencies, or by State, local, and private sectors. The Office is also responsible for establishment of tolerance levels for pesticide residues which occur in or on food; registration and reregistration of pesticides; special review of pesticides suspected of posing unreasonable risks to human health or the environment; monitoring of pesticide residue levels in food, humans, and nontarget fish and wildlife; preparation of pesticide registration guidelines; development of standards for the registration and reregistration of pesticide products; provision of program policy direction to technical and manpower training activities in the pesticides area; development of research needs and monitoring requirements for the pesticide program and related areas; review of impact statements dealing with pesticides; and carrying out of assigned international activities.

(b) *Office of Toxic Substances.* The Office of Toxic Substances (OTS), under the management of a Director and Deputy Director is responsible to the Assistant Administrator for those activities of the Agency mandated by the Toxic Substances Control Act. The Director is responsible for developing and operating Agency programs and policies for new and existing chemicals. In each of these areas, the Director is responsible for information collection and coordination; data development; health, environmental and economic assessment; and negotiated or regulatory control actions. The Director provides operational guidance to EPA Regional Offices, reviews and evaluates toxic substances activities at EPA Headquarters and Regional Offices; coordinates TSCA activities with other EPA offices and Federal and State agencies, and conducts the export notification required by TSCA and provides information to importers. The Director is responsible for developing policies and procedures for the coordination and integration of Agency and Federal activities concerning toxic substances. The Director is also responsible for coordinating communication with the industrial community, environmental groups, and other interested parties on matters relating to the implementation of TSCA; providing technical support to international activities managed by the Office of International Activities; and managing the joint planning of toxic research and development under the auspices of the Pesticides/Toxic Substances Research Committee.

(c) *Office of Compliance Monitoring.* The Office of Compliance Monitoring, under the supervision of a Director, plans, directs, and coordinates the pesticides and toxic substances compliance programs of the Agency. More specifically, the Office provides a national pesticides and toxic substances compliance overview and program policy direction to the Regional Offices and the States, prepares guidance and policy on compliance issues, establishes compliance priorities, provides technical support for litigation activity, concurs on enforcement actions, maintains liaison with the National Enforcement Investigations Center, develops annual fiscal budgets for the national programs, and manages fiscal and personnel resources for the Headquarters programs. The Office directs and manages the Office of Pesticides and Toxic Substances' laboratory data integrity program which conducts laboratory inspections and audits of testing data. The Office issues civil administrative complaints and other administrative orders in cases of first impression, overriding national significance, or violations by any entity located in more than one Region. The office coordinates with the Office of General Counsel and the Office of Enforcement and Compliance Monitoring in an attorney-client relationship, with those Offices providing legal support for informal and formal administrative resolutions of violations; for conducting litigation; for interpreting statutes, regulations and other legal precedents covering EPA's activities; and for advising program managers on the legal implications of alternative courses of action. The Office of Compliance Monitoring coordinates with the Office of Pesticide Programs in the conduct of pesticide enforcement compliance and registration programs under the Federal Insecticide, Fungicide, and Rodenticide Act and participates in decisions involving the cancellation or suspension of registration. The Office establishes policy and operating procedures for pesticide compliance activities including sampling programs, export certification, monitoring programs to assure compliance with experimental use permits, pesticide use restrictions, and recordkeeping requirements, and determines when and whether compliance actions are appropriate. The Office establishes policy and guidance for the State cooperative enforcement agreement program and the applicator training and certification program. The Office of Compliance Monitoring also coordinates with the Office of Toxic Substances in the conduct of regulatory and compliance programs under the Toxic Substances Control Act and participates in regulation development for TSCA. The Office participates in the control of imminent hazards under TSCA, inspects facilities subject to TSCA regulation as a part of investigations which are national in scope or which require specialized expertise, and samples and analyzes chemicals to determine compliance with TSCA. The Office coordinates and provides guidance to other TSCA compliance activities, including the State cooperative enforcement agreement program and the preparation of administrative suits.

§ 1.45 Office of Research and Development.

The Office of Research and Development is under the supervision of the Assistant Administrator for Research and Development who serves as the principal science adviser to the Administrator, and is responsible for the development, direction, and conduct of a national research, development and demonstration program in: Pollution sources, fate, and health and welfare effects; pollution prevention and control, and waste management and utilization technology; environmental sciences; and monitoring systems. The Office participates in the development of Agency policy, standards, and regulations and provides for dissemination of scientific and technical knowledge, including analytical methods, monitoring techniques, and modeling methodologies. The Office serves as coordinator for the Agency's policies and programs concerning carcinogenesis and related problems and assures appropriate quality control and standardization of analytical measurement and monitoring techniques utilized by the Agency. The Office exercises review and concurrence responsibilities on an Agencywide basis in all budgeting and planning actions involving monitoring which require Heardquarters approval.

(a) *Office of Acid Deposition, Environmental Monitoring and Quality Assurance.* The Office of Acid Deposition, Environmental Monitoring and Quality Assurance (OADEMQA), under the supervision of an Office Director, is responsible for planning, managing and evaluating a comprehensive program for: (1) Monitoring the cause and effects of acid deposition; (2) research and development on the causes, effects and corrective steps for the acid deposition phenomenon; (3) research with respect to the transport and fate of pollutants which are released into the atmosphere; (4) development and demonstration of techniques and methods to measure exposure and to relate ambient concentrations to exposure by critical receptors; (5) research, development and demonstration of new monitoring methods, systems, techniques and equipment for detection, identification and characterization of pollutants at the source and in the ambient environment and for use as reference or standard monitoring methods; (6) establishment, direction and coordination of Agencywide Quality Assurance Program; and (7) development and provision of quality assurance methods, techniques and material including validation and standardization of analytical methods, sampling techniques, quality control methods, standard reference materials, and techniques for data collection, evaluation and interpretation. The Office identifies specific research, development, demonstration and service needs and priorities; establishes

program policies and guidelines; develops program plans including objectives and estimates of resources required to accomplish objectives; administers the approved program and activities; assigns program responsibility and resources to the laboratories assigned by the Assistant Administrator; directs and supervises assigned laboratories in program administration; and conducts reviews of program progress and takes action as necessary to assure timeliness, quality and responsiveness of outputs.

(b) *Office of Environmental Engineering and Technology.* The Office of Environmental Engineering and Technology (OEET) under the supervision of a Director, is responsible for planning, managing and evaluating a comprehensive program for the: Development of cost-effective methods for control and management of operations with environmental impacts associated with the extraction, processing, conversion, and transportation of energy, minerals, and other resources, and with industrial processing and manufacturing facilities; development of cost-effective methods for environmental control of public sector activities including publicly-owned waste water and solid waste facilities; development of cost-effective methods for control and management of hazardous waste generation and disposal, of remedial actions, and of emergency spills of oils and hazardous wastes; development of engineering data needed by the Agency in reviewing premanufacturing notices relative to assessing release and exposure of chemicals, treatability by waste treatment systems, containment and control of genetically engineered organisms, and development of alternatives to mitigate release and exposure of existing chemicals; improvement of drinking water supply and system operations, including improved understanding of water supply technology and water supply criteria. In carrying out these responsibilities, the Office: Develops program plans and manages the resources assigned to it; implements the approved programs and activities; assigns objectives and resources to the OEET laboratories; conducts appropriate reviews to assure the quality, timeliness and responsiveness of outputs; and, conducts analyses of the relative environmental and socioeconomic impacts of engineering methods and control technologies and strategies. The Office of Environmental Engineering and Technology is the focal point within the Office of Research and Development for providing liaison with the rest of the Agency and with the Department of Energy on issues associated with energy development. The Office is also the focal point within the Office of Research and Development for liaison with the rest of the Agency on issues related to engineering research and development and the control of pollution discharges.

(c) *Office of Environmental Processes and Effects Research.* The Office of Environmental Processes and Effects Research, under the supervision of the Director, is responsible for planning, managing, and evaluating a comprehensive research program to develop the scientific and technological methods and data necessary to understand ecological processes, and predict broad ecosystems impacts, and to manage the entry, movement, and fate of pollutants upon nonhuman organisms and ecosystems. The comprehensive program includes: (1) The development of organism and ecosystem level effect data needed for the establishment of standards, criteria or guidelines for the protection of nonhuman components of the environment and ecosystems integrity and the prevention of harmful human exposure to pollutants; (2) the development of methods to determine and predict the fate, transport, and environmental levels which may result in human exposure and exposure of nonhuman components of the environment, resulting from the discharge of pollutants, singly or in combination into the environment, including development of source criteria for protection of environmental quality; (3) the development and demonstration of methods for the control or management of adverse environmental impacts from agriculture and other rural nonprofit sources; (4) the development and demonstration of integrated pest management strategies for the management of agriculture and urban pests which utilize alternative biological, cultural and chemical controls; (5) the development of a laboratory and fieldscale screening tests to provide data that can be used to predict the behavior of pollutants in terms of movement in the environmental, accumulation in the food chain, effects on organisms, and broad escosystem impacts; (6) coordination of interagency research activities associated with the health and environmental impacts of energy production and use; and (7) development and demonstration of methods for restoring degraded ecosystem by means other than source control.

(d) *Office of Health Research.* The Office of Health Research under the supervision of a Director, is responsible for the management of planning, implementing, and evaluating a comprehensive, integrated human health research program which documents acute and chronic adverse effects to man from environmental exposure to pollutants and determines those exposures which have a potentially adverse effect on humans. This documentation is utilized by ORD for criteria development and scientific assessments in support of the Agency's regulating and standard-setting activities. To attain this objective, the program develops tests systems and associated methods and protocols, such as predictive models to determine similarities and differences among test organisms and man; develops methodology and conducts laboratory and field research studies; and develops interagency programs which effectively use pollutants. The Office of Health Reserach is the Agency's focal point within the Office of Research and Development for providing liaison relative to human health effects and related human exposure issues (excluding issues related to the planning and implementation of research on the human health effects of energy pollutants that is conducted under the Interagency Energy/Environment Program). It responds with recognized authority to changing requirements of the Regions, program offices and other offices for priority technical assistance. In close coordination with Agency research and advisory committees, other agencies and offices, and interaction with academic and other independent scientific bodies, the Office develops health science policy for the Agency. Through these relationships and the scientific capabilities of its laboratories and Headquarters staffs, the Office provides a focal point for matters pertaining to the effects of human exposure to environmental pollutants.

(e) *Office of Health and Environmental Assessment (OHEA).* The Office of Health and Environmental Assessment, under the supervision of a Director, is the principal adviser on matters relating to the development of health criteria, health affects assessment and risk estimation, to the Assistant Administrator for Research and Development. The Director's Office: Develops recommendations on OHEA programs including the identification and development of alternative program goals, priorities, objectives and work plans; develops recommendations on overall office policies and means for

their implementation; performs the critical path planning necessary to assure a timely production of OHEA information in response to program office needs; serves as an Agency health assessment advocate for issue resolution and regulatory review in the Agency Steering Committee, Science Advisory Board, and in cooperation with other Federal agencies and the scientific and technical community; and provides administrative support services to the components of OHEA. The Director's Office provides Headquarters coordination for the Environmental Criteria and Assessment Offices.

(f) *Office of Exploratory Research.* The Office of Exploratory Research (OER), under the supervision of a Director, is responsible for overall planning, administering, managing, and evaluating EPA's anticipatory and extramural grant research in response to Agency priorities, as articulated by Agency planning mechanisms and ORD's Research Committees. The Director advises the Assistance Administrator on the direction, scientific quality and effectiveness of ORD's long-term scientific review and evaluation; and research funding assistance efforts. The responsibilities of this office include: Administering ORD's scientific review of extramural requests for research funding assistance; developing research proposal solicitations; managing grant projects; and ensuring project quality and optimum dissemination of results. The OER is responsible for analyzing EPA's long-range environmental research concerns; forecasting emerging and potential environmental problems and manpower needs; identifying Federal workforce training programs to be used by State and local governments; assuring the participation of minority institutions in environmental research and development activities; and conducting special studies in response to high priority national environmental needs and problems. This office serves as an ORD focal point for university relations and other Federal research and development agencies related to EPA's extramural research program.

§ 1.47 Office of Solid Waste and Emergency Response.

The Office of Solid Waste and Emergency Response (OSWER), under the supervision of the Assistant Administrator for Solid Waste and Emergency Response, provides Agencywide policy, guidance, and direction for the Agency's solid and hazardous wastes and emergency response programs. This Office has primary responsibility for implementing the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA—"Superfund"). In addition to managing those programs, the Assistant Administrator serves as principal adviser to the Administrator in matters pertaining to them. The Assistant Administrator's responsibilities include: Program policy development and evaluation; development of appropriate hazardous waste standards and regulations; ensuring compliance with applicable laws and regulations; program policy guidance and overview, technical support, and evaluation of Regional solid and hazardous wastes and emergency response activities; development of programs for technical, programmatic, and compliance assistance to States and local governments; development of guidelines and standards for the land disposal of hazardous wastes; analyses of the recovery of useful energy from solid waste; development and implementation of a program to respond to uncontrolled hazardous waste sites and spills (including oil spills); long-term strategic planning and special studies; economic and long-term environmental analyses; economic impact assessment of RCRA and CERCLA regulations; analyses of alternative technologies and trends; and cost-benefit analyses and development of OSWER environmental criteria.

(a) *Office of Waste Programs Enforcement.* The Office of Waste Programs Enforcement (OWPE), under the supervision of a Director, manages a national program of technical compliance and enforcement under CERCLA and RCRA. The Office provides guidance and support for the implementation of the CERCLA and RCRA compliance and enforcement programs. This includes the development of program strategies, long-term and yearly goals, and the formulation of budgets and plans to support implementation of strategies and goals. The Office provides program guidance through the development and issuance of policies, guidance and other documents and through training and technical assistance. The Office oversees and supports Regions and States in the implementation of the CERCLA and RCRA enforcement programs. The Office may assume responsibility for direct management of a limited number of CERCLA and RCRA enforcement actions which are multi-regional in nature or are cases of national significance. The Office serves as the national technical expert for all matters relating to CERCLA and RCRA compliance and enforcement. It represents the interest of the CERCLA and RCRA enforcement programs to other offices of the Agency. In coordination with the Office of External Affairs (OEA) and IO–OSWER, represents the program to external organizations, including the Office of Management and Budget (OMB), Congress, U.S. Department of Justice and other Federal agencies, the media, public interest and industry groups, State and local governments and their associations and the public.

(b) *Office of Solid Waste.* The Office of Solid Waste, under the supervision of a Director, is responsible for the solid and hazardous waste activities of the Agency. In particular, this Office is responsible for implementing the Resource Conservation and Recovery Act. The Office provides program policy direction to and evaluation of such activities throughout the Agency and establishes solid and hazardous wastes research requirements for EPA.

(c) *Office of Emergency and Remedial Response.* The Office of Emergency and Remedial Response, under the supervision of a Director, is responsible for the emergency and remedial response functions of the Agency (i.e., CERCLA). The Office is specifically responsible for: (1) Developing national strategy, programs, technical policies, regulations, and guidelines for the control of abandoned hazardous waste sites, and response to and prevention of oil and hazardous substance spills; (2) providing direction, guidance, and support to the Environmental Response Teams and overseeing their activities; (3) providing direction, guidance, and support to the Agency's non-enforcement emergency and remedial response programs, including emergency and remedial responses to hazardous waste sites; (4) developing national accomplishment plans and resources; (5) scheduling the guidelines for program plans; (6) assisting in the training of personnel; (7) monitoring and evaluating the performance, progress, and fiscal status of the Regions in implementing emergency and remedial response program plans; (8) maintaining liaison with concerned public and private national organizations for emergency response; (9) supporting State emergency response programs; and (10) coordinating Office activities with other EPA programs.

§ 1.49 Office of Water.

The Office of Water, under the supervision of the Assistant Administrator for Water who serves as

the principal adviser to the Administrator in matters pertaining to water programs, is responsible for management of EPA's water programs. Functions of the Office include program policy development and evaluation; environmental and pollution source standards development; program policy guidance and overview; technical support; and evaluation of Regional water activities; the conduct of compliance and permitting activities as they relate to drinking water and water programs; development of programs for technical assistance and technology transfer; development of selected demonstration programs; economic and long-term environmental analysis; and marine and estuarine protection.

(a) *Office of Water Enforcement and Permits.* The Office of Water Enforcement and Permits, under the supervision of a Director, develops policies, strategies, procedures and guidance for EPA and State compliance monitoring, evaluation, and enforcement programs for the Clean Water Act and the Marine Protection Research and Sanctuaries Act. The Office also provides national program direction to the National Pollutant Discharge Elimination System permit program. The office has overview responsibilities and provides technical assistance to the regional activities in both enforcement and permitting programs.

(b) *Office of Water Regulations and Standards.* The Office of Water Regulations and Standards, under the supervision of a Director, is responsible for the Agency's water regulations and standards functions. The Office is responsible for developing an overall program strategy for the achievement of water pollution abatement in cooperation with other appropriate program offices. The Office assures the coordination of all national water-related activities within this water program strategy, and monitors national progress toward the achievement of water quality goals and is responsible for the development of effluent guidelines and water quality standards, and other pollutant standards, regulations, and guidelines within the program responsibilities of the Office. It exercises overall responsibility for the development of effective State and Regional water quality regulatory control programs. The Office is responsible for the development and maintenance of a centralized water programs data system including compatible water quality, discharger, and program data files utilizing, but not displacing, files developed and maintained by other program offices. It is responsible for developing national accomplishment plans and resource and schedule guidelines for monitoring and evaluating the performance, progress, and fiscal status of the organization in implementing program plans. The Office represents EPA in activities with other Federal agencies concerned with water quality regulations and standards.

(c) *Office of Municipal Pollution Control.* The Office of Municipal Pollution Control, under the supervision of a Director, is responsible for the Agency's water program operations functions. The Office is responsible for developing national strategies, program and policy recommendations, regulations and guidelines for municipal water pollution control; for providing technical direction and support to Regional Offices and other organizations; and for evaluating Regional and State programs with respect to municipal point source abatement and control, and manpower development for water-related activities. The Office assures that priority Headquarters and regional activities are planned and carried out in a coordinated and integrated fashion, including developing and implementing data submission systems.

(d) *Office of Drinking Water.* The Office of Drinking Water, under the supervision of a Director, is responsible for water supply activities of the Agency, including the development of an implementation strategy which provides the national policy direction and coordination for the program. This Office develops regulations and guidelines to protect drinking water quality and existing and future underground sources of drinking water, develops program policy and guidance for enforcement and compliance activities, and recommends policy for water supply protection activities. The office provides guidance and technical information to State agencies, local utilities, and Federal facilities through the Regional Offices on program planning and phasing; evaluates the national level of compliance with the regulations; plans and develops policy guidance for response to national, Regional, and local emergencies; reviews and evaluates, with Regional Offices, technical data for the designation of sole-source aquifers; designs a national program of public information; provides program policy direction for technical assistance and manpower training activities in the water supply area; identifies research needs and develops monitoring requirements for the national water supply program; develops national accomplishments' plans and resource schedule guidelines for monitoring and evaluating the program plans, and program performance, and fiscal status; develops program plans, and budget and program status reports for the water supply program; coordinates water supply activities with other Federal agencies as necessary; and serves as liaison with the National Drinking Water Advisory Council.

(e) *Office of Ground-Water Protection.* The Office of Ground-Water Protection, under the supervision of a Director, oversees implementation of the Agency's Ground-water Protection Strategy. This Office coordinates support of Headquarters and regional activities to develop stronger State government organizations and programs which foster ground-water protection. The Office directs and coordinates Agency analysis and approaches to unaddressed problems of ground-water contamination; is principally responsible of restablishing and implementing a framework for decision-making at EPA on ground-water protection issues; and serves as the focus of internal EPA policy coordination for ground-water.

(f) *Office of Marine and Estuarine Protection.* The Office of Marine and Estuarine Protection, under the supervision of a Director, is responsible for the development of policies and strategies and implementation of a program to protect the marine/estuarine environment, including ocean dumping. The Office provides national direction for the Chesapeake Bay and other estuarine programs, and policy oversight of the Great Lakes Program.

Subpart C—Field Installations

§ 1.61 Regional Offices.

Regional Administrators are responsible to the Administrator, within the boundaries of their Regions, for the execution of the Regional Programs of the Agency and such other responsibilities as may be assigned. They serve as the Administrator's prinicipal representatives in their Regions in contacts and relationships with Federal, State, interstate and local agencies, industry, academic institutions, and other public and private groups. Regional Administrators are responsible for: (a) Accomplishing national program objectives within the Regions as established by the Administrator, Deputy Administrator, Assistant Administrators, Associate Administrators, and Heads of Headquarters Staff Offices; (b) developing, proposing, and implementing approved Regional

programs for comprehensive and integrated environmental protection activities; (c) total resource management in their Regions within guidelines provided by Headquarters; (d) conducting effective Regional enforcement and compliance programs; (e) translating technical program direction and evaluation provided by the various Assistant Administrators, Associate Administrators and Heads of Headquarters Staff Offices, into effective operating programs at the Regional level, and assuring that such programs are executed efficiently; (f) exercising approval authority for proposed State standards and implementation plans; and (g) providing for overall and specific evaluations of Regional programs, both internal Agency and State activities.

[FR Doc. 85-15407 Filed 6-27-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2856-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On September 6, 1984 (49 FR 35155), USEPA proposed disapproval of the incorporation of a source specific variance for Acme Barrel Company into the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). No public comments were received in response to USEPA's notice of proposed rulemaking. This notice announces final disapproval of the incorporation of this source specific variance into the SIP.

EFFECTIVE DATE: This final rulemaking becomes effective on July 29, 1985.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: In a September 8, 1983, Final Order (PCB 82-135), the Illinois Pollution Control Board (IPCB) granted Acme Barrel Company a variance from Rules 105(a), 105(d), 202(b), 203(e)(3), and 502 until March 6, 1984, for the operation of its gas fired drum incinerator which is located in Chicago, Cook County, Illinois, a primary nonattainment area for total suspended particulates (TSP). On October 31, 1983, the Illinois Environmental Protection Agency (IEPA) submitted this Final Order to USEPA as a proposed revision to the Illinois SIP. The following presents a summary of IPCB regulations involved in this variance.

Rule 105(a)—Prohibition on operation during breakdown.

Rule 105(d)—Report of operation during breakdown or start-up.

Rule 202(b)—Prohibition of visible emission greater than 30 percent.

Rule 203(e)(3)—Particulate emission standard of 0.2 grains per standard cubic foot corrected to 12 percent CO_2. This rule applicable to existing incinerators burning 2,000 pounds of refuse per hour, or less.

Rule 502—Prohibition of open burning.

Rule 502 is not part of the Illinois SIP for TSP. USEPA can take no action on this variance as it pertains to Rule 502.

USEPA's analysis of this proposed SIP revision was completed in conformance with the provisions of a July 29, 1983, memorandum on source specific SIP revisions from Sheldon Meyers, former Director of the Office of Air Quality Planning and Standards. This policy requires the State to show that the SIP as a whole, despite the relaxation, would provide for attainment of the TSP national ambient air quality standards (NAAQS) by the end of 1982. For TSP, a modeling demonstration using USEPA reference modeling techniques and the best available data are required.

The State's submittal contained no modeling demonstration. USEPA, therefore, proposed disapproval of this variance as it pertains to IPCB Rules 105(a), 105(b), 202(b), and 203(e)(3). As stated above, USEPA took no action on this variance as it pertains to Rule 502, because Rule 502 is not part of the Illinois SIP.

No public comments were received in response to USEPA's notice of proposed rulemaking. USEPA, today, announces final disapproval of the incorporation of this source specific variance into the SIP.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Lists of Subjects in 40 CFR Part 52

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

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: June 21, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-15573 Filed 6-27-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[Docket No. AM012WV; A-3-FRL-2856-7]

State of West Virginia; Revision of the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 14, 1980, at 45 FR 54042, EPA approved, with certain conditions, West Virginia's revised State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards for Total Suspended Particulates (TSP). One of the conditions EPA established was that West Virginia revise Regulation VII and submit this revision, and associated test procedures, to EPA as a SIP revision. On September 20, 1983, EPA approved Regulation VII absent these test procedures. On June 13, 1984, West Virginia submitted these test procedures and EPA has reviewed and is now approving them in this Notice.

EFFECTIVE DATE: June 28, 1985.

ADDRESSES: Copies of West Virginia's Test Procedures for Regulation VII are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division,

Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, PA 19106, ATTN: Denis M. Zielinski (3AM11)

West Virginia Air Pollution Control Commission, 1558 Washington Street, East Charleston, West Virginia 25312, ATTN: Mr. Carl G. Beard, II.

FOR FURTHER INFORMATION CONTACT: Denis M. Zielinski at the EPA, Region III address above or call (215) 597-2906.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 required States to submit revised State Implementation Plans (SIP's) for all areas where National Ambient Air Quality Standards (NAAQS) had not been attained. West Virginia submitted a SIP revision to EPA, as required, for attainment of the TSP NAAQS's. EPA approved this SIP revision, with certain conditions, in a notice published at 45 FR 54042, August 14, 1980. One of the conditions in the SIP was that West Virginai was to revise its Regulation VII—"To Prevent and Control Particulate Air Pollution from Manufacturing Process Operations."

On September 20, 1983 (48 FR 42813), EPA approved the revision of Regulation VII with certain conditions. This approval did not include the associated compliance test procedures and EPA conditioned approval upon submittal by West Virginia of the associated test procedures now being approved today.

On January 31, 1984, West Virginia submitted an emergency regulation and TP-4—"Compliance Test Procedures for Regulation VII—'To Prevent and Control Particulate Air Pollution from Manufacturing Process Operations'." On June 13, 1984, West Virginia notified EPA that the test procedures submitted on January 31, 1984 were now approved State procedures and requested that EPA approve them as a SIP revision.

EPA reviewed West Virginia's test procedures and determined them to be acceptable. Therefore, EPA proposed approval of these test procedures as a revision to the West Virginia SIP in the **Federal Register** on September 19, 1984. A thirty (30) day public comment period commenced on that date ended on October 18, 1984. On October 18, 1984, Comments were sent to EPA from a busienss association. Comments pertained to the following four (4) items.

First, the commenter claims that TP-4 is unenforceable and therefore not approvable under section 110 of the Clean Air Act because it violates West Virginia Code Section 16-20-5, which prohibits the state from adopting a requirement more stringent than a comparable federal requirement. More specifically, the commenter complains that the lack of averaging provisions and an error band in TP-4 make TP-4 more stringent than EPA's Method 9, which contains those features. Second, the commenter claims that TP-4 is unenforceable because it was not adopted consistently with a requirement in West Virginia's Administrative Procedures Act for approval by the state's Legislative Rulemaking Review Committee and the West Virginia Legislature. Finally, the commenter contends that EPA should not approve TP-4 because it "purports to have compliance with Regulation VII determined by a methodology for which there is no procedure to certify observers."

EPA disagrees with each of these claims. First, TP-4 does not violate the prohibition in WVC Section 16-20-5 against state requirements that are more stringent than comparable federal requirements. The only comparable federal provision that applies to the sources affected by TP-4 is the general provision in section 172(b) of the Clean Air Act that nonattainment area SIPs include requirements reflecting the application of reasonably available control technology (RACT). The commenter has not attempted to show and no evidence suggests that the technology needed to meet the opacity standard in Regulation VII as implemented using TP-4 is not reasonably available. Thus, the West Virginia requirements are not more stringent than the general federal RACT requirement.

The commenter suggests, however, that EPA's Method 9 is a comparable federal requirement that is less stringent than TP-4. The commenter is incorrect. EPA has not promulgated any combination of opacity standard and test method as a RACT requirement for the sources at issue here. Nor has the Agency designated either the Method 9 data reduction procedures or any other test procedures as RACT test methods required to be used in conjunction with state-adopted RACT opacity standards for sources such as those covered by Regulation VII. [1] That is why EPA required the state to develop its own test method to accompany Regulation VII in addressing those emissions. 48 FR 42813 (September 20, 1983).

For these reasons, the combination of Regulation VII and TP-4 is not more stringent than a comparable federal requirement and therefore does not violate WVC Section 16-20-5. [2]

Second, EPA presumes that the WVAPCC is correct in asserting that it adopted TP-4 consistently with the West Virginia Administrative Procedures Act. Absent evidence of a patent violation of state procedural requirements or some basic inconsistency between a state's submittal and its substantive laws or constitution, EPA generally will not scrutinize a state's submittal for procedural deficiencies. Such evidence does not appear here. The commenter should address its procedural concerns to the appropriate state decisionmakers.

Finally, the absence of certification procedures specifically designed for personnel conducting tests using TP-4 does not warrant disapproval of TP-4. The state has determined that opacity observers applying TP-4 will be certified under the general procedures designed for applying EPA's Method 9. Even assuming *arguendo* that the use of TP-4 would result in a greater error than that associated with Method 9, that would mean only that sources seeking to comply with the Regulation VII opacity requirement associated with TP-4 might need to take precautions beyond those that would be needed to assure compliance if West Virginia had chosen an averaging method instead of TP-4. As noted above, there is no federal requirement that state-adopted opacity standards take the form of time averages. The state is thus free to require these precautions, so long as the resulting level of control requires the application of RACT. Since the relevant portion of Regulation VII plus TP-4 will require RACT-level control, EPA may approve TP-4 despite the absence of certification procedures designed specifically for personnel conducting TP-4 testing.

For the foregoing reasons EPA is today approving TP-4 for inclusion in the West Virginia SIP.

Administrative Procedures

At this time EPA is also amending 40 CFR Part 52 by deleting § 52.2532(a). This deletion should have been done

[1] The only requirements that might be considered comparable federal RACT requirements are the opacity standards and test procedures contained in federal consent decrees that address the type of emissions from iron and steel plants to which Regulation VII and the TP-4 test measures apply. Like TP-4, the test methods in those decrees do not provide for the averaging of opacity observations. Moreover, the corresponding opacity standards in those decrees are not less stringent than Regulation VII. Thus, even if the decrees were considered comparable federal requirements, the combination of Regulation VII and TP-4 would equal rather than exceed their stringency and would therefore still be consistent with Section 16-20-5.

[2] EPA notes also that, accordingly to the WVAPCC, TP-4 is not even subject to Section 16-20-5 because Regulation VII was adopted before the effective date of Section 16-20-5.

when EPA approved the Final Rulemaking Notice for the revision of West Virginia Regulation VII on September 20, 1983 (48 FR 42813). Because these test procedures are related to Regulation VII this section is being corrected today.

This SIP revision conforms to the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: June 21, 1985.

Lee M. Thomas,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Authority: 42 U.S.C. 7401–7642.

§ 52.2532 [Amended]

2. Section 52.2532 Control Strategy: Particulate Matter is amended by removing paragraph (a).

3. Section 52.2532 is amended by correctly redesignating paragraph (b) as paragraph (a).

[FR Doc. 85–15574 Filed 6–27–85; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[A–8–FRL–2856–6]

Approval and Promulgation of State Implementation Plans; Revision to Colorado Inspection/Maintenance Program

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves revisions to the Colorado Inspection/Maintenance Program (I/M) which is part of the 1982 Colorado State Implementation Plan (SIP) to attain standards for carbon monoxide (CO) and ozone. The revisions include updated requirements for emission mechanics, emission standards for 1985 vehicles and more stringent emission standards for heavy-duty vehicles. These revisions will make the I/M program more effective in controlling CO and ozone. This notice also reinstates a portion of EPA additions to the Colorado SIP which was inadvertently removed in EPA's approval of the 1982 Colorado SIP on December 12, 1983 (48 FR 55284).

DATES: This action will be effective on August 27, 1985 unless notice is received by July 29, 1985 that someone wishes to submit adverse or critical comments. Such notice may be submitted to Robert DeSpain at the EPA Regional Office address listed below.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Denver, Colorado 80202

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

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, CO 80295, (303) 293–1773.

SUPPLEMENTARY INFORMATION: The Colorado I/M program was approved on December 12, 1983 (48 FR 55284). On December 10, 1984, the Governor of Colorado submitted revisions to Regulation 11 (which implemented the I/M program). These revisions make the program more effective by updating mechanic training requirements for new technology vehicles, providing emission standards for 1985 model year vehicles and providing more stringent emission standards for heavy duty vehicles. EPA finds that these revisions meet EPA criteria and is approving them.

On April 30, 1981 (46 FR 24182), EPA promulgated rules and regulations concerning the review of new sources in nonattainment areas. These provisions were inadvertently withdrawn as part of the December 12, 1983 rulemaking. EPA is reinstating the provisions today.

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

Under section 307(b)(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See § 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon Monoxide, Hydrocarbons, Incorporation by reference.

Dated: June 21, 1985.

Lee Thomas,

Administrator.

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

PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401–7642.

2. In § 52.320, paragraph (c)(31) is added as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(31) Revisions to Air Pollution Control Commission Regulation No. 11 related to the Colorado Inspection and Maintenance (I/M) program for exhaust emission inspection of motor vehicles, submitted by the Governor on December 10, 1984.

3. Section 52.329 is added as follows:

§ 52.329 Rules and regulations.

(a) *Part D disapproval.* Regulation No. 3 and the Common Provisions Regulations are approved except for the following provisions which are disapproved:

(1) Section IV.D2(b)(ii)(G), which exempts from "major modification," a change of an existing oil-fired or gas-fired boiler to the use of a coal/oil mixture, shale oil, or coal-derived fuels, provided that such change would not interfere with reasonable further progress toward attainment of any National Ambient Air Quality Standard.

(2) Section IV.D2.(b)(iii), "major modification" and the definition of "major stationary source" in the

Common Provisions Regulation that provides that fugitive emissions of particulate matter from any of the 26 listed source categories will be excluded in determining whether the source is major, even though quantifiable, if the owner or operator of the source demonstrates to the satisfaction of the Colorado Air Pollution Control Division that such emissions are of a size and substance that will not adversely affect public health or welfare.

(3) Section IV.H.6., that allows the Division to grant an applicant a period of greater than six months to bring a source into compliance.

(4) Regulation No. 3 did not include a provision for "reconstruction," and certain fugitive emissions may escape review since they were not included in Colorado Regulations No. 6 and No. 8, but were regulated under Federal New Source Performance Standards or National Emission Standards for Hazardous Pollutants. Any source which escapes review because of these deficiencies in Regulation No. 3 will be subject to federal enforcement actions.

[FR Doc. 85-15575 Filed 6-27-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2856-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of direct final rulemaking.

SUMMARY: The USEPA announces approval of a revision to the Wisconsin State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). The revision incorporates test methods, for large petroleum dry cleaning sources located in southeastern Wisconsin, into the Wisconsin VOC SIP. These test methods are contained in the "Air Management Operations Handbook". USEPA's action is based upon a SIP revision that was submitted by the State on January 24, 1985.

DATE: This action will be effective August 27, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Wisconsin SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

Copies of the SIP revision, and other materials related to this rulemaking, are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

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

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), Environmental Protection Agency Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On January 23, 1984, the Wisconsin Department of Natural Resources (WDNR) submitted a revision to the VOC SIP incorporating regulations for large petroleum dry cleaning sources located in southeastern Wisconsin. These regulations reflect the application of Reasonably Available Control Technology (RACT) to petroleum dry cleaning sources of volatile organic compound (VOC) emissions, for which USEPA has published a Control Technique Guideline (CTG) (EPA-450/3-82-009). Petroleum dry cleaners are covered by the third group of CTG's (RACT III). On August 17, 1984 (49 FR 32866), USEPA proposed to approve the petroleum dry cleaning RACT III regulations provided that the WDNR: (1) Included the test methods specified in the CTG in their "Air Management Operations Handbook", which is the repository for Wisconsin's test methods; and (2) submitted the test methods to USEPA as a SIP revision prior to final rulemaking. As explained below, Wisconsin satisfied these requirements, and USEPA approved the petroleum dry cleaning RACT III regulations on May 10, 1985 (50 FR 1982).

Wisconsin originally incorporated the test methods into the Operations Handbook and submitted them to USEPA on November 2, 1984. USEPA reviewed the State submittal and determined that the Operations Handbook did not include all of the testing and monitoring requirements contained in the CTG. Therefore, USEPA proposed a revision to the Handbook in a letter dated January 11, 1985. WDNR incorporated the revision and resubmitted the Operations Handbook on January 25, 1985, prior to final rulemaking on the RACT III petroleum dry cleaning regulations. USEPA finds that the Operations Handbook now specifies all the reference test methods contained in the subject CTG (EPA-450/3/82-009), and that these test methods are approvable as part of the Wisconsin SIP.

Since USEPA views today's action as noncontroversial, USEPA is approving this SIP revision without prior proposal. The action will become effective on August 27, 1985. However, if USEPA is notified by July 29, 1985, that someone wishes to submit adverse or critical comments, then this action will be withdrawn and a new rulemaking will propose the action and establish a comments period.

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

Under 5 U.S.C. § 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Ozone, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

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

Dated: June 21, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

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

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

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

2. Section 52.2570 is amended by adding new subparagraph (c)(41) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(41) On January 24, 1985, the Wisconsin Department of Natural Resources submitted test methods for petroleum dry cleaning sources as a revision to the Wisconsin SIP. These test methods are part of the State's "Air Management Operations Handbook".

(i) Incorporation by reference.

(A) Test methods for petroleum dry cleaning sources contained in the Wisconsin Department of Natural Resources' "Air Management Operations Handbook".

[FR Doc. 85-15576 Filed 6-27-85; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

41 CFR Part 105-61

Establishment of Chapter XII and Redesignation of Regulations; Technical Correction

AGENCY: National Archives and Records Adminstration.

ACTION: Correction to final rule.

SUMMARY: This document corrects a technical error in the final rule published on April 19, 1985 at 50 FR 15722 which established National Archives and Records Administration regulations in Title 36, Chapter XII of the Code of Federal Regulations and removed certain sections from Title 41 of the Code of Federal Regulations. Section 105-61.301 was inadvertently omitted from the list of sections removed from Part 105-61 of Title 41.

EFFECTIVE DATE: The final rule became effective on April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Adrienne C. Thomas, Program Policy and Evaluation Division, National Archives (NAA), Washington, DC 20408, (202) 523-3214.

SUPPLEMENTARY INFORMATION: FR document 85-9538, dated April 19, 1985 is corrected on page 15728, in the third column, by adding the following entry to the list of sections removed from 41 CFR Parts 101-11, 105-61, and 105-65: Section 105-61.301.

Dated: June 25, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-15638 Filed 6-27-85; 8:45 am]

BILLING CODE 7515-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 94

[MM Docket No. 83-523; FCC 85-294]

Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules in the Instructional Television Fixed Service (ITFS) and institutes policies designed to foster the most effective use of the service. Provisions are adopted to: Provide a "local priority period" during which time only local applicants will be considered for channels; provide a point accumulation method, based on specified criteria, with a random chance tie-breaker for selecting among mutually exclusive applicants; provide an "A/B" cut-off list for mutually exclusive applications and petitions to deny; continue the requirement on each channel for formal educational programming to enrolled students; and require a minimum amount of ITFS programming by licensees proposing to lease excess capacity. Technical standards are expanded to include cochannel and adjacent channel protection ratios and to specify a fifty-mile radius engineering analysis and a two-foot parabolic receive antenna's characteristics for reference in application processing.

EFFECTIVE DATE: July 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce A. Romano, Mass Media Bureau, (202) 632-9356.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 74

Television.

47 CFR Part 94

Communications equipment, Radio.

Second Report and Order (Proceeding Terminated)

In the matter of Amendment of Part 74 of the Commission's Rules and Regulations in regard to the Instructional Television Fixed Service.

Adopted: May 31, 1985.

Released: June 20, 1985.

By the Commission: Commissioner Rivera not participating.

1. The Commission has before it comments filed in response to its *Notice of Proposed Rulemaking* in MM Docket No. 83-523 ("*Notice (85-523)*"), 48 FR 29553 (June 27, 1983), and its *Further Notice of Proposed Rulemaking* in MM Docket No. 83-523 ("*Further Notice (83-523)*"), 98 FCC 2d 1249 (1984).[1] This Report and Order considers those comments and adopts rules governing the application and comparative selection processes for, and the provision of service by, licensees in the Instructional Television Fixed Service ("ITFS"), and concludes this proceeding.

Introduction

2. Section 74.931 of the Commission's Rules states:

> Instructional television fixed stations are intended primarily to provide a means for the transmission of instructional and cultural material . . . to specified receiving locations for the primary purpose of providing a formal educational and cultural development to students enrolled in accredited public and private schools, colleges and universities . . . Such stations may also be used for . . . in-service training . . . extension of professional training . . . administrative activities . . . and other similar uses . . . Stations may be licensed in this service as originating or relay stations to interconnect [ITFS] stations in adjacent areas (or deliver and obtain instructional and educational material). (47 CFR 74.931(a)-(d).)

Notice (83-523), supra, had proposed the relaxation of certain ITFS technical and nontechnical requirements, premised, in part, on the fact that channels allocated for ITFS were vastly underutilized. *Id.* at 29554-55. This was found to be the result of the specialized nature of ITFS and the limited funds available for its growth. *Id.* On the same day, the Commission adopted a *Report and Order* in General Docket No. 80-112 ("*Report and Order (80-112)*"), 94 FCC 2d 1203 (1983), which permitted ITFS licensees to use their excess channel capacity for non-ITFS purposes, either by themselves or by leasing to other parties. The growth and development of the educational and instructional services for which ITFS was designed were viewed as desirable goals and the Commission determined that permitting the leasing or commercial use of excess channel capacity and removing unnecessary and burdensome requirements would foster these goals.

3. Subsequently, in *Report and Order* in MM Docket 83-523 ("*Report and Order (83-523)*"), 98 FCC 2d 925 (1984),[2]

[1] A list of the parties filing comments in response to *Further Notice (83-532), supra,* is attached as Appendix A.

[2] *Aff'd., Memorandum Opinion and Order* in MM Docket No. 83-523, FCC 85-111, released January 15, 1985.

the Commission adopted several of the changes proposed in *Notice (83–523), supra,* relaxing ITFS transmission standards, authorizing "temporary fixed stations" and program delivery to cable headends, encouraging frequency coordination, authorizing a one-step licensing procedure and increasing the ITFS license term from five years to ten years. At the same time, in *Further Notice (83–523), supra,* the Commission noted a significant increase in the number of applications filed for new ITFS facilities since its previous actions, primarily by nonlocal, nonprofit organizations. It stated that this increased interest in the ITFS spectrum was clearly a result of the decision to permit the use of ITFS excess channel capacity for commercial purposes, as most of the applications proposed, under varying circumstances, to lease channel time to operators in the Multipoint Distribution Service ("MDS"). It continued that the increased usage of the ITFS spectrum is desirable and encouraged, and reiterated its position that this goal and the means for its realization are meritorious and that the improved utilization of ITFS transmission time would foster a broader and more efficient use of spectrum capacity while generating new revenue sources for the development of ITFS. It observed that existing ITFS rules and policies were not adequate or inclusive enough to deal realistically with the rapidly changing developments in this area. It concluded that further consideration of certain aspects of the use of channel capacity for non-ITFS purposes, and other matters relating to ITFS generally, was necessary to assure the preservation of the ITFS service. Therefore, the Commission solicited comments on matters dealing with the following: eligibility requirements for becoming an ITFS licensee; selection procedures and criteria for choosing among mutually exclusive applicants; procedural standards for "cutting off" applications that are accepted for filing; control of an ITFS facility by a licensee that leases excess channel capacity to others; the nature and scope of permissible ITFS service; and interference protection standards.

4. Comments were filed by numerous interested parties, most of them existing or prospective ITFS licensees. They claim that widespread recognition of the value of ITFS service has just begun and that the recent surge in applications will continue, expanding the number and variety of services provided. Commentors were unanimous on the critical importance of emphasizing appropriate eligibility criteria to preserve the essentially educational nature of ITFS service. An overwhelming consensus was expressed on the critical role that local involvement plays in effectively serving the intended ITFS audience.

5. As demand for ITFS facilities increases, careful choices must be made among competing interests. Embracing these fundamental principles, the actions taken herein will formulate rules which will focus on the qualifications of ITFS licensees as the basic means of directing the use of the service. Local applicants will be encouraged and preferred, but maximum advantage will be taken of the particular benefits offered by the participation of nonlocal applicants and national programming networks within the service. By this approach, the advantageous use of ITFS channels will be advanced to the greatest extent possible, without infringing on licensee discretion or discouraging cooperative involvement by lessees of excess channel capacity where the public will benefit from that cooperation.

6. To this end, specific provisions are adopted to: Provide a "local priority period" during which time only local applicants will be considered for ITFS channels; maintain the "cut-off" status of nonlocal applicants whose requested channels are not authorized to local applicants during the local priority period; provide a point accumulation method with a random chance tie-breaker for selecting among mutually exclusive applications, with criteria including, among others, whether the applicant is local, whether it is an accredited school or governing agency, whether it would remain within the four-channel limitation, and factors contributing to the effective utilization of the resources for ITFS service, including the amount and kind of ITFS service proposed; provide an "A list, B list" procedure for cutting off mutually exclusive applications and petitions to deny, with a sixty-day "A" period; require that each ITFS channel carry formal education for credit to enrolled students, and include exclusively off-campus instructional programming; require a "substantial use" of at least twenty hours per week for all ITFS programming (with a total dedication of forty schedule hours per week for ITFS, either by reservation or recapture provisions) before designating excess capacity on a channel for non-ITFS use. A one-channel reservation for national networks is rejected, and specific provisions to ensure that ITFS licensees retain cotnrol of their facilities in leasing situations are not adopted at this time. Technical standards are also expanded to include cochannel and adjacent channel protection ratios for use when agreement cannot be reached between parties; to specify a fifty-mile radius engineering analysis; and to specify a two-foot parabolic receive antenna's characteristics for reference in application processing, in certain situations. Also, the direct heterodyne frequency conversion requirement is deleted and a fifteen-mile radius protected service area is not adopted.

Eligibility

7. Under current rules, to be eligible for an ITFS license a party must be a school or governmental organization engaged in the formal education of enrolled students (*e.g.,* a school board or district), or a nonprofit organization formed for the purpose of providing instructional television materials to these entities.[3] In *Further Notice (83–523), supra,* the Commission reiterated that nonprofit educational organizations, including unaccredited organizations, should not be precluded from ITFS eligibility. It acknowledged the difficulty of applying eligibility standards to the new, nonlocal educational organizations, especially those by MDS operators, not doubting that those organizations were generally founded for educational purposes, but concerned that most have no local presence and that many of their proposals were not tailored to the numerous individual communities in which they applied. *Id.* at para. 16. The Commission was optimistic nonetheless that national networks could benefit the ITFS service, with their ability to achieve economies of scale and exchange programming nationwide, complementing local offerings and introducing service to unserved and underserved areas. Consequently, it expressed an inclination not to exclude such applicants from eligibility solely on the basis that they lack physical presence in the cities they proposed to serve, if they are otherwise qualified. At the same time it stressed the importance of a licensee's educational nature and its local involvement, and invited comments on what indicia of local involvement national entities could show to prove themselves eligible for a license. In particular, it asked whether a nonlocal applicant should obtain letters from its intended receive sites giving reasonable assurance of their intention

[3] 47 CFR 74.932(a). A nonprofit organization which would be eligible for a noncommercial educational television broadcast station is also considered to be eligible for a license for an ITFS station. *Id.*

to use the applicant's proposed service. *Id.* at paras. 18 and 19. It also inquired into the possibility of requiring local involvement through local selection and development committees, but indicated a preference to let applicants present evidence of local involvement in whatever form they deemed most suitable to meet local educational needs. *Id.* Lastly, it asked whether local educational organizations, as opposed to local educational institutions, should be subject to any of the same eligibility criteria adopted for nonlocal applicants.

8. The vast majority of commentors believe that a local presence should be an absolute condition of eligibility. One group of commentors characteristically observes: "Education is inherently a local undertaking." Some commentors further insist that no local advisory committee could substitute for local physical presence. Local curriculum development, instructor involvement, and student assistance and feedback are all essential and cannot be provided successfully except by "local institutions with substantial experience." Any organization from diploma mills to art galleries to day care centers could call itself "educational," insists one group, but only local bodies such as school districts and state educational agencies can decide what is truly educational; only they are entrusted with the state's particular academic standards. They assert that when the original 1963 rules expanded eligibility to include "nonprofit organizations," the intent was to enfranchise educational "community groups," not just any nonprofit entity.[4]

9. Several parties assert that if the Commission ignores these local guidelines, it will encounter an imbroglio of hearings and content regulation which would be both inappropriate and wasteful. It is better, they say, to set strict eligibility standards; then other restrictions such as the permissible use rules could be relaxed. The nonlocal applicants applying nationwide ("national applicants"), they imply, are not community groups because they are national organizations, and they are not even educational because, as one puts it, their "primary purpose . . . is the commercial exploitation of ITFS." (Various comments filed by Cohn & Marks.)

10. One national applicant, Network for Instructional Television (NITV), also inveighed against the dangers of nonlocalism. It, however, would permit national entities with "strong local presence," including the establishment of local programming committees. The rest, it said, should be declared ineligible. The Instructional Telecommunications Foundation (ITF), the National Association of Public Television Stations, the University of Maryland and a few others also contend that the national applicants with sufficient local ties could promote diversity, competition, and innovation in the industry. Various proposals indicate that local selection and production committees might include representatives from the receive sites being served and a local office and staff. They might also perform audience surveys and select, produce, and schedule programming that meets specific local needs and does not duplicate other local programming sources. Only NITV proposes that a specific percentage (two-thirds) of each committee should consist of local representatives.

11. The Hispanic Information and Telecommunications Network (HITN), the League of Unified Latin American Citizens, and the Puerto Rican Legal Defense and Education Fund believe the emphasis on localism is misplaced. They believe that the unserved educational needs of Hispanics, which they allege are particularly critical, can best be met by Hispanic applicants, whether locally based or not.

12. Another group of commentors would allow nonlocal applicants, but require them to submit, among other things, a certificate of accreditation from the state department of education where it is located. This would ensure that the nonlocal applicant is "bona fide and accountable," that it would provide formal education, and that the quality of formal education would meet the given state's academic standards. For the same reason, some commentors from this group further urge that the applicant should also obtain state "authorization" in every state where it applies. They claim that this opinion is endorsed by the Council on Post Secondary Accreditation and the State Higher Education Executive Officers Association which together "represent the entirety of the accrediting and state authorizing communities." (Group comments filed by Dow, Lohnes, and Albertson, pages 29–31). Hospital associations oppose the accreditation requirement because some worthy providers of education, like hospitals, are not accredited. NITV and HITN contend that accreditation is no guarantee of motive or ability.

13. Several parties believe that letters of reasonable assurance that the applicant's service will be used by proposed receive sites should also be a factor in deciding the eligibility of nonlocal applicants. Letters are needed, a number of commentors explain, to show that the applicant has the school's genuine "active support."

14. Several other eligibility criteria were suggested, but less widely endorsed. A few commentors propose that a nonschool applicant should demonstrate its history of service to the given community, as the best indication of "future effective utilization." NITV and HITN counter that "prior local service" is no measure of an applicant's present or future ability to serve, and that such a requirement would preclude newly formed educational organizations. One small group asked for a general showing of educational experience. Some would make this a mandatory requirement in combination with accreditation and other factors. Others would accept a showing of educational experience in the place of accreditation, since it would show the applicant is "genuinely instructional."

Discussion

15. Qualification criteria for ITFS licensees are the crucial points in any mechanism designed to promote the effective exploitation of the ITFS resource. The current rules have been effective and can continue to be effectively implemented to assure the *bona fide* educational nature of ITFS applicants, with the further interpretations made below. The controversial outstanding issue is the place of nonlocal applicants, particularly the national entities, in the licensing process.

16. Locally based educational entities have been convincingly demonstrated by the commentors to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities, for designing courses to suit those needs, and for scheduling courses during the school year. They best understand the educational needs and academic standards of their communities and are the most appropriate bodies to produce educational programming or select such programming from the sources available. Thus, they can act most responsibly in designing and developing ITFS systems. Locally based curriculum development, instructor involvement, supplementary (print) material development, student feed-back, and assistance to participating students all provide critical contributions to the most effective use of instruction via television.

[4] Commentors cite *Report and Order* in Docket No. 14744, 39 FCC 846, 853–54 (1963).

17. National organizations, however, can have a significant role to play in the development and delivery of ITFS service. While their nonlocal nature precludes many of the most desirable characteristics of an ITFS licensee, they can, as noted, complement the services offered by local licensees in several ways. Also, their lack of local identity, credentials and responsibility can be mitigated to some extent by the inclusion of appropriate local persons and entities in positions of responsibility for the operations in individual communities. Therefore, it is not necessary or appropriate to disqualify all nonlocal applicants from consideration as licensees. However, when the Commission originally envisioned that leasing would promote the development of all educational entities, it did not foresee the rapid spread of nationwide filing. *Further Notice (83–523), supra* at paras. 15–17. It was not anticipated that a few MDS operators would funnel most of their financial resources primarily into a small number of nonlocal entities that, in turn, have applied for hundreds of channels nationwide. This has occurred at the expense of potential local applicants, many of which would be dependent on such funds to apply for authorization. It is obvious from these numerous applications on file by national organizations that intend to lease time that MDS operators are very interested in supporting the initiation of ITFS service, in exchange for airtime, in a great number of communities. If channels were more available, or if the support of commercial MDS operators were offered to local entities, we would expect to see an increase in the number of local educational institutions and organizations applying for ITFS licenses, given the unfettered opportunity to apply for channels and to negotiate lease agreements. Moreover, a heightened interest by local applicants has been demonstrated by the increased number of applications filed by such entities. Local entities would generally provide even greater public benefits than would nationals, as local educational bodies are the most expert and accountable authorities for determining and serving the educational needs of their communities. None of the nonlocal applicants on file enjoys any physical presence or prior involvement in the communties where they have applied, and they also are unaccredited. Some were not founded strictly for educational purposes.[5]

18. For these reasons, we believe an opportunity should be opened for all local entities to attempt to avail themselves of the benefits of leasing or their own non-ITFS use of excess channel capacity. This will be accomplished by the introduction of a "local priority period." After an adequate period of time to implement this opportunity, whatever channels remain unassigned would be made available to any applicants, including national entities, who are found to be eligible. Under this procedure more local entities will have the opportunity to fill more channels as financial support from non-ITFS use becomes more widespread. Existing local operators also can incorporatrate non-ITFS use into their systems to generate revenues to improve their educational offerings. These are opportunities which have not yet occurred to any significant extent, as explained, contrary to the Commission's intentions in liberalizing the use rules in *Report and Order (80–112), supra.* Revenues obtained from the use of excess capacity would thus directly support the programming choices of local entities engaged in education. Thus, a local priority period appears to be the wisest and most efficient plan for managing the newly-crowed ITFS spectrum.

19. This procedure does not deny eligiblity to nonlocal applicants, but recognizes a strong preference for local entities, including those which need a system but have been precluded or discouraged from filing by the flurry of nonlocal applications. After a period of time, however, seriously interested local parties will have had reasonable opportunity to apply, and this consideration must give way to the countervailing desirability of making use of vacant channels. Accordingly, the local priority period will be the minimum necessary to achieve the aforementioned goals.

20. Meanwhile, the national entities can still foster participation in ITFS service by local educational entities by developing, producing and supplying instructional programming for them. They should be able to accomplish this without holding ITFS licenses. If the programming they have available and have proposed to use in their numerous applications is quality instructional programming, desirable to schools and other entities they propose to serve, it will be in demand by licensees. These local licensees can act autonomously to use the funds derived from non-ITFS use to purchase this programming, thereby financing it, for the instruction they see fit for their students. This opportunity is greatly enhanced by other actions taken herein. The anticipated increase in ITFS applications and operators, as well as the essential use and substantial use provisions adopted (paras. 75 and 95, *infra*) will increase the demand for ITFS programming.

21. Currently, there is little history of leasing by local entities. After this Order, however, that use should expand as applications on file are granted. Also, it is anticipated that MDS operators will approach eligible local entities with proposals for new stations, based on their support of the development of ITFS systems by nonlocal applicants. It may take several months to negotiate lease agreements, and several more to file applications and receive authorizations. As this use grows, other schools will have the opportunity to discover and observe the workings and benefits of ITFS, as well as the possibilities presented by leasing or self-use of excess channel capacity. A one-year period should provide ample opportunity for serious candidates to observe the new systems, consider whether and how they can utilize this service, and prepare and file applications. Accordingly, the local priority period will extend for one year after the effective date of this Order (see par. 140, *infra*). No applications can be filed by nonlocal applicants prior to that time.[6] Also, applications currently on file by nonlocal applicants will not be considered in effect during the period. Thus, pending applications by local applicants for any channels already requested by nonlocal applicants can be acted on, and local entities can file new proposals for any channels requested by nonlocal applicants that are not already cut off by other local applicants pursuant to the interim cut-off procedures adopted in *Further Notice (83–523), supra.* However, applications by nonlocal entities which have already been cut-off from competing proposals and petitions to deny by the interim cut-off procedures will retain their cut-off status at the end of the local priority period, if their requested channels are not requested by or authorized to local applicants during the period. Thus, any such currently cut off applications by

[5] For example, one nonlocal applicant is the fund-raising arm of a university, not the university itself. (The University has applied for its own channels locally).

[6] Before the issuance of *Further Notice (83–523)* and during the period following the adoption of interim processing standards set forth therein, certain applications of some nonlocal entities were granted, consistent with processing criteria then in effect, based on prevailing circumstances. Authorizations granted as of the date of adoption of the instant Order will be "grandfathered."

nonlocal entities which remain viable after the local priority period will not be subject to later competition and will be available for immediate consideration, upon affirmation by the applicant of its continued prosecution of the application.[7] Any applications mooted by grant of current or intervening applications filed by local applicants, or whose prosecution is not affirmed by the applicant at the end of the local priority period, will be dismissed.

22. For purposes of the local priority period and for selection among mutually exclusive applicants, the Commission will regard as "local," institutions and organizations that are physically located in the community, or metropolitan area, where service is proposed. For colleges and universities, this would include areas where they have a campus. Educational organizations will generally be regarded as "local" if the address of the organization's headquarters is located within the area where the facility is sought. Entities created by a state or local government for the purpose of serving formal educational needs will be considered "local" throughout the area within the government's jurisdiction over which its authority is intended to extend. Educational entities located within a state and created by affiliated educational institutions [8] within that state will be considered "local" in those areas where the member institutions are located (*e.g.*, Indiana Higher Educational Telecommunications System).[9]

23. Whether an applicant is local or nonlocal, it still must be found eligible to obtain an ITFS license. The existing rules provide needed flexibility in deciding who is eligible to be an ITFS licensee. Therefore, the basic categories of eligible applicants will be only slightly modified: (1) Educational institutions engaged in the formal education of enrolled students (*e.g.* public and private schools, colleges and universities); (2) governmental organizations engaged in the formal education of enrolled students (*e.g.* school boards and school districts); (3) nonprofit organizations whose purposes are educational and include providing instructional television material to such institutional or governmental organizations. As nonprofit organizations eligible for noncommercial educational broadcast stations can generally meet this last criterion, their specific inclusion is no longer necessary. *Compare* 47 CFR 74.932(a).

24. The Commission will continue to consider accreditation as an eligibility factor. 47 CFR 74.932(a)(1)(2). Accreditation, in the case of primary and secondary schools, or their governing authorities, indicates that they will conform to state-mandated academic standards. Accreditation, in the case of colleges and universities, shows they observe accepted standards of higher education.

25. Accredited schools, colleges and universities are expected to serve the formal educational needs of their students. All applicants lacking accreditation must perfect their eligibility by showing that they will serve the needs of students of accredited schools. Otherwise, they may not enjoy the support of the schools or other organizations they propose to serve, or they may not be accountable to them, and the essential purpose of the ITFS service, which is to provide formal educational programming to students enrolled at accredited schools, may not be met. In the interim application processing period established by *Further Notice (83–523)*, applicants attempted to demonstrate the participation of their intended school receives sites by securing letters or other documentation from these entities. In most cases, the letters were vague and did not effectively demonstrate the schools' demand and intended use for the ITFS services proposed.[10] Since the utilization of the offered programming service by specified receive sites constitutes the basis for any proposed ITFS operation, all applicants not proposing to provide formal educational programming to their own enrolled students must submit letters from those receive sites utilizing their programming.

26. The commentors discussed how such letters could be made more effective than those required in the interim processing period. Based on their suggestions, letters will be required to include the following: They must be written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. The administrator must indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. The letter should discuss the types of programming and the hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling

[7] To continue prosecution of such an application, the applicant will also be required to submit appropriate amendment(s) to conform the application to any other provisions adopted herein. Those applications may be subject to additional petitions to deny, limited to the specific subject(s) of such amendments or other events occuring during the interim period.

[8] Hospitals present a special category of ITFS operator, see para. 79, *infra*. The provisions set forth above will thus be applicable to hospitals or hospital associations.

[9] The Public Broadcasting Service (PBS) was granted a number of construction permits prior to the filing of most of the other national applications and before the Commission could fully evaluate the cumulative impact of all national applicants on the ITFS service. *Public Broadcasting System ITFS Applications*, 96 FCC 2d 555 (1984). Although these and other subsequent grants are grandfathered, PBS does not conform to the definition of a local entity as adopted herein. It is a national organization and the existence of member stations that are independently owned and operated in certain communities is not a sufficient basis upon which to categorize PBS, itself, as "local." Therefore, based on our determinations in this proceeding, all presently pending applications filed directly by PBS will be treated in the same manner as those of other national applicants. Applications can be filed by the local member stations, which would enjoy the characteristics of any other local applicant for basic eligibility and comparative considerations. PBS has stated that the outstanding construction permits issued to it will be assigned to the licensees of local educational television broadcast stations, where requested by such licensee. This has already been accomplished in some cases. Local licensees that file their own applications for permits in communities where PBS has authorized ITFS channels, will be required to demonstrate the need for such applications in lieu of seeking assignment of the PBS permits.

[10] On March 20, 1984, the Commission's staff directed inquiries to most of the nonlocal applicants then on file. The applicants were asked, among other things, to submit letters of reasonable assurance of intended use of their services from their proposed receive sites and to describe how local groups were involved in each proposal. Most of the applicants did not respond with any letters from the majority of the markets in which they applied. Most of the letters or other documentation which were submitted evidence little more than general interest in the national network proposals or did not demonstrate any clear intent to use the programming service proposed in the application in educational curricula. A few national applicants submitted standardized narrative descriptions of the manner in which they hoped local groups would be involved. The interim rules established by *Further Notice (83–523), supra* at para. 38, again required letters of assurance from all applicants not proposing to serve their own in-school needs. Some of the existing applicants, local and nonlocal, continued to make efforts to demonstrate that local entities desired to incorporate the proposed service in their curricula. New national applicants filing during the interim cut-off period for the first time submitted no supporting letters of assurance to conform to the interim rules. In this connection, the many difficulties an applicant may face when introducing schools to an unfamiliar technology are recognized. Receive sites may not make strong commitments to use proposed programming prior to viewing it, or they may desire ITFS channels to air their own programming and submit only vague and generalized information regarding their plans to use the applicant's programming. In those markets in which an application was not mutually exclusive and where letters appeared to demonstrate reasonably, under the interim standards, an intent to use the proposed service, construction permits were granted. In the other "singleton" cases, the showings were not considered sufficient to sustain a ten-year grant of the limited ITFS resource, even when viewed in the most favorable light. Given the generally vague and inconclusive showings made by these applicants to date, more specific guidelines are adopted herein for making the demonstration of local support and involvement in the future.

and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such authorization(s) must be provided. These requirements are intended to ensure that service to accredited schools, upon which the applicant's eligibility is based, will be provided. The requirement should not be unduly burdensome for applicants proposing a desired service, and no less should be required before an authorization is issued to construct and operate an ITFS station for ten years.

27. An applicant's receive sites must be appropriate to its statement of educational purpose, as required to be set forth in its application. For example, an applicant proposing elementary school level programming should submit a letter of intended use from at least one elementary school. An applicant requesting multiple channels to provide service to both high schools and colleges should submit letters from both kinds of institutions.

28. According to most commentors, letters from proposed receive sites are insufficient, by themselves, to protect against the drawbacks of nonlocal proposals. Even with receive site support and accountability, a nonlocal applicant remains far removed from the educational needs of the community or communities it intends to serve. As the commentors forcefully argue, nationally fed catalogue programming must be evaluated by local educators and tailored to each community's educational needs. *Further Notice (83–523), supra,* recognized that national applicant proposals were often not tailored to the educational needs of the individual communities. The comments indicate that national applicants are simply unable to make certain programming decisions that are simultaneously tailored to many communities across many states. Therefore, nonlocal applicants, in addition to submitting letters of intended use from proposed receive sites, will also be required to establish a local program committee in each community where they apply.

29. Because local program committees are new to the ITFS service, they will not be burdened with detailed regulatory requirements, and no specified number or percentage of the committee members will be required to be local representatives. Each receive site, however, should have some representation so that its particular programming and scheduling needs will be considered. Therefore, each receive site's letter of intended program use of a nonlocal licensee's service must confirm that a member of its staff will serve on the local committee and demonstrate a recognition of the composition and power of the local committee. The letter should show that the representative will aid in the selection, scheduling and production of the programming received over the system.

30. Other suggested criteria for establishing the eligibility of nonlocal educational organizations will not be adopted. Many commentors would expect all nonlocal applicants to show they are accredited educational institutions. However, this would severely and unnecessarily restrict the scope of nonlocal applicants who could apply. Most nonlocal applicants to date have been unaccredited organizations. As other commentors have noted, the fact that an organization is unaccredited does not preclude an ability to provide quality formal educational programming, and unaccredited local organizations have operated successful ITFS systems. The suggestion to require showings of prior local involvement or educational experience will also be rejected. Nonlocal applicants cannot be expected to have prior local involvement in the communities in which they applied, and this does not conclusively demonstrate any inability to provide a valuable service. Whether or not an applicant is local, if it is unaccredited it must still be a nonprofit organization with educational purposes that delivers ITFS programming to educational institutions or governmental organizations engaged in the formal education of enrolled students in order to be eligible for an ITFS license. Furthermore, as previously expressed, Commission policy is to encourage new entities to enter the service.

31. Various other suggestions were made to require nonlocal applicants to submit articles of incorporation and bylaws, certificates of nonprofit status, and financial reports. These criteria were intended to attract only genuinely educational entities to the service. For example, more detailed financial reports are suggested to "avoid speculative filing;" NITV complains that some applicants rely heavily on lease revenue for financing without having a negotiated lease in hand. These requirements, alone or in combination, would do more to add to the burdens of paperwork for both the applicants and the Commission's staff than to screen applicants effectively. The Commission has the discretion to request the applicant's articles of incorporation or other information in any individual case where such review appears warranted. Therefore, the rules will not be amended to require any group of applicants to submit these documents. Applicants will be required to provide certification regarding their tax exempt status or their accreditation when their eligibility depends on these factors.[11]

32. A few commentors urge the Commission to consider an eligibility factor unrelated to the applicant's local ties. The Hispanic Information and Telecommunications Network (HITN), among others, contend that Hispanics are underserved by traditional communications media and have a special need for ITFS frequencies. These factors, they say, should enter into our eligibility considerations for Hispanic applicants. The preference accorded to local applicants is based on factors unrelated to any specialized audience for educational programming that an applicant may propose to serve. All national ITFS operators, whether minority or not, Hispanic or not, suffer the same inherent disadvantage stemming from their distant connection to their local audiences. This is not overcome by the minority nature of an applicant. The appropriateness of a preference for minority applications in a comparative context is addressed in the section on selection procedures for mutually exclusive applications, para. 51, *infra.*

Mutually Exclusive Selection Procedures

33. Currently, there are no procedures for selecting among mutually exclusive ("MX") applications. The abundance of vacant channels prior to *Report and Order (80–112), supra,* prevented the development of MX applications and permitted private resolutions where applicants coincidentally requested the same channels. *Notice (83–523), supra,* had solicited comments on selection procedures that might be used for ITFS, but the significant increase in applications resulting from the liberalized uses of the frequencies occurred after the solicitation of comments, so comments were again solicited on methods for selection among MX applications in *Further Notice (83–523), supra.* The Commission noted the commentors' initial rejection of full evidentiary hearings and of a

[11] Factors such as accreditation, educational background and experience and history of educational service will be considered, where appropriate. Whether certain of the present nonlocal applicants will qualify as the kind of nonprofit organization entitled to ITFS licenses is a matter which will be considered when, and if, their applications are considered after the local priority period.

first-come, first-served procedure, and proposed not to consider those possibilities further. The key alternatives proposed were a lottery with preferences, a paper hearing, a point system, or a combination method, such as a point system with a tie-breaking mechanism. In addition to the method for selecting among MX applicants, comments were solicited on what criteria, if any, should be used and the relative weight to be afforded to each under any procedure adopted for selection among MX applicants. *Further Notice (83–523)* specifically suggested that the criteria might include the nature of the applicants, and particularly any established presence in the community; the amount of programming for in-school use; and the amount of other traditional ITFS programming. *Id.* at para. 35.

34. The commentors continue to reject full evidentiary hearings and first-come, first-served procedures. They oppose the former because it would involve undue time and expense and the latter because it would disadvantage local educational entities that often cannot act as quickly as other potential ITFS applicants, especially those that would lease excess capacity and have access to the resources of their proposed lessees.

35. Few commentors favor a lottery, and most believe that it is inappropriate for ITFS regardless of any weighting system used. Generally, those preferring the lottery indicate that its primary advantage is its low cost, so that the better financed applicants would not enjoy a significant advantage over their competitors. On the other hand, many commentors believe that a lottery cannot adequately make the necessary distinctions among competing applicants. One argues that a lottery is inadvisable because giving all eligible applicants a statistical chance of winning diminishes the likelihood of the best applicant receiving the grant. Another stresses that a system more deliberative than a lottery is appropriate because the emphasis in ITFS is on education. It is the belief of one party that a lottery would be inadequate because a hearing would be required at minimum for matters relating to eligibility and anticipated safeguards to prevent the subversion of the educational purposes of ITFS. Questions are raised about the Commission's authority to use a lottery for ITFS, since the number of MX ITFS applications is not so large, or expected to become so large, as to make it impractical to employ a comparative proceeding, in contrast to other services which have employed lotteries. Assuming that lotteries could be used, the comments differ on whether a preference for minorities should be required or would be appropriate for a service whose primary purpose is educational in nature.

36. A large number of the commentors favor paper hearings as a selection procedure, arguing that the important educational needs served by ITFS require a nonrandom comparative evaluation of competing applicants. Shifting the weight of preferences, depending on the individual situation of a particular community, is perceived as a specific advantage of this approach. Another advantage stated is that paper hearings would permit administrative law judges, who are experienced in comparative evaluations, to make the selections. The specific implementation procedures for paper hearings vary among the parties, with most preferring a streamlined or abbreviated paper hearing process that would have many of the advantages of a full hearing, but would involve significantly fewer applicant and Commission resources. One variation proposed would have a hearing for an entire community in one proceeding in order to achieve the optimal balance of educational and instructional programming.

37. Several parties also favor a point system, which would nominate the applicant accumulating the highest total of points, based on predetermined criteria that are assigned specific values. This selection procedure is viewed as having the dual advantage of being a comparative evaluation and one that can be expeditiously administered. One commentor indicates that the point system appraisal could be used for both qualitative and quantitative considerations. Some of the commentors propose that the preferences for this system be based only on eligibility requirements, while others believe that it shoud be based on any factors which would best further the objectives of ITFS. Commentors disfavoring the point system generally believe that it is not sufficiently sensitive for making the necessary judgment calls.

38. Commentors overwhelmingly favor a preference for local applicants in deciding among mutually exclusive applications for much the same reason they believe local identity or involvement should be a prerequisite for basic eligibility. They differ, however, as to the weight that should be afforded to any local preference. One commentor contends that local presence is irrelevant if the applicant has an established relationship with the local educational community. Other comparative criteria are also suggested, as discussed below.

Discussion

39. The use of a point system, with a tie-breaker device for tied cases, constitutes the best method of selecting among mutually exclusive ITFS applicants. It will provide a reliable mechanism to process and evaluate applications and compose a meaningful comparison among them, based on criteria deemed essential to the effective and efficient use of ITFS channels. In this respect, it effectively comprises a paper hearing and accomplishes the same objectives, but with a less cumbersome and expensive procedure. This is particularly pertinent here considering the nature and resources of most ITFS applicants. It will also result more consistently than would a lottery in the selection of the best qualified applicant where there is a meaningful difference between competing applicants. This is particularly relevant considering the nature and importance of the valuable educational objectives of the serivce to be provided, and the significant differences between applicants.

40. Contrary to some objections, the system will not result in the award of licenses on an arbitrary basis. Points will be awarded only for those factors most germane to the provision of ITFS service and according to their relative importance. Where there are no differences of decisional significance between leading applicants, a tie-breaker device will avoid the effect of awarding licenses based on minor or arbitrary differences. Thus, "those applications that are clearly superior will be granted. Those that are clearly inferior will be denied. Those that are without substantial and material differences will be designated for random selection. . . ." *Second Report and Order* in General Docket No. 81–786 (*"Random Selection Lotteries II"*), 93 FCC 2d 952, 990 (1983).

41. There is ample authority for this procedure in the Commission's mandate to "encourage the larger and more effective use of radio in the public interest" and its wide latitude to "conduct proceedings in the manner as will best conduce to the proper dispatch of business and to the ends of justice."[12] This procedure also complies with Section 309 of the Communications Act (47 U.S.C. § 309) and its interpretation in *Ashbacker Radio Corp.* v. *FCC*, 326 U.S.

[12] 47 U.S.C. 303(g); *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 216 (1943); 47 U.S.C. 154(j).

327 (1945), in selecting between mutually exclusive applicants via a reasoned decision based upon relevant comparative criteria, with all applicants enjoying an equal opportunity to demonstrate the relative merits of their applications. In another proceeding in which a similar procedure was proposed for selection among applicants in the Multipoint Distribution Service, the Commission recognized this procedural flexibility afforded by Congress and its authority to set comparative criteria and their respective weights by a rulemaking proceedings.[13] In proposing various alternatives to oral comparative hearings, it found that oral comparative hearings are nowhere mandated, and reasoned that "no hearing need be held where there are no disputed facts to resolve," and that "no right to a meaningful hearing is denied if there are no meaningful issues to be heard."[14] Here, as there, "evaluation of relevant issues for a license award would not ordinarily be enhanced by the traditional courtroom drama of oral presentation by witnesses or cross examination of these witnesses on the stand. Live testimony, affording the opportunity to judge demeanor and credibility of a witness would afford nothing in this context."[15] In those cases where a substantial and material question of fact is raised, an applicant's substantive rights will be preserved by designating a hearing to consider that specific fact or facts. (See para. 65 *infra.*)

42. The use of a tie-breaker device in this situation comports with the requirement of the Administrative Procedure Act for reasoned decision-making and rationality (5 U.S.C. 706(2)(a)) by avoiding a strained or arbitrary decision where there is not a meaningful distinction between applicant's qualifications. Due to the mathematical equality of opportunity which will be inherent in the random selection tie-breaking mechanism which will be applied, it is a fair and rational decision-making device where applicants are in virtual equipoise on comparative factors and, arguably, may be required to avoid arbitrary or capricious action. This use of random chance to choose among mutually exclusive applicants which are otherwise similarly qualified was previsouly asserted by the Commission in *Notice of Inquiry and Proposed Rulemaking* in CC Docket No. 80-116, *supra* at paras. 60-76. *See also, MCI Cellular Telephone Co.*, 96 FCC 2d 1015, 1035 (1984). It was suggested as long as fifteen years ago by Judge Leventhal, in a comparative selection case with numerous similarly qualified applicants: "Perhaps a lottery could be used, for luck is not an inadmissable means of deciding the undecidable, provided the ground rules are known in advance." *Star Television, Inc.* v. *FCC*, 416 F. 2d 1086, 1095 (D.C. Cir. 1969) (dis.).

43. Although the lottery statute has led to the effective and appropriate utilization of lotteries as a primary selection mechanism in other services,[16] they are neither required nor appropriate for that function in selecting among ITFS applicants. The lottery has been specifically authorized by Congress for those situations in which a significant public benefit would flow from its use. The decisional criteria for employing lotteries include considering whether (1) there is a large number of licenses available in the particular service; (2) there is a large number of mutually exclusive applications for licenses; (3) there is a large backlog; (4) a lottery would significantly speed up the process of getting service to the public; and (5) greater diversity of information in a community would result.[17] Although the number of available licenses is large, and the backlog and number of mutually exclusive ITFS applications has reached an unprecedented level for this service, it is not so great, and is not expected to become so great, as to make the lottery the most practical and efficient method for selecting among mutually exclusive applications. Additionally, the actions taken in this Order will significantly reduce the number of MX situations and promptly reduce the backlog.[18] Furthermore, as stated in connection with the decision to use lotteries as a primary selection method only on a case-by-case basis for Private Radio services, "in some cases, expedition does not outweigh consideration of other public interest factors, *e.g.*, public safety and more efficient use of the spectrum." *Random Selection Lotteries II, supra* at 953. According to that decision, lotteries, although now authorized by statute, will be applied to Private Radio selection "only when it appears that there are no substantial and material differences in the qualifications of competing applicants to serve the public interest." *Id.* at 989. A similar consideration is appropriate here given the nature and importance of the valuable educational objectives of ITFS and the significant differences between applicants in the ITFS service. Moreover, the point system adopted in this Order will result in the expeditious processing of mutually exclusive applications and the speed with which a lottery would result in a selection would not be significantly faster, if at all.

44. Procedurally, the selection process will operate as described below. In cases where there are mutually exclusive applications, each application will be reviewed to determine the number of merit points to be awarded to it, according to each of the criteria discussed below, with the "tentative selectee"[19] being the applicant with the highest point total. In the case of a tie for highest point total, a random selection tie-breaker will be employed to determine the tentative selectee. (See para. 50, *infra.*) Any petitions to deny against the tentative selectee will then be considered. (See para. 65, *infra.*) The application processing procedure will be administered by the Mass Media Bureau, with final action taken by the full Commission in all comparative cases.

45. The use of any point system involves subjective judgment, but the criteria used in making selections among ITFS applicants must be calculated to grant licenses to those applicants that are most likely to best meet the educational and instructional needs of the various communities. The specific weight assessed to each characteristic will represent the relative significance deemed, in the Commission's best judgment, appropriate to those factors. Although the use of ITFS now includes many instructional uses outside of the formal classroom, reflecting changes in educational needs and the means of satisfying them, the purpose of the service remains primarily on the transmission of instructional and educational materials.

46. For the reasons stated in the discussion on eligibility (paras. 15-32,

[13] *Notice of Inquiry and Proposed Rulemaking* in CC Docket No. 80-116, 45 FR 29335 (1980) at paras. 48, 51. A lottery selection procedure ultimately was adopted instead, in response to the new lottery statute, Pub. L. 97-259, 96 Stat. 1087, 1094-95, Sept. 13, 1982, 47 U.S.C. 309(i). *Second Report and Order* in Gen. Docket No. 80-112, FCC 84-568, released February 1, 1985.

[14] *Id.* at paras. 39ff, 69, 71.

[15] *Id.* at para. 59.

[16] Pub. L. 97-259, 96 Stat. 1087, Sept. 13, 1982 (47 U.S.C. 309(i)).

[17] *See*, Conference Report, H.R. Rep. No. 765, 97th Cong., 2d Sess. 37 (1982).

[18] The numbers of applications do not begin, nor are they expected, to approach those involved in other services that use lotteries. Fewer than 500 ITFS applications are mutually exclusive, compared to the over 16,000 applications pending in the MDS Service, over 20,000 in the low power television service, and over 5,100 in the cellular radio service.

[19] The status of a selectee is tentative until any petitions to deny its application have been ruled upon.

supra), "local" [20] applicants will receive the highest award, with four points toward their total.

47. Another significant factor will be whether an applicant is an accredited school or educational institution, as proposed by several commentors. These parties are the providers of education and are the most likely to have the academic and staff resources, as well as the perspective, to develop educational programming to meet specific current and future educational needs. Educational institutions are more likely to be attuned to the educational needs of the area and have developed relationships with significant members of the educational community more so than other organizations. Those institutions which are accredited demonstrate the best evidence that they are functioning at a level which meets, at a minimum, standards prescribed by governmental or other recognized bodies responsible for formal education. Governmental bodies, or other entities such as an archdiocese, which are responsible for the administration of accredited schools deserve the same consideration where they will reflect the views of state and local officials responsible for education. Accordingly, accredited schools and educational institutions and school boards and school districts, applying within their jurisdiction, will receive three points toward their total. There will be no differentiation between levels of schools, or between public and private schools, as urged by some commentors. All have distinct and legitimate needs, and the Commission is not in the position to determine which are more significant than others.

48. Another significant factor will be the operation of other ITFS channels by the applicant. The Commission has held to its original determination to limit the number of channels granted to each licensee in a particular area.[21] *Memorandum Opinion and Order (83-523), supra.* This determination is due to the limited availability of and increased demand for ITFS channels, and will promote the diversity of services that can be provided by the greatest practicable number of ITFS licensees. An applicant whose request would result in the authorization of four channels or less will be preferred over an applicant that would exceed the four-channel limitation, even when the latter is accompanied by a sufficient waiver request.[22] Accordingly, applicants whose request would result in a total acquisition of four or fewer channels in the community will receive two points toward their total.

49. Points will be awarded for certain factors that contribute to the most effective utilization of the spectrum for ITFS service. The extent of use of the frequencies for their intended purpose by an applicant will be one factor. A weekly schedule of twenty-one or more hours per channel of formal instruction or of forty-one or more hours per channel of other ITFS service will merit one point. A weekly schedule of forty-one or more hours per channel of formal instruction or of twenty-one or more hours of formal instruction plus forty-one or more hours of other ITFS service per channel will merit two points.[23] There will be no award for the least amount of commercial programming, as proposed by one commentor, as there is no inherent detriment caused by non-ITFS programming *per se.* Also, one point may be awarded to an existing licensee of E or F channels that is seeking to relocate to other channel groups, upon a showing of an established need for an expanded service that cannot be accommodated on its grandfathered E or F facilities. The burden will be on the applicant to request this last preference and to submit information in support of the request.

50. Where the best qualified (highest scoring) of two or more applicants are equally qualified under these criteria (have the same point total), the tentative selectee will be chosen through a tie-breaker mechanism. The tie-breaker will use a mechanical random-selection process, under the direction of the Secretary's office, in which each applicant has an equal chance.[24]

51. A point award for minority applicants was specifically considered and rejected. Minority applicants have traditionally been favored in the Commission's comparative proceedings for broadcast services, based on the nature of the particular services and their audiences. As ITFS is intended as an educational service, rather than a general interest consumer medium, the diversity goal underlying that traditional minority preference in broadcast services is not applicable here. To the contrary, to award a preference arising from this rationale would implicitly emphasize the significance of permitted secondary services, *e.g.*, general appeal and commercial programming, over the essential educational uses of the ITFS frequencies. Such a use is not even a factor in the plans of many ITFS applicants. ITFS licensees have a wide responsibility to the entire student population they serve, and the Commission will rely on the judgment and discretion of these professional educators to determine any special needs that must be met, and to design and redesign their programs to meet them. The minority status of an applicant is thus not sufficiently germane to the provision of ITFS service to provide a basis upon which to prefer one applicant over another. The preference concerning diversity of overall media ownership made in comparative proceedings for the same services are also not relevant here, given the disparate missions of the services involved. Desirable diversity of ownership within the ITFS service itself and desirable availability of ITFS frequencies to the greatest practicable number of users are recognized by the four-channel limitation itself and by the point award for compliance with that limitation.

52. A number of other suggested preferences will not be adopted. A difference in the number of students served and the extent of their use of ITFS programming does not warrant a preference of itself, as it does not account for actual use by students or the value of the programming and its integration into specific curricula by the school. The telecommunications

[20] "Local" applicants are defined in the eligibility discussion, para. 22, *supra.*

[21] *Memorandum Opinion and Order* in Docket No. 14744, 39 FCC 846 (1963); 47 CFR 74.902(c).

[22] The diversity consideration regarding common ownership with other local media is less relevant than in broadcast services, given the nature of ITFS service, and is not sufficiently significant compared to other criteria adopted herein to warrant a point award.

[23] These points will accrue only to programming scheduled between 8:00 a.m. and 10:00 p.m., Monday through Saturday, excluding holidays and vacations, the hours during which the most meaningful utilization by recipients will occur. See paras. 93-95, *infra.* Hours per channel per week are determined by totaling the number of scheduled hours per week of programming between 8:00 a.m. and 10:00 p.m. Monday through Saturday in the subject category, and dividing that total by the number of channels. For example, if an applicant proposes: for channel G1—54 hours of ITFS service, including 20 hours of formal ("essential use") instruction; for channel G2-62 hours of ITFS service, including 42 hours of essential use instruction; and for channel G3—40 hours of ITFS service, all of its essential use instruction, that applicant has proposed 34 average hours per channel per week of essential use instruction (102÷3) and 18 average hours per channel per week of other ITFS service (54÷3), for 1 point for effective utilization of the spectrum.

[24] This random chance tie-breaker is not adopted under the authority of the lottery statute (47 U.S.C. 309(i)). It is employed only to choose among applicants which have already been determined to be equally qualified on all relevant qualification grounds, not as a primary comparative selection method. Consequently, the provisions of the lottery statute governing random selection in other circumstances are not controlling.

experience of the applicant's staff is not as significant as other factors. To the extent that a community-based staff and production facilities are relevant, they are reflected in the local preference. Exclusive ITFS use of the channels does not necessarily represent the best use beyond the extent already accounted for in the proposed service calculation. Retention of control by the licensee, beyond the limits addressed in para. 103, *infra*, is not necessarily critical and is subject to infinite gradations.

Cut-Offs

53. Currently, there are no cut-off periods or other restrictions for the filing of petitions to deny or the filing of applications that are mutually exclusive with others already on file.[25] Prior to *Report and Order (80–112), supra*, any such procedure was not essential given the limited number of applications. Since the relaxation of the rules and the provision for non-ITFS use of excess channel capacity, the efficient processing of the increased number of applications filed has necessitated a cut-off procedure, and *Further Notice (83–523), supra*, proposed the use of either the traditional A and B cut-off dates [26] or the "window" approach [27] to protect pending applications.

54. The window approach is favored by a few commentors, who generally view its ease of administration as its main advantage. Many commentors, however, believe this approach is inappropriate for ITFS. They maintain that the window mechanism would result in the filing of arbitrary and speculative applications and would encourage the hoarding of channels. It is argued that the public interest also would be disserved by needless costs generated in preparing and filing these applications. Others argue that it would be difficult for educational organizations and institutions to file applications during a window period because they do not usually have in-house engineering staff and communications counsel needed to respond quickly to a window notice. They also state that their operating budgets are usually approved on an annual basis and are subject to multiple stages of review, making necessary budgeting and long-range planning difficult or impossible on short notice.

55. The commentors generally prefer the traditional A/B cut-off procedure, primarily because it is a demand-oriented approach, allowing applicants to file for channels as the need or interest arises. Some also prefer the A/B cut-off because it is a time-tested process with established procedural law and offers better notice to existing operators and encourages private settlements. Most believe that 60–90 days constitutes the optimal balance between the additional time that educational institutions need to plan and file ITFS applications and the goal of commencing service without undue delay. One commentor recommends that if the Commission adopts a cut-off period of less than 60 days, educational institutions be permitted to file contingent applications.

Discussion

56. The traditional A/B cut-off approach offers the best method for establishing a finite period for filing mutually exclusive applications and petitions to deny in the ITFS service. Educational institutions and organizations typically do not have expertise in filing for Commission licenses or an in-house staff of communications attorneys and engineers who can expeditiously prepare ITFS applications. One commentor correctly points out that these entities often need governmental or other authorization or funding before applying for ITFS facilities.[28] Time may also be required to negotiate a lease for the use of excess channel capacity. A window period would require educators and nonprofit organizations to apply for channels under an arbitrary deadline, without going through routine budgetary and planning procedures, and may prevent them from applying altogether. It would be counterproductive to establish a procedure whose time constraints would place the educational community at this significant disadvantage.

57. The A/B cut-off, on the other hand, will provide a longer period of time for all interested parties in every community to assess the need for ITFS programming and plan for ITFS facilities, essentially until an application is filed for the last available channels in a community. The traditional A/B cut-off approach will avoid problems anticipated by commentors, particularly the warehousing of channels due to the uncertainty of whether, or when, further application opportunities would occur. Filing windows have been adopted (in conjunction with subsequent first-come, first-served provisions) in services where numerous applications are anticipated or less differentiation exists between applicants than is the case in ITFS, *e.g.*, low power television. Also, in those services there will usually be an applicant prepared to file by the end of the window period. These situations do not exist in ITFS, so there is no benefit derived from the window to offset the detriment. Another reason for window periods which does not pertain to the ITFS service is that in some other services, competing applications would be filed in response to an "A" notification for the primary purpose of simply delaying the installation of a new competitor by creating an MX situation.[29] As ITFS licensees will typically serve different and distinct audiences, no such factor is involved.

58. The "A" cut-off period will be 60 days. This is twice the length of time provided to file mutually exclusive applications in AM and television broadcast services,[30] but the additional

[25] *Further Notice (83–523), supra*, established a cut-off period for all applications accepted for filing on or before August 15, 1984, the date of publication of the Notice in the **Federal Register**. Applications filed after that date by local applicants, that are pending and are not mutually exclusive with earlier filed applications, will be subject to the cut-off procedures established in this proceeding. Applications filed after that date by nonlocal applicants that have achieved cut-off status by being mutually exclusive with earlier filed applications, will be dismissed. See paras. 18, 21, *supra*.

[26] The traditional cut-off involves placing the first application(s) accepted for filing and determined to be substantially complete, on a public notice called a "A cut-off list." This list notifies the public that the application has been accepted and gives interested parties a period of time to file competing applications or petitions to deny. The application(s) triggering the "A" cut-off list are required to make any major changes to its proposal prior to the end of the "A" cut-off period. After the "A" period expires, all substantially complete applications filed during that period are placed on a "B" list. This list notifies the public that these applications have been accepted for filing and provides a period of time for filing petitions to deny or minor amendments. *See, e.g.*, 47 CFR 73.3572(c).

[27] The "window" or "date certain" cut-offs specify a date or period for filing applications for new facilities. No applications are accepted before or after the state window of opportunity for filing. Applications filed in response to the window which are mutually exclusive are considered together. Any single application can be processed and granted where there are no deficiencies or meritorious issues raised against it. The period for filing petitions to deny against applications varies depending on the needs of the particular service. *See, e.g.*, 47 CFR 73.3572(f)(1).

[28] In *Notice of Proposed Rulemaking* in MM Docket No. 84–750, 49 FR 36523 (September 18, 1984), the Commission recognized that a window/first-come-first-serve approach would not be appropriate for noncommercial educational FM and TV applicants because of those parties' special problems, *e.g.*, the securing of funding, staff and programming before applying for a facility. *Id.* at n.10.

[29] *Report and Order* in MM Docket No. 84–750, FCC 85–125, adopted March 14, 1985.

[30] 47 CFR §§ 73.3571(c) and 73.3572(c).

time is necessary for the reasons cited above. This additional filing time will not be so long as to slow down appreciably the processing of the ITFS applications. A longer period for filing applications is not justified. Such a longer period would be further outside the normal processing time and consequently have a greater impact on processing speed. All parties will have had the same opportunity as the first applicant to assess the needs of the community and prepare an application, and the "A" cut-off period itself is not intended to guarantee an optimum planning schedule for parties who have not begun to act. The "A" list period will also mark the deadline for filing major amendments for and petitions to deny against applications on the "A" list. (*See*, 47 U.S.C. 309(d)(1).)

59. Other cut-off provisions will follow those for the AM and television broadcast services, including a 30-day period for the "B" cut-off, which will provide the opportunity for interested parties to file petitions to deny or minor amendments. Applicants on the "A" and "B" cut-off list will be permitted to file minor amendments to their applications until the "B" cut-off date, thus giving all applicants considered together the same deadline for filing minor amendments. Also, amendments will be permitted after the "B" list period for the purpose of keeping the applications current, under 47 CFR 1.65, but no comparative advantage will derive from amendments filed after the "B" cut-off date.

60. A few commentors urge publication of notices of the filing of applications in local newspapers, and one proposes that new applications be sent by certified mail to all current licensees and permittees in the community where the facility is sought. One of the commentors suggests local publication only for nonlocal applicants. Publication of local notice has not been required of ITFS applicants in the past. There has not been sufficient justification advance to warrant the requirement that local notice be given or that all local permittees and licensees be individually served with applications.

61. Presently the ITFS rules do not define "major" changes in authorized or proposed facilities. In *Further Notice (83-523), supra*, the Commission proposed to continue its present practice of holding applications for new channels for a thirty-day period before action is taken. The few comments which addressed this issue suggest that the rule distinguish between major and minor changes, with minor changes processed immediately. It is suggested that proposing new channels or an increase in signal range be considered a major change, while those involving switching transmitters of the same power or changes only affecting technical operations (signal range not affected) be considered minor.

62. We have determined that applications or amendments to applications involving changes in facilities should be categorized; proposals to add new channels, change from one channel (on channel group) to another or increase power will be treated as "major" changes, and all other as "minor." A major change request will be subject to the A/B cut-off procedure. In cases where the Commission staff determines that an application (or amendment) which would otherwise be treated as a minor change should be considered a major change because of its impact on ITFS service, the applicant will be notified of the change in classification either within 15 days after it has been accepted for filing or within 15 days after the acceptance of any other application of ITFS facilities. Those applications (or amendments) which are not for new facilities or major changes in existing facilities will be routinely accepted for filing and subject to immediate processing.[31]

Petitions to Deny

63. Comments were invited in *Further Notice (83-523), supra*, concerning the filing and consideration of petitions to deny. Because there is no cut-off procedure, the Commission's current practice is to consider all petitions to deny filed prior to the day an application is acted upon (except those applications subject to the interim cut-off period). There was wide variation regarding issues that should be raised in petitions to deny. Some parties suggest that petitions be allowed only for issues relating to misrepresentation of eligibility, to claims of interference by existing operators or noncompliance with other requirements to derogation of the primary purpose of ITFS, or to issues which mirror the broadcast standards (*e.g.*, raising issues relating to late-filed applications or failure to meet minimum programming requirements). One commentor would not accept petitions to deny from competing applicants under a point system, believing such conflicts should be handled under the point system mechanism.

64. As is the case for AM and television broadcast services,[32] petitions to deny will be accepted only during the A cut-off period against applications on the "A" list, and only during the B cut-off period against applications on the "B" list. Similarly, time periods for filing responsive pleadings will be 10 days for oppositions and 5 days for replies to oppositions. 47 CFR 1.45. No persuasive reasons has been advanced to restrict the issues that may be raised in petitions. Any relevant public interest question will be an appropriate subject for a petition. This will provide all interested parties an opportunity to be heard.

65. In the case of mutually exclusive applications, only those petitions which have been filed against the tentative selectee will be reviewed. When petition issues can be resolved in favor of the selectee, *i.e.*, no substantial or material questions of fact are raised, then the challenged applicant can be granted a license, assuming that the proposal(s) otherwise meets the requirements for grant. In instances where a petition to deny filed against the application of a tentative selectee raises a substantial question of fact, the application will be designated for hearing pursuant to section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), and the administrative law judge will hold a hearing based only on those issues specified against the tentative selectee. If the evidence adduced results in the reduction of points or dismissal of the tentative selectee's application, the matter will be remanded to the Mass Media Bureau which will then reapply the point system to those remaining mutually exclusive applications. This procedure is consistent with other services which do not use comparative hearings to resolve MX situations. *See, Random Selection Lotteries II, supra* at 969, n. 20; *Report and Order* in CC Docket No. 83-1096, 98 FCC 2d 175, 219 (1984).

Channel Limitations

66. The Commission requires each ITFS applicant to demonstrate the need for each ITFS channel it has requested. In *Further Notice (83-523), supra*, after recognizing that in the past it routinely granted four-channel requests and, in many instances, granted waivers of the four-channel limitation,[33] due to the

[31] *Further Notice (83-523), supra*, n. 12, stated that applications for license renewal are to be filed four months before the expiration of the license term and will not be acted upon any sooner than 30 days prior to the expiration date. This filing requirement is applicable to most of the services administered by the Mass Media Bureau but is not specifically provided for in Part 74 of the Rules regarding ITFS. Section 74.15(e) of the Rules, which set forth the license term for ITFS stations, will be amended to incorporate this provision.

[32] 47 CFR 73.3571(c) and 73.3572(c).

[33] 47 CFR 74.902

abundant ITFS spectrum capacity and relatively light demand, the Commission noted the recent significant increase in channel requests. Consequently, it invited comment on the factors to be considered in a stricter assessment of the sufficiency of an applicant's demonstration of need for requested channels, and it adopted interim rules requiring the submission of proposed weekly schedules with a narrative justification, based on the schedule, for the channels requested to meet traditional ITFS programming proposals. *Id.* at para. 37; 47 CFR 74.902(c). At the same time, it determined to maintain the four-channel limitation in *Report and Order (83–523), supra* at para. 19.[34]

67. One commenter suggested that single channels are not valuable for ITFS service. However, the value of each channel will be a function of the specific need for ITFS service, and only such channels for which a need can be demonstrated to the Commission will be granted. Conversely, it is not practical to require all applicants to request and fully utilize one channel at a time before requesting others, as suggested by a few commentors, and it is not necessary where an applicant can concretely demonstrate the need for a multichannel system. Rather than attempt to anticipate and prejudge every conceivable justification which applicants may raise, the Commission will consider each case on an *ad hoc* basis. It will take into consideration such factors as the amount of use of any currently assigned channels and the amount of proposed use of each channel requested, the amount of, and justification for, any repetition in the schedules, and the overall demand and availability of ITFS channels in the community. To this end, the Commission will continue to require the submission of the proposed weekly schedules for each channel requested and a narrative showing of need for each channel to meet traditional programming proposals. This justification per channel will be required of all applicants, as the Commission is as concerned with efficient utilization by all licensees, whether or not local and whether or not they are schools serving their enrolled students.

68. The Commission will not reserve one channel for the exclusive use of national ITFS operators, as proposed in *Further Notice (83–523), supra,* at para. 37. All other applicants are required to justify the use of each channel for which they apply, and there is no reason to treat national entities more leniently. Conversely, where national entities can demonstrate a need for a service they propose to provide (after the local priority period specified in para. 21, *supra*), they will be permitted to apply for up to four channels, as is any other applicant which can justify the grant of each channel. In the interim, such a reservation is not necessary to ensure participation by national entities, as they have every opportunity to be involved as programmers, and do not need a channel reservation to preserve this position.[35] As such applications will be accepted and granted only after a period set aside for local applications, they will not limit the expansion of current operators or the application of other local entities in the near term.[36] As discussed in para. 19, *supra,* there is not sufficient reason to warrant the continued nonuse of channels indefinitely when a service can be provided by national entities.

Permissible Use

Essential Use

69. The ITFS spectrum is primarily intended for the transmission of formal education for schools, but current rules also allow the transmission of in-service training, professional development and other instructional and administrative programming, and use of the frequencies for ITFS relay stations. (*See,* 47 CFR 74.931(a)–(d).)

70. In *Further Notice (83–523), supra,* the Commission noted that the demand for instructional programming for use in schools has increased significantly, especially at various non-school sites. It observed that while traditional ITFS licensees may be an appropriate source to satisfy certain of these demands, ITFS is not the only delivery system that can be, and is, utilized for such purposes. The Commission stressed that while ITFS is a proper and important adjunct to these sources, "the foundation of the service must continue to be that for which it was designed—the transmission of educational materials to accredited schools for the formal education of students enrolled there." *Id.* at para. 8. It recognized that "this kind of [educational] programming is not traditionally provided by other outlets and the specialized and unique audience served is one whose very important needs could too readily be ignored if ITFS stations were permitted to transmit their programming to any location of their choosing. . . ." *Id.* Accordingly, the Commission proposed to maintain the specific requirement to transmit formal educational programming to enrolled students in accredited schools. However, whereas the current rule required that the "primary" use of any ITFS facility be for formal in-school educational programming, implying such use for a majority of the time in operation, the Commission proposed that it may be sufficient to require only that formal in-school educational programming be an "essential" use of each authorized channel. *Id.* at para. 9.

71. Comments were invited on whether to codify the essential use standard, whether the standard should be quantified so that a certain number of hours of formal education would be delivered on each channel, whether the same standard should apply to entities not proposing to serve their own in-school formal educational needs, and whether those programs delivered to homes for academic credit should qualify as essential use programming.

72. A few commentators support the essential use standard as proposed. One directly reasons that since the classroom remains the primary vehicle of education, it deserves at least some attention on each channel, and that the requirement is only minimally restrictive because it does not preclude other forms of programming. The Instructional Telecommunications Foundation recommends that one-third of each channel be set aside for essential use. The Archdiocese of Detroit prefers a minimum essential use of one-hour-per-weekday, applied on a per-system basis in case an operator needs the capacity of a whole channel to serve informal programming to a certain site. Others favor some quantification of the rule but do not specify any number of hours. Those who specifically oppose any quantification of the essential use standard cite the licensees' need for flexibility in scheduling formal programming because programming demands differ among communities. Another group suggests a minimum of educational programming (6 hours per weekday), subject to a waiver based on "unique local needs." Most who favor the essential use standard believe it should apply to all entities, including those who do not serve their own in-

[34] That decision was affirmed upon reconsideration, with the Commission explicitly recognizing the same arguments that are repeated here regarding the desirability of multichannel ITFS systems, in *Memorandum Opinion and Order* in MM Docket No. 83–523, FCC 85–111, released January 15, 1985, at paras, 7, 8.

[35] See para. 20, *supra.*

[36] Licensees or applicants seeking more than four channels for a particular system are required to submit a showing in support of a request for waiver of the four-channel limitation rule. The waiver burden is high, particularly in areas where a large demand for channels exists. *Report and Order (83–523), supra* at para. 19; *aff'd., Memorandum Opinion and Order (83–523), supra.*

school needs. Some argue that holding only certain applicants to the standard would create an artificial distinction, since all applicants should be prepared to deliver formal educational programming.

73. Many commentors oppose the essential use standard altogether, variously contending that the Commission should not dictate which forms of programming are more important than others; that all forms of educational and instructional programming are valuable to society; and that applicants should be encouraged to serve the needs of the whole community, not just the needs of schools. Most insist that the unique value of ITFS lies in its ability to reach beyond school walls. They assert that formal education is increasingly demanded at businesses, health care facilities and training centers. Thus, they conclude restricting essential use programming to schools is an artificial distinction which may actually harm the growth of ITFS. They contend that the Commission's regulations should focus on the quality of the service, not on the buildings where the service happens to be delivered.

74. Predictably, the same majority of commentors also believe that if the Commission does adopt an essential use standard, it should be broad enough to include formal education delivered to homes. A few of the larger groups point out that there are parents, elderly, homebound persons, and other groups with limited time and money for education who cannot do their learning anywhere but at home. One hospital television network would regard formal, in-home use as essential, but not allow an applicant to propose all of its essential use programming in the form of in-home education because of the difficulty of demonstrating the demand for such programming at the application stage. A few parties oppose in-home essential use on the grounds that formal educational programming belongs exclusively in schools. One party states that in-service training for teachers and school administrators should qualify as essential use programming because of its immediate relevance to the formal education of students.

Discussion

75. The clear and guiding principle in this consideration is that the primary purpose of ITFS was at its founding and remains to serve formal academic needs. Thus, an essential use standard is vital, particularly in light of the numerous other corollary uses which are being authorized for the service. Although many commentors insist that the Commission should not stand in the role of an educator and decide what programs are truly instructional, the Commission must use some guideline to distinguish between fundamentally instructional programming and informational, cultural, entertainment and other programming, in order to preserve the essential nature of the service. An essential use standard accomplishes that by requiring a showing that some of the programs in a given proposal are offered for credit towards an academic degree or diploma, while putting the responsibility for deciding what is educational not on the Commission, but on the accrediting institutions, where it rightly belongs. Therefore, every ITFS system will continue to carry formal educational programming for credit for students enrolled at accredited schools.

76. The argument that a unique and significant value of ITFS lies in its ability to reach beyond school walls is persuasive. In this respect, it is imperative to focus on the purpose of ITFS, which is not so much to serve school buildings as to serve students and schools, satisfying the demand for televised formal education. Therefore, geographic restrictions on the sites to which an operator chooses to deliver formal programming are not appropriate. Programming offered for credit to enrolled students of an accredited school will be recognized as formal education programming, satisfying the essential use standard, whether it is delivered to schools, businesses, homes, or any other sites.

77. Given that formal education is the cornerstone of the ITFS service, the concern of many commentors over the verifiability of the legitimacy of service provided exclusively to nonschool sites is apt.[37] That concern is readily resolved, however, by requiring all ITFS applicants that do not list schools as receive sites to furnish detailed information about the essential use component of their systems, naming the schools and the degrees or diplomas for which the formal programming will be offered, and describing the administration of the courses. Written verification regarding each of these points will be required from each school.[38]

78. Applicants listing only cable headends as receive sites have been "required to show that one use of the cable system will be to distribute educational and instructional programming to schools and other appropriate ITFS users." *Report and Order *83-523), supra* at para. 13. To make this showing, such applicants which serve schools should name the schools. Those which serve non-school sites should provide the essential use information requested above in para. 77, *supra*.

79. ITFS use by health care facilities requires special consideration. The Pennsylvania Hospital Television Network took the lead in explaining that hospitals offer many academic courses to train their personnel for license exams, as opposed to university degrees, which should qualify as "education" for ITFS purposes. States (and private organizations) license many professionals and the Commission is not equipped or inclined to examine which courses of training are sufficiently academic to be deemed "formal education." [39] Hospital training, however, demands particular attention. Judging from Pennsylvania Hospital's comments, healthcare instruction is a field with rapidly growing demand. Furthermore, the medical sciences unarguably serve urgent community needs. Teaching hospitals, which offer formal programming to medical students, have already become ITFS licensees and have generally proven themselves as effective educators. Hospitals are unique institutions in providing this specialized ITFS service. Significantly, hospitals serve a very specialized audience, and are therefore inherently disadvantaged, compared to other educational organizations, which can serve all levels and disciplines of education. Any regulation that requires a category of programming that is not normally used in hospitals may effectively render hospitals ineligible for ITFS licenses. Although many hospitals offer academic courses to staff members, such as radiologists or registered nurses, for training toward state license exams, they do not award academic degrees and generally may not provide "formal" education in the traditional sense of the word. Thus, the

[37] Commentors are specifically concerned that those licensees which are not educational institutions and which list no schools as receive sites may neglect to ascertain the demand for the formal education programming offered on their systems. They fear that offerings of those licensees which are educational institutions claiming to serve only their own off-campus students, may well comprise continuing education courses.

[38] The verification must be written or signed by an administrator or authority who is responsible for the school's curricula.

[39] Professional training, whether for certification or maintaining currency, is already a permitted use for ITFS frequencies. 47 CFR 74.931(b).

requirement that all applicants must deliver some formal education for academic credit to enrolled students could disqualify a hospital's proposal. This is not a desired result of the requirement. So long as hospitals remain eligible for ITFS licenses, the definition of essential use programming will incorporate the specialized formal education that hospitals provide, and will regard as essential use programming any medical science courses offered by hospitals to their staffs as training for state licenses. (Other hospital programming, such as medical instruction for patients, will not meet the essential use standard.) In contrast, in-service training for teachers and school administrators is not so regulated by a licensing authority. Neither do schools suffer the same handicap as hospitals in achieving basic eligibility. Thus, such in-service training for teachers and school administrators will not be included as essential use programming, but will continue to be viewed as a secondary ITFS use.

80. No reason has been advanced to exclude from the application of the essential use requirement any particular category of ITFS licensee. The essential use rule reflects the most important function of the ITFS service and will be applied to all licensees, including those who do not serve their own in-school needs. Those licensees may have the least incentive to maintain the focus of the ITFS service. The modification of the rules to permit exclusively nonschool reception to satisfy the requirement should eliminate the compliance burden for any such licensee providing a recognized ITFS service.

81. The amount of essential use programming offered on a given system, depends upon many factors. School districts, hospitals and universities have very different scheduling needs for formal education, and a set number of hours per day or per week that all various operators can or should devote to essential use programming cannot be fixed. Because of these differences, some commentors would prefer not to quantify the essential use standard. But the Commission has already seen proposals that relegate formal programming to a small portion of one channel. At a time when ITFS channels are increasingly scarce, a policy that grants many channels for entirely non-essential purposes cannot be justified. Therefore, every channel requested must contain at least some amount of essential use programming. Specific quantification is neither practicable nor necessary. The Commission is loath to substitute its judgment for that of educators. Existence of the essential use standard will ensure the introduction of either receive equipment at school sites or an administrative program to manage off-campus use. With either system in place, the demand for programming should dictate the particular amount of programming dedicated to various uses.

Substantial Use

82. ITFS licensees who wish to use or lease airtime (their "excess capacity") for non-ITFS purposes are currently required to use each channel for ITFS purposes for a minimum of 15 hours per week between 8:00 a.m. and 10:00 p.m., Monday through Friday, excluding holidays and vacations. *Memorandum Opinion and Order on Reconsideration* in Gen. Docket 80-112, 98 FCC 2d 129 (1984); 47 CFR 74.931(e). This minimum was established to insure that a "significant portion" of each channel would be used for ITFS purposes.[40] *Memorandum Opinion and Order (80-112), supra* at para. 24. In *Further Notice (83-523), supra,* the Commission reiterated its concern for preserving at least a minimum amount of time on each channel for ITFS purposes, and solicited recommendations on how many hours operators should devote to ITFS programming before using or leasing a channel for non-ITFS purposes. *Id.* at para. 10.

83. Comments were invited on whether any minimum hour standard should be applied on a per-channel basis and whether it should apply per day or per week, and whether the specified minimum amount of "substantial use" programming should include a separate standard for essential use (formal) programming. Information on ITFS programming schedules prior to the excess capacity usage provisions of *Report and Order (80-112), supra,* was specifically solicited. In connection with the considerations on licensee control, the Commission also solicited comments on whether ITFS lessors should be entitled to recapture or reserve airtime on any leased systems in order to meet changing ITFS needs as they arise. *Further Notice (83-523), supra* at para. 23.

84. Only a few commentors would preserve the rule roughly as is, arguing that it strikes a good balance between allowing the applicant flexibility in leasing and discouraging those applicants with primarily commercial goals. The vast majority of parties who commented on the issue request an increase in the number of hours of "permissible use" programming required to constitute a substantial use, freeing excess capacity for non-ITFS use. Most of those recommend doubling the current requirement to at least 30 hours per week. Complete elimination of the requirement received virtually no support.

85. Other approaches are also suggested. One idea is to stretch the bracket from 7:00 a.m. to 11:00 and over weekends, in order to include more informal educational programming. One party suggests that the time frame for colleges should extend even later at night, presumably because college students study later at night. A few others push for a standard based on ratios; *i.e.,* for every hour of commercial programming offered by the lessee, the lessor would have to transmit a given amount of ITFS programming. This, they contend, would give applicants more bargaining power in dealing with prospective lessees, provide needed flexibility in scheduling, and, most importantly, promote the expansion of ITFS programming in direct proportion to the expansion of commercial programming. The University of Maryland advocates a unique proposal, which would require either three hours per channel per day or a phased-in minimum of 50% of the licensee's "normal weekly hours of business," whichever is greater. They propose that this would allow new operators to start small but still require them to grow, depending on their academic demand.

86. Most commentors insist that any standards should be applied on a per-channel basis to prevent "channel loading"—the practice of concentrating all of the required hours of ITFS programming into one of the multiple channels operated, to free others for full-time, non-ITFS use. The few commentors seeking a per-system standard cite the need for flexibility in scheduling. The MDS Industry Association explains that MDS support of ITFS depends critically on the licensees' freedom to devote an entire channel to compete with 24-hour video entertainment services.

87. A majority would also apply to the standard on a per-day basis, instead of the existing per-week basis, to protect against the loading of ITFS programming into one or two days and the concomitant threat that commercial interests may dominate the licensees' scheduling decisions. The few parties seeking to retain the per-week standard repeat the perceived need for scheduling flexibility.

88. Few parties considered whether any portion of the substantial use minimum should consist of formal

[40] This includes all permissible ITFS uses, not just those qualifying as essential use.

education. The National Association of State Universities and Land Grant Colleges contend that 20 percent of the substantial use programming should be formal, and Iowa State University of Science and Technology calls for a 20 to 25 percent minimum, implying that leasing applicants may be less motivated than others to serve formal education needs.

89. The majority of commentors favor some mechanism that would afford licensees the room to increase hours of ITFS programming over time. Many add that any right of recapture should be "qualified" so that the MDS operator could receive "reasonable compensation" for any hours it must return to the licensee. The Network for Instructional Television considers the recapture provision "unnecessary" as long as the Commission would reserve part of the system's total capacity for ITFS purposes.

Discussion

90. A minimum "substantial use" for ITFS service will be required on each ITFS channel before it can be used for non-ITFS purposes, whether by the licensee or a lessee. Such a requirement is an elementary necessity to guarantee the intended use of ITFS channels in the face of the revenue-generating uses which will also be permitted. Also, non-ITFS use is typically omnidirectional and at maximum allowable power, which generates the maximum impact on the availability of ITFS facilities to others.

91. A fundamental element of this service requirement will be an allowance for some of the required ITFS airtime which cannot be put into immediate service due to a licensee's limited resources or demand to be "preserved" for use at a later time. This preservation can be accomplished either by a strict reservation of airtime for ITFS use only or by the retention of power by the licensee to readily recapture, without detriment, sufficient airtime to fulfill the requirement. This preservation element will enable and encourage the emergence of new entrants that might not be able to start with a full schedule of ITFS services. It thus prevents a responsible and realistic "substantial use" requirement from freezing out smaller or less developed licensees, while advancing responsible use of the spectrum for ITFS purposes. This allowance combines the best features of both a strict reservation and a simple recapture approach. By applying only to a specified number of hours, it provides a definite framework for a prospective lessee to evaluate airtime availability and plan its involvement in leasing ITFS channels. By permitting use of the time by a lessee, subject to recapture conditions, it prevents the unnecessary waste of valuable airtime. By specifying that recapture of this time must be readily available and without detriment to the licensee, it avoid any obstacle or disincentive for licensee use for expanded ITFS service.

92. The ratio scheme proposed would likely prove counter-productive. If the amount of commercial programming is limited by the amount of ITFS service offered on a system, a lessee (or licensee) may be encouraged to fund more ITFS programming, as suggested. But more likely, a new ITFS operator may not have produced enough programming, or may not have enough demand for the programming, to air many ITFS hours in the first few years. Without such ITFS service to offer, it would be hard to attract an MDS partner willing to operate only a few hours. Further, leasing only a few hours, even if accomplished, would not generate much leasing revenue. Meanwhile, the unleasable hours would remain unused for any purpose. An equally undesirable result would be the inclusion of ITFS programming for the mere purpose of increasing commercial use and without regard to its "educational" function. These are clearly not desirable results, and the possible benefits to be derived from this approach are not sufficiently compelling to recommend it.

93. The typical public school, according to the comments, is open from 8:00 a.m. to 4:00 p.m., Monday through Friday, or 8 hours per day. Commentors did not respond to the request for data of actual use prior to *Report and Order (80–112), supra,* but several assert that ITFS licensees typically offer programming throughout the eight hour school day. A study submitted by the Corporation for Public Broadcasting [41] indicates that school districts using ITFS typically deliver 8 hours of formal educational programming per weekday per channel (40 hours per week), while colleges and universities air formal programming anywhere from 12 to 16 hours per weekday per channel (60–80 hours per week). A survey of applications by new applicants currently on file reveals an expectable variation in the proposals by all categories of applicants. The average number of proposed ITFS hours is 53 per channel, per week and the median proposal is 50 hours per channel, per week. The two categories of applicant with the lowest average, licensees of noncommercial educational television stations and archdioceses, propose 41 and 49 hours, respectively; all other categories average over 55 hours. Well over half of the proposals are in the range of 40–60 hours per channel per week, with several proposals over 90 hours. Only a few of the surveyed applicants propose fewer than 35 hours per channel per week. Notably, virtually all of the surveyed applicants will attain their service levels without the benefit of revenue generated by non-ITFS use.

94. These proposals provide some guidance on appropriate and reasonable minimum use levels for effective ITFS operations. In fact, an operator generating revenue with non-ITFS use (or receiving free system equipment) might be expected to produce a fuller schedule. However, one of the most important purposes of this proceeding and rules development has been and continues to be the initiation of new service by qualifying parties whose needs and/or abilities may not be represented by systems and operations in use and on file. Such applicants can be expected to use or lease excess capacity for non-ITFS uses to generate funds to initiate ITFS systems. They may well not be able to produce many hours of programming per day, and may need to use or lease more non-ITFS hours in order to raise sufficient funding for their programs. Accordingly, a substantial use standard will be set at a level somewhat lower than those proposed by commentors and adopted by almost all current applicants. It will include a preservation provision (see para. 91, *supra*), so that if expansion ability is maintained to a certain level by reservation or ready recapture of airtime, service can be initiated at an even lower level of operation. No compelling reason has been advanced to permit extreme day-loading or channel-loading,[42] but some flexibility is appropriate to recognize the day-to-day variety in the functioning of educational institutions.

95. On each channel, licensees will be required to provide at least three hours of ITFS programming per weekday (Monday–Friday), with an additional five hours per week distributed during the week at the licensee's discretion, for a total of twenty hours per week, excluding holidays and vacations, minimum current use on each channel.

[41] C.G. Arnall's *Instructional Television Fixed Services: an Analysis of ITFS Operations* (CPB: 1984).

[42] Current leases have no provision for a 24-hour channel, in contradiction of MDS Industry Association's assertion that such a channel is necessary for successful MDS operation.

This represents an increase of only five hours per week over the existing standard. While opening the door to new applications in this way, the intended use of the spectrum will be preserved by requiring that a minimum of forty hours per week, excluding holidays and vacations, must be dedicated for ITFS programming on each channel, so that if only twenty to thirty-nine hours can be currently programmed, additional hours will be reserved or subject to ready recapture. The dedication must include at least six hours per weekday, with the remaining ten hours distributed at the licensee's discretion.[43] Any hours specified for ITFS use must, of course, be appropriate to the receive site. If the only qualifying receive site or sites is in operation fewer hours than would satisfy the substantial use standard, a waiver can be requested. Monday–Friday use must continue to occur between 8:00 a.m. and 10:00 p.m. ITFS programming between 8:00 a.m. and 10:00 p.m. on Saturday will be added to programming qualified to meet this requirement.[44] These requirements do not eliminate the need for licensees to maintain some recapture power over other times to adjust to their programming needs. This issue is further addressed in para. 104. *infra.*

96. It is not necessary to build a formal education requirement into the substantial use standard. The essential use rule already requires all licensees, including lessors, to deliver at least some formal education on each channel. This will necessitate the installation of receive equipment or appropriate administration, so that essential uses will not suffer from extrinsic considerations related to delivery costs. Beyond that, licensees must be permitted to use their discretion in responding to individual needs. Therefore, all ITFS programming, formal and informal, will count towards the substantial use minimum.

97. These requirements will be applied only to licensees, current and future, that use their "excess capacity" for non-ITFS purposes. We presume that the motives of applicants not leasing excess capacity for commerical purposes are purely educational and that the demand is sufficiently great, whether in amount or in nature, to justify the costs of construction and operation. These applicants will provide as many hours as possible of both formal and informal ITFS programming. Therefore, there is no reason to dictate how many hours of programming they must provide. Prospective licensees which cannot meet the established standards but wish to lease should consider the feasibility of merging or sharing facilities with others whose needs are similarly slight, as proposed by several commentors.

Licensee Control

98. When it permitted ITFS licensees to use their excess channel capacity for non-ITFS purposes either by themselves or by leasing to other parties, the Commission predicted that licensees would limit their excess capacity in order to protect their own growth requirements, and therefore no regulations that would restrict the lease negotiations were established. *Report and Order (80–112), supra* at 1252. The Commission subsequently noted that the lease agreements contained in numerous pending applications filed in response to that provision would place many of the licensees' responsibilities in the hands of their proposed MDS lessees. *Further Notice (83–523), supra* at para. 22. Specifically, the agreements would allow the MDS party to finance, design, construct, operate and own the physical plant, as well as lease large portions of airtime on the system. The Commission acknowledged that leasing inherently involves some sharing of licensee control and that ceding certain powers to the MDS lessee, such as the responsibility for construction, could serve the best interests of both parties because of the greater technical expertise which MDS operators generally have. *Id.* at para. 23. While comments were invited on how the powers of licensee control should be allocated among the leasing parties, the Commission indicated an inclination to impose minimal restrictions on the construction, operation, and ownership of facilities, so that the negotiating parties would be free to arrive at terms on their own best judgment.

99. Many commenters argue that an ITFS licensee should maintain absolute control over the construction, operation and ownership of its station. According to some, absolute control means the licensee must construct, operate and retain title to the facilities. Otherwise, they fear, the ITFS spectrum would soon be threatened by a "*de facto* reallocation" to MDS use. According to others, absolute control would not prohibit the delegation of tasks as long as the licensee directs and supervises the work to insure that the changing needs of the educational community will be met. Still others contend that absolute control over construction merely means the licensee must reserve a right of approval for any construction work performed by the lessee.

100. A greater number of parties, however, see no need for new rules governing control. Some explain that the rapid changes brought on by leasing make it impossible or inappropiate to formulate standards just yet, as leasing is still experimental. Others further assert that if the Commission would adopt strict eligibility rules, it could leave the area of licensee control unregulated, because leasing would then be performed only by responsible licensees. These parties regard leasing as a "cooperative relationship" in which the tasks of construction, operation and ownership are best left to the commercial operator who has greater resources and technical expertise. They would have the Commission review any licensee control and real-party-in-interest questions on an *ad hoc* basis and designate issues for hearing where necessary. This way, each applicant could tailor a lease to its own unique needs and the Commission could address any control problem in light of the "totality of the circumstances."[45]

101. Specific rules regarding leasing and control will not now be adopted. As argued, it would be difficult to fashion standards for leasing while the practice is still in an experimental stage. Only a few different examples of leases are in evidence thus far as only a few MDS operators have entered into lease agreements. Future leasing parties may choose very different approaches, and future innovation should not be discouraged.

102. The comments confirm that leasing inherently involves compromises. In exchange for building an ITFS station and funding its operations, an MDS lessee must expect to gain access to a certain minimum of airtime to make its investment in the ITFS system worthwhile. This trade-off was recognized in *Further Notice (83–523), supra,* at para. 23, and accepted when non-ITFS use of excess capacity was first considered and permitted. The ITFS proposals cater to a wide variety

[43] It is notable that compliance with these standards is further eased by the expansion of the definition of "permissible use" programming which will meet this qualification.

[44] Saturday classes and schedules are common for many schools and other educational facilities, especially for continuing and professional education. Furthermore, there is no likelihood that that this provision will be used to load programming to circumvent intended ITFS use, as it is one of the more desirable periods for commercial programming.

[45] Commentors note that the Commission generally considers the totality of circumstances to ascertain where actual control of a station resides, citing *Mutual Radio of Chicago, Inc.*, 55 RR 2d 1577, 1583 (1984) and *George E. Cameron, Jr., Communications (KROQ)*, 91 FCC 2d 870; 52 RR 2d 455 (1972).

of community needs, and the permissible use and substantial use rules established in this proceeding will ensure that a substantial amount of programming is devoted to ITFS purposes on every channel before non-ITFS use occurs. In addition, the eligibility rules and comparative criteria formulated in this document will promote the licensing of the most responsible educational bodies.

103. Because licensees will be required to maintain sufficient programming control to meet their needs, many other tasks may be performed by an excess capacity lessee. As the commentors stress and the Commission has recognized, MDS lessees commonly have more engineering and operations expertise than their ITFS counterparts. Also, as Microband Corporation of America ("Microband") points out, they can usually accomplish construction and operation/maintenance considerably more economically, at only marginal expense, due to their in-place structure. Operation of facilities by lessees is not necessarily inconsistent with the performance of an ITFS licensee's responsibilities, and no actual harm has been demonstrated by commentors. Broadcast licensees often lease facilities owned by other parties with no significant loss of control; no greater loss of control need occur when an ITFS physical plant is leased from an MDS operator. Furthermore, as Microband also points out, there are tax advantages in ownership that accrue to an MDS operator, which can be reflected in lease payments, which would not be as advantageous to most ITFS licensees. These considerations all presume that licensees will continue to be held ultimately responsible for full complaince with all Commission rules, and that both real-party-in-interest and licensee control compliants will be reviewed on a case-by-case basis. How ITFS licensees arrange to retain their ultimate responsibility will be left to their best judgment.

104. Any review of excess capacity leases will therefore place primary emphasis on the licensees' programming control. Provisions which assign exclusive rights to a lessee can also be scrutinized. For example, a representative contract on file with the Commission between a proposed MDS lessee and applicants for ITFS facilities provides that the lessee may select the station's transmitter site "in its sole discretion." This would appear to be inconsistent with the responsibility of the ITFS licensee to ensure the adequacy of its service. Overly restrictive programming arrangements which would effectively prevent the licensee from responding to changing needs would also bear scrutiny.[46] The rights of a licensee in the event its needs are not met, and specifically its rights of transfer or assignment and its rights and obligations upon termination of the contract can also bear consideration. We do expect that where such clauses are used, the applicant will submit an accompanying narrative to the Commission explaining why the provision is necessary and consistent with the licensee's fulfillment of its responsibilities. We will review such clauses in light of all prevailing circumstances. Also, since a license to operate authorized facilities runs for a period of ten years, any lease arrangements involving those facilities cannot exceed that period.

105. Applicants for new stations or for modifications in existing facilities will continue to be required to submit copies of lease agreements with their applications. Also to assure compliance with rules and policies pertaining to leasing arrangements, existing operators who begin to lease out excess capacity on authorized facilities will also be required to submit copies of their leases to the Commission. At this stage in the development of ITFS, this material is needed to monitor the new policies adopted herein. As experience develops, these requirements may no longer be necessary.

106. We believe this method of monitoring ITFS lease agreements precludes the need for other safeguards suggested by some commentors. In deciding to handle licensee control complaints on a case-by-case basis, we need not require all leasing parties to hire separate legal counsel, to disclose their financial ties or to limit the lease term to only a few years, as suggested by some commentors. Prohibiting an MDS operator from simultaneously contributing capital and leasing air time on the system, as suggested by one commentor, would frustrate the purpose of excess capacity leasing.

Technical Standards

107. *Further Notice (83–523), supra,* proposed to amend the Rules with regard to the technical requirements applicable to ITFS. In order to maximize compatibility and interoperability between ITFS and MDS, the Commission proposed ITFS technical standards that were very similar to the provisions adopted for MDS in the *First Report and Order* in General Docket 80–113, 98 FCC 2d 68 (1984) (hereinafter *"Technical Standards Order"*). *Further Notice (83–523)* proposed rules for ITFS which would govern matters relating to interference. The proposed rules addressed cochannel and adjacent channel interference standards, a standard receiving antenna, and a protected service area. The Commission also proposed to examine ITFS matters which, because of the nature of the service, may require different technical standards from those applied to MDS. Seventeen entities submitted comments and reply comments in response to the technical standards proposed.

108. Historically, ITFS has successfully relied upon informal coordination between operators to anticipate and resolve interference problems. However, a large number of new proposals and formal petitions alleging interference have been received; therefore the informal coordination procedure has recently become less successful. The Commission strongly supports continuation of such coordination procedures among the ITFS community to resolve potential interference problems. Such effort would reduce the burden on the Commission's staff and would promote more efficient utilization of the spectrum.

109. The rules adopted below are not meant to replace the coordination process, but rather to provide a means of adjudication in situations where informal coordination attempts have failed. Since the ITFS technical standards proposed in *Further Notice (83–523)* have already been addressed in great detail in the *Technical Standards Order,* we will address the rules with some modifications that we are adopting as they apply to ITFS.[47]

[46] The preservation provision of the substantial use requirement, para. 95, *supra,* is the primary means of providing the capacity to meet expanding needs. While this bedrock protection of 40 core hours of airtime may permit the acceptance of stricter rescheduling provisions, more protective of the lessee, than could otherwise be tolerated during remaining hours, an ITFS licensee cannot surrender all future rights to adjust to changing needs.

[47] It should be noted that the proposed rules did not contemplate changing the technical standards applicable to Private Operational-Fixed Microwave Radio Service (OFS) stations licensed on the three 2.5 GHz channels allocated for private use. However, the Part 94 rules governing the operation of OFS stations currently incorporate by reference some of the technical standards contained in Part 74. We are taking the opportunity in this *Second Report and Order* to incorporate in Part 94 all of the rule provisions applicable of OFS stations licensed at 2.5 GHz. In so doing, we are merely extracting applicable technical standards currently contained in Part 74 and inserting these standards into Part 94. No new rules are being adopted relative to OFS stations. The ministerial change does not affect the substance or scope of the rules and is authorized,

Continued

Cochannel Interference

110. The MDS rules, as adopted in the *Technical Standards Order*, specified a 45 dB cochannel protection ratio (*i.e.*, the difference between the desired signal and the undesired signal must be 45 dB at the receiver antenna terminals) for stations operating in the same geographical area. The 45 dB ratio was established on the basis of extensive tests conducted by the Television Allocation Study Organization (TASO), in which actual television pictures, subjected to various levels of interference, were compared by a panel of viewers. *Further Notice (83–523), supra*, proposed that 45 dB be utilized as the standard protection ratio for ITFS.

111. The comments and reply comments received were overwhelmingly in favor of establishing 45 dB as the cochannel protection standard. Most commentors agree that 45 dB represents a reasonable compromise between available signal quality and possible preclusionary effects. Some commentors, however, believe that the 45 dB ratio, while adequate for entertainment programming, may be insufficient for detailed course work (*e.g.*, schematic diagrams, mathematical formulas, etc.).[48] Cochannel protection ratios up to 55 dB are offered as being necessary to protect such ITFS programming.

12. The level of cochannel interference that viewers will find unacceptable is dependent upon the nature of the material being transmitted. As mentioned in the MDS *Technical Standards Order*, TASO results revealed that scenes with more detail are most likely to be perceived as having unacceptable levels of interference than are scenes with less detail. However, there is no conclusive evidence on record to justify selection of any protection ratio greater than 45 dB. Further, no data has been submitted to adequately document that 45 dB is insufficient for the transmission of very detailed material. For these reasons, 45 dB will be adopted as the general cochannel protection ratio for ITFS. Should isolated situations occur where the 45 dB cochannel protection ratio is not sufficient, and all informal coordination attempts between the involved parties fail, the Commission will consider more stringent protection ratios on a case-by-case basis, provided that detailed confirming data is submitted. Such a confirmation showing would consist of test data similar to that provided in the original TASO report. The applicant or licensee must clearly demonstrate that the 45 dB ratio is not sufficient protection for the service being proposed or provided. It must be emphasized that licensees and applicants are expected to cooperate fully in attempting to resolve problems of this nature before bringing the matter to the attention of the Commission.

The Standard Antenna

113. *In the Technical Standards Order*, a standard (reference) antenna was specified for the purpose of interference calculation. The reference antenna adopted had characteristics generally associated with those of a 2-foot parabolic reflector antenna. *Further Notice (83–523)* proposed to utilize the same standards for interference and other calculations in ITFS.

114. This proposal received mixed support from commentors. Those in opposition allege that the proposed 2-foot parabolic reflector is not a representative model of antennas utilized in ITFS. The vast majority of ITFS receive sites, they argue, use antennas of far better quality than the proposed model and an allocation system utilizing the reference antenna exclusively would stifle ITFS expansion by overprotecting most receive sites. The University of Maryland points out that parabolic reflectors of less than 4 feet were seldom used in their installations and that more often 6, 8 and even 10-foot antennas were utilized. Several commentors express, in effect, that they support the reference antenna provided that alternate engineering showings are permitted utilizing the actual antenna characteristics when necessary to demonstrate the absence of interference.

115. The proposed standard antenna would indicate the worst case study. However, the primary reason for proposing the 2-foot standard antenna was to enable the Commission staff to expedite technical processing of ITFS applications by easing the administrative burden caused by examining individual receive site antennas. We believe that the reference antennas selected is a reasonable choice for this purpose. It should be remembered that this antenna is selected as a reference and not a requirement. Therefore, the rules will be amended to include the standard antenna adopted in this Order. The Commission shares the concerns of many commentors, however, that in many cases, overprotection of existing ITFS stations would preclude future expansion if the 2-foot standard antenna were used exclusively. There is merit in the suggestion that, while adopting the characteristics of the proposed antenna, an alternative showing of noninterference based upon the characteristics of the actual antenna in use at the receive site under consideration should be accepted. Therefore, an alternate engineering showing will be accepted provided that it includes such technical details as the make of the receive antenna, type and gain, model number, and the co-polar and cross-polar gain patterns used in the interferenced calculations. It is emphasized that the burdent of establishing noninterference lies with the applicant and absent the necessary technical information, the Commission staff will utilize the reference antenna for its engineering determinations. This compromise will ensure the protection of ITFS receive sites without risking the preclusive effects resulting from overprotection. Further, the Commissison's resources will be more efficiently utilized since the time consuming task of receive site analysis, when necessary, will be performed by the applicant, the party seeking the benefit to be derived from this analysis.

Analysis of Potential Interference

116. *Further Notice (83–523)* proposed to adopt requirements in ITFS for an interference analysis similar to those adopted for MDS in the *Technical Standards Order*. It recommended that each application include an engineering study of all transmitters located within a 50-mile radius of its proposed transmitter site. This recommendation has the strong support of most commentors. Some commentors suggest that the study should be increased to 65 miles. The Archdiocese of Detroit, Macomb Intermediate School District and the Oakland Schools expressed their desire for the study to also include an electrical height analysis.

117. ITFS processing experience confirms that 50 miles is a reasonably conservative distance for the vast majority of antenna heights utilized in the application of ITFS. Therefore, the 50-mile radius requirement will be adopted and the rules will be amended to require applications for new and major changes to include an analysis of the potential interference. In addition, any petitions to deny alleging interference, must, in like manner, include such an analysis, or the petition will be dismissed. Therefore, each application must include an exhibit of the potential for harmful interference to all existing and previously proposed

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without notice and comment rulemaking, pursuant to section 553(b)(3)(A) of the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(A). These rule changes are included in Appendix B.

[48] See comment of University of Maryland, page 92, and George Mason University at page 125.

cochannel and adjacent channel operations located within 50 miles of the applicant's proposed transmitter location. Because interference is likely to occur at greater distances, when very tall transmitting towers are utilized, each application must also include an analysis of the potential for harmful interference with any authorized or previously proposed cochannel station to which the proposal has an unobstructed electrical path to any existing or previously proposed receive site. The practice of serving such engineering studies on all licensees, permittees, and applicants of pertinent stations considered in such exhibits is encouraged. This practice would involve very little additional effort on the part of the applicants since these stations are part of the required engineering analysis, and would encourage more active communication and coordination among the ITFS community. This procedure may increase the likelihood of resolving disputes through informal coordination, which would expedite the processing time of such applications filed with the Commission.

Equivalent Isotropically Radiated Power (EIRP)

118. *Further Notice (83–523)* requested comments on amending the rules to specify the power in terms of the limited EIRP rather than transmitter power output. It also proposed to limit the radiated power of a station using an omnidirectional antenna to a maximum of 33 dBW (2000 Watts) EIRP. This is equivalent to a 100 Watt (20 dBW) transmitter operating into an antenna with 13 dB gain, assuming no line losses. Further, a formula was proposed to calculate maximum EIRP limitations in cases where directional transmitting antennas are utilized.

119. The comments received on this issue were inconclusive. Some commentors opposed the maximum EIRP proposal, contending that ITFS should continue with the practice of utilizing no more power than necessary to reach specified receive sites, thus minimizing preclusionary and harmful interference effects. Of those in general agreement with the proposed power increase concept, the majority favors a cautious case-by-case approach as opposed to a unilateral across-the-board power increase. Microband, for example, favors provisions for increasing EIRP but is concerned about potential interference. Similarly, comments form the Archdiocese of Detroit and Macomb Intermediate School District, and the Oakland Schools express general approval of the proposal as a reasonable maximum, but express concern that is may promote the use of higher power than necessary to perform the general application of ITFS. They suggest that applicants for power increase be required to submit a demonstration of need. The majority of the commenting parties seem to agree that, if power increases are allowed, such applications must include an engineering analysis of potential interference.

120. Based upon the comments received on this issue, no substantial need is established at this time to amend the rules to permit an overall 33 dBW EIRP increase for ITFS. Generally, the present 10-watt transmitter power output appears sufficient for the majority of ITFS licensees. Provisions for obtaining higher operating power are specified in § 74.935(b) of the Rules. 47 CFR 74.935(b). Accordingly, this shall continue as the standard. In addition, all proposals for transmitter power output greater than 10 watts will be required to include an engineering analysis of potential interference to pertinent existing and pending receive sites in accordance with the established protection ratios adopted in this Order. Finally, each application must include documentation justifying why the additional power is necessary.

Protected Service Area

121. The provisions for the protected service area of MDS stations were established in the *Technical Standards Order.* The Order defined the protected service area of MDS stations employing either an omnidirectional or directional transmitting antenna. Accordingly, a station utilizing an omnidirectional transmitting antenna has a protected service area boundary which extends a 15-mile radius from its transmitter site. For a station utilizing a directional antenna, however, the service area boundary would approximate the shape of the radiated pattern, and would encompass a total area of 710 square miles or less. The protected contour of such station could be calculated utilizing the formula also provided for deriving distances along the boundary of the service area. MDS receive points located outside of the described boundaries are not protected from harmful interference.

122. *Further Notice (83–523)* proposed to utilize a similar service area concept for ITFS so that the boundaries described above would likewise define the ITFS minimum protected service area; *i.e.,* an area where receive sites should not experience interference. Therefore, additional receive sites within this area would be protected without the need for an application, after an initial authorization. Recognizing the need for protection to receive sites outside of this boundary, the Commission proposed to protect such sites from cochannel and adjacent channel interference provided that the power flux density of the transmitted signal is above -75.6 dBW/m^2.

123. Of the technical standards addressed in *Further Notice (83–523),* the proposed service area concept generated the most opposition. Members of the ITFS community argue that ITFS and MDS are different services, and that the service area concept would be an inappropriate application of an MDS standard to ITFS. Many commentors contended that ITFS facilities frequently utilize receive sites at distances much greater than 15 miles and that all bona fide existing receive sites, regardless of distance or power flux density level must be protected.[49] Others point out that many MDS operators, in order to optimize their service, must locate their transmitter site in close proximity to the greatest population density to reach a massive audience, whereas an applicant for ITFS must select its transmitter site based on the geographical distribution of receive sites to be served within its jurisdiction. Therefore, ITFS facilities are engineered to technical standards designed to meet the requirements of its service area. Thus, distant receive sites beyond 15 miles must often be served. By limiting the service area, they maintain, the Commission would be penalizing ITFS licensees for utilizing good engineering practices. Joint commentors represented by Crowell and Moring state that a 15-mile service boundary would be inconsistent with the Commission's stated goal of encouraging the expansion of ITFS, and if adopted would permanently inhibit growth of the service. Microband and Contemporary Communications Corporation content that, while some ITFS facilities transmit to receive sites at distances greater than 15 miles, many ITFS stations' receive sites are clustered relatively close to the transmitter. In these situations, they contend, the service area rule would protect vast areas that were not actually served by ITFS, thus precluding possible spectrum reuse in nearby communities.

124. Careful consideration has been given to all of these arguments. In light of the overwhelming opposition to the service area proposal, the Commission has reconsidered its position on this issue. First, we are convinced that all existing receive sites that have been

[49] See, *e.g.,* Southern California ITFS Advisory Committee.

properly notified with the Commission must be protected from harmful interference regardless of the power flux density incident upon the receive site. The consistency of the opposition to the proposal has convinced us that to do otherwise would be an abdication of our responsibilities toward ITFS licensees. Since we decided to protect all receive sites, regardless of distance, the administrative advantages of a mathematically defined service area are largely nullified. We will, then, continue to protect all notified receive sites consistent with the newly adopted protection ratios specified in this Order. Moreover, we will continue to require applications to be filed to add receive sites in order to be entitled to interference protection. Lastly, we are aware of the possibility of individual licensees specifying additional distant receive sites in order to expand their protected area artificially. The Commission proposes to handle these situations on a case-by-case basis, requesting justification for any distant sites that appear to be specified primarily for the purpose of protection rights or precluding additional facilities in nearby communities.

Adjacent Channel Interference

125. The Multipoint Distribution Service adopted 0 dB in the *Technical Standards Order* as the adjacent channel protection ratio (*i.e.*, the undesired channel signal must not be stronger than the desired signal at the receiver antenna terminals) for stations operating in the same area. Further, the MDS Order requires multichannel MDS operators to demonstrate that their signal will be at least 10 dB below the adjacent channel ITFS signal at the output of the ITFS receiving antenna. This 10 dB standard applies only to those ITFS stations that were constructed prior to May 26, 1983, since the older ITFS operations were not designed to operate in the presence of adjacent channel signals.

126. *Further Notice (83–523)* proposed to utilize the 0 dB protection ratio as the adjacent channel interference standard for ITFS. This standard was proposed for both colocated and noncolocated transmitter sites. Applicants applying for first adjacent channel facilities were also encouraged to colocate or be within 0.5 miles of other adjacent channel facilities to minimize the potential of harmful interference.

127. Commentors overwhelmingly support the establishment of an adjacent channel protection ratio for ITFS. Some commentors indicate that the Commission should also adopt the 10 dB standard for ITFS facilities constructed before May 26, 1983.[50] After having carefully considered this matter, we have decided to adopt the 10 dB protection standard for ITFS facilities constructed before May 26, 1983, and 0 dB for facilities subsequently constructed. This is consistent with the adjacent channel protection requirements adopted in the *Technical Standards Order* for MDS protection of ITFS facilities.[51] This two-fold standard provides protection for older ITFS facilities, thus insuring continued service from equipment which may not have been designed to operate in the presence of adjacent channel signals. Accordingly, these older facilities are afforded additional adjacent channel protection until their systems are either modified or upgraded with state-of-the-art transmitting facilities. Provision is also made for the capabilities of newer equipment which is less susceptible to adjacent channel problems, there by allowing more efficient spectrum utilization. It is stressed that this 10 dB standard applies only to ITFS stations that were constructed prior to May 26, 1983. All subsequently constructed stations will only be entitled to protection to the 0 dB standard.

128. As previously mentioned, *Further Notice (83–523)* encouraged applicants applying for first adjacent channel facilities to colocate or be within 0.5 miles of other adjacent channel facilities to alleviate adjacent channel interference. Location of facilities to this extent minimizes, provided such stations operate with identical transmitting facilities and cross polarize the transmission antennas, the potential for adjacent channel interference. This is because the desired and undesired signals are approximately the same at all receive locations. Several parties commented on this issue. Although most agree that colocation was a useful interference reduction technique, there was some uncertainty as to its applicability to ITFS. ITFS operations, in general, serve school districts, hospitals and facilities which are rarely centrally located. Most commentors believe that only in rare situations would two separate educational entities find a common site mutually acceptable. MDS operations, in contrast, would normally desire to operate from a single central location to serve a metropolitan area as efficiently as possible. Therefore, although we are encouraging the use of colocation for ITFS, we realize that its benefits may be much more limited in ITFS than in MDS due to the fundamental differences between the two services.

129. Comments have been received regarding out-of-band emissions and its impact upon the adjacent channel protection ratios for ITFS. The primary concern is that the present out-of-band emission standards for transmitters specified in § 74.936(b) of the rules are not sufficient to preclude adjacent channel interference between a new applicant and an existing station proposing to colocate or operate in the same geographical area. We are aware of the concerns raised concerning this issue, but do not believe that it is necessary to redefine the transmission standards at this time. The present regulations are clear and sufficient in regards to adjacent channel interference which may result due to out-of-band emissions between such proposals.

130. Historically, interference problems attributable to adjacent channel out-of-band emissions in ITFS were minor due to the general availability of channels. Prior to *Report and Order (80–112), supra,* twenty-eight channels were assigned to ITFS. The number of channels were sufficient for any particular community so that adjacent channel ITFS stations were seldom requested, or authorized, within the same community (with the exception of studio to transmitter linkage facilities). However, the increased demand for ITFS channels has resulted in proposals for first adjacent channel facilities in the same community as existing stations or in the same geographical area.

131. Section 74.936(b) of the Rules, 47 CFR 74.936(b), specifies the required attenuation for transmitters operating at different power levels. These levels of attenuation are sufficient, provided adjacent channel stations are not authorized within the same geographical area. However, applicants proposing to operate within the same geographical area as existing stations on adjacent channels may find it necessary to install filter circuits in the older stations' transmitting facilities to curtail interference due to out-of-band emissions. Moreover, such applicants may be required to conform their proposals to the requirements of § 73.687(a)(3) of the Rules. 47 CFR 73.687(a)(3). These parameters are identical to the transmission standards proposed for MDS facilities in the *Further Notice of Proposed Rulemaking and Notice of Inquiry* in General Docket 80–113, 98 FCC 2d 7 (1984). Accordingly, we believe these current standards are

[50] See, *e.g.*, Joint Comments Represented by Jules Cohen or Southern California ITFS Advisory Committee.

[51] See *First Report and Order (80–113), supra,* at para. 35.

sufficient to govern adjacent channel protection and justify the ratios adopted in this Order.

132. All applicants applying to colocate or operate an adjacent channel station in an area where interference is anticipated are encouraged to initiate informal coordination with other applicants or licensees to resolve these matters before bringing such cases to the Commission.

Unattended Operation

133. *Further Notice (83–523)* proposed to relax the requirement that unattended ITFS relay stations use the direct heterodyne frequency conversion method. State-of-the-art equipment that performs the desired frequency conversion by other technical means is presently available. Such equipment has the advantage of reducing the potential for adjacent channel interference.

134. Commentors who expressed an opinion on this matter were unanimously in favor of relaxing the present rules to allow for the use of state-of-the-art relay station equipment. Recent technological advancements (*e.g.*, the availability of equipment which demodulates the incoming signal to separate baseband video and audio signals for retransmission) render the direct heterodyne relay station requirement obsolete. Therefore, § 74.934(a)(2) of the Rules, 47 CFR 74.934(a)(2), will be amended accordingly.

Conclusion

135. The staff is directed to dismiss any application pending and not cut off as of the date of the adoption of this Order that has been filed by an entity that is not "local", as that term is defined herein, to the community or area in which a license is sought. The dismissals will be without prejudice to the resubmission of new applications 1 year from the effective date of the rules adopted herein, or later, depending on channel availability in particular areas at that time.[52]

136. All other applicants that were cut off from competing applicants during the period established in *Further Notice (83–523)*, see n. 25, *supra*, are requested to amend their applications within 30 days of publication of this Order in the **Federal Register**, by submitting information, where necessary, that demonstrates compliance with the rules and policies set forth herein.[53] The staff is directed to request additional information it considers appropriate to complete the processing of particular applications as they are reached for consideration. Since amendments to pending applications are anticipated to be in the nature of clarifying or additional information that will not affect the basic qualifications of applicants or the substance of their proposals, petitions to deny that are not on file as of 30 days from the publication of the Order in this **Federal Register** will generally not be considered.

137. Applicants whose request would result in the acquisition of more than four channels in a particular community and have not submitted a showing in support of a request for waiver of §74.902(d) of the Rules (47 CFR 74.902(d)), see n. 36, *supra*, are requred to do so within 30 days from the publication of this Order in the **Federal Register**. Applications from current holders of four or more ITFS channels that do not include a showing in support of a waiver will be summarily dismissed when reached for processing. Applicants that are not presently licensed for four or more ITFS facilities in the area and fail to submit a showing, or that submit a showing that does not justify a waiver, will be permitted to elect the single channel group they prefer.

138. Pursuant to the requirements of section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission's final analysis is as follows:

I. Need for and objectives of the rule.

A significant increase in the demand for ITFS frequencies, generated primarily by the Commission's decision to permit ITFS licensees to lease excess channel capacity for commercial purposes, posed new questions about how the channels should be authorized and used. Many recent applications presented questions pertaining to eligibility requirements to be an ITFS licensee and the permissible scope of the service. In addition, the demand for channels resulted in numerous mutually exclusive applications. The rulemaking addressed issues necessary to update the 20-year old rules governing the ITFS service, looking toward a more efficient utilization of the ITFS spectrum, the growth and development of ITFS and the adoptation of the service to modern needs. Modifications of the rules are adopted pertaining to procedural requirements and protection standards to aid in the efficient and expedited processing of applications, as well as to maintain the primarily educational nature of the service.

II. Issues raised in response to the initial regulatory flexibility analysis.

No issues were raised specifically in response to the initial regulatory flexibility analysis. Generally, commentors argued, and the Commission agreed, that the current rules are inadequate to deal with the changes in the ITFS environment, and that any rules adopted should be suitable to the nature of the educational entities which are applicants and licensees. In response, the Commission has: Clarified its eligibility criteria; established streamlined procedures for cutting off applications and choosing among mutually exclusive applications; clarified, expanded the scope, and reduced the amount of required formal educational programming; modified, based on comments and extrinsic evidence, the required hours of ITFS use necessary to qualify "excess capacity" available for non-ITFS use; and established technical standards for application processing and dispute settlement.

III. Significant alternatives considered and rejected.

The Commission considered the use of "window" filing periods and the use of alternate selection procedures (paper hearing and lottery), and rejected them as inappropriate for the ITFS service and unhelpful in reducing burdens on applicants and on the Commission. The Commission also declined to involve itself in setting acceptable provisions for lease agreements, opting for the simple establishment of a standard airtime "reservation" in lieu of any specified airtime recapture provision for the ITFS licensee, and for case-by-case resolution of any other licensee control issues which might arise.

139. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

140. Accordingly, it is ordered, that Parts 74 and 94 of the Commission's Rules and Regulations are Amended, effective thirty days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1), as set forth in Appendix B, under authority contained in 47 U.S.C. 2, 4(i) and 303.

141. It is further ordered, that the captioned proceeding is terminated.

[52] FCC Form 330–P, for a construction permit for new or modified ITFS facilities, will be amended to accommodate the clarifications and changes in interpretation adopted herein regarding eligibility, permissible use and technical standards, and to solicit information pertinent to the selection procedure for mutually exclusive applicants.

[53] Applications which were not cut off will be processed in accordance with the new procedural rules set forth in this Order and can be amended, where necessary, during the "A" cut-off period.

142. It is further ordered, that the Secretary of the Federal Communications Commission Shall Cause this *Second Report and Order* to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments for MM Docket No. 83–523

Comments submitted before the *Further Notice of Proposed Rulemaking* in MM Docket No. 83–523 and considered were filed by:

Oregon Community College Telecommunications Consortium
Triton College
Indiana Higher Education Telecommunication System
University of South Florida
Oregon Community College Association
Pasadena Unified School District
University of La Verne
The University of Texas at Austin
Archdiocese of Atlanta
Georgia Institute of Technology
California State College, Bakersfield
Auburn University
Purdue University
California State University, Fresno
The University of Utah
Indiana University
North Carolina Agricultural and Technical State University
South Carolina State College
Atlanta Baptist Association, Inc.
Kirkwood Community College
Lynn E. Boet, of Ann Arbor, MI
Atlanta Presbytery
California State University, Northridge
San Diego County Office of Education
United States Catholic Conference
East Tennessee State University
The City University of New York
Maryland State Department of Education
California State University, San Bernardino
Sonoma State University

Comments and/or Reply Comments submitted in response to the *Further Notice of Proposed Rulemaking* in MM Docket No. 83–523 were filed by:

Joint Comments of:
  Assoc. for Continuing Education
  Association for Higher Education of North Texas
  California State Polytechnic University
  Illinois Institute of Technology
  The Leland Stanford Junior University
  Northeastern University
  Portland Community College
  Region IV Education Service Center
  University of Texas Health Science Center of Houston
  The Archdiocese of Detroit
  The Macomb Intermediate School District
  The Oakland Schools
Ohio University
Educational Broadcasting Corporation
University of Nebraska
University of Pittsburgh
Joint Comments of:
  Ana G. Mendez Educational Foundation
  Arkansas Educational Television Commission
  Board of Trustees of Community College District No. 508
  County of Cook and State of Illinois
  Board of Trustees of the University of Cincinnati
  Catonsville Community College
  Connecticut Educational Telecommunications Corp.
  Greater Dayton Public Television, Inc.
  Iowa Public Television
  KRMA(TV), Licensed to School District No. 1 in the City and County of Denver and State of Colorado
  Milwaukee Area District Bd. of Vocational, Technical & Adult Education
  Nebraska Educational Telecommunications Commission
  Public Television 19, Inc.
  Regents of the University of Minnesota
  Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico
  South Carolina Educational Television Commission
  South Central Educational Broadcasting Council
  Southern Tier Educational Television Assocation, Inc.
  St. Louis Regional Educational and Public Television Commission
  State of Wisconsin—Educational Communications Board
  The Ohio State University
  The Regents of the University of California
  The Regents of the University of Michigan
  University of Houston
  University of Iowa
  University of Maine
  University of Nebraska
  University of Utah
  Virginia Department of Telecommunications
Oklahoma Educational Television Authority
Microband Corporation of America
Richardson Independent School District
The Georgia Public Telecommunications Commission
The Educational Service Center, Region 20
National Association of Public Television Stations
Public Broadcasting Service
The Southern California Instructional Television Fixed Service Advisory Committee
Mineola Union Free School District
Catholic Television Network
Wayne State University
C.S. Television, Inc.
Contemporary Communications Corporation
United States Catholic Conference
Joint Comments of:
  Center for Excellence, Inc.
  Network for Instructional Television, Inc.
The University of Maryland
MDS Industry Association
Joint Comments of:
  Arizona Board of Regents for Arizona State University
  Arizona Board of Regents for the University of Arizona
  Ball State University
  Boston Catholic Television Center, Inc.
  Detroit Educational Television Foundation
  Educational Television Association of Metropolitan Cleveland
  Maryland Public Broadcasting Commission
  Mohawk-Hudson Council on Educational Television, Inc.
  New Jersey Public Broadcasting Authority
  Santa Clara County Board of Education
  The Public Broadcasting Foundation of Northwest Ohio
  University of North Carolina
  Western New York Public Broadcasting Association
  WHYY, Inc.
  WJCT, Inc.
The Puerto Rican Legal Defense and Education Fund, Inc.
The Ohio State University
University of the District of Columbia
San Diego State University
League of United Latin American Citizens
The University of California
National Association of State Universities and Land Grant Colleges
Delta College
Iowa State University of Science and Technology
Tarrant County Junior College District
The University of Wisconsin System
The Curators of the University of Missouri
WGBH Educational Foundation
The Corporation for Public Broadcasting
The Regents of the University of Colorado
The George Mason University Foundation, Inc.
National Instructional Telecommunications Council
The Greater Cleveland Hospital Association of Cleveland, Ohio
Joint Comments of:
  Media Access Project
  Telecommunications Research and Action Center
The Ohio Educational Broadcasting Network Commission
Hispanic Information and Telecommunciations Network
Hampton Roads Educational Telecommunications Association, Inc.
California State University
Joint Comments of:
  Pennsylvania Hospital Television Network
  Hospital Council of Western Pennsylvania
Dr. Henry R. McCarty, Education & Telec. Consultant
WBGU-TV in Bowling Green, OH
Moraine Valley Community College
John H. Harland, Company
University of Louisville
Council on Ministries
L. Wade Milligan
Abdullah E. Najjar
University of South Florida
Western Kentucky University
University of Georgia
California State University, Long Beach
Massachusetts Corporation for Educational Telecommunications
Kansas City Area Hospital Association
Pennsylvania State University
University of Alabama
University of Kentucky
College of the Virgin Islands
Dallas-Fort Worth Hospital Council
University of Connecticut
Rust College

Mr. & Mrs. Wade Shuman

Late Comments submitted in response to the *Further Notice of Proposed Rulemaking* in MM Docket No. 83-523 and considered were filed by:

University of California, San Diego
Rutgers, the State University of New Jersey
California State University, Los Angeles
Michigan State University
Sangamon State University
National Puerto Rican Coalition, Inc.
New Mexico State University
Ball State University

Appendix B

Parts 74 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Section 74.15 is amended by revising paragraph (e) as follows:

§ 74.15 Station license period.

* * * * *

(e) Licenses for instructional television fixed stations will be issued for a period of 10 years beginning with the date of grant. An application for renewal of license (FCC Form 330-R) shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. If the prescribed deadline falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter.

3. Section 74.902 is amended by revising paragraph (d), and adding new paragraph (g), as follows:

§ 74.902 Frequency assignments.

* * * * *

(d) A licensee is limited to the assignment of no more than four channels for use in a single area of operation, all of which should be selected from the same Group listed in paragraph (a) of this section. An area of operation is defined as the area in which the use of channels by one licensee precludes their use by other licensees. Applicants shall not apply for more channels than they intend to construct within a reasonable time, simply for the purpose of reserving additional channels. The number of channels authorized to an applicant will be based on the demonstration of need for the number of channels requested. The Commission will take into consideration such factors as the amount of use of any currently assigned channels and the amount of proposed use of each channel requested, the amount of, and justification for, any repetition in the schedules, and the overall demand and availability of ITFS channels in the community. For those applicant organizations formed for the purpose of serving accredited institutional or governmental organizations, evaluation of the need will only consider service to those specified receive sites which submitted supporting documentation pursuant to § 74.932(a)(4).

* * * * *

(g) Where adjacent channel operation is proposed in any area, the preferred location of the proposed station's transmitting antenna is at the site of the adjacent channel transmitting antenna. If this is not practicable, the adjacent channel transmitting antennas should be located as close as reasonably possible.

4. Section 74.903 is amended by revising paragraphs (a) and (b) as follows:

§ 74.903 Interference.

(a) Since interference in this service will occur only when an unfavorable desired-to-undesired signal ratio exists at the antenna input terminals of the affected receiver, the directive properties of receiving antennas can be used to minimize the hazard of such interference. Interference may also be controlled through the use of directive transmitting antennas, geometric arrangement of transmitters and receivers, and the use of the minimum power required to provide the needed service. Harmful interference will be considered present when the reference receiving antenna is oriented to receive the maximum desired signal, and a free space calculation determines that the desired-to-undesired signal ratio is less than the value specified for the respective channel under consideration.

(1) Cochannel interference is defined as the ratio of the desired signal to the undesired signal, at the antenna input terminals of the affected receiver, when the ratio is less than 45 dB.

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the antenna input terminals of the affected receiver, when the ratio is less than 0 dB, except in cases where the stations were constructed before May 26, 1983. In such cases, the desired to undesired signal ratio shall not be less than 10 dB unless these stations have been upgraded with state-of-the art transmitting facilities.

(3) For purposes of this section, all interference calculations involving receive antenna performance shall use the reference antenna characteristics shown in Figure 1, of § 74.937(a) or, in the alternative, utilize the actual pattern characteristics of the antenna in use at the receive site under study. If the actual receive antenna pattern is utilized, the applicant must submit complete details including manufacturer, model number(s), co-polar and cross-polar gain patterns, and other pertinent data.

(b) All applicants for instructional television fixed stations are expected to take full advantage of such directive antenna techniques to prevent interference to the reception of any existing operational fixed, international control station or instructional television fixed station at authorized receiving locations. Therefore, all applications for new or major changes must include an analysis of potential interference to all existing and previously proposed stations in accordance with § 74.903(a). An applicant for a new instructional television fixed station or for changes in an existing ITFS facility for a construction permit must include the following technical information with the application:

(1) An analysis of the potential for harmful cochannel interference with any authorized or previously proposed station if:

(i) The proposed transmitting antenna has an unobstructed electrical path to receive sites(s) of any other station(s) that utilize(s), or would utilize, the same frequency, or

(ii) The proposed transmitter is within 50 miles of the coordinates of any such station.

(2) An analysis of the potential for harmful adjacent channel interference with any authorized or previously proposed station(s) if the proposed transmitter is within 50 miles of the coordinates of any other station(s) that utilize(s), or would utilize, an adjacent channel frequency.

(3) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 35 miles of the border.

(4) In lieu of the interference analyses required by paragraphs (b)(1) and (b)(2) of this Section for any authorized or previously proposed station(s), an applicant may submit a statement(s) from the affected ITFS licensee(s) or permittee(s) that any resulting interference is acceptable.

(c) * * *

5. Section 74.910 is added as follows:

§ 74.910 Part 73 application requirements pertaining to ITFS stations.

The following rules are applicable to ITFS stations.

Sec.
73.3500 Application and report forms.
73.3511 Applications required.
73.3512 Where to file; number of copies.
73.3513 Signing in applications.
73.3514 Content of applications.
73.3517 Contingent applications.
73.3519 Repetitious applications.
73.3533 Application for construction permit or modification of construction permit.
73.3534 Application for extension of construction permit or for construction permit to replace expired construction permit.
73.3536 Application for license to cover construction permit.
73.3542 Application for temporary or emergency authorization.
73.3561 Staff consideration of applications requiring Commission action.
73.3562 Staff consideration of applications not requiring action by the Commission.
73.3564 (a), (b) Acceptance of applications.
73.3566 Defective applications.
73.3568 Dismissal of applications.
73.3587 Procedure for filing objections.
73.3598 Period of construction.
73.3599 Forfeiture of construction permit.

The applicability of other rules in Part 73, where appropriate, is not precluded by this section.

6. Section 74.911 is added as follows:

§ 74.911 Processing of ITFS station applications.

(a) Application for ITFS stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. These applications are subject to the provisions of paragraph (c) of this section. A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another, or increase power. However, the Commission may, within 15 days after the acceptance of an application, or 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change, and subject to the provisions of paragraph (c) of this section.

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this Section, or result in a situation where the original party or parties to the application do not retain control of the applicant as originally filed. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Applications for ITFS stations will be processed as nearly as possible in the order in which they are filed. In order that those applications which are mutually exclusive may be grouped and fixed for processing, the Commission will periodically release a public notice listing applications for new facilities or major modifications which have been accepted for filing and announcing a date 60 days after its release on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications, petitions to deny the listed applications, and major amendments to the listed applications must be filed. A second Public Notice be released, listing applications filed in response to the initial Public Notice, providing 30 days after its release to file petitions to deny against the listed applications or to make minor amendments.

(d) Those applications, other than mutually exclusive applications, which upon examination meet other pertinent requirements and would serve the public interest, convenience and necessity will be granted. Mutually exclusive applications will be processed pursuant to the provisions in § 74.913.

7. Section 74.912 is added as follows:

§ 74.912 Petitions to deny.

(a) Any party in interest may file with the Commission a petition to deny any application for new facilities or major changes in the facilities of authorized stations, provided such petitions are filed by the date established pursuant to the cut-off provisions of § 74.911(c). In the case of all other applications, except those excluded under section 309(c) of the Communications Act of 1934, as amended, petitions to deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, petitions to deny may be filed after the issuance of a public notice of acceptance for filing of the applications and up until the first day of the last full calendar month of the expiring license term.

(b) The applicant file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 of this chapter.

(c) Only petitions to deny filed against a tentative selectee (§ 74.913) will be considered. If the petition does not present substantial and material questions of fact warranting a hearing, the petition will be denied and the tentative selectee will be granted a license where, upon examination, the Mass Media Bureau finds that other pertinent requirements have been met and the public interest, convenience and necessity would be served. Where necessary, the points of the application will be modified to comport with any findings made as a result of the review. In the event that the tentative selectee's application is denied or its point total reduced, the point system process will be repeated, where necessary, to determine the tentative selectee or applicants qualifying for the random tie-breaker. If, upon examination, a substantial and material question of fact is found and the Bureau is unable to find that the public interest, convenience and necessity will be served by granting the application of the tentative selectee pursuant to the point system, its application will be designated for hearing pursuant to section 309 of the Communications Act of 1934, as amended. Petitions for reconsideration, motions to stay, or applications for review may be submitted at the time the Bureau grants or denies the application of the tentative selectee pursuant to the filing periods specified in § 1.45 of this chapter.

8. Section 74.913 is added as follows:

§ 74.913 Selection procedure for mutually exclusive ITFS applications.

(a) If timely filed ITFS applications are determined to be mutually exclusive, such applications will be processed and assessed points to determine the tentative selectee for the particular channels. The tentative selectee will be the applicant with the highest point total under the procedure set forth in this section, unless the provisions of paragraph (c) of this section apply, and will be awarded the requested channels if the Commission concludes that such an award will serve the public interest, convenience and necessity.

(b) Each application will be awarded a predetermined number of points under the criteria listed:

(1) Four points for applicants that are "local," as defined in § 74.932, n.1.

(2) Three points for accredited schools, educational institutions, or their governing bodies applying within their jurisdiction;

(3) Two points for applicants whose request, if granted, would result in the acquisition of four or fewer ITFS channels by that applicant;

(4) One point for a proposed weekly schedule of twenty-one or more average hours per channel per week of formal educational programming (§ 74.931(a)), or of forty-one or more average hours per channel per week of other ITFS programming; two points for forty-one or more average hours per channel per week of formal educational programming, or for twenty-one or more average hours per channel per week of formal educational programming plus forty-one or more average hours per channel per week of other ITFS programming.

(5) One point for an existing E or F channel licensee seeking to relocate and showing an established need for an expanded service that cannot be accommodated on its grandfathered E or F facilities. The applicant must submit a specific request and adequate supporting documentation.

(c) If the best qualified (highest scoring) two or more applicants have the same point accumulation, the tentative selectee will be determined through a tie-breaker mechanism.

(d) The tie-breaker will use a mechanical random-selection process, under the direction of the Secretary's office, in which each qualifying applicant has an equal chance.

Note 1.—Average hours per channel per week are determined by totaling the number of scheduled hours per week of programming between 8:00 a.m and 10:00 p.m. Monday through Saturday in the subject category, and dividing that total by the number of channels.

9. Section 74.931 is amended by revising paragraphs (a), (b) and (e) and by adding note 1 as follows:

§ 74.931 Purpose and permissible service.

(a) Instructional television fixed stations are intended primarily to provide a formal educational and cultural development, in aural and visual form, to students enrolled in accredited public and private schools, colleges and universities. Every channel authorized must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools.

(1) All applicants that do not list accredited schools as receive sites must name the school(s) and the degree(s) or diploma(s) for which the formal programming will be offered and describe the administration of the course(s). They must submit documentation, written or signed by the authorities responsible for the schools' curricula, verifying each of these points.

(b) Such stations may also be used for the additional purpose of transmitting other visual and aural educational, instructional and cultural material to selected receiving locations, including in-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors.

* * * * *

(e) A licensee may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a), (b), (c) and (d) of this section, provided it preserves at least 40 hours per week, including at least 6 hours per weekday (Monday through Friday), excluding holidays and vacation days, for ITFS purposes on that channel; and at least 20 hours per week of the preserved time on each channel must be used for ITFS programming, including at least 3 hours per weekday, excluding holidays and vacation days. This preservation may consist of airtime strictly reserved for ITFS use and not used for non-ITFS programming, or, of time used for non-ITFS programming but subject to ready recapture by the licensee for ITFS use with no economic or operational detriment to the licensee. Only ITFS programming and preserved airtime scheduled between 8:00 a.m. and 10:00 p.m., Monday through Saturday, will qualify to meet this requirement. All of the capacity available on any subsidiary channel of any authorized channel may be used for the transmission of material to be used by others. When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation. A licensee operating as a common carrier is required to apply for the appropriate authorization and to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is a common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion. Leasing activity may not cause unacceptable interference to cochannel and adjacent channel operations.

* * * * *

Note 1.—Any medical science courses offered by hospitals to their staffs as training for state licenses will qualify as an essential use of an ITFS channel.

10. Section 74.932 is amended by revising paragraph (a) and by adding notes 1–3 as follows:

§ 74.932 Eligibility and licensing requirements.

(a) A license for an instructional television fixed station will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations, and which is otherwise qualified under the statutory provisions of the Communications Act of 1934, as amended.

(1) Only local applicants can file applications and be considered for licenses during the local priority period, which extends for one year from the effective date of these rules.

(i) During this local priority period, the existing of any outstanding application for ITFS channels by a nonlocal applicant will not prevent the filing and/or grant of an application by a local entity for those same channels.

(2) A publicly supported educational institution must be accredited by the appropriate state department of education.

(3) A privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations.

(4) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating they will receive and use the applicant's formal education programing. The applicant's educational background and experience and history of educational service may also be considered in determining its eligibility.

(5) Nonlocal applicants, in addition to submitting letters from proposed receive sites, must demonstrate the establishment of a local program committee in each community where they apply.

* * * * *

Note 1.—A "local" licensee (or applicant) is an institution or organization that is

physically located in the community, or metropolitan area, where service is proposed. For a college or university, this would include any area where it has a campus. An educational organization will generally be regarded as "local" if the address of the organization's headquarters is located within the area where the facility is sought. An entity created by a state or local government for the purpose of serving formal educational needs will be considered "local" throughout the area within the government's jurisdiction over which its authority is intended to extend. An educational entity located within a state and created by affiliated educational institutions within that state, including hospitals, will be considered "local" in those areas where the member institutions are located.

Note 2.—Documentation from proposed receive sites which are to establish the eligibility of an entity not serving its own enrolled students for credit should be in letter form, written and signed by an administrator or authority who is responsible for the receive site's curriculum planning. The administrator must indicate that the applicant's program offerings have been viewed and that such programming will be incorporated in the site's curriculum. The letter should discuss the types of programming and hours per week of formal and informal programming expected to be used and the site's involvement in the planning, scheduling and production of programming. If other levels of authority must be obtained before a firm commitment to utilize the service can be made, the nature and extent of such additional authorization(s) must be provided.

Note 3.—Letters submitted on behalf of a nonlocal entity must confirm that a member of the receive site's staff will serve on the local program committee and demonstrate a recognition of the composition and power of the committee. The letter should show that the staff member will aid in the selection, scheduling and production of the programming received over the system.

11. Section 74.934 is amended by revising paragraphs (a)(1) and (a)(2); by removing paragraphs (a)(3) and (a)(4); and redesignating (a)(5) as (a)(3) as follows:

§ 74.934 Unattended operation.

(a) * * *

(1) The transmitter shall be equipped with automatic circuits which will permit it to radiate only when a signal on the channel which it is intended to retransmit is present at the input terminals of the apparatus. The automatic circuit may be provided with a reasonable time-delay factor to prevent the transmitter from being turned off during momentary failures of the incoming signal. The station, where the transmitter is installed, must be designed, constructed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(2) The transmitter shall accomplish retransmission of the incoming signal by either linear amplification, heterodyne frequency conversion or by modulating the transmitter with the demodulated incoming signal. In cases where frequency conversion to a different channel is employed, the electrical characteristics of the incoming signal when retransmitted shall not be significantly altered except as to frequency and amplitude. In cases where linear amplification is employed, the electrical characteristics shall not be significantly altered except as to amplitude when retransmitted. Care shall be taken in the design and installation of an unattended relay station to prevent instability which could result in spurious or other unwanted radiation.

(3) * * *

* * * * *

12. Section 74.937 is amended by revising paragraph (a) as follows:

§ 74.937 Antennas.

(a) In order to minimize the hazard of harmful interference from other stations, directive receiving antennas should be used at all receiving locations. The choice of receiving antennas is left to the discretion of the licensee. However, for the purpose of interference calculations, the general characteristics of the reference receiving antenna shown in Figure 1 of this section (*i.e.*, a 2-foot parabolic reflector antenna) are assumed to be used in accordance with the provisions of § 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use at the receive site. Licensees may install receiving antennas with general characteristics superior to those of the reference receive antenna. Nevertheless, should interference occur and it can be demonstrated by an applicant that the existing antenna at the receive site is inappropriate, a more suitable yet practical receiving antenna should be installed. In such cases, the modification of the receive site will be in the discretion, and will be the responsibility, of the licensee serving the site.

13. Section 74.951 is amended by adding a new paragraph (h) as follows:

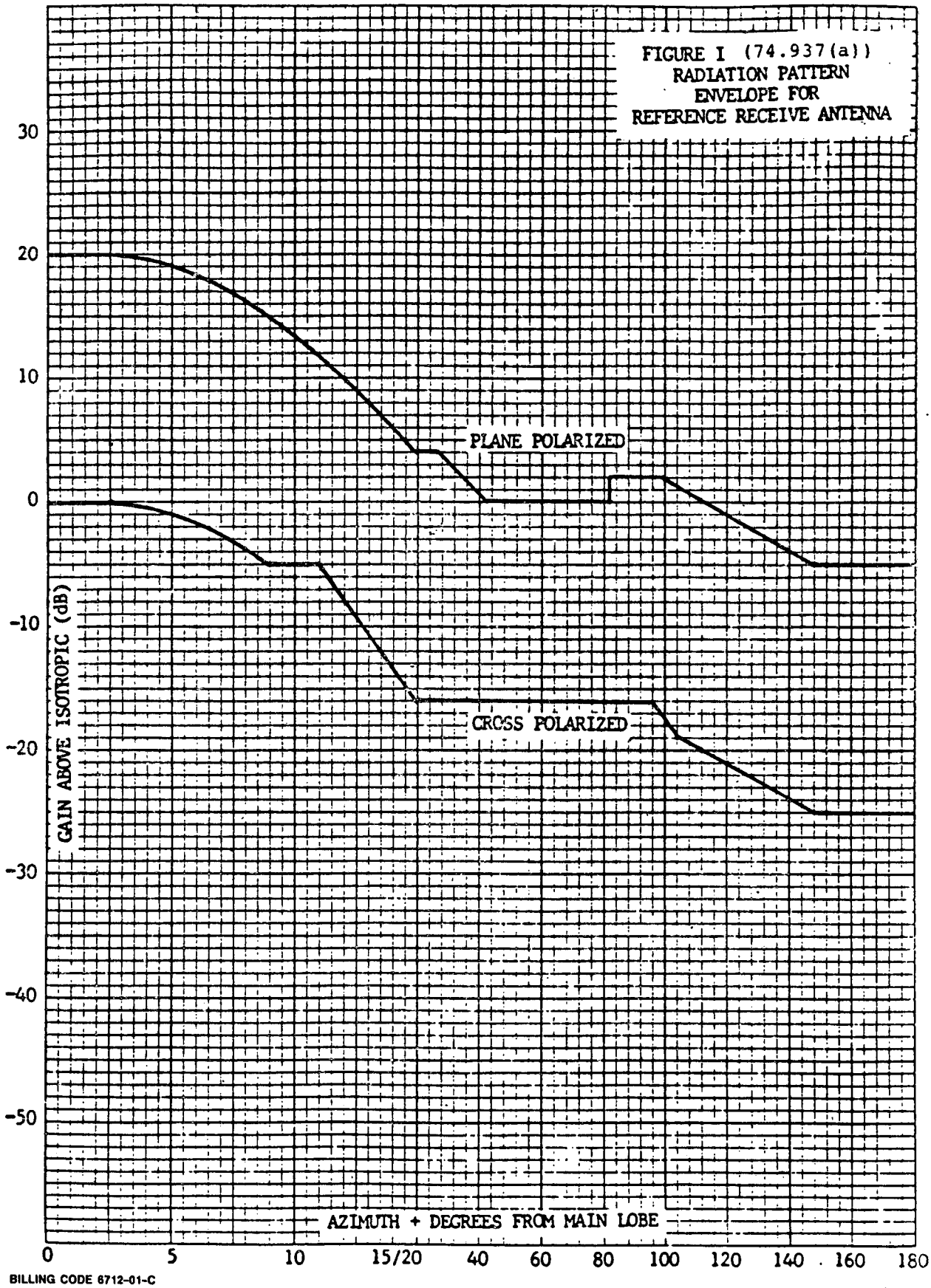
§ 74.951 Modification of transmission systems.

* * * * *

(h) Any addition of receiving locations or to modify such a location to a receive and response station.

BILLING CODE 6712-01-M

APPENDIX B



BILLING CODE 6712-01-C

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE RADIO SERVICE

1. The authority citation for Part 94 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Section 94.65 is amended by revising paragraph (f) and footnotes 1 and 2 as follows:

§ 94.65 Frequencies.

* * * * *

(f) 2500–2690 MHz: Operational-fixed stations may be authorized to operate in this band on the specific channels indicated below:

Frequencies (MHz)
2650–2656 [1]
2662–2668 [1]
2674–2680 [1]
2686.9375 [1 2]
2687.9375 [1 2]
2688.9375 [1 2]

Such assignments are subject to the condition that all stations licensed on these channels must comply with the technical standards set forth in § 94.95. Operational-fixed stations authorized in this band as of July 16, 1971, which do not comply with the above provisions may continue to operate on the frequencies assigned on a coequal basis with other stations operating in accordance with the Table of Frequency allocations. Requests for subsequent license renewals or modifications for such stations will be considered. However, expansion of systems comprised of such stations will not be permitted, except on frequencies allocated under this part.

* * * * *

3. Section 94.67 is amended by revising paragraph (a) footnote 2 as follows:

§ 94.67 Frequency tolerance.

* * * * *

[2] In accordance with the technical standards contained in § 94.95 when A5 emission is to be employed. Otherwise, the frequency tolerance shall be 0.0025%.

* * * * *

4. Section 94.71 is amended by revising paragraph (b) footnote 3 as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

[1] Pursuant to § 94.69, stations licensed on these channels may employ any type of emission consistent with efficient use of the spectrum and good engineering practice, except that type B, damped-wave emission will not be authorized.

[2] Response frequencies: When authorized, they may be paired respectively with the channels 2650–2656, 2662–2668, and 2674–2680 MHz.

[3] Assignments for applications proposing to employ amplitude modulation (A5) for the transmission of a video signal will be made in accordance with § 94.95. For applications not proposing to employ a video signal, the standards contained in paragraph (c) below shall apply.

* * * * *

5. Section 94.75 is amended by revising paragraph (b) footnote 2 as follows:

§ 94.75 Antenna limitations.

* * * * *

[2] Except for 2,150–2,160 MHz, where the maximum beamwidth is 360 degrees and except for frequencies in the 2,500–2,690 MHz band where standards contained in § 94.95 apply.

* * * * *

6. Section 94.92 is amended by revising footnotes 6 and 9 as follows:

§ 94.92 Technical standards for stations authorized prior to July 1, 1976.

* * * * *

[6] This frequency band is available only for operational-fixed stations employing television transmissions. The transmitting equipment for such stations shall meet the technical standards prescribed in § 94.95. Use of these frequencies in the industrial radio service is secondary to stations in the public safety radio service. Operational-fixed stations authorized in the band 2500–2690 MHz prior to July 16, 1971, may continue to be authorized on a coequal basis to other stations operating in accordance with the Table of Frequency allocations. No expansion of existing systems on frequencies not allocated to this service will be permitted. Additional stations or new assignments may be authorized only in accordance with the provisions of this section.

* * * * *

[9] Response frequencies. When authorized they are to be paired respectively with the bands 2650–2656, 2662–2668, and 2674–2680 MHz, and used in accordance with the technical standards prescribed in § 94.95.

7. A new § 94.95 is added to Subpart C as follows:

§ 94.95 Special provisions for operational-fixed stations in the 2500–2690 MHz band.

Notwithstanding any contrary provisions in this part, the channels 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz, and the corresponding response channels 2686.9375 MHz, 2687.9375 MHz, and 2688.9375 MHz may be authorized for operational-fixed service use subject to the following technical standards:

(a) *Emissions and bandwidth.* The average power of radio frequency harmonics of the visual and aural carriers, measured at the output terminals of the transmitter, shall be attenuated no less than 60 dB below the peak visual output power within the assigned channel. All other emissions appearing on frequencies more than 3 MHz above or below the upper and lower edges, respectively, of the assigned channel shall be attenuated no less than: (1) 30 dB for transmitters rated at less than 10 watts visual peak power output. (2) 40 dB for transmitters rated at 10 watts or more visual peak power output. Should interference occur as a result of emissions outside the assigned channel, greater attenuation may be required.

(b) *Antennas.* (1) In order to minimize the hazard of harmful interference from other stations, directive receiving antennas should be used at all receiving points. The choice of receiving antennas is left to the discretion of the licensee. However, should interference occur and it can be demonstrated that such interference could be eliminated through the use of a more suitable yet practical directive receiving antenna, the licensee of the station causing the interference is absolved of the responsibility of correcting the interference condition. (2) Directive transmitting antennas shall be used whenever feasible so as to minimize interference to other licensees. The radiation pattern shall be designed to minimize radiation in directions where no reception is intended. When a station is used for point-to-point service, an appropriate directional antenna must be used. (3) In selecting a location for the transmitting antenna, it should be borne in mind that interference to the reception of its transmission is most likely to come from the direction in which receiving antennas must be aimed to receive its transmissions. Whenever possible the location should be chosen so that the receiving antennas in its system are aimed in directions from which interfering signals are least likely to come. (4) The use of elevated receiving antennas is preferable to the use of elevated transmitting antennas or greater power to provide the desired service. (5) The use of vertical or horizontal plane polarization or right-hand or left-hand rotating (circular) polarization may be used to minimize the hazard of harmful interference between systems. The Commission reserves the right to specify the polarization to be used. (6) The power gain compared to an isotropic antennas and the directive properties of the transmitting and receiving antennas proposed to be employed, as well as the geometric distribution of the transmitting and receiving point, shall be supplied with each application for a new fixed station or for changes in the antenna facilities of an existing station.

(c) *Transmission standards.* Stations in this band are not required to

attenuate the lower sideband by any specified amount unless interference to the reception of another station results from emissions in excess of those permitted television broadcast stations, in which case the attenuation specified in § 73.687(a)(3) of this chapter shall apply. However, in no case shall the amplitude of any lower sideband component exceed the amplitude of the upper sideband component having the highest amplitude.

(d) *Acceptability of equipment for licensing.* (1) Transmitters employed in this service must have type acceptance by the Commission. Type acceptance may be given under either of the following conditions: (i) A transmitter or translator may be type accepted upon the request of any manufacturer of such equipment built in quantity by following the type acceptance procedure set forth in Part 2 of this chapter, provided that the date and information submitted indicate that the equipment meets all technical requirements applicable to this service. If accepted, such transmitting equipment will be included on the Commission's "Radio Equipment List, Equipment Acceptable for Licensing." Applicants specifying equipment included on such a list need not submit detailed descriptions and diagrams where the correct type number is specified, provided that the equipment proposed is identical with the accepted. Copies of the Radio Equipment List are available for inspection at the Commission's office in Washington, D.C., and at each of its field offices. (ii) An application specifying a transmitter or translator not included on the Radio Equipment List, may be accepted upon the request of a prospective licensee submitting a complete description of the equipment, including the circuit diagram, listing of all tubes used, function of each, multiplication in each stage, plate current and voltage applied to each tube, and a description of the oscillator circuit together with any devices installed for the purpose of frequency stabilization. However, if this data has been filed with the Commission by a manufacturer in connection with a request for type acceptance, it need not be submitted with the application but may be referred to as "on file." Measurement data for type acceptance made in accordance with paragraph (d)(1)(i) of this section shall be submitted with the license application. (2) Additional rules with respect to withdrawal of type acceptance, modification of type accepted equipment, and limitations on the findings upon which type acceptance is based are set forth in Part 2 of this chapter.

(e) *Frequency tolerance.* (1) The frequency of the visual carrier shall be maintained within 60 Kilocycles of the assigned frequency at all times when the station is in operation. (2) The frequency of the aural carrier shall be maintained in accordance with the provisions of § 73.687(c)(1) of this chapter.

[FR Doc. 85-15113 Filed 6-27-85; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[APD 2800.12 CHGE 11]

General Services Administration; Service Contract Act

Correction

In FR Doc. 85-13907 beginning on page 24523 in the issue of Tuesday, June 11, 1985, make the following correction:

§ 552.222-86 [Corrected]

On page 24525, third column, in § 552.222-86, first line, "552.1006(b)(1)" should have read "522.1006(b)(1)".

BILLING CODE 1505-01-M

Board of Contract Appeals

48 CFR Part 6101

[Amdt BOCA-1]

Rules of Procedure

AGENCY: GSA Board of Contract Appeals.

ACTION: Interim rule.

SUMMARY: This document amends the GSA Board of Contract Appeals rules of procedure which will govern proceedings before the Board in contract appeals and petitions and in protests involving procurement of automatic data processing goods and services (ADP).

DATES: Effective June 28, 1985. Written comments must be received on or before July 29, 1985.

ADDRESSES: Written comments should be submitted to James J. Regan, Chief Counsel, GSA Board of Contract Appeals, Room 7204, 18th & F Sts., NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: James J. Regan, GSA Board of Contract Appeals, (202) 566-0890.

SUPPLEMENTARY INFORMATION:

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a major rule. The General Services Administration certifies that this document will not have a significant economical effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). All forms which contain collection of information has been approved by Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). OMB approval numbers appear on each form as applicable.

List of Subjects in 48 CFR Part 6101

Government procurement.

1. In 48 CFR Part 6101 the authority citation reads as follows:

Authority: 41 U.S.C. 601-613; sec. 2713, Pub. L. 98-369, 98 Stat. 1175-1203.

2. In 48 CFR Chapter 61 an additional Table of Contents is added to read as follows.

Note.—This Table of Contents to the Rules of the GSA Board of Contract Appeals is published in its entirety for purposes of clarity and quick reference.

PART 6101—RULES OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

Sec.

6101.0 Foreword.
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Form 5—Appellant/Protester/Intervenor certificate of finality.

3. In 6101.1 (Rule 1) paragraph (b)(7) is revised to read as follows:

6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs (Rule 1).

* * * * *

(b) * * *

(7) *Permissive intervenor.* The term "permissive intervenor" means any entity that is an interested party and has proceeded with a protest of the same procurement at the GAO.

* * * * *

4. In 6101.5 (Rule 5) paragraphs (a)(2), (b)(3), (b)(4), and (d) are revised to read as follows:

6101.5 Filing cases; time limits for filing; docketing; notice of protest by contracting officer (Rule 5).

(a) * * *

(2) *Protest.* The only acceptable form for a protest is the pleading prescribed in 6101.7(b)(2), which must be filed with the Board, with a copy to the contracting officer as prescribed in 6101.3(b)(2). A protest may not be filed with the Board by an interested party who has proceeded with a protest of the same procurement at the GAO. Any other interested party or agency described in paragraph (a)(3) of this Rule 5 may participate as a party to a protest by filing a notice of intervention or a motion to intervene, as appropriate.

* * * * *

(n) * * *

(3) * * *

(i) A protest based upon alleged improprieties in any type of solicitation which are apparent before bid opening or the closing time for receipt of initial proposals shall be filed before bid opening or the closing time for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested no later than the next closing time for receipt of proposals following the incorporation; and

* * * * *

(4) *Intervention.* Any intervenor of right or intervening agency receiving notice of a protest as provided in paragraph (d) of this Rule 5 may, by intervening within 4 days after receipt of notice, participate fully as party to a protest. When such a party intervenes, it may raise at the time it files its notice or motion any new issue concerning the protested procurement, provided that the new issue is timely raised under paragraph (b)(3) of this Rule 5 and further that the notice or motion complies fully with the pertinent requirements of paragraph (a)(3) of this Rule 5. An intervening agency must also file a motion to intervene within 4 days of receipt of a notice of intervention which raises a new issue or within 4 days of receipt of an amendment to the protest which raises a new issue.

* * * * *

(d) *Notice of protest by contracting officer.* Within 1 day after receipt of a copy of the protest, the contracting officer shall give oral or written notice of the protest: to all firms solicited who appear to be affected by the protest, if sealed bids or initial offers or proposals have not been opened; to all bidders or offerors, if no award has been made and bids have been opened or the date for receipt of initial proposals has passed; or, if award has been made, to the contractor and all bidders or offerors. This notice shall be provided to an officer, a managing agent, or the individual who has signed the bid or proposal. If the procuring agency is other than the GSA, notice shall also be given to the Director, Authorizations and Management Reviews Division (XMA) or the GSA official delegating procurment authority to the agency. If the GSA is procuring on behalf of another agency, notice shall also be given by the contracting officer to that agency. If only written notice is provided under this paragraph it must be provided by means reasonably calculated to effect delivery within 1 day after the copy of the protest is received by the contracting officer. If oral notice is given, it shall be confirmed in writing or by telegram or by teletyperwriter on the same date the oral notice is provided. The contracting officer will confirm by written notification to the Board within 5 days after receipt of the protest whether the requisite notice was provided and list all persons and agencies to whom such notice was given.

5. In 6101.7 (Rule 7) paragraph (b)(2)(v) is revised, paragraph (b)(2)(vi) is removed, and paragraphs (b)(2)(vii) and (b)(2)(viii) are redesignated as paragraphs (b)(2)(vi) and (b)(2)(vii) respectively.

6101.7 Pleadings (Rule 7).

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(v) A simple, concise, and direct statement of the grounds for protest, including citations to provisions of statute, regulations, or the delegation of procurement authority that the protester alleges were violated;

(vi) Proof of the timeliness of the protest; and

(vii) If a hearing is sought to determine whether procurement authority should be suspended (suspension hearing) or to determine the merits of the protest, a specific request for such a hearing or hearings.

* * * * *

6. In 6101.13 (Rule 13) paragraph (b) is revised and paragraphs (c) (1), (2) and (5) have been revised to read as follows:

6101.13 Small claims procedures (Rule 13).

* * * * *

(b) *Election of the small claims procedure.* In any appeal in which the amount in controversy is $10,000 or less, the appellant may elect the small claims procedure.

(1) *When election must be made.* Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after filing of the notice of docketing. A late election may be made only be leave of the Board.

(2) *Tolling of time.* The Board may toll the time for processing the appeal under the small claims procedure if it determines that the appellant has not proceeded in accordance with the schedule established pursuant to paragraph (c) of this Rule 13 and the appeal cannot otherwise be resolved within 120 days after receipt of appellant's election.

(c) * * *

(1) The respondent's appeal file exhibits shall be filed either as prescribed by 6101.4(a) or no later than 15 days after the receipt of the appellant's notice of election, whichever first occurs.

(2) If the Board permits the filing of a complaint, it shall be filed either as prescribed by 6101.7(d) or no later than 15 days after receipt of the appellant's notice of election, whichever first occurs.

* * * * *

(5) The election of each party prescribed by 6101.9 (Rule 9) shall be filed no later than 30 days after the receipt of the appellant's election of the small claims procedure.

* * * * *

7. In 6101.14 (Rule 14) paragraphs (b) and (c)(5) are revised to read as follows:

6101.14 Accelerated procedure (Rule 14).

* * * * *

(b) *Election of the accelerated procedure.* In any appeal in which the amount in controversy is $50,000 or less, the appellant may elect the accelerated procedure.

(1) *When election must be made.* Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after the date the appellant receives the Board's notice of docketing. A late election may be made only by leave of the Board.

(2) *Rescission of election.* The Board may rescind the appellant's election of the accelerated procedure if it determines that the appellant has not proceeded in accordance with the schedule established pursuant to paragraph (c) of this Rule 14 and the appeal cannot otherwise be resolved within 180 days after receipt of the appellant's election.

(c) * * *

(5) The election of each party prescribed by 6101.9 (Rule 9) shall be filed no later than 60 days after receipt of the appellant's election of the accelerated procedure.

* * * * *

8. In 6101.15 (Rule 15) paragraph (a) is revised, new paragraph (c) is added, existing paragraphs (c) through (g) are redesignated as (d), (e), (f), (g) and (h), and newly redesignated paragraphs (d), (e), (f), (g), and (h) are revised to read as follows:

6101.15 General provisions governing discovery (Rule 15).

(a) *Discovery methods.* The parties may obtain discovery by one or more of the following methods.

(1) Depositions upon oral examinations or written questions;

(2) Written interrogatories;

(3) Requests for production of documents or other tangible things; and

(4) Requests for admissions.

* * * * *

(c) *Discovery limits.* The Board may limit the frequency or extent of use of the discovery methods set forth in this Rule 15 if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Unless the Board orders otherwise, the parties to an appeal may by written stipulation agree to the methods of procedures to be used in discovery, except that agreements affecting the time provided in 6101.17 (Rule 17) for responses to requests for discovery may be made only with the approval of the Board. In protests, the parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the protest and is consistent with the requirements of 6101.19(a)(3). Permissive intervenors will not be permitted full rights of discovery. When a petition has been filed, the parties may engage in discovery only to the extent ordered by the Board.

(e) *Discovery conference.* At any time after a case has been filed, and ordinarily within 6 days after the filing of a protest, upon application of a party or on its own initiative, the Board may hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.10 (Rule 10).

(f) *Protective orders; discovery objections.*

(1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(iii) That discovery be conducted with no one present except persons designated by the Board;

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way; and

(v) Such other matters as justice may require.

(2) If a party objects to a discovery request, it may file, or the Board may order it to file, a motion for a protective order with its objections and serve them on the opposing party or parties.

(g) *Failure to make or cooperate in discovery; sanctions*

(1) If a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under 6101.17 (Rule 17), after proper service of interrogatories, or (iii) to serve a written response to a request for inspection, production, and copying of any documents and things under 6101.17 (Rule 17), the party seeking discovery may move for the Board to impose appropriate sanctions under paragraph (g)(3) of this Rule 15. The failure to act as described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in paragraph (f) of this Rule 15.

(2) A party may apply to the Board for an order compelling discovery when another party refuses or obstructs discovery. If a motion to compel discovery is denied in whole or in part, the Board may make a protective order of the type listed in paragraph (f) of this Rule 15.

(3) When the Board has entered an order to provide or permit discovery, and there is a failure to comply with that order, the Board may make such orders with regard to the failure as are just, including the following:

(i) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(ii) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence; and

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed.

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provision of 6101.20 (Rule 20).

9. In 6101.21 (Rule 21) paragraph (a) is revised to read as follows:

6101.21 Hearing procedures (Rule 21).

(a) *Nature and conduct of hearings.* All hearings on the merits of cases shall be open to the public and conducted as far as is convenient in regular hearing rooms. All other acts or proceedings may be done or conducted by the Board either in its offices or at other places.

* * * * *

10. In 6101.35 (Rule 35) paragraph (a)(1) is revised to read as follows:

6101.35 Award of protest costs; amount of costs allowed (Rule 35).

(a) * * *

(1) Filing and pursuing the protest, including reasonable attorney fees; and

* * * * *

11. Section 6101.39 (Rule 39) is revised to read as follows:

6101.39 Seal of the Board (Rule 39).

The Seal of the Board shall be a circular boss, the center portion of which shall depict the Seal of the General Services Administration. The outer margin of the seal shall bear the legend "Board of Contract Appeals". The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

12. In 48 CFR Chapter 61 the Appendix is revised to incorporate the forms in their entirety to read as follows:

Appendix: Form Nos. 1–5
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Form 1—Notice of Appeal, GSA form 2465
Form 2—Notice of Appearance
Form 3—Subpoena, GSA form 9534
Form 4—Government Certificate of Finality
Form 5—Appellant/Protester/Intervenor Certificate of Finality

BILLING CODE 4701-27-M

Form 1

NOTICE OF APPEAL	DATE	OMB APPROVAL NO 3090-0221

TO: Board of Contract Appeals
General Services Administration
Washington, DC 20405

I/We hereby appeal the final decision of _____ (Name of Contracting Officer), issued _____ (Date)

in connection with a dispute under Contract No. _____. This contract was awarded _____ (Date)

for _____ (Type of commodity, service, or construction)

by _____ (Name of agency and organizational unit) , _____ (City and State)

1. DESCRIBE THE NATURE OF THE DISPUTE INVOLVED IN THE FINAL DECISION AND ANY OTHER CIRCUMSTANCES GIVING RISE TO THIS APPEAL:

2. DESCRIBE THE RELIEF WHICH YOU SEEK INCLUDING AN ESTIMATE OF THE AMOUNT OF MONEY IN CONTROVERSY, IF ANY, AND IF KNOWN:

APPELLANT			ATTORNEY FOR APPELLANT		
NAME			NAME		
TITLE			FIRM		
STREET			STREET		
CITY			CITY		
STATE	ZIP CODE	TELEPHONE NUMBER ( )	STATE	ZIP CODE	TELEPHONE NUMBER ( )
APPELLANT'S SIGNATURE			ATTORNEY'S SIGNATURE		

Board of Contract Appeals

General Services Administration
Washington DC 20405

Form 2

_____ : GSBCA No. _____.
_____ :
_____ :
Contract/Solicitation No. :

_____

NOTICE OF APPEARANCE

To: _____
Administrative Judge
Board of Contract Appeals

Please enter my appearance as counsel for/representative of _____ in the above-captioned case.

_____ _____
(Name) Date

_____
(Title)

_____
(Address)

_____
(Telephone)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance was mailed postage paid/delivered this _____ day of _____, 19___, to _____.

_____
(Signature)

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

Form 3

Upon written request to this Board by you or by a party to this case, which request should be made within 10 days after service but in any event no later than the time specified in the subpoena for attendance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things.

_____ (Administrative Judge)	_____ (Date)
_____ (Representative for Appellant/Petitioner/Protester/Intervenor)	_____ (Representative for Respondent
_____ (Address)	_____ (Address)
_____	_____
_____	_____
_____ (Telephone Number)	_____ (Telephone Number)
_____ (Date)	_____ (Date)

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h ___ and tendering to h ___ the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, 19___, at _____.

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 ___.

_____

NOTE: Affidavit not required if service is made by U.S. Marshall or Deputy. Service may also be made by any other person who is not a party and is not less than 18 years of age. Service shall be made by personally delivering a copy to the person named and tendering the fees for one day's attendance and the mileage allowed by law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

Board of Contract Appeals

General Services Administration
Washington DC 20405

Form 4

_____ : GSBCA No. _____
_____ :
_____ :
_____ :
_____ :
Contract/Solicitation :
No. _____ :

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $_____.

C. Agency address (regional office if other than central office):

D. Agency certification

_____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit or to the United States Claims Court (if applicable).

Government Agency

_____ By _____
Date Signature and Title

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

Board of Contract Appeals

General Services Administration
Washington DC 20405

Form 5

_____ : GSBCA No. _____
_____ :
_____ :
_____ :
:
Contract/Solicitation :
No. _____ :

APPELLANT/PROTESTER/INTERVENOR CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Protester/Intervenor certification

_____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at this Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit or to the United States Claims Court (if applicable); and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Appellant/Protester/Intervenor

_____ By _____
Date (Signature and Title)

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

Dated: June 3, 1985.

Leonard J. Suchanek,

Chief Judge and Chairman, Board of Contract Appeals.

[FR Doc. 85-15351 Filed 6-27-85; 8:45 am]

BILLING CODE 4701-27-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

The Milwaukee Road, Inc., Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 2 to revised service order No. 1500.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes The Milwaukee Road, Inc. provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carrier to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 11:59 p.m., June 30, 1985, and continuing in effect until 11:59 p.m., August 31, 1985, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M.F. Clemens, Jr., (202) 275–7840 or 274–1559.

List of Subjects 49 CFR Part 1033

Railroads.

Decided: June 24, 1985.

Upon further consideration of Revised Service Order No. 1500 (50 FR 11366 and 50 FR 21264) and good cause appearing therefor:

§ 1033.1500 [Amended]

It is ordered, § 1033.1500 *the Milwaukee Road, Inc. authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Revised Service Order No. 1500 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., August 31, 1985, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., June 30, 1985.

This action is taken under the authority of 49 U.S.C. 10304–10305 and section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Secretary

[FR Doc. 85–15551 Filed 6–27–85; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Part 1033

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 2 to fifteenth revised service order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 11:59 p.m., June 30, 1985, and continuing in effect until 11:59 p.m., August 31, 1985, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M F. Clemens, Jr., (202) 275–7840 or 275–1559.

List of Subjects in 49 CFR Part 1033

Railroads.

Decided: June 24, 1985.

Upon further consideration of Fifteenth Revised Service Order No. 1474 (50 FR 2676 and 50 FR 11368) and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, § 1033.1474 *Various Railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee),* Fifteen the Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

* * * * *

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., August 31, 1985, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., June 30, 1985.

This action is taken under the authority of 49 U.S.C. 10304–10305 and section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Secretary.

[FR Doc. 85–15551 Filed 6–27–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 41046–4171]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum yield (OY) of sablefish in the Western Regulatory Area of the Gulf of Alaska will be

achieved on June 25, 1985, and that a closure is necessary to protect sablefish stocks in this regulatory area. This closure is a management measure intended to conserve the sablefish resource.

DATES: This notice is effective from noon, Alaska Daylight Time, June 25, 1985, until midnight, Alaska Standard Time, December 31, 1985. Public comments are invited on this closure until July 11, 1985.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of fishing seasons and areas. Implementing rules at § 672.20 specify that these adjustments will be made by the Secretary of Commerce (Secretary) under criteria set out in that section.

Three regulatory areas of the Gulf of Alaska are defined in § 672.2 for the purpose of better managing sablefish. One of these is the Western Regulatory Area. The OY for sablefish in this area is 1,670 metric tons (mt). Fishing effort increased significantly in this area following the closure of the adjacent Central Regulatory Area on May 23, 1985 (50 FR 21852, May 29, 1985). As many as 20 vessels have conducted a directed fishery for sablefish with the known landed catch reported as of June 17, 1985, totaling 1,585 mt. Based on the known sablefish catch and estimates of sablefish caught since June 10 but not yet landed, the Regional Director has determined that the optimum yield will be reached at noon on June 25, 1985.

In accordance with § 672.20(b), the Secretary issues this closure under § 672.22(a), prohibiting further fishing for sablefish in the Western Regulatory Area until midnight, December 31, 1985. This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address above for 15 days following its effective date. In view of any comments received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this closure's continued effect, modifying it, or rescinding it.

Other Matters

The sablefish stock in the Western Regulatory Area will be subject to harm unless this closure takes effect promptly. The Secretary therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is authorized by §§ 672.20 and 672.22, and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 25, 1985.

Carmen J. Blondin,

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

[FR Doc. 85–15599 Filed 6–25–85; 4:05 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 50, No. 125
Friday, June 28, 1985

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

Agricultural Stabilization and Conservation Service

7 CFR Part 736

[Amdt. No. 1]

Grain Warehouses; Inspection Fees

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Stabilization and Conservation Service (ASCS) proposes to amend the regulations for federally licensed grain warehouses (7 CFR Part 736).

The intended effect of this rule is to: (1) Allow for examination of a warehouse upon the request of the license holder and provide a fee for that examination; (2) provide for an examination after license suspension and provide a fee therefor; and (3) adjust fees charged for examinations to provide for an additional fee when a warehouseman has multiple warehouse locations under a single license. This rule is promulgated under the authority of the United States Warehouse Act as amended.

DATE: Comments should be received on or before July 29, 1985 to assure consideration.

ADDRESS: Written comments on this proposed rule should be sent to Paul W. King, Director, Warehouse Division, Room 5968-South Agriculture Building, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Department of Agriculture, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry J. Wishmire, 202–475–4028.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in 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 February 17, 1986.

Merrill D. Marxman, Deputy Administrator for Commodity Operations, ASCS, has determined that this action: (1) 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 government, or a geographic 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) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

In compliance with 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96–511, the information collection requirements, if any, resulting from these proposed revisions—specifically reporting requirements—have been submitted to the Office of Management and Budget for review. Comments concerning the information collection requirements contained in these proposed rules may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, Telephone (202) 395–7340.

Merrill D. Marxman, Deputy Administrator for Commodity Operations, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities and imposes no additional economic costs on small entities. Therefore, no regulatory flexibility analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. In addition, it will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required and none was prepared.

This action will not have a significant impact specifically upon area and community development, therefore review as established by Executive Order 12291 (February 17, 1981) was not used to assure that units of local government are informed of this action.

Background

The U.S. Warehouse Act (Act) (7 U.S.C. 241 *et seq.*) provides for the licensing of warehousemen who apply to the Secretary of Agriculture and meet statutory and regulatory standards. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title to be used as collateral for loans thereby facilitating trading in interstate commerce of agricultural commodities; and (3) set and maintain a standard for sound warehouse operations.

These objectives have been attained by research and development of basic standards for good warehousing practices; original and continuing examinations of applicants and licensees; financial and bonding requirements; and licensing and regulatory requirements.

Throughout its more than 60 years of operation, the Department's supervision of licensees has focused on original and unannounced continuing examinations. The original examination is designed to determine whether an applicant meets the standards for licensing. The continuing unannounced examination is to determine whether the licensee continues to meet these standards and is capable of fulfilling obligations he may have assumed as a licensee. The cost of the original examination is paid by the warehouseman in accordance with fees prescribed in 7 CFR 736.58(a). The cost of the continuing examination(s) is paid by the warehouseman as part of the annual fee prescribed by 7 CFR 736.58 (b)(1). It is proposed that the manner of computing the annual fee be modified.

A grain warehouseman sometimes needs, and would receive benefits from, a planned examination of his licensed warehouse at a time other than the unannounced examinations. Some of these needs are to: (1) Meet requests or requirements of depositors or lending agencies, (2) determine the quantity or condition of grain in store, (3) determine whether the quantity and quality of grain in storage is sufficient to satisfy outstanding storage obligations, or (4) have an independent physical inventory

coinciding with the warehouseman's end of fiscal year audit.

To accommodate these needs, it is proposed to provide for the examination of a licensed grain warehouse at the warehouseman's request and to prescribe fees for this service. Under this proposal, a warehouseman would submit a written request for such an examination stating the purposes of the examination and the warehouseman's agreement to pay the prescribed fee. The Department would conduct the examination, if it did not adversely affect its ability to meet program commitments.

Section 10 of the Act requires that the fees charged for examinations of warehouses shall be reasonable and "shall cover, as nearly as practicable, the costs of providing such services * * * including the administrative and supervisory costs."

The costs of providing the proposed examination would be comparable to the costs of providing an unannounced continuing examination. The costs of providing a continuing examination account for approximately 75 percent of the annual warehouse fee assessed to a warehouse which does not have a Uniform Grain Storage Agreement (UGSA), with Commodity Credit Corporation (CCC), with the remaining 25 percent consisting of the costs of financial review and analysis, licensing and bonding, research and development, and other services. The annual warehouse fee for a warehouse having a UGSA is lower because the CCC pays a portion of the costs.

The Secretary proposes to prescribe fees for the proposed examination which would be equal to 75 percent of the annual fees under 7 CFR 736.58(b) applicable to warehouses not having a UGSA. Because the proposed examination would not benefit CCC, CCC will not pay a portion of the costs of the proposed examination.

Deficiencies in operation and violations of the regulations are often disclosed by the unannounced examinations. The Department directs the warehouseman's attention to these items by personal contact and written advice. The warehouseman's neglect or failure to correct these deficiencies can result in a license suspension. When the deficiencies are corrected, the warehouseman may apply for reinstatement of his license. A reexamination of the warehouse is required to assure that corrections have been made.

This examination would be much the same as a planned examination and the costs of making the reinstatement examination would be comparable to the costs of providing the unannounced continuing compliance examination. However, in the reinstatement examination unlike the planned examination additional time must be devoted to verify and report on the correction of the deficiencies which resulted in the suspension, thus an increased fee would be required to cover the costs incurred. Therefore, the proposed charge for the reinstatement examination after the suspension is determined to have been justified is at a rate of 100 percent of the annual fee indicated under 7 CFR 736.58(b), as applicable to warehouses not having a UGSA. CCC will not share the cost of the examination.

This proposed rule also revises the table used in determining the annual licensed warehouse fee charged grain warehousemen.

User fees were established for this service effective October 1, 1981, pursuant to Section 10 of the U.S. Warehouse Act, 7 U.S.C. 241–273 as amended by the Omnibus Budget Reconciliation Act of 1981, and provided for a fee based on the total capacity of a licensed warehouse, irrespective of the number of warehouse locations under a single license. Thus, a single warehouse on a license and a number of warehouses at different locations on a single license, both licenses equal in capacity, would be required to pay equal charges. Examining warehouses at different locations under a single license is more time consuming than examining a single warehouse location. The Department proposes to adjust these charges to more adequately reflect the actual costs of performing each examination,

The proposed rule specifies a change based on bushels of capacity for each warehouse at an identifiable location that is under a single license. The charge for each separate warehouse under a license is computed separately and totaled to equal the fee.

The total capacity of all warehouse locations under a single license shall not exceed the current warehouse licensed capacity.

An identifiable location is a fully functional facility operated as a public warehouse as determined by the Secretary. A fully functional facility on a farmsite would also be identified as a separate location.

An outlying unit which is not a fully functional facility would be included under the nearest fully functional operating location.

The annual fee each licensed warehouse will be assessed and collected effective with the date of issuance of the original license and thereafter on the anniversary date.

List of Subjects in 7 CFR Part 736

Administrative practice and procedure, Grain, License fees, Warehouses.

Proposed Rule

PART 736—GRAIN WAREHOUSE

Accordingly, it is proposed to amend the regulations for grain warehouses (7 CFR Part 736) as follows:

1. The Authority Citation for 7 CFR Part 736 continues to read as follows:

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

2. Section 736.58 is revised to read as follows:

§ 736.58 Warehouse inspection fees.

(a) A fee shall be charged and collected:

(1) For each original examination or inspection, or reexamination or reinspection for modification of an existing license of a warehouse under the Act computed at the rate of $10 for each 10,000 bushels of storage capacity or fraction thereof, determined in accordance with § 736.6(d), but not less than $100 nor more than $1,000;

(2) For each examination of a licensed warehouse, requested in writing by the warehouseman, computed at the rate of 75 percent of the annual fee under § 736.58(b) applicable to warehouses not having a Uniform Grain Storage Agreement, (The request must state the purposes of the examination and contain an agreement to pay all required costs. The Secretary may refuse any such request if performing the examination would affect the Department's performance of regular program responsibilities.); and

(3) For each examination of a warehouse whose license has been suspended, the suspension is determined to be justified, and reinstatement is requested by the warehouseman, computed at the rate of 100 percent of the annual fee under § 736.58(b) applicable to warehouses not having a Uniform Grain Storage Agreement.

(b) Each warehouseman shall pay an annual fee computed in accordance with this subsection using the table set forth below. The fee will be assessed and payable when bond is first furnished for acceptance by the Secretary and annually thereafter on the bond renewal date. The fee will be determined by computing the amount due for each identifiable location under the license and adding those amounts together to

determine the total amount due for the license. The warehouse capacity at each location will be determined by the Secretary. The total capacity of all warehouses at all locations shall not exceed the capacity stated in the current warehouse license. An identifiable location is a fully functional facility operated as a public warehouse as determined by the Secretary. An outlying unit which is not a fully functional operating facility is included under the nearest fully functional operating facility.

ANNUAL FEE TABLE

Location grain capacity (bushels)	Annual fee (dollars) for each warehouse location with uniform grain storage agreement	Annual fee (dollars) for each warehouse location without uniform grain storage agreement
1 to 150,000	100	200
150,001 to 250,000	200	400
250,001 to 500,000	300	600
500,001 to 750,000	400	800
750,001 to 1,000,000	500	1,000
1,000,001 to 1,200,000	600	1,200
1,200,001 to 1,500,000	700	1,400
1,500,001 to 2,000,000	800	1,600
2,000,001 to 2,500,000	900	1,800
2,500,001 to 5,000,000	1,000	2,000
5,000,001 to 7,500,000	1,100	2,200
7,500,001 to 10,000,000	1,200	2,400
10,000,001 +	[1]1,200	[2]2,400

[1] Plus $30 Per million bushels of capacity above 10 million or fraction thereof.
[2] Plus $60 per million bushels of capacity above 10 million or fraction thereof.

Signed at Washington, D.C. on June 24, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-15533 Filed 6-27-85; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1421

Price Support Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR Part 1421 governing the Commodity Credit Corporation (CCC) price support loan and purchase program effective with the 1985 and subsequent crops of grain and similarly-handled commodities with respect to loan maturity dates and the measurement of farm stored loan collateral. In addition, this proposed rule would remove obsolete references to annual commodity supplements in 7 CFR Part 1421.

DATE: Comments must be received on or before July 29, 1985.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Cill, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447-8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040 and 0560-0087.

This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

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

Producers will soon be obtaining loans on 1985-crop commodities. Since the proposed changes made by these regulations will be applicable to 1985 crop commodities, the comment period is limited to 30 days. Therefore, comments must be received with respect to this proposed rule by July 29, 1985 in order to be assured of consideration.

Loan Maturity Dates

The regulations at 7 CFR 1421.6(c) currently provide that CCC price support loans for commodities other than rice, farm-stored flue-cured tobacco, and farm-stored peanuts mature on demand but no later than the last day of the ninth calendar month following the month in which the loan is disbursed. Because loan maturity dates are currently determined according to the date the loans are disbursed, producers cannot be informed of the specific loan maturity date when an application is submitted for a loan. This is especially true during the last few days of each month and during a heavy loan application period in the Agricultural Stabilization and Conservation Service (ASCS) county office when the loan is disbursed after the first of the next month. This proposed rule would provide that loans for commodities which are provided for under the programs authorized by 7 CFR Part 1421 other than rice, farm-stored flue-cured tobacco, and farm-stored peanuts would mature upon demand but no later than the last day of the ninth calendar month following the month in which the loan application is made if the loan is disbursed no later than the last day of the month following the month in which loan application is made. If the loan is not disbursed within this time period, the producer would be required to reapply for a loan. This proposed rule would also amend 7 CFR 1421.58(a), 1421.98(a), 1421.218(a), 1421.253(a), 1421.343(a), 1421.373(a), and 1421.468(a) to make conforming amendments.

Annual Commodity Supplements

Annual commodity supplements are no longer published by CCC. Accordingly, this proposed rule would remove the obsolete reference to the annual commodity supplements which are found at § 1421.6(c).

Farm Storage Loans

The regulations at 7 CFR 1421.17(a) and (e) currently provide that the quantity of farm-stored commodities which are pledged as collateral for a CCC price support loan may be based upon either the physical measurement of the commodity or upon a certification provided by the producer with respect to quantity of the commodity stored on the farm. To reduce the potential of loan deficiencies that could occur as a result of erroneous certifications, this proposed rule would require that all farm-stored commodities pledged as collateral for a loan in accordance with Part 1421 by measured by ASCS except barley, corn, and sorghum when they are considered to be high moisture commodities. The measurement of these high moisture commodities would not be required because of known safety hazards in attempting to measure high moisture grain stored in silos and oxygen-limiting structures.

This proposed rule would amend for clarify in § 1421.17(a) the references to the administrative criteria used by State and country committees in establishing the maximum percentage of a quantity of a commodity which is stored in approved farm storage facilities which may be pledged as collateral for a price support loan. This proposed rule would also amend § 1421.17(e) to provide that the maximum percentage of high moisture grain for which a price support loan may be obtained by a producer cannot exceed 75 percent of the total quantity of the grain as certified by the producer. Section 1421.284 would be amended by deleting the requirement that loans be based upon 100 percent of the estimated quantity of additional peanuts pledged as collateral for a loan. This change would provide that peanuts pledged as collateral for a loan would be treated in the same manner as other commodities which are pledged as collateral for a loan.

List of Subjects in 7 CFR Part 1421

Grains loan programs—agriculture, Price support programs, Surety bonds, Warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that Chapter XIV, Title 7 of the Code of Federal Regulations be amended as follows:

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

Authority: Secs. 4 and 5; 62 Stat. 1070, as amended, 1072, (15 U.S.C. 714b, 714c); Secs. 101, 105B, 107B, 110, 201, 301, 401, 405; 63 Stat. 1051, as amended, 95 Stat. 1242, as amended, 1227, as amended, 1221, as amended, 91 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444d, 1445b–1, 1445e, 1446, 1447, 1421, 1425).

2. In Part 1421, the Table of Contents and the Subpart headings to sections 1421.1 through 1421.29; sections 1421.50 through 1421.60; sections 1421.90 through 1421.100; sections 1421.210 through 1421.220; sections 1421.245 through 1421.254; sections 1421.280 through 1421.291; sections 1421.300 through 1421.312; sections 1421.335 through 1421.345; sections 1421.365 through 1421.374; and sections 1421.460 through 1421.471; are amended by deleting "1978", "1982", and "1984" wherever they appear and inserting in lieu thereof "1985".

3. In Part 1421, the first sentence of § 1421.1 is amended by deleting "1978" and inserting in lieu thereof "1985".

4. In Part 1421, §§ 1421.50, 1421.90, 1421.210, 1421.245, 1421.280, 1421.300, 1421.335, 1421.365, 1421.460, 1421.745 are amended by deleting "1978", "1982" and "1984" wherever they appear and inserting in lieu thereof "1985".

5. In Part 1421, § 1421.6(c) is revised to read as follows:

§ 1421.6 Program availability, disbursement, and maturity of loans.

* * * * *

(c) *Availability and maturity dates.* Final availability dates applicable to loans and purchases will be specified in the individual commodity regulations which supplement this subpart. Whenever the final date of availability or the maturity date falls on a nonworking day for county offices, the applicable final date shall be extended to include the next workday. Loans on commodities other than rice, farm-stored flue-cured tobacco and farm-stored peanuts mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is made. If the loan is not disbursed by the last day of the calendar month following the month in which loan application is made, the producer must reapply for a commodity loan as otherwise provided by this Part.

* * * * *

6. In Part 1421, § 1421.17(a) and (e) are revised to read as follows:

§ 1421.17 Farm storage loans.

(a)(1) *Quantity for loans.* The quantity of a commodity which shall be used to determine the amount of a farm storage loan shall not exceed a percentage (hereinafter called the "loan percentage"), as established by the State committee, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. Except as provided in paragraph (e) of this section with respect to barley, corn, and sorghum when they are considered to be high moisture commodities, the collateral securing all farm storage loans shall be measured. Farm storage loans may be made on less than the maximum quantity eligible for loan at the producer's request. However, all of the commodity in a bin, crib, or lot shall be pledged as security for a farm storage loan although only a portion thereof would otherwise be adequate security for the amount of the loan.

(2) The State committee shall establish the loan percentage each year for each commodity on a Statewide basis or for specified areas within the State. With respect to ear corn, the loan percentage may not exceed 90 percent. The factors to be considered by the State committee in determining loan percentages shall include but not be limited to: (i) General crop conditions; (ii) factors affecting quality peculiar to an area or State; and (iii) climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to: (i) The condition or suitability of the storage structure; (ii) the condition of the commodity; and (iii) the hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

* * * * *

(e) *Producer certification.* In addition to loan quantity determinations based on measurement as provided in paragraph (a) of this section, loan quantity determinations for barley, corn, and sorghum when they are considered to be high moisture commodities may be made on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC–666 is eligible to be pledged as collateral and is otherwise available for loan purposes. The maximum loan percentage shall be 75 percent of the quantity certified by the producer, unless such loan percentage is reduced by the State or county committee in accordance with paragraph (a) of this section.

* * * * *

7. In Part 1421, paragraph (a) of each §§ 1421.58, 1421.98, 1421.218, 1421.253, 1421.343, 1421.373, and 1421.468 are revised to read as follows:

§ 1421. Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans shall mature in accordance with § 1421.6(c).

* * * * *

8. In Part 1421, § 1421.284 is revised to read as follows:

§ 1421.284 Determination of quantity.

The quantity of peanuts pledged as collateral for a farm storage peanut loan shall be determined in accordance with § 1421.17 of the general regulations and shall be expressed in units of tons and tenths of tons.

Signed at Washington, D.C., on June 24, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc 85-15569, Filed 6-27-85; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Parts 91, 161 and 162

[Docket No. 84-081]

Accreditation of Veterinarians and Origin Health Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to make changes in 9 CFR Parts 161 and 162 relating to the accreditation of veterinarians. These changes would require that a revocation remain in effect for at least two years; would require that a veterinarian whose accreditation had been suspended for six months or more or revoked must pass an examination administered by APHIS as a condition of reaccreditation; and would clarify the regulations to provide that the Veterinarian in Charge shall designate the time and place for the holding of an informal conference, in accordance with certain criteria. This document also proposes to make changes in 9 CFR Parts 91 and 161 relating to origin health certificates. These changes would allow an accredited veterinarian to sign an origin health certificate without including test results from a laboratory and would allow an authorized Veterinary Services veterinarian to include such test results on the origin health certificate, under certain circumstances. These proposed changes appear necessary to help ensure that only veterinarians who are qualified and act in compliance with applicable requirements are accredited, and to provide a mechanism to help ensure that completed origin health certificates are available when they are needed by exporters.

DATE: Written comments must be received on or before July 29, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received 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. Robert E. Wagner, Interstate Inspection and Compliance Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8684.

SUPPLEMENTARY INFORMATION:

Accreditation

Requirements and standards for accredited veterinarians, and provisions concerning the suspension or revocation of such accreditation are set forth in 9 CFR Part 161.

Section 161.3 currently contains provisions authorizing the accreditation of a veterinarian to be suspended for a given period of time or to be revoked based on a finding that the veterinarian has not complied with the standards for accredited veterinarians set forth in § 161.2. A suspension or revocation can be imposed only after opportunity for an adjudicatory hearing under the rules of practice, except that a summary suspension found necessary on an emergency basis in order to adequately protect the public health, interest, or safety may be imposed pending a final determination in an adjudicatory proceeding. With respect to suspensions, except for summary suspensions that are changed to revocations as the result of adjudicatory proceedings, it has been the practice of Veterinary Services to automatically reinstate a veterinarian as an accredited veterinarian after the time period of the suspension has ended. However, a veterinarian whose accreditation has been revoked must meet the following provisions in § 161.1(b) in order to become reaccredited:

(b) The Deputy Administrator is hereby authorized to reaccredit a veterinarian whose accreditation has been revoked when he determines, after the order of revocation has been in effect for not less than one year, that such veterinarian: (1) Is licensed to practice veterinary medicine in the State in which he wishes to be accredited; (2) has made formal application for accreditation on Form 1-36A, "Application for Veterinary Accreditation"; (3) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited; and (4) such veterinarian has furnished adequate assurance that he will faithfully fulfill the duties of an accredited veterinarian in the future.

It is proposed to make changes in § 161.1(b) of the regulations to require that a revocation remain in effect for at least two years, and to add a requirement in § 161.1(b) to provide that a veterinarian whose accreditation has been revoked must pass an examination administered by Veterinary Services as a condition of reaccreditation. It is also proposed to amend § 161.1 to set forth the current practice of Veterinary Services with respect to reaccreditation of veterinarians after suspensions, with one change. In this connection, it is proposed to add a new paragraph (c) to § 161.1 to read as follows:

(c) A veterinarian whose accreditation has been suspended (other than a summary suspension that is changed to a revocation as the result of an adjudicatory proceeding) will be automatically reinstated as an accredited veterinarian upon the completion of the suspension, except that such veterinarian shall be required to pass an examination administered by the Service as a condition of reaccreditation if the suspension was for six months or more.

There has recently been an increase in the number of more serious violations of the regulations and standards by accredited veterinarians, such as the misrepresentation of the source of samples for testing. In cases such as these, the Department seeks revocations rather than suspensions. It appears that it is necessary to strengthen the provisions relating to revocations in order to help impress upon accredited veterinarians the need to comply with the regulations. Therefore, as indicated above, it is proposed to require that a revocation remain in effect for at least two years before consideration can be given for reaccreditation. Further, it appears reasonable that a veterinarian whose accreditation has been removed for six months or more, and who therefore may have lost familiarity with Veterinary Services programs, should be required to establish competency as a condition of becoming reaccredited by passing an examination administered by Veterinary Services.

Informal Conferences

Supplemental rules of practice governing the revocation or suspension of veterinarians' accreditation are set forth in 9 CFR Part 162.

The supplemental rules of practice provide that before formal action can be taken to remove the accreditation of a veterinarian, that the veterinarian shall have an opportunity to have an informal conference with the Veterinarian in Charge to discuss the matter. In this connection § 162.12(a) of the rules of practice provides that:

(a) The Veterinarian in Charge, with the concurrence of the State Animal Health Official and the accredited veterinarian, shall designate the time and place for the holding of an informal conference to review the matter.

In the past, some State animal health officials have attempted to thwart the efforts of Veterinary Services to take action against accredited veterinarians under the supplemental rules of practice by refusing to concur in the designation of the time and place for the holding of informal conferences. Lack of concurrence on the part of State animal health officials has caused confusion as to whether such conferences with veterinarians could be held and whether necessary disciplinary measures could be initiated.

The provisions of § 162.12(a) were not intended to allow either a State animal health official or an accredited veterinarian to prevent the holding of an informal conference by refusing to cooperate in designating the time and place for the holding of such an informal conference. It was intended that the time and place for the holding of such an informal conference be designated by the Veterinarian in Charge. Also, it was intended that the Veterinarian in Charge give careful consideration to the convenience of the state animal health official and the accredited veterinarian when designating the time and place for holding the informal conference. Accordingly, it is proposed to amend § 162.12(a) to clearly reflect what was intended.

Origin Health Certificate

Regulations concerning inspection and handling of animals for exportation are set forth in 9 CFR Part 91.

Pursuant to the provisions of § 91.3(a), all animals intended for exportation to a foreign country must be accompanied by an origin health certificate from the State of origin of the export movement to the port of embarkation or to the border of the United States.

The origin health certificate is required, among other things, to individually identify the animals in the shipment; to certify that the animals were inspected within 30 days prior to the movement of the animals for export; and to certify that the animals were found to be sound, healthy, and free from evidence of communicable disease and exposure thereto. In addition, Part 91 provides that for certain animals the origin health certificate is required to specify the types of tests conducted, the date of the tests, and the results of the tests.

This document proposes to amend in certain respects the procedures relating to the issuance by accredited veterinarians of origin health certificates which must contain results of tests performed by laboratories.

The current system for issuing such origin health certificates is designed to include the following:

1. The issuing accredited veterinarian takes the test sample from the animal;
2. The issuing accredited veterinarian submits the test sample to a laboratory;
3. The laboratory performs the test and sends the results of the test to the issuing accredited veterinarian and to the authorized Veterinary Services veterinarian in the State of origin of the export movement;
4. The issuing accredited veterinarian includes the results of the test on the certificate, signs the certificate, and forwards the certificate to the authorized Veterinary Services veterinarian;
5. The authorized Veterinary Services veterinarian endorses the certificate after taking whatever action is necessary to verify the accuracy of the information on the certificate; and
6. The authorized Veterinary Services veterinarian distributes the certificate.

These procedures are consistent with the provisions in § 161.2(b) which currently require that an accredited veterinarian not sign such an origin health certificate unless the certificate shows the results of tests that were conducted. Also, the procedures are consistent with the provisions in § 91.3 which provide that the origin health certificate shall be endorsed by an authorized Veterinary Services veterinarian in the State of origin of the export movement.

Based on Departmental experience, it has been determined that there are instances when there is not enough time for an accredited veterinarian to hold an origin health certificate until he or she receives the laboratory test results and still leave sufficient time for the accredited veterinarian to send the certificate to the authorized Veterinary Services veterinarian to be verified, endorsed, and distributed before a scheduled shipment.

Accordingly, it is proposed to amend § 161.2 to provide that an accredited veterinarian may sign an origin health certificate without including test results from a laboratory if an authorized Veterinary Services veterinarian has agreed, based on a finding that such action is necessary to save time in order to meet an exportation schedule, to include the test results on the certificate, and if the accredited veterinarian states on the certificate that such test results are to be added by the authorized Veterinary Services veterinarian. It is also proposed to amend § 91.3 to allow an authorized Veterinary Services veterinarian to include such test results on the origin health certificate and to provide that such authorized Veterinary Services veterinarian initial any added test results.

It appears that adoption of the proposed provisions would facilitate international trade in United States livestock by providing a mechanism to help ensure that such certificates are available when they are needed by exporters.

Executive Order 12291 and Regulatory Flexibility Act

This proposed action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have an effect on the economy of $100 million or more; 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 have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If the proposed regulations are adopted, it is anticipated that an insignificant number of accredited veterinarians would be affected by the provisions concerning accreditation, and that an insignificant number of shipments of animals would be affected by the provisions concerning origin health certificates. Therefore, 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.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this rule have been approved by the Office of management and Budget (OMB) and have been given the OMB control numbers 0579–0032 and 0579–-0069.

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

9 CFR Part 161

Veterinarians.

9 CFR Part 162

Administrative practice and procedure, Veterinarians.

Accordingly, it is proposed to amend the regulation in 9 CFR Parts 91, 161, and 162 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for § 91.3 would be revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 7 CFR 2.51, and 371.2(d).

2. In § 91.3, paragraph (a) would be revised to read as follows:

§ 91.3 General export requirements.

(a) All animals intended for exportation to a foreign country, except animals intended for exportation to Mexico or Canada, shall be accompanied from the State of orgin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation to Mexico or Canada shall be accompanied from the State of orgin of the export movement to the border of the United States by an origin health crertificate. The origin health certificate shall certify that the animals were inspected within the 30 days prior to the date of the movement of the animals for export, and were found to be sound, healthy, and free from evidence of communicable disease and exposure thereto. The origin health certificates shall be endorsed by an authorized Veterinary Services veterinarian in the State of origin and shall include any test results added by such authorized Veterinary Services veterinarian pursuant to § 161.2 (any added test results shall be initialed by such authorized Veterinary Services veterinarian). The origin health certificates shall individually identify the animals in the shipment as to species, breed, sex, and age, and if applicable shall also show registration name and number, tattoo markings, or other natural or acquired markings.

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for Part 161 would be revised to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 116, 120, 121, 125, 134b, and 134f; 7 CFR 2.17, 2.51, and 371–2(d).

4. In § 161.1, paragraph (b) would be revised and a new paragraph (c) would be added to read as follows:

§ 161.1 Requirements for accreditation.

* * * * *

(b) The Deputy Administrator is hereby authorized to reaccredit a veterinarian whose accrediation has been revoked when the revocation has been in effect for not less than two years and he or she determines that such veterinarian: (1) Is licensed to practice veterinary medicine in the State in which he or she wishes to be accredited; (2) has made formal application for accreditation or Form I–36A, "Application for Veterinary Accreditation"; (3) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited; (4) has furnished adequate assurance that he or she will faithfully fulfill the duties of an accredited veterinarian in the future; and (5) has passed an examination administered by the Service.

(c) A veterinarian whose accreditation has been suspended (other than a summary suspension that is changed to a revocation as the result of an adjudicatory proceeding) will be automatically reinstated as an accredited veterinarian upon the completion of the suspension, except that such veterinarian shall be required to pass an examination administered by the Service as a condition of reaccreditation if the suspension was for six months or more.

§ 161.2 [Amended]

5. In the first sentence in § 161.2(b), "paragraph (c) of this section" would be changed to "paragraph (c) or (l) of this section".

6. A new pararaph (l) would be added to § 161.2 to read as follows:

§ 161.2 Standards for accredited veterinarians.

* * * * *

(l) An accredited veterinarian may sign an origin health certificate for use pursuant to Part 91 of this Chapter without including test results from a laboratory if an authorized Veterinary Services veterinarian has agreed, based on a finding that such action is necessary to save time in order to meet an exportation schedule, to include the test results on the certificate and if the accredited veterinarian states on the certificate that such test results are to be added by the authorized Veterinary Services veterinarian.

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS' ACCREDITATION

7. The authority for Part 162 would be revised to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111, 114a–1, 115, 116, 120, 121, 125, and 134f; 7 CFR 2.17, 2.51, and 371–2(d).

8. In § 162.12, paragraph (a) would be revised to read as follows:

§ 162.12 Informal conference.

(a) The Veterinarian in Charge, after careful consideration of the convenience of the State Animal Health Official and the accredited veterinarian, shall designate the time and place for the holding of an informal conference to review the matter.

* * * * *

Done at Washington, D.C., this 24th day of June 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–15534 Filed 6–27–85; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 94

[Docket No. 85–034]

African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR part 94 to provide a mechanism to allow, under certain conditions, pork and pork products originating in a country believed to be free of African swine fever (ASF) to be imported into the United States after being processed in a

country where ASF exists or is reasonably believed to exist. It appears that compliance with the proposed provisions would be adequate to allow such pork or pork products to be imported into the United States without presenting a significant risk of causing the introduction into the United States of ASF.

DATE: Written comments must be received on or before July 29, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to docket number 85-034. Written comments received 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 P. Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFDR Part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of pork and pork products in order to prevent the introduction into the United States of African swine fever (referred to below as ASF), which is considered to be the most dangerous and destructive communicable disease of swine.

Section 94.8 of the regulations lists countries where ASF exists or is reasonably believed to exist (referred to below as ASF countries) and regulates the importation into the United States of pork and pork products from such countries.

The Belgian Ministry of Health and two pork processing firms in Italy have petitioned the Department to amend § 94.8 to provide a mechanism to allow pork and pork products originating in countries not listed as ASF countries to be imported into the United States after being processed in ASF countries if heated but not shelf-stable without refrigeration.

The Department has considered the issue raised by the petitioners. In response, the Department has developed provisions which are designed to allow pork and pork products from ASF countries to be imported into the United States without presenting a significant risk of introducing ASF. In this connection, it is proposed to add provisions to paragraph (a) in § 94.8 to allow such pork or a pork product to be imported into the United States, if:

(3) Such pork or pork product meets the conditions of paragraphs (a)(3)(i) through (a)(3)(vi) of this section;

(i) It was derived from pork or pork products:

(A) Which originated from swine raised and slaughtered in a country not listed in this section;

(B) Which were shipped from the country of origin to a processing establishment [1] in a country listed in this section in a closed container sealed with serially numbered seals applied by an official of the national government of the country of origin;

(C) Which were accompanied from the country of origin to such processing establishment by a certificate signed by an official of the national government of the country of origin specifying the country of origin, the processing establishment to which the pork was consigned, and the numbers of the seals applied; and

(D) Which were taken out of the container at such processing establishment only after an official of the national government of the country where such processing establishment is located determined that the seals were intact and free of any evidence of tampering, and had so stated on the certificate referred to in paragraph (a)(3)(i)(C) of this section;

(ii) All bones were completely removed;

(iii) It was heated by other than a flash-heating method at the processing establishment referred to in paragraph (a)(3)(i)(B) of in this section, to an internal temperature of at least 156 °F. (68.9 °C.) throughout (this must have occurred after the bones had been removed);

(iv) The processing establishment referred to in paragraph (a)(3)(i)(B) of this section:

(A) Does not receive or process any live swine, uses only pork or pork products which originate in countries not listed in this section, and processes pork or pork products only in accordance with paragraphs (a)(3)(i) through (a)(3)(vi) of this section:

(B) Is operated by persons who have entered into a valid written compliance agreement with Veterinary Services whereby such persons have agreed to maintain on file at the establishment for at least two years copies of the certificates referred to in paragraph (a)(3)(i)(C) of this section, to allow Veterinary Services personnel to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(C) Is operated by persons who have entered into a trust fund agreement executed by such persons and Veterinary Services; pursuant to the trust fund agreement the establishment is current in paying the cost for Veterinary Services personnel to inspect the establishment (it is anticipated that such inspections will occur once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds); and in addition the establishment has on deposit with the Animal and Plant Health Inspection Service an unobligated amount equal to the cost for Veterinary Services personnel to conduct one inspection;

(v) It was processed in a country listed in this section only at one processing establishment; and

(vi) It is accompanied at the time of importation into the United States by a certificate issued by an official of the national government of the country wherein the processing establishment referred to in paragraph (a)(3)(i)(B) of this section is located stating that all of the requirements of this section have been met.

These provisions consist of two types of safeguards. The provisions, other than the heating provisions, are designed to ensure that the pork or pork products would come from swine free of ASF, an to ensure that during shipping and processing the pork or pork products would maintain their identity and not become contaminated with ASF virus. The heating provisions are designed to ensure that any ASF virus in the pork or pork products would be destroyed. Based on research, it has been determined that heating pork or pork products by other than a flash-heating method to an internal temperature of at least 156 °F. (68.9 °C.) throughout would be sufficient to destroy any ASF virus present. It appears at this time that both types of safeguards are necessary to provide adequate assurance that such pork or pork products imported into the United States would not cause a significant risk of introducing ASF. It is necessary to be extremely cautious with respect to the importation of such pork or pork products since, as noted above, ASF is considered to be most dangerous and destructive communicable disease of swine.

Also, it appears that all bones should be required to be completely removed. Bones can be a reservior of ASF virus and there are no feasible methods for ensuring that bones have been heated throughout to an internal temperature of 156 °F.

Further, under the proposal, flash-heating methods, such as microwave cooking, would not be allowed because there are no feasible methods for ensuring that the pork or pork products heated by flash-heating methods had been heated to an internal temperature of 156 °F. throughout.

[1] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR 301 *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

The compliance agreement provisions appear to be necessary to help ensure that all of the proposed requirements would be complied with.

The proposal also includes provisions which would require that the operator of the processing establishment or a representative of the establishment execute a trust fund agreement ensuring that costs for Veterinary Services to conduct inspections at the establishment would be paid.

Executive Order 12291 and Regulatory Flexibility Act

This proposal is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have a significant annual effect on the economy; 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 have not significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the amount of port and pork products that would be imported into the United States under the proposed provisions, if they are adopted, would be insignificant compared to the total amount of pork and pork products imported into the United States.

Under the circumstances explained above, 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.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, MD 20782

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock & livestock products, Meat & meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED ARTICLES

Accordingly, it is proposed to amend 9 CFR Part 94 as follows:

1. The authority citation for Part 94 would be revised to read as set forth below and the authority citations following all the sections in Part 94 would be removed:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.8, paragraph (a)(2) would be amended to change the period to a semicolon and to read "or" after the semicolon.

3. In § 94.8, a new paragraph (a)(3) would be added to read as follows:

§ 94.8 Pork and port products from countries where African swine fever exists or is reasonably believed to exist:

* * * * *

(a) * * *

(3) Such pork or pork product meets the conditions of paragraphs (a)(3)(i) through (a)(3)(vi) of this section;

(i) It was derived from pork or pork products:

(A) Which originated from swine raised and slaughtered in a country not listed in this section:

(B) Which were shipped from the country of origin to a processing establishment [1] in a country listed in this section in a closed container sealed with serially numbered seals applied by an official of the national government of the country of origin;

(C) Which were accompanied from the country of origin to such processing establishment by a certificate signed by an official of the national government of the country of origin specifying the country of origin, the processing establishment to which the pork was consigned, and the numbers of the seals applied; and

(D) Which were taken out of the container at such processing establishment only after an official of the national government of the country where such processing establishment is located determined that the seals were intact and free of any evidence of tampering, and had so stated on the certificate referred to in paragraph (a)(3)(i)(C) of this section;

(ii) All bones were completely removed;

(iii) It was heated by other than a flash-heating method at the processing establishment referred to in paragraph (a)(3)(i)(B) of this section, to an internal temperature of at least 156° F. (68.9° C.) throughout (this must have occurred after the bones had been removed);

(iv) The processing establishment referred to in paragraph (a)(e)(i)(B) of this section:

(A) Does not receive or process any live swine, uses only pork or pork products which originate in countries not listed in this section, and processes pork or pork products only in accordance with paragraphs (a)(3)(i) through (a)(3)(vi) of this section;

(B) Is operated by persons who have entered into a valid written compliance agreement with Veterinary Services whereby such persons have agreed to maintain on file at the establishment for at least two years copies of the certificates referred to in paragraph (a)(3)(i)(c) of this section, to allow Veterinary Services personnel to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(C) Is operated by persons who have entered into a trust fund agreement executed by such persons and Veterinary Services; pursuant to the trust fund agreement the establishment is current in paying the cost for Veterinary Services personnel to inspect the establishment (it is anticipated that such inspections will occur once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds); and in addition the establishment has on deposit with the Animal and Plant Health Inspection Service an unobligated amount equal to the cost for Veterinary Service personnel to conduct one inspection;

(v) It was processed in a country listerd in this section only at one processing establishment; and

[1] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR Part 301, *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

(vi) It is accompanied at the time of importation into the United States by a certificate issued by an official of the national government of the country wherein the processing establishment referred to in paragraph (a)(3)(i)B) of this section is located stating that all of requirements of this section have been met.

Done at Washington, D.C. this 24th day of June 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-15538 Filed 6-27-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-52-AD]

Airworthiness Directives; British Aerospace BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM)

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for damage or cracks and repairs, as necessary, of certain components of the nose and main landing gears of British Aerospace BAC 1-11 200 and 400 series airplanes. There have been reports of a nose landing gear collapsing and of cracks in the main landing gear rear pintle support beam. These conditions, if not corrected, have the potential of leading to a catastrophic landing.

DATE: Comments must be received on or before August 16, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-52-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Standardization Branch, ANM-113; telephone (206) 431-2979. 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: Airworthiness Rules Docket No. 85-NM-52-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The British Civil Aviation Authority (CAA) has classified two British Aerospace BAC 1-11 service bulletins as mandatory. These service bulletins address the following service difficulties reported on the Model BAC 1-11 200 and 400 series airplanes:

1. Cracks have been reported in the main beam sub-assembly (manacle beam) of the main landing gear support structure of British Aerospace Model BAC 1-11 200 and 400 series airplanes. The cracks varied in length from 0.2 inches to 1.75 inches. These cracks developed in airplanes with more than 20,000 landings. In the case of the 0.2-inch crack, it was possible to recover the beam by blending, but in the other cases, the beam had to be replaced. British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896 prescribes repetitive inspections, and repairs or beam replacement, if necessary.

2. Collapse of a nose landing gear was reported due to loss of toggle links' special bolt assembly, part number AB44A1275, during a retraction cycle. This could result in the nose gear jamming in the partially retracted position, with a down-and-locked green light indication. British Aerospace BAC 1-11 Alert Service Bulletin 32-A-PM5872 prescribes inspection for damage of the toggle links' special bolt.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the actions mentioned above.

It is estimated that 60 U.S. registered airplanes would be affected by this AD, that it would take approximately 3 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 this AD to U.S. operators is estimated to be $7,200.

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 significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is 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, British Aerospace Model BAC 1-11 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

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); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 airplanes, with series as specified in each paragraph below, certificated in any category. To prevent a hazardous landing condition, accomplish the following within the next 90 days after the effective date of this AD, or prior to reaching the landing threshold indicated in each paragraph below, whichever is the later, unless already accomplished:

A. For Model BAC 1-11 400 series airplanes, prior to the accumulation of 15,000 landings, perform and eddy current or dye penetrant inspection for cracks of the rear pintle support beam in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, dated August 6, 1984. Thereafter, repeat this inspection at intervals not to exceed 3,200 landings.

If cracks are discovered, repair or replace in accordance with paragraph 2.2 of the accomplishment instructions of the service bulletin before further flight.

B. For Model BAC 1-11 200 and 400 series airplanes, inspect for damage of the toggle links' special bolt assembly, part number AB44A1275, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 32-A-PM5872, dated July 25, 1983.

If the special bolt assembly is found damaged, replace with a serviceable part before further flight.

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

D. 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 inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 17, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15497 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-23-AD]

Airworthiness Directive; Government Aircraft Factories Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Government Aircraft Factories (GAF) Models N22B and N24A airplanes which would require removal of material from the interior trim panel of the emergency exit door to provide sufficient clearance for the opening of the emergency exit door. The proposed AD is needed because possible interference between the emergency exit door and the fuselage exit could result in restricting exit from the airplane. The proposed actions will prevent this restriction.

DATES: Comments must be received on or before August 17, 1985.

ADDRESSES: GAF Alert Service Bulletin AS/B ANMD-52-6, dated August 8, 1984, applicable to this AD may be obtained from Government Aircraft Factories, 223 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207; Telephone 03-647-3111; Telex 30252; Cable BEAUFAIR or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of Regional Counsel, Attention: Rules Docket No. 85-CE-23-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Domich, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, Post Office Box 92007; Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 536-6143.

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 or notice 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 Director before taking action on the proposed rule. The proposal contained in this notice my be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and emergency aspects of the rule. 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-23-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There has been an AD (AD/GAF-N22/49) received from the Australian Department of Aviation applicable to GAF Models N22B and N24A airplanes stating that excessive force may be required to push the emergency exit door clear of the airplane. The manufacturer has investigated and found that the interior trim panel on the emergency exit could interfere with release of the emergency exit door, which is a window in the fuselage. Removal of material from the lower edge of the trim panel provides clearance and proper operation of the emergency exit door. As a result, GAF has issued AS/B ANMD-52-6, dated August 8, 1984, which gives instructions for trimming the excess material and relieves interference between the emergency exit door and the fuselage. Compliance with the provision of AS/B ANMD-52-6 are recorded in aircraft log books as Mod N627. The Australian Department of Aviation, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Australia, has classified this alert service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Australian regulations, the action has the same effect as an AD on airplanes certified for operation in the United States.

The FAA relies upon the certification of the Australian Department of Aviation combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of AS/B ANMD–52–6 and the mandatory classification of this service bulletin by the Australian Department of Aviation. Based on the foregoing, the FAA believes that the condition addressed by AS/B ANMD–52–6 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD is applicable to GAF Models N22B and N24A airplanes and would require inspection and trimming of material, if necessary, in accordance with GAF AS/B ANMD–52–6 to allow the emergency exit door to clear the airplane fuselage.

There are approximately 22 United States registered airplanes affected by the proposed AD. The cost of complying with proposed AD is estimated to be $40 per airplane. The cost to the private sector is estimated to be $880. Few, if any, small entities own the affected airplanes. The cost of compliance is so minimal that it would not impose a significant economic burden on any such owner. Therefore, I certify that this action: (1) Is not a major rule under the provisions of 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 regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aviation, Safety.

The Proposed Amendment

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 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; 49 CFR 1.47.

2. By adding the following new AD:

Government Aircraft Factories (GAF): Applies to Models N22B and N24A airplanes, (all S/N's) certificated in any category, unless AS/B ANMD–52–6 (Mod N627) has been incorporated.

Compliance: Required within 100 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent restriction of the emergency exit opening accomplish the following:

(a) Modify the airplane emergency exit door interior trim panel in accordance with Paragraph 2. "Accomplishment Instructions" of GAF Alert Service Bulletin AS/B ANMD–52–6 dated August 8, 1984.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Western Aircraft Certification Office, ANM–170W, Northwest Mountain Region, FAA, Post Ofice Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 17, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85–15495 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–CE–24–AD]

Airworthiness Directive; Government Aircraft Factories Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Government Aircraft Factories (GAF) Models N22B and N24A airplanes which would require replacement of certain vertical fin attachment fittings and fin/horizontal stabilizer attachment fittings. The proposed AD is needed because certain empennage attachment fittings are undergoing fatigue failure which could result in loss of the airplane. The proposed actions of this AD will preclude this occurrence.

DATES: Comments must be received on or before August 17, 1985.

ADDRESSES: GAF Service Bulletins S/B NMD–53–5, dated October 19, 1984, and S/B NMD–55–21, dated October 19, 1984, applicable to this AD may be obtained from Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207; Telephone 03–647–311; Telex 30252; Cable BEAUFAIR or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–24–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Domich, Aerospace Engineer, Airframe Section, ANM–172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, Post Office Box 92007; Worldway Postal Center, Los Angeles, California 90009–2007; Telephone (213) 536–6143.

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 or notice 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 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 emergency aspects of the rule. 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central

Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-24-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There has been an AD (AD/GAF-N22/50) received from the Australian Department of Aviation stating that certain fittings on the GAF Models N22B and N24A airplanes are reaching their fatigue life limits. These fittings are the attachment fittings of the upper fin rear spar and the fin/horizontal stabilizer attachment fittings and are essential for retaining the vertical fin and horizontal stabilizer in position on the fuselage. This fatigue condition reaches criticality at 3000 hours time-in-service. Failure could result in loss of the vertical fin and/or horizontal stabilizer with resulting loss of the aircraft. Therefore, GAF issued S/B NMD-53-5 and NMD-55-21 both dated October 19, 1984, which entail replacement of certain attachment fittings with sturdier ones. Compliance with the provisions of S/B's NMD-53-5 and NMD-55-21 must be recorded in aircraft logbooks as Mod N600A, N600B and N602. The Australian Department of Aviation, who has the responsibility and authority to maintain the continuing airworthiness of these airplanes in Australia has classified these service bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Australian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the Australian Department of Aviation combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/Bs NMD-53-5 and NMD-55-21 and the mandatory classification of these service bulletins by the Australian Department of Aviation. Based on the foregoing, the FAA believes that the conditions addressed by S/Bs NMD-53-5 and NMD-55-21 are unsafe and may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD is applicable to all GAF Models N22B and N24A airplanes. It would require installation of improved attachment fittings in accordance with GAF S/Bs NMD-53-5 and NMD-55-21; prior to exceeding 3000 hours total aircraft time-in-service for those airplanes having less than 2700 hours time-in-service and within 300 hours time-in-service after the effective date of this AD for those airplanes having 2700 hours or greater time-in-service. There are approximately 22 United States registered airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $800 per airplane. The kits are free from the manufacturer. The total cost to the private sector is estimated to be $17,600. Few, if any, small entities own the affected airplanes. The cost of compliance is so minimal that it would not impose a significant economic burden on any such owner. Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures 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 regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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 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, 1984); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Government Aircraft Factories (GAF): Applies to Models N22B and N24A (all serial numbers) aiplanes certificated in any category, unless S/B NMD-53-5 (Mods N600A or N600B) and S/B NMD-55-21 (Mod N602) have been incorporated.

Compliance: Required as indicated unless already accomplished. To prevent structural failure of the vertical fin and/or the horizontal stabilizer in flight prior to accumulating 3,000 hours time-in-service for aircraft having less than 2,700 hours time-in-service on the effective date of this AD, and within the next 300 hours time-in-service for aircraft having 2,700 or more hours time-in-service on the effective date of this AD, accomplish the following:

(a) Replace the attachment fittings of the upper fin rear spar and the fin/horizontal stabilizer in accordance with Paragraph 2, "Accomplishment Instructions" of Government Aircraft Factories (GAF) Service Bulletins S/B NMD-53-5 and S/B NMD-55-21, both dated October 19, 1984.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Western Aircraft Certification Office, ANM-17W, Northwest Mountain Region, FAA, Post Office Box 92007 Worldway Postal Center, Los Angeles, California 90009-2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 17, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85-15494 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-16]

Airworthiness Directives; Pratt & Whitney Aircraft JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require initial and repetitive diffuser case rear rail eddy current inspections (ECI) on Pratt & Whitney Aircraft (PWA) JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines, in accordance with PWA Service Bulletin (SB) 5591, Revision 1. The proposed AD is needed to institute an inspection program that would assure timely crack detection and prevent diffuser case rupture that can cause an uncontained engine failure.

DATE: Comments must be received on or before September 3, 1985.

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 No. 85-ANE-16, 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 No. 85–ANE–16.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SB may be obtained from Pratt & Whitney Aircraft, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. A copy of the SB is contained in the Rules Docket No. 85–ANE–16, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Transport Engine 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 FFA 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–ANE–16". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the diffuser cases on PWA JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, and –20 series turbofan engines develop rear outer rail cracks initiated by low cycle fatigue (LCF). These cracks can propagate to critical length and cause an explosive failure of the diffuser case if not detected in time. Also a significant number of rear outer rail weld repairs were done in accordance with repair 10, in Section 72–41–01, of the Engine Manual Part Number (P/N) 646028 prior to Revision 69, dated December 1984, which did not include an X-ray inspection to assure the quality of the weld repair. One diffuser case rear outer rail crack, initiated at a deficient weld repair that was not X-ray inspected, propagated to critical crack length and caused an explosive failure of the diffuser case during takeoff. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require initial and repetitive ECI of the diffuser case rear rail per PWA SB 5591, Revision 1.

Conclusion

The FAA has determined that this proposed regulation involves 1,731 JT9D engines installed on Boeing 747 series aircraft and 75 JT9D engines installed on McDonnell Douglas DC–10 series 40 aircraft, and the approximate total annual cost is $157,000. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 and McDonnell Douglas DC–10 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (a) 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, Incorporation by reference.

The Proposed Amendment

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 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]; 49 CFR 1.47.

2. By adding the following new AD:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft (PWA) JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, and –20 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent diffuser case rupture, accomplish the following:

(a) Inspect diffuser case rear rail for cracks within the next 500 cycles in service after the effective date of this AD, in accordance with the Accomplishment Instructions contained in PWA Service Bulletin (SB) 5591, Revision 1, dated May 22, 1985.

(b) Reinspect diffuser case rear rail for cracks in accordance with the Accomplishment Instructions and repetitive inspection intervals contained in PWA SB 5591, Revision 1, dated May 22, 1985.

(c) Remove from service, prior to further flight, diffuser cases cracked beyond the limits established in PWA SB 5591, Revision 1, dated May 22, 1985.

(d) Inspect diffuser case rear rail for cracks on engines separated at "M" flange, in accordance with the Accomplishment Instructions contained in PWA SB 5591, Revision 1, dated May 22, 1985. Repair cracked cases prior to return to service.

Upon request, an alternative 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.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Manager, Engine Certification Office, FAA New England 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 increase for that operator.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on June 12, 1985.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 85–15493 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85-NM-53-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require functional tests, and repair or replacement, as necessary, of the cold air unit overheat protection circuits on British Aerospace Model BAC 1-11 200 and 400 series airplanes. At least three cold air units have failed, resulting in turbine components being ejected from the units. Since these incidents happen on the ground, there exists the potential for injury to passengers and ground personnel.

DATE: Comments must be received on or before August 16, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace Inc., box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano. Standardization Branch, ANM-113; telephone (206) 431-2979. 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 requests to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The British Civil Aviation Authority (CAA) has classified British Aerospace BAC 1-11 Alert Service Bulletin 21-A-PM5863 as mandatory. There have been at least three reported failures of the cold air unit which resulted in turbine components being ejected from the units. In one case the compressor scroll became detached and the wheel was ejected from the cold air unit and passed through the lower fuselage skin. In all three cases the overheat protection system wiring was open or the overheat detector was defective. It has been determined that the units had been running in an overspeed condition outside the normal temperature range because of system faults and failure of the overheat detectors. The service bulletin prescribes repeated functional checks of the overheat protection circuits and calibration checks of the overheat detectors and replacement or repair of faulty units, as necessary.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the action mentioned above.

It is estimated that 60 U.S. registered airplanes would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,200.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Excutive 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 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, British Aerospace Model BAC 1-11 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

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 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); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. To detect overspeeding of the cold air unit, accomplish the following within the next 120 days after the effective date of the AD, or prior to reaching the threshold indicated in each paragraph below, whichever is the later, unless already accomplished:

A. Perform a functional test of the cold air unit overheat protection circuits in accordance with paragraph 2.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 21-A-PM5863, revision 2, dated June 12, 1984, prior to the accumulation of 10,000 flight hours or 8 years in service, whichever is the earlier, and thereafter repeat this test at intervals not to exceed 3,000 flight hours or 14 months, whichever occurs first. If found faulty, the overheat protection circuits must be repaired before further flight.

B. For aircraft not incorporating Graviner 156D overheat detectors, perform a workshop calibration and functional test of the overheat detectors prior to 300 flight hours after the effective date of this AD, and thereafter repeat this test at intervals not to exceed 3,000 flight hours or 14 months, whichever occurs first.

C. For aircraft incorporating Graviner 1560 overheat detectors which have accumulated 7,000 flight hours or 4 years since new or from last calibration, within the next 3,000 flight hours of fourteen (14) months, whichever is the earlier, perform a workshop calibration

and functional test of the overheat detectors. Thereafter, repeat this test at intervals not to exceed 10,000 flight hours or 6 years, whichever occurs first.

D. Overheat detectors that do not pass the tests of paragraphs B. or C., above, must be replaced before further flight.

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

F. 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 inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace Inc., Dulles International Airport, Washington, D.C. 20041. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, June 17, 1985.

Leroy A. Keith,

Acting Director Northwest Mountain Region.

[FR Doc. 85-15496 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 85N-0300]

The Drug Price Competition and Patent Term Restoration Act of 1984; Establishment of a Public File and Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a docket containing a public record of the comments, views, and other information submitted to the agency from interested persons regarding Title II, the patent term restoration provisions, of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417). FDA is also inviting public comment on interpretation of the statute for purposes of the agency's implementation of the statute's provisions.

DATE: Written comments by August 12, 1985.

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

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417). The patent term restoration provisions contained in Title II of the act require FDA's involvement in the process whereby holders of patents for certain human drugs and biologics, medical devices, and food and color additives may obtain up to 5 years of patent-life extension to partially restore patent life lost during FDA's regulatory review of the products. The U.S. Patent and Trademark Office (PTO) has developed guidelines for filing patent extension applications. 1047 Off. Gaz. Pat. Office 16 (October 9, 1984). Copies of the PTO guidelines, and all other documents relevant to this program, will be included in the docket established by this notice, and are available for review at the Dockets Management Branch (address above).

The agency has previously published a notice in the **Federal Register** of May 24, 1985 (50 FR 21460) requesting public comments and establishing a public file (Docket No. 85N-0214) for Title I of Pub. L. 98-417.

FDA, recognizing the novelty of its patent term restoration duties, has made special efforts to foster communications with regulated industries, and the public regarding its role in the patent term restoration program. On February 8, 1985, the agency offered guidance on special questions concerning the patent extension process. On April 24, 1985, 11 trade and public organizations were invited to submit their ideas and recommendations regarding patent extension procedures. FDA will include copies of these letters and any replies in the docket established by this notice.

In addition, FDA has established individual dockets for each patent extension application the agency has received from PTO. These dockets contain all official communications between FDA and PTO and all official communications between either agency and the applicant or third parties concerning the particular application.

The questions that arise about patent term restoration in these early stages, and the agency's response to these questions, inevitably will influence its development of patent extension procedures. Recognition of the importance of FDA's early experience with the patent term restoration program has encouraged the agency to invite comments from interested parties, including but not limited to the following topics:

1. *FDA eligibility assessment.* Under current procedures, developed in cooperation with PTO, FDA assists PTO in its determination of whether a product is eligible for patent extension. Although PTO makes the final determination, FDA provides information of eligibility issues uniquely within FDA's expertise. FDA is seeking comments on all issues of product eligibility for patent extension that relate to the agency's expertise concerning human drugs, medical devices, and food and color additives.

2. *Regulatory review period determination.* Title II requires FDA to determine the length of time the product was subject to premarketing review under the Federal Food, Drug, and Cosmetic Act provision applicable to that product. The regulatory review period includes a testing phase and an approval phase—sequential stages that are divided by the submission of an application for marketing approval. FDA would like to receive comments about all aspects of regulatory review period determinations, such as the interpretation of the term "major health or environmental effects test" applicable to food or color additives (35 U.S.C. 156(f)(3)). For example, comments are sought identifying those actions sufficient to "initiate" such a test, and whether a multiphase study with discreet phases, each lasting less than 6 months but altogether totaling more than 6 months, could constitute such a test. FDA has not yet received a patent extension application for a food or color additive, although it has received inquiries about such products.

3. *Due diligence challenges.* Within 180 days after FDA publishes its regulatory review period determination, anyone may file a petition challenging whether the applicant acted with due diligence during the applicable regulatory review period. The petitioner must offer sufficient information in the petition to justify an FDA investigation of the product applicant's diligence. Section 156(d)(2)(B) of Pub. L. 98-417 requires the agency to promulgate regulations governing due diligence determinations. The agency has not yet received any due diligence challenges, but is currently considering issues that might arise in such a proceeding, such as the type and amount of information in a petition challenging due diligence that would be sufficient to warrant an FDA investigation and, once the agency

decides to conduct a due diligence investigation, what criteria should FDA apply to determine whether an applicant acted with due diligence in pursuing FDA approval? Comments concerning these aspects are invited.

Interested persons may submit written comments on Title II of Pub. L. 98-417 to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. To assure consideration of comments on Title II in any proposed regulations or guideline, the comments should be submitted on or before August 12, 1985. The docket will be available for public inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 1985.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 85-15672 Filed 6-26-85; 10:31 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 234

[Docket No. R-85-1202; FR-1999]

Condominium Ownership Mortgage Insurance—1983 Act Amendments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing eligibility requirements for mortgage insurance in the condominium program. The revision reflects a recent statutory enactment amending section 234 of the National Housing Act (NHA), which provides for mortgage insurance for condominiums.

The rule would remove the provision that units in a project less than a year old are ineligible for condominium mortgage insurance where the project was not covered by mortgage insurance or was not VA-approved. This rule also would remove the requirement that an investor must be the owner-occupant of a family unit covered by an insured mortgage before acquiring other units covered by insured mortgages. Finally, the rule would restrict the availability of unit mortgage insurance in projects that were converted from rental housing.

DATE: Comments must be received by: August 27, 1985.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Brian Chappelle, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Amended Statutory Provisions

Section 420 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983) (1983 Act) amended section 234(c) of the National Housing Act (NHA), which provides for mortgage insurance for condominiums. The amendment removed the requirement that, for a condominium unit to be eligible for mortgage insurance, it had to be in a project covered by a HUD-insured mortgage. Accompanying this requirement was the proviso (also repealed) that a dwelling in an uninsured condominium project containing 12 or more units was eligible for mortgage insurance only if the project construction was completed more than one year before application for mortgage insurance. Under the amended section 234(c), project mortgage insurance is no longer a prerequisite to eligibility for unit mortgage insurance nor is there a delay for larger projects.

The amendment also had the effect of removing language from section 234(c) that provided for insurance of unit mortgages in a project approved for a guaranty, insurance, or a direct loan by the Veterans Administration (VA). However, under the continuing authority of section 203(b), made applicable to section 234(c), units in a condominium approved by the VA under that agency's housing assistance programs remain eligible for mortgage insurance. VA-approved condominium units must, of course, meet relevant eligibility criteria applicable to all condominium mortgages insured under this Department's insuring authority.

Also removed from section 234(c) was the provision that a mortgagor must be an owner-occupant of a family unit covered by an insured mortgage in order to be able to acquire additional family units covered by mortgages insured under this section—limited to a maximum of four units. With the repeal of this provision, a mortgagor no longer has to acquire a unit covered by a mortgage insured under this section for the mortgagor's own use and occupancy before the mortgagor could purchase more units with mortgages insured under section 234(c). Amendatory language in section 234(c) now provides instead that mortgage insurance on an investor-owned condomium unit is contingent on at least 80 percent of the FHA-insured units in the project being occupied by mortgagors or by comortgagors. Thus, an application for mortgage insurance will not be approved if approval would result in less than 80 percent of the units in the project covered by mortgage insurance being occupied by the mortgagors or comortgagors.

The 1983 Act also repealed the insurable mortgage limit and loan-to-value ratio provisions that were separately stated in section 234(c). Instead, under the amended language of section 234(c), the loan-to-value and maximum mortgage limitations of section 203(b)(2) of the NHA are made applicable to this program. (This statutory amendment was implemented in an earlier rulemaking. *See* 49 FR 14336, 14338-9 (April 11, 1984).)

Section 420 of the 1983 Act also amended section 234 to add a new section 234(k), which provides that no insurance may be provided with respect to a unit in any project that was converted from rental housing unless "(1) the conversion occurred more than one year prior to the application for insurance, (2) the mortgagor or comortgagor was a tenant of that rental housing, or (3) the conversion of the property is sponsored by a bona fide tenants organization representing a majority of the households in the projects."

Existing Regulations

The existing regulations at 24 CFR 234.26, implementing section 234(c) of the NHA (before its amendment by the 1983 Act), were published as an interim rule in the **Federal Register** of September 18, 1981 (46 FR 46317). This proposed rule would amend those regulations to conform them to the

amendatory language of section 420 of the 1983 Act.

Amendments Made by This Proposed Rule

In § 234.1 definitions would be added for the terms "conversion", "tenant", and "bona fide tenants organization". The terms "mortgage" and "project" (formally "multifamily project") would be redefined in this rule to omit reference to the word "multifamily" since the text of the rule does not use the term "multifamily project", but only "project".

Section 234.26 would be revised to remove the restrictive eligibility requirements that were implemented by the previous interim rule at 24 CFR 234.26(a)(1)–(3) (*see* 46 FR 46317, 46318, September 18, 1981). These requirements are no longer necessary since section 234(c)(2) of the NHA has been repealed by section 420(a) of the 1983 Act. Added to § 234.26 by this rule, at § 234.26(e)(2) and (f), would be the new provisions on minimum mortgagor occupancy levels and on limitations on conversion of rental housing.

The regulatory provision at 24 CFR 234.59 on "mortgagor limitations" would be removed. That provision is no longer valid as a result of the repeal of section 234(c)(3) of the NHA by section 420 of the 1983 Act.

Section 104(a)(2) of the 1984 Amendments

This rule was submitted to the responsible Committees of Congress for prepublication review on September 18, 1984, in accordance with section 7(o)(2) of the Department of Housing and Urban Development Act. Subsequent to the expiration of the fifteen-day prepublication review period on October 3, 1984, the Housing and Community Development Technical Amendments Act of 1984 was signed into law (Pub. L. 98–479, approved October 17, 1984 "technical amendments Act").

Section 104(a)(2) of the technical amendments Act amended section 234(k) of the National Housing Act to permit mortgage insurance on a unit in a project that was converted from rental housing if

> . . . Before April 20, 1984 (A) application was made to the Secretary for a commitment to insure a mortgage covering any unit in the project, (B) in the case of direct endorsement, the mortgagee received the case number assigned by the Secretary for any unit in the project, or (C) application was made for approval of the project for guarantee, insurance, or direct loan under chapter 37 of title 38, United States Code.

This amendatory language was not, in view of the chronology recited above, included in the rule transmitted to the Congress. Therefore, the text of the rule is being published exactly as it was reviewed by the Congressional Committees, that is, without the amendatory language of section 104(a)(2) of the technical amendments Act. However, the amendment at section 104(a)(2) will be added to the final rule on its issuance. In the Department's view, the amendment is self-executing. However, discussion of the amendment in this preamble (even though the amendatory language is not included in the rule's text) should serve as notice to the public of the amendment's provisions and afford an opportunity for comment. For textual guidance, the amendment will be implemented in the final rule at 24 CFR 234.26(h)(4).

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

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

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would remove regulatory provisions in accordance with recent statutory amendments and would add provisions that are protective of, or that redirect benefits to, a determinable class of users without imposing any economic burden on small entities.

This rule was listed as Sequence Number 89 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17310), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.133.

List of Subjects in 24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the Department proposes to amend 24 CFR Part 234 as follows:

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

1. The authority citation for Part 234 continues to read as follows:

Authority: Secs. 211, 234 of the National Housing Act (12 U.S.C. 1715b, 1715y); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 234.1, by revising paragraphs (d) and (k), and by adding paragraphs (o), (p) and (q) to read as follows:

§ 234.1 Definitions used in this subpart.

* * * * *

(d) "Mortgage" means a first lien covering a fee interest or eligible leasehold interest, in a one-family unit in a project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated.

* * * * *

(k) "Project" means a structure or structures containing four or more family units.

* * * * * * *

(o) "Conversion" means the date on which all documents necessary to create a condominium under State law (and local law where applicable) have been recorded.

(p) "Tenant" means the occupant(s) named in the lease or rental agreement of a housing unit in a project as of the date the condominium conversion documents are properly filed for the project, or as of the date on which the occupants are notified by management of intent to convert the project to a condomnium, whichever is earlier.

(q) "Bona fide tenants' organization" means an association of tenants formed by the tenants to promote their interests in a particular project, with membership in the association open to each tenant, and all requirements of the association applying equally to every tenant.

3. Section 234.26 is revised to read as follows:

§ 234.26 Project requirements.

No mortgage shall be eligible for insurance unless it complies with the following provisions:

(a) *Location of family unit.* The family unit shall be located in a project that the Commissioner determines to be acceptable.

(b) *Plan of condominium ownership.* The project in which the unit is located shall have been committed to a plan of condominium ownership by a deed, or other recorded instrument, that is acceptable to the Commissioner.

(c) *Releases.* The family unit shall have been released from any mortgage covering the project or any part of the project.

(d) *Certificate by mortgagee.* The mortgagee shall certify that:

(1) The deed of the family unit and the deed or other recorded instrument committing the project to a plan of condominium ownership comply with legal requirements of the jurisdiction.

(2) The mortgagor has good marketable title to the family unit, subject only to a mortgage that is a valid first lien on the family unit.

(3) The family unit is assessed and subject to assessment for taxes pertaining only to that unit.

(e) *Conditions and provisions.* (1) The Commission may require such conditions and provisions as the Commissioner determines are necessary for the protection of the consumer and the public interest, including, but not limited to, the execution of an agreement between the owners and the Commissioner that shall be made applicable to the condominium owners association and to any owner of a family unit.

(2) An application shall not be approved if approval would result in less than 80 percent of the units in the project covered by mortgages insured under this part being occupied by the mortgagors or comortgagors.

(3) In addition to the other requirements contained in this section, in order for a project to be acceptable to the Secretary, at least 51 percent of the family units shall be occupied by the owners or shall have been sold to owners who intend to occupy the units.

(f) *Projects covered by an insured or Secretary-held mortgage.* In addition to the other provisions contained in paragraphs (a)–(e) of this section, projects which are covered by an insured project mortgage, or mortgage held by the Secretary, must be in compliance with a conversion plan approved by the Commissioner. The conversion plan shall provide for:

(1) The termination by payment in full of the mortgage or by voluntary termination of the insurance contract covering any HUD/FHA-insured or Secretary-held mortgage on the project, unless mortgage on the project, unless the Commissioner determines that his/her interests and those of the individuals purchasing the family units are best served by not requiring the termination of the insurance or payment in full of the mortgage.

(2) On release of a family unit from the project mortgage, payment shall be made on the outstanding balance of the project mortgage in an amount equal to the share of the balance determined by HUD to be attributable to the family unit.

(3) The project mortgages shall certify notwithstanding any provisions of the mortgage covering prepayment, that no charge is contemplated or has been collected for prepayment in full of the project mortgage.

(g) *Projects not covered by an insured or Secretary-held mortgage.* Projects which are not covered by an insured project or Secretary-held mortgage and which have not been approved by the Veterans Administration for its guaranty, insurance or direct loan programs shall meet the provisions contained in paragraphs (a)–(e) of this section along with the following additional requirements: Except with the approval of the Commissioner for the purpose of constructing or converting the project in phases or stages, any special right of the declarant (as declarant and not as a unit owner) to do any and all of the following has expired or has been waived in a recorded instrument:

(1) Add land or units to the condominium;

(2) Convert common elements into additional units or limited common elements;

(3) Withdraw land from the condominium;

(4) Use easements through the common elements for the purpose of making improvements within the condominium or within any adjacent land; or

(5) Convert a unit into two or more units, common elements, or into two or more units and common elements.

(h) *Limitations on conversion of rental housing to condominium use.* With respect to a family unit in any project that was converted from rental, housing, no insurance will be provided under this section unless:

(1) The conversion occurred more than one year before the application for insurance; or

(2) The mortgagor or comortgagor was a tenant of that rental housing; or

(3) The conversion of the property is sponsored by a bona fide tenant's organization representing a majority of the households in the project.

§ 234.59 [Removed]

4. By removing § 234.59.

Dated: June 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 85–15531 Filed 6–27–85; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–238–81]

Investment Tax Credit for Certain Rehabilitation Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 46 and 48 of the Internal Revenue Code of 1954 relating to an investment tax credit for rehabilitation expenditures incurred in connection with the rehabilitation of a qualified rehabilitated building. Also, changes are made to the regulations under section 191 to reflect the repeal of that section. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, and the Tax Reform Act of 1984. The regulations would provide the public with the guidance needed to comply with the law as amended by the Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 27, 1985. The amendments would be effective generally for rehabilitation expenditures incurred after December 31, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–238–81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (Attention:CC:LR:T) (202–566–3516).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 46, 48, and 191 of the Internal Revenue Code of 1954. Generally, these amendments are proposed to conform the Income Tax Regulations to section 212 of the Economic Recovery Tax Act of 1981 (95 Stat. 235), section 102(f) of the Technical Corrections Act of 1982 (96 Stat. 2371), and sections 31(c), 111 (e)(8), and 1043(a) of the Tax Reform Act of 1984 (98 Stat. 518, 631, and 1044).

Section 38 of the Internal Revenue Code provides for a credit against tax in the case of investment in certain depreciable property (*i.e.*, section 38 property). Section 48(a)(1)(E) of the Code defines section 38 property so as to include the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures. Section 48(g) and § 1.48–12 define the terms "qualified rehabilitated building" and "qualified rehabilitation expenditure". Section 46(b)(4)(A) provides rules for determining the rehabilitation percentage that is to be applied to qualified rehabilitation expenditures in order to determine the amount of the investment tax credit that is allowable under section 38 to a taxpayer.

Rehabilitation Percentage

The Economic Recovery Tax Act of 1981 provided for a three-tier rehabilitation percentage in the case of qualified rehabilitation expenditures. In general, section 46(b)(4)(A) provides that the rehabilitation percentage is 15 percent in the case of a 40-year building, and 25 percent in the case of a certified historic structure. Section 46(b)(4)(B) provides that the regular percentage and the energy percentages do not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures. Section 46(b)(4)(C) provides definitions relating to the three types of buildings. In general, a 30-year building is a building where 30 years have elapsed between the date the building was first placed in service and the date physical work on the rehabilitation work on the rehabilitation began. A 40-year building is a building where 40 years have elapsed between these dates. The proposed regulations provide for an allocation rule in certain cases where additions have been made to a building.

Property Used for Lodging

In general, section 48(a)(3) provides that section 38 property does not include property which is used predominantly to furnish lodging. The Economic Recovery Tax Act amended section 48(a)(3) to provide an exception to this exclusion in the case of certified historic structures.

Qualified Rehabilitated Buildings

The term "qualified rehabilitated building" is defined in section 48(g)(1) and § 1.48–12(b). In order to qualify as a qualified rehabilitated building, four requirements must be met. First, the building must have been placed in service before the beginning of the rehabilitaton. Second, at least 75 percent of the existing external walls of the building generally must be retained as external walls. Third, thirty years must have elapsed between the date the building was first placed in service and the date the physical work on the rehabilitation began. Fourth, the building must have been substantially rehabilitated.

The Tax Reform Act of 1984 added section 48 (g) (1) (E) which provides for an alternative "external wall" test. Although the portion of these proposed regulations dealing with the new test is reserved, the Treasury Department invites public comment on this topic. Specifically, the Treasury Department invites public comment on the interpretation of the term "internal structural framework" in section 48 (g) (1) (E).

The proposed regulations contain additional restrictions applying in the cases of buildings that have been moved. Rehabilitation is distinguished from new construction in these proposed regulations. A quantitative test for substantial rehabilitation is provided in section 48 (g) (1) (C) and § 1.48-12 (b) (2). In general, the qualified rehabilitation expenditures during the appropriate measuring period must exceed the greater of $5,000 or the adjusted basis of the property. The proposed regulations provide rules for applying the test in various contexts.

Qualified Rehabilitation Expenditure

The term "qualified rehabilitation expenditure" is defined in section 48 (g) (2) and § 1.48-12 (c). In general, the expenditures must be for property chargeable to capital account and must be incurred after December 31, 1981, for real property with a recovery period of 18 years in connection with the rehabilitation of qualified rehabilitation building. Section 48 (g) (2) (B) and § 1.48-12 (c) exclude certain expenditures from the definition of qualified rehabilitation expenditures. The proposed regulations clarify that the term "qualified rehabilitation expenditures" is not limited to those expenditures incurred during the relevant measuring period used for purposes of the substantial rehabilitation test. In the case of rehabilitated property placed in service in a taxable year, if the building qualifies as a qualified rehabilitation building for that year, the taxpayer can claim as qualified rehabilitation expenditures the expenditures incurred before the beginning of the measuring period, during the measuring period, and after the measuring period but before the end of the taxable year.

Certified Historic Structure

The term "certified historic structure" is defined in section 48 (g) (3) and § 1.48-12 (d). In general, a certified historic structure is a building (and its structural components) which is listed in the National Register, or which is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district. Although procedures for obtaining a National Register listing or a certification of significance are generally within the authority of the Department of Interior, (and therefore outside the scope of the Internal Revenue Code), these proposed regulations do address the issue of when a 25 percent investment tax credit can be claimed in the case of a pending application for certification by the Department of Interior.

Adjustments to Basis

Section 48 (q) and § 1.48-12 (e) provide rules concerning an adjustment to the basis of a qualified rehabilitation buildings. In general, the increase in the basis of the building that would result from the qualified rehabilitation expenditures must be reduced by the amount of the credit allowed under section 38 (50 percent of the credit in the case of a certified historic structure).

Coordination With Other Provisions

Section § 1.48-12 (f) provides rules relating to the coordination between section 48 (g) and various other provisions of the Internal Revenue Code of 1954. Rules and cross-references to other provisions of the Code are provided.

Section 191

Section 191, relating to amortization of rehabilitation expenditures for certified historic structures, was repealed by the Economic Recovery Tax Act of 1981 for expenditures incurred after December 31, 1981. These proposed regulations reflect the repeal.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, 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 of any person who has submitted written 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 in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that the proposed rule is not a major rule as defined in Executive Order 12291 or the Treasury-Office of Management and Budget implementation of that order, dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is John G. Schmalz 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 these regulations both on matters of substance and style.

List of Subjects

26 CFR 1.0–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805 * * * 1.48–12 also issued under 26 U.S.C. 48(g)(1)(C) (i) and (iii).

Par. 2. Section 1.46–1 is amended by revising paragraphs (a)(2) and (d), by adding a new paragraph (e)(5), and by adding a new paragraph (q) at the end thereof, to read as follows. Paragraph (e) introductory text is shown for reader convenience.

§ 1.46–1 Determination of amount.

(a) *Effective dates.* * * *

(2) *Acts covered.* This section reflects changes made by the following Acts of Congress:

Act and Section

Tax Reduction Act of 1975, section 301.
Tax Reform Act of 1976, section 802, 1701, 1703.
Revenue Act of 1978, section 311, 312, 315.
Energy Tax Act of 1978, section 301.
Economic Recovery Tax Act of 1981, section 212.
Technical Corrections Act of 1982, section 102(f).

* * * * *

(d) *Credit earned.* The credit earned for the taxable year is the sum of the following percentages of qualified investment (as determined under section 46 (c) and (d))—

(1) The regular percentage (as determined under section 46(a)(2)(B)),

(2) For energy property, the energy percentage (as determined under section 46(a)(2)(C)),

(3) The ESOP percentage (as determined under section 46 (a)(2)(E)), and

(4) For the portion of the basis of a qualified rehabilitated building (as defined in § 1.48–12(b)) that is attributable to qualified rehabilitation expenditures (as § 1.48–12(c)), the rehabilitation percentage (as determined under section 46 (b) (4)).

(e) *Designation of credits.* The credit available for the taxable year is designated as follows:

* * * * *

(5) The credit attributable to the rehabilitation percentage for qualified rehabilitation expenditures is the rehabilitation investment credit.

* * * * *

(q) *Rehabilitation percentage*—(1) *In general.* For qualified rehabilitation expenditures (as defined in § 1.48–12(c)), section 46 (b)(4)(A) provides for a three-tier rehabilitation percentage. The applicable rehabilitation percentage depends on whether the qualified rehabilitation building is a "30-year building," a "40-year building," or a certified historic structure (as defined in section 48(g)(3) and § 1.48–12(d)). The rehabilitation percentage for qualified rehabilitation expenditures incurred with respect to a qualified rehabilitated building is 15 perent to the extent that the building is a 30-year building (*i.e.*, at least 30 years, but less than 40 years, has elapsed between the date the physical work on the rehabilitation began and the date the building was first placed in service), 20 percent to the extent that the building is a 40-year building (*i.e.*, at least 40 years has so elapsed), and 25 percent for certified historic structures, regardless of age. For purposes of this paragraph (q), a building is not a "30-year building" unless it has been at the location where it is being rehabilitated for the thirty-year period immediately preceding the beginning of the rehabilitation process, and is not a "40-year building" unless it has been at the location where it is being rehabilitated for the forth-year period immediately preceding the beginning of the rehabilitation process. See § 1.48–12(b)(5). Also, for purposes of this paragraph (q), a building (other than a certified historic structure) is not a qualified rehabilitated building to the extent of that portion of the building that is less than 30 years old. If rehabilitation expenditures are incurred with respect to an addition to a qualified rehabilitated building, but the addition is not considered to be part of the qualified rehabilitated building because the addition does not meet the thirty-year requirement in section 48(g)(1)(B) and § 1.48–12(b)(4), then no rehabilitation percentage will be applied to the expenditures attributable to the rehabilitation of the addition. Thus, for purposes of this paragraph (q)(1), it may be necessary to allocate rehabilitation expenditures incurred with respect to a building between the original portion of the building and the addition.

Furthermore, if qualified rehabilitation expenditures are incurred for property that is excluded from section 38 property described in section 48(a)(1)(E) (because, for example, they are made with respect to a portion of the building used for lodging within the meaning of section 48(a)(3) and § 1.48–1(h)), a similar allocation of the expenditures must be made between the expenditures that result in basis that is section 38 property and the expenditures that do not result in basis that is section 38 property since the rehabilitation percentage is applicable only to section 38 property. These allocations should be made using the principles contained in § 1.48–12(c)(9)(ii).

(2) *Regular and energy percentages not to apply.* The regular percentage and the energy percentage shall not apply to that portion of the basis of any building that is attributable to qualified rehabilitation expenditures (as defined in § 1.48–12(c)).

(3) *Effective date.* The rehabilitation percentage is applicable only to qualified rehabilitation expenditures (as defined in § 1.48–12(c)). For rules relating to applicability of the regular percentage to qualified rehabilitation expenditures (as defined in § 1.48–11(c)), see § 1.48–11.

Par. 3. Section 1.48–1 is amended by adding a new subdivision (iii) to paragraph (h)(1) and a new subdivision (iv) to paragraph (h)(2) to read as follows:

§ 1.48–1 Definition of section 38 property.

* * * * *

(h) *Property used for lodging*—(1) *In general.* * * *

(iii) Notwithstanding any other provision of this paragraph (h), in the case of a qualified rehabilitated building (within the meaning of section 48(g)(1) and § 1.48–12(b)), expenditures for property resulting in basis described in section 48(a)(1)(E) shall not be treated as section 38 property to the extent that such property is attributable to a portion of the building that is used for lodging or in connection with lodging. For example, if expenditures are incurred to rehabilitate a five story qualified rehabilitated building, three floors of which are used for apartments and two floors of which are used as commercial office space, the expenditures attributable to the commercial part of the building are not expenditures for property, or in connection with property, used predominantly for lodging. Allocation of expenditures between the two portions of the building are to be made using the principles contained in § 1.48–12(c)(9)(ii).

(2) *Exceptions.* * * *

(iv) *Certified historic structures.* For purposes of this paragraph (h), regardless of the actual use of a certified historic structure, that portion of the basis of such certified historic structure which is attributable to qualified rehabilitation expenditures (as defined in § 1.48–12(c)) shall not be considered as property which is either used predominantly to furnish lodging or predominantly in connection with the furnishing of lodging. Accordingly, such portion of the basis may qualify as section 38 property. (For a definition of "certified historic structure," see section 48(g)(3) and § 1.48–12(d).)

* * * * *

Par. 4. There is inserted immediately after § 1.48–11 a new § 1.48–12 to read as follows:

§ 1.48–12 Qualified rehabilitated building; expenditures incurred after December 31, 1981.

(a) *General rule*—(1) *In general.* Under section 48(a)(1)(E), the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures (within the meaning of section 48(g) and this section) is section 38 property. Property that is section 38 property by reason of section 48(a)(1)(E) is treated as new section 38 property and, therefore, is not subject to the used property limitation in section 48(c). Section 48(g)(1) and paragraph (b) of this section define the term "qualified rehabilitated building." Section 48(g)(2) and paragraph (c) of this section define the term "qualified rehabilitation expenditure." Section 48(g)(2)(B)(iv) and (3) and paragraph (d) of this section describe the rules applicable to "certified historic structures." Section 48(q) and paragraph (e) of this section provide rules concerning an adjustment to the basis of the rehabilitated building. Paragraph (f) of this section provides guidance for coordination of these provisions with other sections of the Code.

(2) *Effective date*—(i) *In general.* Except as otherwise provided in this paragraph, this section applies to expenditures incurred after December 31, 1981, in connection with the rehabilitation of a qualified rehabilitated building. (See paragraph (c)(3)(i) of this section for rules concerning the determination of when an expenditure is incurred.) If, however, physical work on the rehabilitation began before January 1, 1982, and the building does not meet the requirements of paragraph (b) of this section, the rules in § 1.48–11 shall apply to the expenditures incurred after December 31, 1981, in connection with such rehabilitation. (See paragraph (b)(6)(i) of this section for rules determining when physical work on a rehabilitation begins.) For property placed in service before March 16, 1984, and any property subject to the exception set forth in section 111(g)(2) of Public Law 98–369 (Deficit Reduction Act of 1984), the references to "18 years" in paragraphs (c)(1)(iii), (c)(2), (c)(4), and (c)(7)(v) shall be replaced with "15 years" and the reference to "18-year real property" in paragraph (c)(4) shall be replaced with "15-year real property."

(ii) *Transition rule concerning external wall definition.* Notwithstanding the definition of external wall contained in paragraph (b)(3)(iii) of this section, in any case in which the written plans and specifications for a rehabilitation were substantially completed on or before June 28, 1985, and the building being rehabilitated would fail to meet he requirement of paragraph (b)(1)(iii) of this section if the definition of external wall in paragraph (b)(3)(iii) of this section were used, then the term "external wall" shall be defined as a wall, including its supporting elements, with one face exposed to the weather or earth, and a common wall shall not be treated as an external wall. See paragraph (b)(2)(v) of this section for the definition of written plans and specifications.

(b) *Definition of qualified rehabilitated building*—(1) *In general.* The term "qualified rehabilitated building" means any building and its structural components—

(i) That has been substantially rehabilitated (within the meaning of paragraph (b)(2) of this section),

(ii) That was placed in service (within the meaning of § 1.46–3(d)) as a building by any person before the beginning of the rehabilitation, and

(iii) 75 percent or more of the existing external walls of which are retained in place as external walls in the rehabilitation process (within the meaning of paragraph (b)(3) of this section).

See paragraph (b)(4) and (5) of this section for additional requirements related to the definition of a qualified rehabilitated building.

(2) *Substantially rehabilitated building*—(i) *Substantial rehabilitation test.* A building shall be treated as having been substantially rehabilitated for a taxable year only if the qualified rehabilitation expenditures (as defined in paragraph (c) of this section) incurred during any 24-month period selected by the taxpayer ending with or within the taxable year exceed the greater of—

(A) The adjusted basis of the building (and its structural components), or

(B) $5,000.

(ii) *Date to determine adjusted basis of the building*—(A) *In general.* The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the first day of the 24-month period selected by the taxpayer or the first day of the taxpayer's holding period of the building (within the meaning of section 1250(e)), whichever is later. For purposes of determining the holding period under section 1250(e), any reconstruction that is part of the rehabilitation shall be disregarded.

(B) *Special rules.* In the event a building is not owned by the taxpayer, the adjusted basis of the building shall be determined as of the date that would have been used if the owner had been the taxpayer. The adjusted basis of a building that is being rehabilitated by a taxpayer other than the owner shall thus be determined as of the beginning of the first day of the 24-month period selected by the taxpayer or the first day of the owner's holding period, whichever is later. Therefore, if a building that is being rehabilitated by a lessee is sold subject to the lease prior to the date that the lessee has substantially rehabilitated the building, the lessee's adjusted basis is determined as of the beginning of the first day of the new lessor's holding period or the beginning of the first day of the 24-month period selected by the lessee (the taxpayer), whichever is later. If, therefore, the first day of the new lessor's holding period were later than the first day of the 24-month period selected by the lessee (the taxpayer), the lessee's adjusted basis for purposes of the substantial rehabilitation test would be the same as the adjusted basis of the new lessor as determined under paragraph (b)(2)(vii) of this section. If a building is sold after the date that a lessee has substantially rehabilitated the building with respect to the original lessor's adjusted basis, however, the lessee's basis may be determined as of the first day of the 24-month period selected by the lessee or the first day of the original lessor's holding period, whichever is later, and the transfer of the building will not affect the adjusted basis for purposes of the substantial rehabilitation test.

(iii) *Adjusted basis of the building*—(A) *In general.* The term "adjusted basis of the building" means the aggregate adjusted basis (within the meaning of section 1011(a)) in the building (and its structural components) of all the parties who have an interest in the building.

(B) *Special rules.* In the case of a building that is leased to a tenant, the adjusted basis of the building is determined by adding the adjusted basis of the owner (lessor) in the building to the adjusted basis of the lessee (or lessees) in the leasehold and any leasehold improvements that are structural components of the building. Similarly, in the case of a building that is divided into condominium units, the adjusted basis of the building means the aggregate adjusted basis of all of the respective condominium owners (including the basis of any lessee in the leasehold and leasehold improvements) in the building (and its structural components). If the adjusted basis of a building would be determined in whole or in part by reference to the adjusted basis of a person or persons other than the taxpayer (*e.g.*, a rehabilitation by a lessee) and the taxpayer is unable to obtain the required information from such other person or persons, the adjusted basis of the building will be deemed to be the fair market value of the building. If a building is owned by a partnership (*i.e.*, the building is partnership property), adjusted basis is determined by taking into account any adjustments to the basis of the building made under section 743 and section 734. Any adjustments to the building's basis that are made under section 743 or section 734 after the beginning of the partnership's holding period, but before the end of the measuring period, shall be deemed for purposes of the substantial rehabilitation test to have been made on the first day of the partnership's holding period. For purposes of determining the adjusted basis of a building, the portion of the adjusted basis of a building that is allocable to an addition (within the meaning of paragraph (b)(4)(ii) of this section) to the building that is less than thirty years old (within the meaning of section 48(g)(1)(B) and paragraph (b)(4)(i) of this section) shall be disregarded. (See paragraph (b)(2)(vii) of this section for a special rule applicable to the determination of the adjusted basis of a building when qualified rehabilitation expenditures are treated as incurred by the taxpayer.)

(iv) *Rehabilitation.* Rehabilitation includes renovation, restoration, or reconstruction of a building, but does not include an enlargement (within the meaning of paragraph (c)(9) of this section) or new construction. The determination of whether expenditures are attributable to the rehabilitation of an existing building or to new construction shall be based upon all the facts and circumstances.

(v) *Special rule for phased rehabilitation.* In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in written architectural plans and specifications completed before the physical work on the rehabilitation begins, paragraphs (b)(2) (i), (ii), and (vii) of this section shall be applied by substituting "60-month period" for "24-month period." A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The determination of whether a rehabilitation consists of distinct stages and therefore may reasonably be expected to be completed in phases shall be made on the basis of all the relevant facts and circumstances in existence before physical work on the rehabilitation begins. For purposes of this paragraph and paragraph (a)(2)(ii) of this section, written plans that describe generally all phases of the rehabilitation process shall be treated as written architectural plans and specifications. Such written plans are not required to contain detailed working drawings or detailed specifications of the materials to be used. In addition, the taxpayer may include a description of work to be done by lessees in the written plans. For example, where the owner of a vacant four story building plans to rehabilitate two floors of the building and plans to require, as a condition of any lease, that tenants of the other two floors must rehabilitate those floors, the requirements of this paragraph (b)(2)(v) shall be met if the owner provides written plans for the rehabilitation work to be done by the owner and a description of the rehabilitation work that the tenants will be required to complete. The work required of the tenants may be described in the written plans in terms of minimum specifications (*e.g.*, as to lighting, wiring, materials, appearance) that must be met by such tenants. See paragraph (b)(6)(i) of this section for the definition of physical work on a rehabilitation.

(vi) *Treatment of expenses incurred by persons who have an interest in the building.* For purposes of the substantial rehabilitation test in paragraph (b)(2)(i) of this section, the taxpayer may take into account qualified rehabilitation expenditures incurred during the same rehabilitation process by any other person who has an interest in the building. Thus, for example, to determine whether a building has been substantially rehabilitated a lessee may include the expenditures of the lessor and of other lessees; a condominium owner may include the expenditures incurred by other condominium owners; and an owner may include the expenditures of the lessees.

(vii) *Special rules when qualified rehabilitation expenditures are treated as incurred by the taxpayer.* In the case where qualified rehabilitation expenditures are treated as having been incurred by a taxpayer under paragraph (c)(3)(ii) of this section, the tranferee shall be treated as having incurred the expenditures incurred by the transferor on the date that the transferor incurred the expenditures within the meaning of paragraph (c)(3) (i) of this section. For purposes of the substantial rehabilitation test in paragraph (b)(2)(i) of this section, the transferee's adjusted basis in the building shall be determined as of the beginning of the first day of a 24-month period, or the first day of the transferee's holding period, whichever is later, as provided in paragraph (b)(2)(ii) of this section. The transferee's basis as of the first day of the transferee's holding period for purposes of the substantial rehabilitation test in paragraph (b)(2)(i) of this section, however, shall be considered to be equal to the transferee's basis in the building on such date less—

(A) The amount of any qualified rehabilitation expenditures incurred (or treated as having been incurred) by the transferor during the 24-month period that are treated as having been incurred by the transferee under paragraph (c)(3)(ii) of this section, and

(B) The amount of qualified rehabilitation expenditures incurred before the transfer and during the 24-month period by any other person who has an interest in the building (*e.g.*, a lessee of the transferor).

The preceding sentence shall not apply, however, unless the transferee's basis in the building is determined with reference to: (*1*) The transferee's cost of the building (including the rehabilitation expenditures), (*2*) the transferor's basis in the building (where such basis includes the amount of the expenditures), or (*3*) any other amount that includes the cost of the rehabilitation expenditures. In the event that the transferee's basis is determined with reference to an amount not described above (*e.g.*, transferee's basis in one building is determined with reference to the transferee's basis in another building under section 1031(d)), the amount of the expenditures incurred by the transferor and treated as having been incurred by the transferee are not deducted from the transferee's basis for purposes of the substantial rehabilitation test. If a transferee's basis is determined under section 1014, any expenditures incurred by the decedent within the measuring period that are treated as having been incurred by the transferee under paragraph (c)(3)(ii) of this section shall decrease the transferee's basis for purposes of the substantial rehabilitation test.

(viii) *Statement of adjusted basis, measuring period, and qualified rehabilitation expenditures.* In the case of any tax return filed after August 27, 1985, on which an investment tax credit for property described in section 48(a)(1)(E) is claimed, the taxpayer shall indicate by way of a marginal notation on, or a supplemental statement attached to, Form 3468—

(A) The beginning and ending dates for the measuring period selected by the taxpayer under section 48(q)(1)(C)(i) and paragraph (b)(2) of this section,

(B) The adjusted basis of the building (within the meaning of paragraph (b)(2)(iii) or (vii) of this section) as of the beginning of such measuring period, and

(C) The amount of qualified rehabilitation expenditure incurred, and treated as incurred, respectively, during such measuring period.

Furthermore, for returns filed after August 27, 1985, if the adjusted basis of the building for purposes of the substantial rehabilitation test is determined in whole or in part by reference to the adjusted basis of a person, or persons, other than the taxpayer, (*e.g.*, a rehabilitation by a lessee), the taxpayer must attach to the Form 3468 filed with the tax return on which the credit is claimed a statement addressed to the District Director, signed by such third party, that states the first day of the third party's holding period and the amount of the adjusted basis of such third party in the building at the beginning of the measuring period or the first day of the holding period, whichever is later. If the taxpayer is unable to obtain the required information, that fact should be indicated and the taxpayer should state the fair market value of the building on the proper date.

(ix) *Examples.* The following examples illustrate the application of the substantial rehabilitation test in this paragraph (b)(2):

Example (1). Assume that A, a calendar year taxpayer, purchases a building for $140,000 on January 1, 1982, incurs qualified rehabiltiation expenditures in the amount of $48,000 (at the rate of $4,000 per month) in 1982, $100,000 in 1983, and $20,000 (at the rate of $2,000 per month) in the first ten months of 1984, and places the rehabilitated building in service on October 31, 1984. Assume that A did not have written architectural plans and specifications describing a phased rehabilitation within the meaning of paragraph (b)(2)(v) of this section in existence prior to the beginning of physical work on the rehabilitation. For purposes of the substantial rehabilitation test in paragraph (b)(2) of this section, A may select any 24-consecutive-month measuring period that ends in 1984, the taxable year year in which the rehabilitated building was placed in service. Assume that on A's 1984 return, A selects a measuring period beginning on February 1, 1982, and ending on January 31, 1984, and specifies that A's basis in the building (within the meaning of section 1011(a)) was $144,000 on February 1, 1982 ($140,000 + $4,000). (The $4,000 of rehabilitation expenditures incurred during Jnauary 1982 are included in A's basis under section 1011 even though such property has not been placed in service.) The amount of qualified rehabilitation expenditures incurred during the measuring period was $146,000 ($44,000 from February 1 to December 31, 1982, plus $100,000 in 1983, plus $2,000 in January 1984). The building shall be treated as "substantially rehabilitated" within the meaning of this paragraph (b)(2) for A's 1984 taxable year because the $146,000 of expenditures incurred by A during the measuring period exceeded A's adjusted basis of $144,000 at the beginning of the period. If the other requirements of section 48(g)(1) and this paragraph are met, the building is treated as a qualified rehabilitated building, and A can treat as qualified rehabilitation expenditures the amount of $168,000 (*i.e.*, $146,000 of expenditures incurred during the measuring period, $4,000 of expenditures incurred prior to the beginning of the measuring period as part of the rehabilitation process, and $18,000 of expenditures incurred after the measuring period during the taxable year within which the measuring period ends (see paragraph (c)(6) of this section)). The result would be the same if the property attributable to the rehabilitation expenditures was placed in service as the expenditures were incurred. (See paragraph (f)(2) of this section.)

Example (2). Assume the same facts as in example (1), except that additional rehabilitation expenditures are incurred after the rehabilitated building was placed in service on October 31, 1984 such expenditures are incured through the end of 1984, and in 1985 when the portion of the basis attributable to the additional expenditures is placed in service. The fact that the building qualified as substantially rehabilitated building for A's 1984 taxable year has no effect on whether the building is a qualified rehabilitated building for property placed in service in A's 1985 taxable year. In order to determine whether the building is a qualified rehabilitated building for A's 1985 taxable year, A must select a measuring period that ends in 1985 and compare the expenditures incurred within that period with the adjusted basis as of the beginning of the period. Solely for the purpose of determining whether the building was substantially rehabilitated for A's 1985 taxable year, expenditures incurred during 1983 and 1984, even though considered in determining whether the building was substantially rehabilitated in 1984, may also be used to determined whether the building was substantially rehabilitated for A's 1985 taxable year, provided the expenditures were

incurred during any 24-month measuring period selected by A that ends in 1985.

Example (3). (i) Assume that B purchase a building for $100,000 on January 1, 1982, and leases the building to C who rehabilitates the building. Assume that C, a calendar year taxpayer, places the property with respect to which rehabilitation expenditures were made in service in 1982 and selects December 31, 1982, as the end of the measuring period for purposes of the substantial rehabilitation test. The beginning of the measuring period is January 2, 1982, the beginning of B's holding period under section 1250 (e), and the adjusted basis of the building is $100,000. Accordingly, if C incurred more than $100,000 of qualified rehabilitation expenditures during 1982, the building would be substantially rehabilitated within the meaning of paragraph (b) (2) (i) of this section.

(ii) Assume the facts of example (3) (i), except that after C begins physical work on the rehabilitation, but before C incurs $100,000 of expenditures, D acquires the building, subject to C's lease, from B for $200,000. D's holding period under section 1250 (e) begins on the day after D acquired the building, and C's adjusted basis for purposes of the substantial rehabilitation test is $200,000, less the amount of expenditures incurred by C before the transfer. (See paragraph (b) 92) (ii) and (vii) of this section.) Accordingly, if C incurred more than $200,000 (less the amount of expenditures incurred prior to the transfer) of qualified rehabilitation expenditures during 1982, the building would be substantially rehabilitated within the meaning of paragraph (b) (2) of this section. Under paragraph (b) (2) (ii) (B) of this section, however, C's adjusted basis for purposes of the substantial rehabilitation test would be $100,000 if C had substantially rehabilited the building (*i.e.*, incurred more than $100,000 in rehabilitation expenditures) prior to B's sale to D.

Example (4). E owns a building with a basis of $10,000 and E incurs $5,000 of rehabilitation expenditures. Before completing the rehabilitation project, E sells the building to F for $30,000. Assume that F is treated under paragraph (c)(3)(ii) of this section as having incurred the $5,000 of rehabilitation expenditures actually incurred by E. Because F's basis in the building is determined under section 1011 with reference to F's $30,000 cost of the building (which includes the property attributable to E's rehabilitation expenditures), F's basis for purposes of the substantial rehabilitation test is $25,000 ($30,000 cost basis less $5,000 rehabilitation expenditures treated as if occurred by F). (See paragraph (b)(2)(vii) of this section.) F would thus be required to incur more than $20,000 of rehabilitation expenditures (in addition to the $5,000 incurred by E and treated as having been incurred by F) during a measuring period selected by F to satisfy the substantial rehabilitation test.

Example (5). G owns Building I with a basis of $10,000 and a fair market value of $20,000. H owns Building II with a basis of $5,000 and a fair market value of $20,000, with respect to which H has incurred $1,000 of rehabilitation expenditures. G and H exchange their buildings in a transaction that qualifies for nonrecognition treatment under section 1031. Assume that G is treated under paragraph (c)(3)(ii) of this section as having incurred $1,000 of rehabilitation expenditures. G's basis in Building II, computed under section 1031(d), is $10,000. G's basis in Building II is not determined with reference to (A) the cost of Building II, (B) H's basis in Building II (including the cost of the rehabilitation expenditures) or (C) any other amount that includes the cost of the expenditures, but is instead determined with reference to G's basis in other property (Building I). Therefore, G's basis in Building II for purposes of the substantial rehabilitation test is not reduced by $1,000 of rehabilitation expenditures treated as if occurred by G. (See paragraph (b)(2)(vii) of this section.) Accordingly, G's basis in Building II for purposes of the substantial rehabilitation test is $10,000, and G must incur additional rehabilitation expenditures in excess of $9,000 within a measuring period selected by G to satisfy the test.

(3) *Retention of 75 percent of external walls*—(i) *In general.* A building meets the requirement set forth paragraph (b)(1)(iii) of this section if 75 percent or more of the existing external walls of the building (as measured by the total area of the existing external walls) are retained in place as external walls in the rehabilitation process. For this purpose, the area of existing external walls includes the area of windows and doors. If an addition to a building is not treated as part of a qualified rehabilitated building because it does not meet the 30-year requirement in paragraph (b)(4) of this section, then the external walls of such addition shall not be considered to be existing external walls of the building for purposes of section 48 (g)(3)(A)(iii) and this section. The area of the existing external walls of a building shall be determined prior to any destruction, modification, or construction of walls that is undertaken by any party in anticipation of the rehabilitation.

(ii) *Alternative test described in section 48 (g)(1)(E).* [Reserved]

(iii) *Definition of external wall.* For purposes of this paragraph (b), a wall includes both the supporting elements of the wall and the nonsupporting elements (*e.g.*, a curtain) of the wall. Except as otherwise provided in this paragraph (b)(3), the term "external wall" includes any wall that has one face exposed to the weather, earth, or an abutting wall of an adjacent building. The term "external wall" also includes a shared wall (*i.e.*, a single wall shared with an adjacent building), generally referred to as a "party wall," provided that the shared wall has no windows or doors in any portion of the wall that does not have one face exposed to the weather, earth, or an abutting wall. In general, the term "external wall" includes only those external walls that form part of the perimeter of the building or that surround an uncovered courtyard. Therefore, the walls of an uncovered internal shaft, designed solely to bring light or air into the center of a building, which are completely surrounded by external walls of the building and which enclose space not designated for occupancy or other use by people (other than for maintance or emergency), are not considered external walls. Thus, for example, a wall of a light well in the center of a building is not an external wall. However, walls surrounding an outdoor space which is usable by people, such as a courtyard, are external walls.

(iv) *Retained in place.* An existing external wall is retained in place if the supporting elements of the wall are retained in place. An existing external wall is not retained in place if the supporting elements of the wall are replaced by new supporting elements. An external wall is retained in place, however, if the supporting elements are reinforced in the rehabilitation, provided that such supporting elements of the external wall are retained in place. An external wall also is retained in place if it is covered (*e.g.*, with new siding). Moreover, an external wall is retained in place if the existing curtain is replaced with a new curtain, provided that the structural framework that provides for the support of the existing curtain is retained in place. An external wall is retained in place notwithstanding that the existing doors and windows in the wall are modified, eliminated, or replaced. An external wall is retained in place if the wall is disassembled and reassembled, provided the same supporting elements are used when the wall is reassembled and the configuration of the external walls of the building after the rehabilitation is the same as it was before the rehabilitation process commenced. Thus, for example, a brick wall is considered retained in place even though the original bricks are removed (for cleaning, *etc.*) and replaced to form the wall.

(v) *Effect of additions.* If an existing external wall is converted into an internal wall (*i.e.*, a wall that is not an external wall), the wall is not retained in place as an external wall for purposes of this section.

(vi) *Examples.* The provisions of this paragraph (b)(3) may be illustrated by the following examples:

Example (1). Taxpayer A rehabilitated a building all of the walls of which consisted of wood siding attached to gypsum board sheets (which covered the supporting elements of

the wall, *i.e.*, studs). A covered the existing wood siding with aluminum siding as part of a rehabilitation that otherwise qualified under this subparagraph. The addition of the aluminum siding does not affect the status of the existing external walls as external walls and they would be considered to have been retained in place.

Example (2). Taxpayer B rehabilitated a building, the external walls of which had a masonry curtain. The masonry on the wall face replaced with a glass curtain. The steel beam and girders supporting the existing masonry curtain were retained in place. The walls of the building are considered to be retained in place as external walls, notwithstanding the replacement of the curtain.

Example (3). Taxpayer C rehabilitated a building that has two external walls measuring 75' x 20' and two other external walls measuring 100' x 20'. C demolished one of the larger walls, including its supporting elements and constructed a new wall. Because one of the larger walls represents more than 25 percent of the area of the building's external walls, C has not satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (4). The facts are the same as in example (3), except that C does not tear down any walls, but builds an addition that results in one of the smaller walls becoming an internal wall. In addition, C enlarged 8 of the existing windows on one of the larger walls, increasing them from a size of 3' x 4' to 6' x 8'. Since the smaller wall accounts for less than 25 percent of the total wall area, C has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process. The enlargement of the existing windows on the larger wall does not affect its status as an external wall.

Example (5). Taxpayer D rehabilitated a building that was in the center of a row of the three buildings. The building being rehabilitated by D shares its side walls with the buildings on either side. The shared walls measure 100' x 20' and the rear and front walls measure 75' x 20'. As part of a rehabilitation, D tears down and replaces the front wall. Because the shared walls as well as the front and back walls are considered external walls and the front wall accounts for less than 25 percent of the total external wall area (including the shared walls), D has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process.

(4) *Thirty-year requirement*—(i) *In general.* Except in the case of a certified historic structure (within the meaning of paragraph (d) of this section), a building is considered a qualified rehabilitated building only if a period of at least 30 years has elapsed between the date physical work on the rehabilitation of the building began and the date the building was first placed in service (within the meaning of § 1.46–3(d)) as a building by any person.

(ii) *Additions.* A building that was first placed in service at least 30 years before physical work on the rehabilitation began will not be disqualified because additions to such building are less than 30 years old. Additions to the building that are less than 30 years old, however, shall not be treated as part of the qualified rehabilitated building.

The term "addition" means any construction that resulted in any portion of an external wall becoming an internal wall, that resulted in an increase in the height of the building, or that increased the volume of the building.

(iii) *Vacant periods.* The 30-year period required by this paragraph (b)(3) includes periods during which a building was vacant or devoted to a personal use and is computed without regard to the number of owners or the identify of owners during the period.

(5) *Location at which the rehabilitation occurs.* A building, other than a certified historic structure (within the meaning of paragraph (d) of this section), is not a qualified rehabilitated building unless it has been located where it is being rehabilitated for the thirty-year period immediately preceding the date physical work on the rehabilitation began in the case of a "30-year building" or the forty-year period immediately preceding the date physical work on the rehabilitation began in the case of a "40-year building." (See § 1.46–1(q)(1) for the definitions of "30-year building" and "40-year building.")

(6) *Definition and special rule*—(i) *Physical work on a rehabilitation.* For purposes of this section, "physical work on a rehabilitation" begins when actual construction, or destruction in preparation for construction, begins. The term "physical work on a rehabilitation," however, does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration (*e.g.*, placing boards over broken windows).

(ii) *Special rule for adjoining buildings that are combined.* For purposes of this paragraph (b), if as part of a rehabilitation process two or more adjoining buildings are combined and placed in service as a single building after the rehabilitation process, then, at the election of the taxpayer, all of the requirements for a qualified rehabilitated building in section 48(g)(1) and this section may be applied to the constituent adjoining buildings in the aggregate. For example, if such requirements are applied in the aggregate, any shared walls or abutting walls between the constituent buildings that would otherwise be treated as external walls (within the meaning of paragraph (b)(3) of this section) would not be treated as external walls of the building, and the substantial rehabilitation test in paragraph (b)(2) of this section would be applied to the aggregate expenditures with respect to all of the constituent buildings and to the aggregate adjusted basis of all of the constituent buildings. A taxpayer shall elect the special rule of this paragraph (b)(6)(ii) for adjoining buildings by indicating by way of a marginal notation on, or a supplemental statement attached to, the Form 3468 on which a credit is first claimed for qualified rehabilitation expenditures with respect to such buildings that such buildings are a single qualified rehabilitated building because of the application of the special rule in this paragraph (b)(6)(ii).

(c) *Definition of qualified rehabilitation expenditures*—(1) *In general.* Except as provided in paragraph (c)(7) of this section, the term "qualified rehabilitation expenditure" means any amount that is—

(i) Properly chargeable to capital account (as described in paragraph (c)(2) of this section),

(ii) Incurred by the taxpayer after December 31, 1981 (as described in paragraph (c)(3) of this section),

(iii) For recovery property that is real property (or additions or improvements to real property) with a recovery period (within the meaning of section 168) of 18 years (15 years for low-income housing) (as described in paragraph (c)(4) of this section), and

(iv) Made in connection with the rehabilitation of a qualified rehabilitated building (as described in paragraph (c) (5) of this section).

(2) *Chargeable to capital account.* For purposes of paragraph (c) (1) of this section, amounts are chargeable to capital account if they are properly includible in computing basis under § 1.46–3 (c). Amounts treated as an expense and deducted in the year they are paid or incurred or amounts that are amortized over a period of less than 18 years (15 years in the case of low-income housing) do not qualify. For purposes of this paragraph (c), amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, developers fees, and other construction related costs, if added to the basis of real property with a recovery period of 18 years (15 years in the case of low-income housing), satisfy the requirement of this paragraph (c) (2). Construction period interest and taxes, as defined in section 189, are not qualified

rehabilitation expenditures if they are amortized under section 189. If, however, the taxpayer elects under section 266 to treat such interest and taxes as chargeable to capital account with respect to real property with a recovery period of 18 years (15 years in the case of low-income housing), they shall be treated in the same manner as other costs described in this paragraph (c) (2). Any construction period interest or taxes or other fees or costs incurred in connection with the acquisition of land or a building are subject to paragraph (c) (7) (ii) of this section.

(3) *Incurred by the taxpayer*—(i) *In general.* Qualified rehabilitation expenditures are incurred by the taxpayer for purposes of this section on the date such expenditure would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense. If qualified rehabilitation expenditures are treated as having been incurred by a taxpayer under paragraph (c) (3) (ii) of this section, the taxpayer shall be treated as having incurred the expenditures on the date such expenditures were incurred by the transferor.

(ii) *Qualified rehabilitation expenditures treated as incurred by the taxpayer.* (A) Where rehabilitation expenditures are incurred with respect to a building by a person (or persons) other than the taxpayer and the taxpayer subsequently acquires the building, or a portion of the building to which the expenditures are allocable, the taxpayer acquiring such property shall be treated as having incurred the rehabilitation expenditures actually incurred by the transferor (or treated as incurred by the transferor under this paragraph (c) (3) (ii)) with respect to the acquired property, provided that—

(*1*) The building, or the portion of the building, acquired by the taxpayer was not used after the rehabilitation expenditures were incurred and prior to the date of acquisition, and

(*2*) No credit with respect to such qualified rehabilitation expenditures is claimed by anyone other than the taxpayer acquiring the property.

For purposes of this paragraph (c) (3) (ii), use shall mean actual use, whether personal or business.

(B) The amount of rehabilitation expenditures described in paragraph (c) (3) (ii) (A) of this section treated as incurred by the taxpayer under this paragraph shall be the lesser of—

(*1*) The amount of rehabilitation expenditures incurred before the date on which the taxpayer acquired the building (or portion thereof) to which the rehabilitation expenditures are attributable, or

(*2*) The portion of the taxpayer's cost or other basis for the property that is properly allocable to the property resulting from the rehabilitation expenditures described in paragraph (c) (3) (ii) (B) (*1*) of this section.

(C) For purposes of this paragraph (c) (3) (ii) of this section, the amount of rehabilitation expenditures treated as incurred by the taxpayer under this paragraph (c) shall not be treated as costs for the acquisition of a building. The portion of the cost of acquiring a building (or an interest therein) that is not treated under this paragraph as qualified rehabilitation expenditures incurred by the taxpayer is not treated as section 38 property in the hands of the acquiring taxpayer. (See paragraph (c) (7) (ii) of this section.) (See paragraph (b) (2) (vii) for rules concerning the application of the substantial rehabilitation test when expenditures are treated as incurred by the taxpayer.)

(iii) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). In 1981, A, a taxpayer using the cash receipts and disbursements method of accounting, commenced the rehabilitation of a 30-year old building. In June 1981, A signed a contract with a plumbing contractor for replacement of the plumbing in the building. A agreed to pay the contractor as soon as the work was completed. The work was completed in December 1981, but A did not pay the amount due until January 15, 1982. The expenditures for the plumbing are not qualified rehabilitation expenditures (within the meaning of paragraph (c) of this section) because they were not incurred under the accrual method of accounting after December 31, 1981.

Example (2). B. incurred qualified rehabilitation expenditures of $300,000 with respect to an existing building between January 1, 1982, and May 15, 1982, and the sold the building to C on June 1 1982. The portion of the building to which the expenditures were allocable was not used by B or any other person during the period from January 1, 1982, to June 1, 1982, and neither B nor any other person claimed the credit. Consequently, C will be treated as having incurred the expenditures on the dates that B incurred the expenditures.

Example (3). C, a taxpayer using the cash receipts and disbursements method of accounting, begins the rehabilitation of a building on January 11, 1982. Prior to May 1 1982, C pays rehabilitation expenditures of $12,000. On May 3, 1982, C sells the building, the land, and the property attributable to the rehabilitation expenditures to D for $35,000. The purchase price is properly allocable as follows:

Land	$8,000
Existing building	11,000
Property attributable to rehabilitation expenditures	16,000
Total purchase price	35,000

The property attributable to the rehabilitation expenditures is placed inservice by D on September 5, 1982. D may treat a portion of the $35,000 purchase price as rehabilitation expenditures paid or incurred by him. Since the rehabilitation expenditures paid by C ($12,000) are less than the portion of the purchase price properly allocable to property attributable to these expenditures ($16,000), D may treat only $12,000 as rehabilitation expenditures paid or incurred by him. The excess of the purchase price allocable to rehabilitation expenditures ($16,000) over the rehabilitation expenditure paid by C ($12,000), or $4,000, is treated as the cost of acquirinig an interest in the building and is not a qualified rehabilitation expenditure treated as incurred by D.

Example (4). The facts are the same as in example (3), except that the purchase price properly allocable to the property attributable to rehabilitation expenditures is $10,000. Under these circumstances, D may treat only $10,000 of C's $12,000 expenditures as rehabilitation expenditures paid by C. The excess of the rehabilitation expenditures paid by C ($12,000) over the purchase price allocable to rehabilitation expenditures ($10,000), or $2,000, is treated as the cost of acquiring an interest in the building and is not a qualified rehabilitation expenditures treated as incurred by D.

(4) *Incurred for 18-year property.* For purposes of this section, an expenditure is incurred for recovery property having a recovery period of 18 years only if the amount of the expenditure is added to the basis or property which is 18-year real property or 15-year real property in the case of low-income housing (within the meaning of section 168(c)). For purposes of this section, the term "low-term housing" has the meaning given such term by section 168(c)(2)(F).

(5) *Made in connection with the rehabilitation of a qualified rehabilitation building.* In order to be qualified rehabilitation expenditures, expenditures must be incurred in connection with a rehabilitation as defined in paragraph (b)(2)(iv) of this section. Expenditures attributable to work done to facilities related to a building (*e.g.*, sidewalk, parking lot, landscaping) are not considered made in connection with the rehabilitation of a qualified rehabilitated building.

(6) *When expenditures may be incurred.* An expenditure is a qualified rehabilitation expenditure only if the building with respect to which the expenditures are incurred is substantially rehabilitated (within the meaning of paragraph (b) (2) of this

section) for the taxable year in which the property attributable to the expenditures is placed in service (*i.e.*, the building is substantially rehabilitated during a measuring period ending with or within the taxable year in which the credit is claimed). (See paragraph (f) (2) of this section for rules relating to when property is placed in service.) The amount of qualified rehabilitation expenditures is limited to expenditures incurred:

(i) Before a measuring period, during which the building was substantially rehabilitated, that ends with or within the taxable year, provided that the expenditures were incurred in connection with the rehabilitation process that resulted in the substantial rehabilitation of the building;

(ii) Within a measuring period, during which the building was substantially rehabilitated, that ends with or within the taxable year, and

(iii) After a measuring period, during which the building was substantially rehabilitated, but prior to the end of the taxable year with or within which the measuring period ends.

(7) *Certain expenditures excluded from qualified rehabilitation expenditures.* The term "qualified rehabilitation expenditures" does not include the following expenditures:

(i) Any expenditure with respect to whch an election is not made under section 168 (b) (3) to use the straight-line method of depreciation. (See paragraph (c) (8) of this section.)

(ii) The cost of acquiring a building, any interest in a building (including a leasehold interest), or land, except as provided in paragraph (c) (3) (ii) of this section.

(iii) Any expenditure attributable to an enlargement of a building (within the meaning of paragraph (c) (9) of this section).

(iv) Any expenditure attributable to the rehabilitation of a certified historic structure or a building located in a registered historic district, unless the rehabilitation is a certified rehabilitation. (Paragraph (d) of this section contains definitions and special rules applicable to rehabilitations of certified historic structures and buildings located in registered historic districts.)

(v) Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal period) is less than 18 years.

(vi) Any expenditure allocable to that portion of a building which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168 (j) and the regulations thereunder), except that the exclusion in this paragraph (c) (7) (vi) shall not apply for purposes of determining whether the building is a substantially rehabilitated building under paragraph (b) (2) of this section.

(8) *Election to use straight-line cost recovery.* The requirement in section 48 (g) (2) (B) (i) and paragraph (c) (7) (i) of this section that an election be made to use straight-line cost recovery applies only to the cost recovery of the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures. See section 168 (f) (1) for rules relating to the use of different methods of cost recovery for different components of a building. In addition, the requirement in section 48 (g) (2) (B) (i) and paragraph (c) (7) (i) of this section shall not apply to any expenditure to the extent that section 168 (f) (12) or (j) applies to such expenditure.

(9) *Enlargement defined*—(i) *In general.* A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodelling is not considered an enlargement. The total volume of a building is generally equal to the product of the floor area of the base of the building and the height from the underside of the lowest floor (including the basement) to the average height of the finished roof (as it exists or existed). For this purpose, floor area is measured from the exterior faces of external walls (other than shared walls that are external walls) and from the centerline of shared walls that are external walls.

(ii) *Rehabilitation that includes enlargement.* If expenditures for property only partially qualify as qualified rehabilitation expenditures because some of the expenditures are attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. The expenditures must be specifically allocated between the original portion of the building and the enlargement to the extent possible. If it is not possible to make a specific allocation of the expenditures, the expenditures must be allocated to each portion of some reasonable basis.

The determination of a reasonable basis for an allocation depends on factors such as the type of improvement and how the improvement relates functionally to the building. For example, in the case of expenditures for an air-conditioning system or a roof, a reasonable basis for allocating the expenditures among the two portions generally would be the volume of the building, excluding the enlargement, served by the air-conditioning system or the roof, relative to the volume of the enlargement served by the improvement.

(d) *Rules applicable to rehabilitations of certified historic structures—(1) Definition of certified historic structure.* The term "certified historic structure" means any building (and its structural components) that is—

(i) Listed in the National Register of Historic Places ("National Register"); or

(ii) Located in a registered historic district and certified by the Secretary of the Interior to the Internal Revenue Service as being of historic significance to the district.

(2) *Definition of registered historic district.* The term "registered historic district" means any district that is—

(i) Listed in the National Register, or

(ii)(A) Designated under a statute of the appropriate State or local government that has been certified by the Secretary of the Interior to the Internal Revenue Service as containing criteria that will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and (B) certified by the Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register.

(3) *Definition of certified rehabilitation.* The term "certified rehabilitation" means any rehabilitation of a certified historic structure that the Secretary of the Interior has certified to the Internal Revenue Service as being consistent with the historic character of the building or the district in which such building is located. The determination of the scope of a rehabilitation shall be made on the basis of all the facts and circumstances surrounding the rehabilitation and shall not be made solely on the basis of ownership. The Secretary of the Interior shall take all of the rehabilitation, work performed as part of a single rehabilitation, including any post-certification work, into account in determining whether the rehabilitation complies with the Department of Interior standards for rehabilitation and whether the certification should be granted, revoked, or otherwise invalidated.

(4) *Revoked or invalidated certification.* If the Department of Interior revokes or otherwise invalidates a certification after it has been issued to a taxpayer, the basis attributable to rehabilitation of the decertified property shall cease to be section 38 property described in section 48(a)(1)(E). Such cessation shall be effective as of the date the activity giving rise to the

revocation or invalidation commenced. See section 47 for the rules applicable to property that ceases to be section 38 property.

(5) *Special rule for certain buildings located in registered historic districts.* The exclusion in paragraph (c)(7)(iv) of this section does not apply to a building in a registered historic district if—

(i) Such building was not a certified historic structure; and

(ii) The Secretary of the Interior certified to the Internal Revenue Service that such building was not of historic significance to the district.

If the certification referred to in paragraph (d)(5)(ii) of this section is requested by the taxpayer after physical work on the rehabilitation of the building has begun and is granted by the Secretary of the Interior, the taxpayer must certify to the Internal Revenue Service that, at the beginning of such rehabilitation, the taxpayer in good faith was not aware of the requirement of paragraph (d)(5)(ii) of this section. The certification referred to in the previous sentence must be attached to the Form 3468 filed with the tax return for the year in which the credit is claimed.

(6) *Special rule for certain rehabilitations begun before an area is designated as a registered historic district.* In general, paragraph (c)(7)(iv) of this section applies to any rehabilitation expenditures that are incurred after a building becomes a certified historic structure within the meaning of section 48(g)(3)(A) and paragraph (d)(1) of this section or the area in which a building is located becomes a registered historic district within the meaning of section 48(g)(3)(B) and paragraph (d)(2) of this section. Rehabilitation expenditures made after the date the area in which a building is located becomes a registered historic district, however, shall not be disqualified under paragraph (c)(7)(iv) of this section in any case in which physical work on the rehabilitation of a building begins prior to the date the taxpayer knows or has reason to know of an intention to nominate the area in which such building is located as a registered historic district. For purposes of this paragraph (d)(6), the taxpayer knows or has reason to know of such an intention if there is (i) a written communication to the owner of any building within the district that the district in which the building is located is being considered for designation as a registered historic district, (ii) a legal notice of such consideration published in a newspaper, or (iii) a public meeting held to discuss such consideration. In order to take advantage of the special rule of this paragraph (d)(6), the taxpayer must attach to the Form 3468 filed for the taxable year in which the credit is claimed, a statement that the taxpayer in good faith did not know, or have reason to know, of an intention to nominate the area in which the building is located as a registered historic district.

(7) *Notice of certification*—(i) *In general.* Except as otherwise provided in paragraph (d)(7)(ii) of this section, a taxpayer claiming the credit for rehabilitation of a certified historic structure (within the meaning of section 48(g)(3) and paragraph (d)(1) of this section) must attach to the Form 3468 filed with the tax return for the taxable year in which the credit is claimed a copy of the final certification of completed work by the Secretary of the Interior.

(ii) *Late certification.* If the final certification of completed work has not been issued by the Secretary of the Interior at the time the tax return is filed for a year in which the credit is claimed, a copy of the first page of the Historic Preservation Certification Application—Part 2—Description of Rehabiliation (NPS Form 10–168a), with an indication that it has been received by the Department of the Interior or its designate, must be attached to the Form 3468 filed with the return. A notice from the Department of the Interior or the State Historic Preservation Officer, stating that the application has been received, or a date-stamped application shall be sufficient indication that the application has been received. The taxpayer must submit a copy of the final certification as an attachment to Form 3468 with the first income tax return filed after the receipt by the taxpayer of the certification. If the final certification is denied by the Department of Interior, the credit will be disallowed for any taxable year in which it was claimed. If the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that the taxpayer filed the tax return on which the credit was claimed, the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and the taxpayer shall be requested to consent to an agreement under section 6501(c)(4) extending the period of assessment for any tax relating to the time for which the credit was claimed.

(e) *Adjustment to basis*—(1) *General rule.* If a credit is allowed with respect to qualified rehabilition expenditures incurred in connection with a qualified rehabilitated building (other than a certified historic structure), the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation expenditures must be reduced by the amount of credit allowed. If a rehabilitation investment credit is allowed with respect to qualified rehabilitation expenditures in connection with the rehabilitation of a certified historic structure, the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation expenditures must be reduced by one-half of the amount of the credit allowed. See section 48(q) for other rules concerning adjustments to basis in the case of section 38 property.

(2) *Recapture of rehabilitation investment credit.* If during any taxable year there is a recapture amount determined with respect to any credit that resulted in a basis adjustment under paragraph (e)(1) of this section, the basis of such building (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47(a)(5).

(f) *Coordination with other provisions of the Code*—(1) *Credit claimed by lessee for rehabilitation performed by lessor.* A lessee may take the credit for rehabilitation performed by the lessor if the requirements of this section and section 48(d) are satisfied. For purposes of applying section 48(d), the fair market value of section 38 property described in section 48(a)(1)(E) shall be limited to that portion of the lessor's basis in the qualified rehabilitated building that is attributable to qualified rehabilitation expenditures.

(2) *When the credit may be claimed*—(i) *In general.* The investment credit for qualified rehabilitation expenditures is generally allowed in the taxable year in which the property attributable to the expenditure is placed in service, provided the building is a qualified rehabilitated building for the taxable year. See paragraph (b) of this section and section 46(c) and § 1.46–3(d). Under certain circumstances, however, the credit may be available prior to the date the property is placed in service. See section 46(d) and § 1.46–5 (relating to qualified progress expenditures). Solely for purposes of section 46(c), property attributable to qualified rehabilitation expenditures will not be treated as placed in service until the building with respect to which the expenditures are made meets the definition of a qualified rehabilitated building (as defined in

section 48(g)(1) and paragraph (b) of this section) for the taxable year. Accordingly, in the first taxable year for which the building becomes a qualified rehabilitated building, the property described in section 48(a)(1)(E) attributable to expenditures described in paragraph (c) of this section shall be considered to be placed in service, if such property was considered placed in service under section 46(c) and the regulations thereunder without regard to this subparagraph in that taxable year or a prior taxable year. For purposes of the preceding sentence, the requirement in section 48(g)(1)(A)(iii) and paragraph (b)(3) of this section relating to the definition of a qualified rehabilitated building shall be deemed to be met if the taxpayer reasonably expects that no rehabilitation work undertaken during the remainder of the rehabilitation process will result in less than 75 percent of the external walls being retained as external walls within the meaning of paragraph (b)(3) of this section. If more than 25 percent of the external walls of the building are not retained in place as external walls in the rehabilitation process, however, the credit shall be disallowed for the taxable year in which it was claimed. If a taxpayer fails to complete physical work on the rehabilitation prior to the date that is 30 months after the date that the taxpayer filed a tax return on which the credit is claimed, the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and shall be requested to consent to an agreement under section 6501(c)(4) extending the period of assessment for any tax relating to the item for which the credit was claimed.

(ii) *Example.* The application of this paragraph (f)(2) may be illustrated by the following example:

Example. Assume that A, a calendar year taxpayer, purchases a four-story building on January 1, 1983, for $100,000, and incurs $10,000 of qualified rehabilitation expenditures in 1983 to rehabilitate floor one, $50,000 of qualified rehabilitation expenditures in 1984 to rehabilitate floor two, $70,000 of qualified rehabilitation expenditures in 1985 to rehabilitate floor three, and $60,000 of qualified rehabilitation expenditures in 1986 to rehabilitate floor four. Assume further that A places the property attributable to these expenditures in service on the last day of the year in which the respective expenditures were incurred. Under the rule in this paragraph (f)(2), the portion of the basis of the building that is attributable to qualified rehabilitation expenditures incurred with respect to floor one and two are deemed to be placed in service in 1985, because that is the first year that the substantial rehabilitation test described in paragraph (b) of this section is met ($120,000 of expenditures incurred by A during a measuring period ending on December 31, 1985 is greater than the $110,000 basis at the beginning of the period). Assume that as of December 31, 1985, at least 75 percent of the external walls of the building have been retained during the rehabilitation process and that A has a reasonable expectation that no work during the remainder of the rehabilitation process will result in less than 75 percent of the external walls being retained. A may claim a credit for A's 1985 taxable year on $130,000 of qualified rehabilitation expenditures ($10,000 in 1983, $50,000 in 1984, and $70,000 in 1985). (See paragraph (c)(6) of this section for rules applicable to when qualified expenditures may be incurred. In addition, see section 46 (d) and § 1.46-5 for rules relating to qualified progress expenditures.) The fact that the building was a qualified rehabilitated building for A's 1985 taxable year, however, has no effect on whether the building is a qualified rehabilitated building for A's 1986 taxable year. In order to determine whether A is entitled to claim a credit on A's 1986 return for the $60,000 of qualified rehabilitation expenditures incurred in 1986, A must select a measuring period ending in 1986 and must determine whether the building is a qualified rehabilitated building for that year. Solely for purposes of determining whether the building was substantially rehabilitated, expenditures incurred in 1984 and 1985, even though considered in determining whether the building was substantially rehabilitated for A's 1985 taxable year, may be used in addition to the expenditures incurred in 1986 to determine whether the building was substantially rehabilitated for A's 1986 taxable year, provided the expenditures were incurred during any measuring period selected by A that ends in 1986.

(3) *Coordination with section 47.* If property described in section 48(a)(1)(E) is disposed of by the taxpayer, or otherwise ceases to be "section 38 property," section 47 may apply. Property will cease to be section 38 property, and therefore section 47 may apply, in any case in which the Department of Interior revokes or otherwise invalidates a certification of rehabilitation after the property is placed in service. If, for example, the taxpayer made modification to the building inconsistent with Department of Interior standards, the Secretary of the Interior might revoke the certification. In addition, if all or a portion of a substantially rehabilitated building becomes tax-exempt use property (see paragraph (c)(7)(vi) of this section) for the first time within five years after the credit is claimed, the credit will be recaptured under section 47 at that time as if the building or portion of the building which becomes tax-exempt use property had then been sold.

Par. 5. Section 1.191-1 is amended by revising paragraphs (a), (b)(1)(i) and (3), and (c)(2)(iii), and by adding a new paragraph (f) to read as follows:

§ 1.191-1 Amortization of certain rehabilitation costs for certified historic structures.

(a) *In general.* Section 191 allows an owner of a certified historic structure who rehabilitates the structure to elect to amortize over a 60-month period certain expenditures attributable to certified rehabilitation. The election may be made only if the certified historic structure (as defined in § 1.191-1(a)) and the improvements made are otherwise of a character subject to depreciation under section 167. In general, only those rehabilitation expenditures which result in additions to capital account after June 14, 1976, and before January 1, 1984, are eligible for this special amortization procedure. To qualify for the election, the rehabilitation must be certified by the Secretary of the Interior to the Internal Revenue Service as consistent with the historic character of the structure. See § 1.191-2(d) for the definition of certified rehabilitation. Along with the amortization deductions, the taxpayer may continue otherwise allowable depreciation deductions of the basis of the structure, exclusive of rehabilitation costs which are a part of the amortizable basis (as defined in § 1.191-2(e)).

(b) *Allowance of deduction*—(1) *Determination of amortization period*—(i) *General rule.* The taxpayer may elect to begin the 60-month amortization period with the month following the month in which the amortizable basis is acquired, or with the first month of the succeeding taxable year. Generally amortizable basis must be acquired after June 14, 1976, and before January 1, 1984. For purposes of this section, the month in which the amortizable basis is acquired is the latest of the month in which the work (or a component part of the work) is completed, the month in which costs are added to capital account, or the month in which depreciation deductions under section 167 would be first allowable with respect to the structure. See, however, § 1.191-2(e)(8) for special rules for certified rehabilitations in part occurring outside the effective period of section 191. No amortization deduction may be claimed before a building is used (or held for use) in a trade or business or for the production of income.

* * * * *

(3) *Relation to section 167(o) and other provisions.* If an election involving

a certified historic structure is made under section 191, no election may be made under section 167(o) either for the same rehabilitation or for any subsequent rehabilitation of the same structure undertaken by the taxpayer making an election under section 191. Additionally, no election is permitted under section 191 if depreciation deductions or credits against tax based upon any part of the costs qualifying for amortization under section 191, are at any time claimed (or allowable) under any depreciation or other provision of the Internal Revenue Code of 1954. However, this limitation with respect to investment tax credits under section 38 applies only to structures placed in service after October 31, 1978. Except as provided in paragraph (f)(3) of this section, if section 191 treatment is timely elected on a structure placed in service after October 31, 1978, the investment tax credit under section 38 is considered not to have been allowable with respect to that structure for the same rehabilitation. However, the rule in the preceding sentence does not preclude a taxpayer from claiming an investment tax credit with respect to a separate and distinct rehabilitation to a structure on which a section 191 election was previously made.

* * * * *

(c) *Person to claim deduction.* * * *

(2) *Exceptions and special rules.* * * *

(iii) *Certain transferees of historic structures.* If expenditures for certified rehabilitation are in fact made by the owner of a certified historic stucture, and if one or more tansferees then acquire the ownership of the rehabilitated directly from that owner before the structure is placed in service in its rehabilitated use, the transferees, solely for purposes of section 191, may be treated as having incurred the rehabilitation expenditures actually incurred by the transferor on the date that the transferor actually incurred those expenditures. Transferees acquiring structures in transfers occuring after the structure is placed in service after its rehabilitation but before the first day of the following taxable year, are not eligible for section 191 treatment, because depreciation deductions for rehabilitation costs are allowable to the transferor before the transfer. The amount of rehabilitation expenditures treated as made by the transferees under this subdivision (iii) is the lesser amount of—

(A) The rehabilitation expenditures actually made before the date on which the transferee acquired ownership of the structure, or

(B) The portion of the transferee's cost or other basis for the property (determined according to the rules of section 167) which is attributable to rehabilitation expenditures made before the date on which the transferee acquires ownership of the structure.

* * * * *

(f) *Termination*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, section 191, this section, § 1.191–2, and § 1.191–3 shall not apply to expenditures incurred after December 31, 1981, in taxable years ending after such date.

(2) *Transition rule.* Section 191 and this section shall continue to apply to expenditures incurred after December 31, 1981, and before January 1, 1984, for the rehabilitation of a building if—

(i) The physical work on the rehabilitation began before January 1, 1982, and

(ii) The building does not meet the requirements of § 1.48–12(b).

(3) *Coordination with section 38.* The fact that section 191 has been timely elected with respect to expenditures incurred prior to January 1, 1982, shall not prevent the investment tax credit under section 38 from being allowed with respect to qualified rehabilitation expenditures (within the meaning of section 48 (g) (2) and § 1.48–12 (c)) incurred after December 31, 1981, as part of the same rehabilitation.

Par. 6. Section 1.191–2 is amended by revising paragraph (e) (8) to read as follows:

§ 1.191–2 Definitions and special rules.

* * * * *

(e) *amortizable basis.* * * *

(8) *Time when amounts are added to capital account.* Under section 191, expenditures are treated as added to capital account at the time they are actually made (paid or accrued). However, amortizable basis includes only expenditures attributable to component parts of the structure completed before January 1, 1984. Therefore, expenditures for improvements completed after December 31, 1983, are not a part of the taxpayer's amortizable basis even through they may have been paid or accrued prior to that date. In the case of a single and continuous rehabilitation project all of which is certified by the Secretary of the Interior, expenditures for rehabilitation begun before June 14, 1976, but completed and charged thereafter, are a part of the taxpayer's amortizable basis. However, even where there is a single and continuous rehabilitation project, expenditures made for any component part of the improvements completed and charged before June 14, 1976, are not a part of the taxpayer's amortizable basis.

Par. 7. Section 1.191–3 is amended by revising paragraph (b) (4) to read as follows:

§ 1.191–3 Time and manner of making election.

* * * * *

(b) *Special rules.* * * *

(4) *Elections to begin amortization deductions after December 31, 1983.* Notwithstanding the rules of § 1.191–1 (b) (1) (i), expenditures for component parts of a rehabilitation project which is not completed and placed in service until after December 31, 1983, are included in amortizable basis if the component parts are completed and the expenditures are added to capital account under § 1.191–2 (e) (8) by that date. Amortization deductions for the costs of such component parts are allowable beginning with the month in which the entire rehabilitation would qualify under § 1.191–1 (b) (1), but for the expiration of section 191 on December 31, 1983.

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–15645 Filed 6–27–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85–08]

Marine Event; Miller High Life Thunderboat Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations during the Miller High Life Thunderboat Regatta. This four day event usually takes place in September of each year in the waters of Mission Bay, California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the event.

DATES: Comments must be received on or before 17 July 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate

Boulevard, Long Beach, California. Normal office hours are between 7:30 AM and 3:30 PM, Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: JTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-08) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The Thunderboats Unlimited of San Diego "Miller High Life Thunderboat Regatta" is conducted every year in the month of September in the waters of Fiesta Bay, Mission Bay, California. This event usually has 20 unlimited hydroplane boats that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area, may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

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

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

2. 33 CFR Part 100 is amended by adding the following section:

§ 100.35 11-85-08—Miller High Life Thunderboat Regatta, Mission Bay, CA.

The Miller High Life Thunderboat Regatta is conducted annually in the summer months, usually from 9:00 AM to 5:00 PM on the navigable waters of Mission Bay, California. Further information on exact time, date and location are published by the Eleventh Coast Guard District in the Local Notice to Mariners and/or Special Local Regulations promulgated approximately 15 days prior to the event.

Special Local Regulations—for this year's event are as follows:

(a) *Regulated Area:* The following area will be closed intermittently to all vessel traffic: that portion of Fiesta Bay in Mission Bay, CA starting at latitude 32 degrees 47'32"N, longitude 117 degrees 13'00"W, thence due west to longitude 117 degrees 13.5"W, thence along the eastern shoreline of Crown Point to the Vacation Isle Bridge, thence south along the bridge to Vacation Isle, thence along the eastern shoreline of Vacation Isle to latitude 32 degrees 46'18"N, longitude 117 degree 14'01"W, thence southeasterly to latitude 32 degrees 46'14"N, longitude 117 degrees 13'43"W, thence along the western shoreline of Fiesta Island to latitude 32 degrees 47'20"N, longitude 117 degrees 13'00"W, thence due north to the starting point.

(b) *Effective Dates:* These regulations will be effective from 9:00 AM to 5:00 PM on 13 thru 15 September 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered specators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: June 3, 1985.

A.B. Beran,

Commodore, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85-15607 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 85-10]

Marine Event; NJBA Regatta

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations during the NJBA Regatta. This event will be held on 24 and 25 August 1985, at Parker, Arizona. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the start of the event.

DATE: Comments must be received on or before July 17, 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California. Normal office hours are between 7:30 AM and 3:30 PM, Monday through

Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85-10) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The National Jet Boat Association, "NJBA Regatta" will be conducted on 24 and 25 August 1985, on the Colorado River in front of the Bluewater Marina in Parker, Arizona. This event will have approximately 200 inboard high speed ski boats, 18 to 20 feet in length, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following temporary section:

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

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

2. 33 CFR Part 100 is amended by adding the following section:

§ 100.35 11-85-10-NJBA Regatta, Parker, Arizona

(a) *Regulated Area:* The following area will be closed intermittently to all non-commercial vessel traffic: that portion of the Arizona side of the Colorado River, from Headgate Rock Dam thence 1.5 miles North.

(b) *Effective Dates:* These regulations will be effective from 6:00 AM to 8:00 PM on 24 and 25 August 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a citation for failure to comply.

(3) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call signal "PATCOM".

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.36)

Dated: June 3, 1985.

A.B. Beran,

Commodore, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85-15608 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 84-85]

Drawbridge Operation Regulations; Cheesequake Creek, NJ.

AGENCY: Coast Guard, DOT.

ACTION: Public Hearing on Proposed Regulation, and Extension of Comment Period.

SUMMARY: The Commander, Third Coast Guard District, has authorized a public hearing to be held to receive comments on a proposed regulation governing the operation of New Jersey Transit Rail Operations' Morgan drawbridge across Cheesequake Creek, mile 0.2 at Morgan, NJ. This hearing is being held to gather information and data necessary to attempt to resolve differences between various factions who support or oppose the proposed regulations. The comment period previously published in Notice of Proposed Rulemaking is extended.

DATES: (a) The hearing will be held on July 24, 1985 at 7 p.m. (b) Written comments may be submitted on or before August 9, 1985.

ADDRESSES: (a) The location of the hearing will be: William C. McGinnis School, 271 State Street, Perth Amboy, NJ. (b) Written comments may be mailed to and will be available for examination from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the office of the Commander (on-br), Third Coast Guard District, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: This proposal was published in the **Federal Register** on April 29, 1985 (50 FR 16720) and was distributed as Public Notice 3-595 by the Commander, Third Coast Guard District, on May 8, 1985.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed regulation, and announce the procedures to be followed

at the hearing. Each person who wishes to make an oral statement should notify the Contact Officer listed above by July 22, 1985. Such notification should include the approximate time required to make the presentation.

A transcript will be made of the hearing and my be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this proposed regulation by submitting their comments in writing. Each comment should state reasons for support or opposition, suggest any proposed changes to the regulations, and include the name and address of the person or organization submitting the comment. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. All comments received will be considered before final action is taken on the proposed regulation. After the time set for the submission of comments, the Commander, Third Coast Guard District will determine a final course of action. The proposed regulations may be changed or withdrawn based on comments received. If significant differences still remain, the District Commander will forward the record, including all written comments and his recommendations, to the Commandant, United States Cost Guard for final action.

List of Subjects in 33 CFR Part 117

Bridges.

Authority: U.S.C. 499; 49 CFR 1.46. 33 CFR 1.05–1(g).

Dated: June 21, 1985.

Robert T. Nelson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85–15603 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[7–85–24]

Drawbridge Operation Regulations; Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Seaboard System Railroad the Coast Guard is considering a change to the regulations governing the Cordesville bridge, mile 42.8, by requiring that advance notice of opening be given. This proposal is being made because the bridge has opened only about once every five days since 1978. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 12, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, at (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The existing regulations provide for constant bridgetender service between 7 a.m. and 12 noon and 1 p.m. and 4 p.m. with 24 hours advance notice required for opening at other times. Two scheduled trains cross the bridge daily at approximately 6 p.m. and 8 p.m. There were 498 bridge openings over the seven year period from 1978 through 1984. The openings varied from a low of 56 in 1982 to a high of 90 in 1981 or an average of about one opening every five days. The frequency of bridge openings does not appear to justify constant bridgetender service.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge will be required to open at any time with six hours advance notice. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.925 is proposed to be revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.925 Cooper River.

The draw of the Seaboard System Railroad bridge, mile 42.8 near Cordesville, shall open on signal if at least six hours advance notice is given.

Dated: June 17, 1985.

A.R. Larzelere,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85–15609 Filed 6–27–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Ozark National Scenic Riverways, MO; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed special regulation set forth below would permit the continued taking of turtles and crayfish at Ozark National Scenic

Riverways, consistent with provisions of the Wildlife Code of the Missouri Department of Conservation. The taking of these species is a minor but traditional use at Ozark Riverways requiring specific authorization under the revised general regulations for areas administered by the National Park Service. The regulations is designed to reinstate a level of public use and enjoyment of park resources consistent with the establishment of Ozark Riverways to provide for both preservation and recreational uses.

DATE: Written comments, suggestions or objections will be accepted until July 29, 1985.

ADDRESS: Comments should be directed, to: Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965.

FOR FURTHER INFORMATION CONTACT: Arthur E. Eck, Assistant Superintendent, Ozark National Scenic Riverways, Van Buren, Missouri 63965, Telephone: (314) 323–4236.

SUPPLEMENTARY INFORMATION:.

Background

On March 17, 1982, the National Park Service published in the **Federal Register** (47 FR 11598) a proposed rule revising the General Regulations for Areas Administered by the National Park Service (36 CFR Parts 1–7, 12). The proposed rule included a provision authorizing fishing and the taking of aquatic wildlife in accordance with State law. Aquatic wildlife was defined to include frogs, turtles, crabs, clams, mussels, crayfish, and lobsters.

In response to public comments to the proposed rule, the National Park Service determined that a broad interpretation of fishing was inconsistent with past administrative practice and policy to conserve and protect part resources and wildlife. Consequently, the final rule published June 30, 1983 (48 FR 30276) narrowed the definitions of "fishing" and "fish" to taking or attempting to take bony fish, sharks, salt water mollusks or crustaceans.

On December 27, 1983, further proposed amendments to the general regulations codified in 36 CFR were published (48 FR 46971). One component of this proposal was a regulation to authorize all fishing methods at Ozark Riverways permitted under Missouri law, as appropriate. The final rule, published April 30, 1984 (49 FR 18451) provided that at Ozark National Scenic Riverways, unless otherwise designated, fishing in a manner authorized under applicable State law is allowed (36 CFR 7.83). Specific provisions were made in the final rule for the digging of bait for personal use and for the taking of frogs.

As published in the **Federal Register** on April 30, 1984 (49 FR 18451), the special regulations for Ozark Riverways made no provisions for the taking of turtles and crayfish. A recommendation from Ozark National Scenic Riverways on January 23, 1984, to further amend 36 CFR 7.83 to include such authority, reflected local sentiment and an effort to reconcile traditional activities with the new regulations. Since a special regulation to accommodate the taking of turtles and crayfish was not part of the proposed rule published December 27, 1983, and therefore not subject to public involvement, action on the recommendation was deferred until the present proposed rulemaking.

The designation process specified in 36 CFR 1.5, gives superintendents limited discretion in allowing activities within part areas provided they are not contrary to Federal statutory law or in derogation of park values.

However, except in an emergency, such designation which is of a nature, magnitude and duration to result in a significant change in public use patterns, or adversely affects the park's natural or cultural values, or deemed to be of a highly controversial nature, shall be published in the **Federal Register** (36 CFR 1.6). Because the traditional public use of Ozark National Scenic Riverways has included the taking of turtles and crayfish and as this is an activity consistent with the fishing regulations of the State of Missouri, and as differences between Park Service regulations and State regulations have prompted several public meetings and correspondence; this notice of proposed rulemaking is being published. Specifically, Ozark National Scenic Riverways is proposing to amend 36 CFR 7.83 to authorize the superintendent to designated conditions under which turtles and crayfish may be taken, consistent with State law.

An environmental assessment of the effects of this proposed regulation has been prepared and submitted to the Director of the Midwest Region, National Park Service, on December 14, 1984. A statement of a "Finding of No Significant Impact," in accordance with the National Environmental Policy Act (42 U.S.C. 4332), was prepared in conjunction with the environmental assessment. Both documents are available from the Superintendent, Ozark National Scenic Riverways.

The stability of the affected animal populations will continue to be monitored. No designation will be made except upon the written determination that the taking of turtles and/or crayfish at Ozark National Scenic Riverways will not be detrimental to park wildlife or their reproductive potential, have an adverse effect on the park ecosystem, or be incompatible with the purposes for which the area was established.

Public Participation

A variety of environmental concerns and citizen responses to the recently revised general regulations of the National Park Service as they affect Ozark National Scenic Riverways were considered in the subject environmental assessment. Public meetings at Van Buren, Missouri, on December 5, 1983, and at West Plains, Missouri, on December 6, 1983, provided direct public involvement and communication between local citizens and officials of the Department of Interior and National Park Service Directorate about the continuation of specific recreational pursuits at Ozark National Scenic Riverways. In addition to these discussions and presentation of statements, public involvement has been derived from letters, telephone contacts, and further consultation with representatives of organizations and agencies contacted in the past and listed below:

Missouri Department of Conservation
U.S. Forest Service
Ozark Hill and Rivers Landowners Association
Ozark Resources Management Association
Local Citizens for Preservation of Rights
Ozark Riverways Land and Water Rights Association

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed special reglation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Arthur E. Eck, Assistant Superintendent; James M. Simpson, Resources Management Specialist, both of Ozark National Scenic Riverways.

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. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291,

and certifies that this document will 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 conclusion is based on the fact that the taking of turtles and crayfish at Ozark National Scenic Riverways is a minor recreational use. The proposed rule will contribute in some part to the local tourism of communities in the vicinity of the Current and Jacks Fork Rivers by assuring the continued availability of the range of recreational activities that have been available to park users in the past.

As noted previously, pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an environmental assessment on this proposed rule which is available at the address noted at the beginning of the rulemaking.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for 36 CFR Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. In section 7.83, by revising paragraph (e)(1) to read as follows:

§ 7.83 Ozark National Scenic Riverways.

* * * * *

(e) *Frogs, turtles and crayfish.* (1) The superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and/or crayfish upon a written determination that the taking of frogs, turtles and/or crayfish:

* * * * *

Dated: May 29, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-15593 Filed 6-27-85; 8:45 am]

BILLING CODE 4310-70-M

POSTAL SERVICE

39 CFR Parts 775 and 776

Amendments to Environmental Procedures and Floodplain Management and Protection of Wetlands Procedures

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of the proposed amendments is to state clearly the point at which the environmental assessment process would be formally initiated for facility actions. These proposed amendments would continue to require that the environmental assessment process for a facility action be started early in the planning process. However, an environmental assessment report would not be required until contending facility project sites have been determined. This represents a change from current operating procedure which calls for a preferred area environmental assessment report before contending sites are determined.

The U.S. Postal Service has determined that preferred area environmental assessment reports provide minimal information about specific environmental impacts of contending sites. Consequently, the preferred area environmental assessment process appears to be an administrative cost and burden which does not significantly contribute to an effective planning process for facility actions. Elimination of the preferred area environmental assessment process will have no adverse effect on the ability of the U.S. Postal Service to address adequately environmental impacts.

DATES: Written comments must be received by July 29, 1985.

ADDRESS: Written comments must be sent to Director, Office of Program Planning, Real Estate and Buildings Department, U.S. Postal Service, Washington, D.C., 20260-6420. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 4141, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C., 20260-6420.

FOR FURTHER INFORMATION CONTACT: Melinda Hulsey, 202/245-4354.

SUPPLEMENTARY INFORMATION: The U.S. Postal Service conducts environmental reviews for proposed facility actions through the procedures outlined in 39 CFR Part 775, *Environmental Procedures,* and 39 CFR Part 776, *Floodplain Management and Protection of Wetland Procedures.* These procedures contemplate the environmental assessment of proposed actions as soon as their effects can be meaningfully evaluated.

Under current operating procedures, outlined in Postal Service Handbook RE-6, *Environmental Procedures,* facility actions not covered by a categorical exclusion require the preparation of a preferred area environmental assessment before specific contending sites have been identified. A preferred area is a geographically defined area within which any site location would be considered to be beneficial from a service standpoint.

It was anticipated that the preferred area environmental assessment would be used as a tool in determining potential environmental impacts of zones within the preferred area. The preferred area environmental assessment is prepared without consideration of whether sites meeting the specifications for the proposed facility action are available. At this point in the facility planning process, alternative sites have not yet been identified. The specifications for facility actions, which include acreage needed, transportation network available, etc., typically limit the number of specific sites which can be considered as viable alternatives. In practice, therefore, the preferred area environmental assessment provides information for zones in which potential sites may or may not exist.

In addition, the information contained in the preferred area environmental assessment is necessarily general due to the size of the preferred area. As a result, the information is of limited benefit in determining specific environmental impacts for any particular viable alternative sites.

The elimination of the preferred area environmental assessment will not affect early community contact for facility actions. Standard operating procedure of the Postal Service will continue to require contact with the community as soon as it is determined that a facility action is being considered.

The proposed amendments would only require an environmental assessment report for contending project sites. At this stage, the information provided in the environmental assessment could be meaningfully evaluated to determine the environmental impacts, if any, of the proposed action on the local environs. The environmental assessment, together with other planning information, would be used in the selection of the final site.

In view of the above considerations, the Postal Service proposes to amend 39 CFR Part 775 and 39 CFR Part 776 as follows:

List of Subjects in 39 CFR Parts 775 and 776

Environmental impact statements, Floodplains.

PART 775—ENVIRONMENTAL PROCEDURES

1. The authority citation for Part 775 is revised to read as set forth below and the authority citation following § 775.4 is removed.

Authority: 39 U.S.C. 401; 42 U.S.C. 4331 *et seq.*; 40 CFR 1500.4(p).

2. Section 775.6 is amended by revising paragraph (b)(1) to read as follows:

§ 775.6 Environmental evaluation procedures.

* * * * *

(b) * * *

(1)The environmental assessment of any action which involves the choice of contending sites for a facility must be started early in the planning of the action. An environmental assessment report, however, is not required until the contending project sites have been determined. The information contained in the environmental assessment report must be used, together with other site planning information, in the selection of the final site.

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

3. The authority citation for Part 776 continues to read as follows:

Authority: 39 U.S.C. 401.

4. Section 776.5 is amended by revising paragraph (a) to read as follows:

§ 776.5 New construction.

(a) *Restriction on Consideration of Floodplain/Wetland.* During the evaluation of contending sites for a proposed project, floodplain and wetlands areas may be considered *only* when there is no practicable alternative site.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-15597 Filed 6-27-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

Groundfish of the Gulf of Alaska

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 14 to the fishery management plan for groundfish of the Gulf of Alaska for review by the Secretary of Commerce (Secretary) and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment should be submitted on or before September 6, 1985.

ADDRESSES: All comments should be sent to Robert McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802. Copies of the amendment, the environmental assessment (EA), and the regulatory impact review and initial regulatory flexibility analysis (RIR/IRFA) are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 14 proposes the following measures: (1) Establish a gear and/or area restriction in the sablefish fishery; (2) establish rockfish areas and quotas; (3) implement new optimum yields for pollock, Pacific ocean perch, other rockfish, Atka mackerel and other species; (4) implement reporting requirments for catchers and processors of groundfish; (5) establish measures to control the Pacific halibut bycatch; (6) implement the NMFS habitat policy; and (7) revise sablefish fishing seasons. An EA (required under the National Environmental Policy Act) and an RIR/IRFA (required under Executive Order 12291 and the Regulatory Flexibility Act) are incorporated in the amendment.

Regulations proposed by the North Pacific Fishery Management Council and based on this amendment are scheduled to be published within 30 days.

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

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: June 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administration for Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 85-15600 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 125
Friday, June 28, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Grants and Program Systems, Small Business Innovation Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the U.S. Department of Agriculture announces the following meetings:

Name: Subcommittee for Phase I Small Business Innovation Research, Technical Advisory Committees for Science and Education Research Grants Program in the following topic areas:
(a) Forest and Related Resources.
(b) Plant Production and Protection.
(c) Animal Production and Protection.
(d) Air, Water, and Soils.
(e) Food Science and Nutrition.
(f) Rural and Community Development.
Date: July 15-16, 1985
Time: 8:30 a.m. to 6:00 p.m.
Place: U.S. Department of Agriculture, Room 112 J.S. Morrill Building, Washington, D.C.
Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the SBIR program.
Agenda: To review and evaluate research proposals and projects associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.
Authority To Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92-463.
Contact Person: Wayne K. Murphey, Executive Secretary, Small Business Innovation Research, Office of Grants and Program Systems, USDA, Room 112 J.S. Morrill Building, Washington, D.C. 20251.

Done at Washington, D.C., this 13th day of June 1985.

Wayne K. Murphey,

Executive Secretary.

[FR Doc. 85-15616 Filed 6-27-85; 8:45 am]

BILLING CODE 3410-MT-M

Commodity Credit Corporation

Wool and Mohair Payment Programs; Determination Regarding Support Prices for Pulled Wool and Mohair for the 1985 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice affirms certain determinations which were announced by the Secretary of Agriculture on January 4, 1985, concerning the support prices for pulled wool and mohair for the 1985 marketing year. These determinations are made in accordance with the National Wool Act of 1954, as amended.

EFFECTIVE DATE: January 4, 1985.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, U.S. Department of Agriculture, P.O. Box 2415, Room 3741—South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Carol Skelly, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major". This notice has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program to which this notice of determination applies are: Title—National Wool Act Payments, Number—10.059, as found in the Catalog of Federal Domestic Assistance.

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

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

The National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1985 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (i.e., the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to; and (2) the average parity index for the three calendar years 1958, 1959, and 1960 and rounding the resulting amount to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 percent above or below the comparable percentage of parity at which shorn wool is supported.

On October 12, 1984, a notice of proposed determination was published at 49 FR 40066 requesting comments concerning the method of calculating

price support payments for pulled wool and the level of price support for mohair. A total of 4 comments (3 with respect to mohair and 1 with respect to both wool and mohair) were received. Of the 3 comments received with regard to mohair, all recommended that mohair be supported at a percentage of parity equal to the percentage at which shorn wool is supported. These comments on the proposed determinations were not adopted. It has been determined that mohair should be supported at a level of 85 percent of the percent of parity at which shorn wool is supported since no additional incentives for the production of mohair are necessary as the result of recent shifts in the industry from raising sheep to goats. The fourth respondent requested that wool and mohair incentive payments be continued.

After taking the foregoing comments into consideration, the Secretary of Agriculture announced in a press release issued January 4, 1985, that the 1985 support prices would be $1.73 per pound for wool and $4.65 per pound for mohair. the purpose of this notice is to affirm those determinations and to set forth the method for calculating the support prices for shorn wool, pulled wool, and mohair for the 1985 marketing year.

Determinations

a. *Support Price—Shorn Wool.* In accordance with section 703(b) of the National Wool Act, as amended ("Wool Act"), the level of support for shorn wool for the 1985 marketing year (i.e., $1.73) is determined as follows. The average parity index for shorn wool during the 3-year period 1981–1983 is 1,072. The average parity index for shorn wool during the 3-year base period of 1958–1960 is 297.3. The ratio of these indices is 3.6058. The result of multiplying 3.6058 by the 1965 support price of 62 cents per pound is $2.2356. Applying the formula prescribed in section 703(b) of the Wool Act, 77.5 percent of $2.2356 is $1.73 when rounded to the nearest full cent.

b. *Support Price—Pulled Wool.* The support price for pulled wool for the 1985 marketing year cannot be determined until the 1985 average market price for shorn wool is calculated, which should occur by April 1986. The method for calculating the support price for pulled wool shall be as follows. Once the average market price for shorn wool is known, the support price for pulled wool will be determined by subtracting the 1985 average market price for shorn wool from the 1985 support price of shorn wool and multiplying that figure by 5 pounds (the amount of wool pulled from the pelt of an average 100-unshorn lamb). The result is then multiplied by 80 percent which represents a quality differential which is determined because pulled wool which is derived from unshorn lamb pelts contains a shorter staple and is a lower quality of wool than shorn from other sheep.

c. *Support Price—Mohair.* The October 1984 parity prices for shorn wool and mohair are $2.25 per pound and $7.11 per pound, respectively. The support price for shorn wool for the 1985 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.73 per pound or 76.9 percent of the October 1984 parity price for shorn wool. The level of price support for mohair for the 1985 marketing year is equal to 85 percent of 76.9 percent (the percentage of the parity price at which shorn wool is supported), which is equal to 65.4 percent of the mohair parity price. Accordingly, 65.4 percent of the October 1984 parity price for mohair of $7.11 per pound results in a support price for mohair for the 1985 marketing year of $4.65 per pound.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, D.C., on June 24, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-15611 Filed 6-27-85; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and 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 California Advisory Committee to the Commission will convene at 7:30 p.m. and will adjourn at 9:00 p.m. on July 19, 1985 and convene at 9:00 a.m. and adjourn at 12:00 noon on July 20, 1985, at the Westin Miyako Hotel, 1625 Post Street, San Francisco, California. The purpose of the meeting is to provide an orientation for new members and discuss committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxwell Greenberg or Philip Montez, Director of the Western Regional Office at (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15524 Filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

Colorado Advisory Committee; Agenda and 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 Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and will adjourn at 4:30 p.m., on July 15, 1985, at the Executive Tower Building, 2nd Floor, Gold Room, 1405 Curtis Street, Denver, Colorado. The purpose of the meeting is to hold an orientation session for new members, present report on State Advisory Chairs' Conference and discuss potential projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office, at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15520 Filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

Idaho Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on July 26, 1985, at the Westbank Quality Inn, 475 Parkway, Idaho Falls, Idaho. The purpose of the meeting is to provide orientation for new members and plan programs for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael Orme or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442–1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15525 Filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Indiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on July 18, 1985, at the Valparaiso University, Student Union Building, Crusader Room, Valparaiso, Indiana. The purpose of the meeting is to provide a briefing on the National Chairs' Conference and discuss the status of current project plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Nuechterlein or Clark G. Roberts, Director of the Midwestern Regional Office at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15519 Filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda and 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 Nevada Advisory Committee to the Commission will convene at 7:00 p.m. and will adjourn at 10:00 p.m. on July 12, 1985 and convene at 9:00 a.m. and adjourn at 12:00 noon on July 13, 1985, at the Maxim Hotel and Casino, 160 East Flamingo Road, Las Vegas, Nevada. The purpose of the meeting is to provide an orientation for new members and discuss Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Elizabeth Nozero or Philip Montez, Director of the Western Regional Office, at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15522 filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and 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 New York Advisory Committee to the Commission will convene at 4:00 p.m. and will adjourn at 6:00 p.m. on July 2, 1985, at Local 23-25—ILGWU, 275 Seventh Avenue, 10th Floor, Room 3, New York, New York. The purpose of the meeting is to discuss and select program activities for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson, Arch Puddington or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15521 Filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on July 12, 1985, at the Case Western Reserve University, 11075 East Blvd., Dean's Conference Room, Cleveland, Ohio. The purpose of the meeting is to discuss the status of current projects and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock or Clark G. Roberts, Director of the Midwestern Regional Office at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 25, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-15523 Filed 6-27-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 31-83]

Foreign-Trade Zone 29, Louisville, KY; Withdrawal of Application for Subzone at Southeastern Sweeteners Plant

The Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, has requested withdrawal of its application to the Foreign-Trade Zones Board for a subzone at the sugar processing plant of Southeastern Sweeteners Distributing Company, Inc., in Louisville. The application was filed on July 28, 1983 (48 FR 37503, August 18, 1983). The request has been made because of changed circumstances.

The request is approved and Foreign-Trade Zones Board Docket No. 31-83 is closed.

Dated: June 24, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-15636 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-469-006]

Certain Steel Products From Spain; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determinaiton To Revoke Countervailing Duty Order

Correction

In FR Doc. 85-13303, appearing on page 23488 in the issue of Tuesday, June 4, 1985, the docket number in the heading was omitted and should have appeared as set forth above.

BILLING CODE 1505-01-M

[A-403-401]

Carbon Steel Structural Shapes From Norway; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the respondent in this investigation to postpone the final determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final antidumping duty determination as to whether sales of carbon steel structural shapes from Norway have occurred at less than fair value until not later than September 11, 1985.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3534.

SUPPLEMENTARY INFORMATION: On January 9, 1985, we announced the initiation of an antidumping duty investigation to determine whether carbon steel structural shapes from Norway, are being, or are likely to be, sold in the United States at less than fair value (50 FR 2317). We issued our preliminary affirmative determination on June 3, 1985 (50 FR 23326). That notice stated that we would issue a final determination by August 12, 1985. On June 11, 1985, counsel for respondent, Norsk Jernverk A.S., requested that we extend the period for the final determination until not later than the 105th day after publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. Norsk Jernverk A.S. accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than September 11, 1985. The date of the public hearing has also been changed to July 25, 1985, at 10:00 AM in room 1412 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Prehearing briefs in at least 10 copies must now be submitted to the Deputy Assistant Secretary by July 18, 1985.

This notice is published pursuant to section 735(d) of the Act.

Scope of Investigation

The products covered by this investigation are carbon steel structural shapes, which cover hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedules 6, Part 2, Subpart B of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any other tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 20, 1985.

[FR Doc. 85-15635 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-011]

Carbon Steel Wire Rod From Brazil; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty case on carbon steel wire rod from Brazil. The review covers the period from September 27, 1982. The petitioners in this proceeding have notified the Department that they are no longer interested in the countervailing duty case. These affirmative statements of no interest provide a reasonable basis for the Department to terminate the suspended investigation. Therefore, we intend to terminate the suspended investigation. The termination will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after September 27, 1982. Interested parties are invited to comment on these preliminary results and tentative determination to terminate.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Richard C. Hendeson or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 42399) a notice of suspension of countervailing duty investigation on carbon steel wire rod from Brazil.

In a letter dated May 9, 1985 (*see* Appendix A), Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company, the petitioners in this proceeding, informed the Department that they were no longer interested in the case and stated their support of termination of the suspended investigation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may terminate a suspended countervailing duty investigation that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of Brazilian carbon steel wire rod. The term "carbon steel wire rod" covers a coiled semi-finished, hot-rolled carbon steel product of approximately round sided cross section, not under 0.02 inch nor over 0.74 inch in diameter, not tempered, not treated and not partly manufactured, and valued over 4 cents per pound; as currently provided for in item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from September 27, 1982.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty case on carbon steel wire rod from Brazil provide a reasonable basis for

termination of the suspended investigation.

Therefore, we tentatively determine to terminate the suspended investigation on this product effective September 27, 1982. The current requirements of the agreement suspending the investigation will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to terminate within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on termination, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to terminate, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: June 22, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

Appendix A

May 9, 1985.

Mr. Alan F. Holmer,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 3850, Washington, DC 20230.

Re: Outstanding Countervailing Duty and Antidumping Orders Concerning Wire Rod from Brazil

Dear Mr. Holmer: Paragraph 2(a)(1) of the Arrangement Concerning Trade in Certain Steel Products Between Brazil and the United States (the "Arrangement") which was confirmed as of February 26, 1985, requires the withdrawal of the countervailing duty and antidumping petitions described in paragraph 1 of Appendix A to the Arrangement including the countervailing duty petition filed on February 8, 1982, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company (or their predecessors) concerning carbon steel wire rod. Paragraph 2(a)(2) requires the United States to initiate the legal process to terminate those antidumping and countervailing duty orders described in paragraph 2 of Appendix A to the Arrangement including that resulting from the antidumping petition filed on September 30, 1982, by Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company concerning carbon steel wire rod.

On behalf of the companies that filed those petitions (hereinafter the "Petitioners"), you are hereby notified that, based on the Arrangement undertaking of Brazil to limit its annual exports of wire rod to the United States to 1.05 percent of U.S. apparent domestic consumption for the duration of the Arrangement, and in reliance on the other understandings expressed herein, the Petitioners (i) withdraw the countervailing duty petition described in paragraph 1 of Appendix A and (ii) will not object to the initiation of legal process to terminate the antidumping order resulting from the petition described in paragraph 2 of Appendix A. The withdrawal and expression of no objection to the initiation of legal process are subject to assurance that the Brazilian Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning wire rod. Petitioners also understand that the United States does not plan to agree to any modifications of the Arrangement that would affect the Brazilian obligations concerning wire rod during the Arrangement term.

Petitioners do not intend to file petitions [as specified in paragraph 2(a)(3) of the Arrangement] seeking import relief with respect to wire rod from Brazil during the period of the Brazilian Arrangement provided that Arrangement proves to be an effective alternative to the results of unfair trade cases as defined by the remedial provisions (offsetting unfair trade practices) of the petition and order that will be terminated. To that end, Petitioners expressly do not waive any statutory rights to file such petitions as they may determine nor do they waive their right to take such other steps as may be provided by law.

It is Petitioners' understanding that the Arrangement with Brazil is a "bilateral arrangement" within the meaning of Section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to Section 805(a) of said Act. Pursuant to those provisions and the requirements and terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of wire rod from Brazil that (i) is not accompanied by an export certificate and (ii) is not issued consistent with the quantitative limitations specifically applicable to Brazil as defined by the Arrangement.

We request that this letter be published together with the **Federal Register** notices of (i) the withdrawal of the petition referenced in paragraph 2(a)(1) and (ii) the initiation of the process required by paragraph 2(a)(2) of the Arrangement. Petitioners will assume that the understandings contained herein are valid and, unless informed otherwise, will undertake to furnish the Department with such documentation as necessary to implement their expression of no objection to the initiation of the legal process and its conclusion.

Respectfully submitted.

Charles Owen Verrill, Jr., Esq.,
Robert E. Nielsen, Esq.,
Wiley & Rein, 1776 K Street, NW., Washington, D.C. 20006, (202) 429-7000.
Counsel for Petitioners: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., Raritan River Steel Co.

David E. Birenbaum, Esq.,
Alan G. Kashdan, Esq.,
Fried, Frank, Harries, Shriver & Jacobson (A Partnership Including Professional Corporations), 600 New Hampshire Ave., NW., Washington, D.C. 20037, (202) 342-3500.
Counsel for Petitioner: Atlantic Steel Co.

[FR Doc. 85-15627 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

National Advisory Committee on Oceans and Atmosphere; Meeting

June 25, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby give that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday and Tuesday, July 15–16, 1985. The meeting will be held in Page Building #1, Rooms 416 and B–100, 2001 Wisconsin Avenue, NW., Washington, DC. The meeting will commence at 9:00 a.m. and end at 4:30 p.m. on July 15 and will commence at 8:30 a.m. and end at 3:00 p.m. on July 16.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, July 15, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC 20235
9:00 a.m.-12:30 p.m.—Plenary
Room 416
9:00 a.m.-9:15 a.m.
• Introductory Remarks
9:15 a.m.-10:30 a.m.
• Guest Speaker
John D. Negroponte, Assistant Secretary Designate, Oceans and International Environmental and Scientific Affairs, Department of State
10:30 a.m.-12:30 p.m.
• Shipbuilding Report
Presentation of Report by Panel Chairman for Approval
12:30 p.m.-1:30 p.m.—Lunch
1:30 p.m.-4:30 p.m.—Panel meetings
1:30 p.m.-4:00 p.m.
• Atmospheric Affairs
Chairman: S. Fred Singer, Room B-100
Topic: Acid Rain, Work Session
Speakers: None
1:30 p.m.-4:30 p.m.
• Coastal Zone/Consistency
Co-Chairman: Judith Kildow, Room 416
Topic: Work Session
Speakers:
Peter Tweedt, Director, Office of Ocean and Coastal Resource Management, National Ocean Survey
William Bettenberg, Director, Minerals Management Service, Department of the Interior
Representative of Congressional Staff
4:30 p.m.—Recess

Tuesday, July 16, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC
8:30 a.m.-10:30 a.m.—Panel meeting
• Exclusive Economic Zone
Chairman: Lee C. Gerhard, Room 416
Topic: Elements of a National Plan
Speakers:
Clif Curtis, Executive Vice President, The Oceanic Society
Charles N. Ehler, Chief, Ocean Assessments Division, Office of Oceanography and Marine, Assessment, National Ocean Survey
10:30 a.m.-12:00 Noon—Plenary
• Discussion of Proposed Scope of New Topics
• Exclusive Economic Zone Law Review
• Ocean Incineration
• NOAA Roles and Missions
12:00 Noon-1:00 p.m.—Lunch
1:00 p.m.-3:00 p.m.—Plenary
• Panel Reports
• OLd Business
• New Business
3:00 p.m.—Adjourn

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653-7818.

Dated: June 25, 1985.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 85-15571 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-12-M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Subcommittee will convene a public meeting, July 9, 1985 from 10 a.m. to approximately 3 p.m., to discuss issues related to the Council's budget, as well as other administrative issues. The public meeting will convene at the Council's office, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico. For further information contact the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico, 00918; telephone (809) 753-4926.

Dated: June 25, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-15598 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Australia, the United Kingdom of Great Britain and Northern Ireland, and The Netherlands

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim orders.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10-14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On March 1, 1985, Her Majesty's Government submitted a diplomatic note to the Secretary of Commerce requesting the issuance of a Presidential proclamation under 17 U.S.C. 902 on the basis that the United Kingdom Copyright Law provides protection for mask works of U.S. nationals and domiciliaries. On May 23, 1985, the Government of Australia submitted a similar diplomatic note, seeking either a Presidential proclamation or in the alternative an interim order under 17 U.S.C. 914. On June 3, 1985, the Government of The Netherlands also submitted a petition for an interim order under 17 U.S.C. 914 on the basis that mask work protection is currently available under The Netherlands copyright law.

The complexity of the issues raised by these requests, coupled with the entirely new approach to international intellectual property law embodied in chapter 9 of title 17 of the United States Code, make impracticable the issuance of Presidential proclamations before July 1, 1985, establishing permanent ties between the United States and Australia and the United Kingdom with respect to mask works. Consequently, in the interest of promoting international comity in the protection of mask works, the Commissioner has determined that the issuance of an interim order under 17 U.S.C. 914 is appropriate since Australia, the United Kingdom, and The Netherlands have legal systems allowing the protection of mask works. Accordingly, interim orders are being issued for the United Kingdom, Australia and The Netherlands.

EFFECTIVE DATE: The effective date of these orders shall be the date of receipt of the respective requests: March 1, 1985, for the United Kingdom; May 23, 1985, for Australia; and June 3, 1985, for The Netherlands.

Termination date: These orders shall terminate on the date specified in the respective orders: November 8, 1987, for the United Kingdom; June 21, 1986, for Australia, and June 21, 1986, for The Netherlands.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor

chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

a series of related images, however, fixed or encoded

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semi-conductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. First, the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

a foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of foreign nations if the Secretary finds:

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A); or

(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On June 12, 1985, the Commissioner of Patents and Trademarks published notices requesting comments on the protection of mask works, under copyright in Australia, 50 FR 24665, and the United Kingdom, 50 FR 24666. On June 13, 1985, the Commissioner also published a petition submitted by the Government of The Netherlands, 50 FR 24795, and requested comments on that petition. The Semiconductor Industry Association (SIA) submitted comments raising a number of issues concerning the interpretation of chapter 9 of title 17 of the United States Code and concerning the relationship of the type of protection afforded under a traditional copyright approach.

As the SIA pointed out in its comment letter:

[T]he governments of Australia, the United Kingdom of Great Britain and Northern Ireland and The Netherlands have based their petitions solely on the assertion that their existing copyright laws adequately protect mask works for the purposes of obtaining an interim order under section 914 of the SPCA. Protection of mask works through traditional copyright laws, however, clearly differs from the form of protection provided by the SCPA. Even if the existing copyright laws of these countries did extend to the same mask works as U.S. protection, the laws of these countries might not recognize the legitimacy of reverse engineering and innocent infringement, key provisions of the SCPA. In addition, the copyright laws of these countries do not provide for registration (including deposit) and notice procedures tailored to the unique problems of protecting mask works. The Commission [sic] should allow itself as well as interested parties sufficient opportunity to analyze whether these differences in approach significantly undermine international comity."

The SIA urges that short term orders be issued for Australia, the United Kingdom and The Netherlands and that a thorough review of these requests be undertaken. The SIA states that:

This would ensure that the important purposes envisioned by Congress in establishing the interim protection provisions of section 914—to promote enactment of laws in other countries providing substantially the same protection to U.S. owners of mask works as U.S. law and to encourage international comity with respect to protection of mask works—are attained.

The complexities of the relationship between section 914, with its Congressionally mandated public hearing process, and the executive discretion embodied in section 902 require careful evaluation in light of the legislative history of the SCPA. Also, the provisions of section 902 itself have been interpreted in differing ways by the parties to this proceeding. We read section 902(a)(2) to permit the application of two very different standards. Subparagraph (A) adopts the traditional international intellectual property standard of national treatment. That is to say, if a foreign nation protects works of U.S. nationals and domiciliaries in the same way that it protects the works of its own nationals and domiciliaries, then the standard of national treatment is satisfied. There is no requirement that the two nations' laws be the same, or for that matter, even similar. Subparagraph (B) on the other hand imposes a standard of reciprocity. That is to say, to meet this test a foreign nation must provide protection that is substantially the same as the protection afforded under U.S. law. Should these two subsections be read conjunctively as urged by the SIA or disjunctively? The legislative history offers some assistance in this interpretation. The House Report states that:

Paragraph (2)(A) authorizes the President to issue proclamations conferring protection under this Act upon a finding that a foreign nation extends protection to mask works of U.S. origin, on substantially the same basis as it protects mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation.

Section (2)(B) provides a further basis for the President to proclaim eligibility of foreign mask work owners for protection under this chapter; namely, that reciprocal eligibility may be established even where the foreign state accords to its nationals a higher level of protection to mask works, so long as that accorded U.S. owners is 'on substantially the same basis as provided in this chapter.'

In any event, this becomes a matter for Presidential discretion on a nation-by-nation basis. It is the view of the Committee that this discretion should be carefully exercised.

The Committee is aware that the United States is taking a first step towards elaborating for mask works a system of protection which has international implications:

The extent to which other states find our approach sensible, or absorb mask works into their organic copyright laws, must be carefully and sympathetically followed.

Further, the international political complexity of a number of multilateral agreements such as the UCC, Berne Convention, Paris Intellectual Property Convention, as opposed to the relatively simple bilateralism implicit in the Presidential proclamation process, must also be carefully monitored to ensure eventual international comity and harmony in this important area of trade. H.R. Rep. 98–781, p. 18.

The House Report, in discussing the relationship among the SCPA and traditional patent and copyright law, also noted that in interpreting the provisions of the SCPA one "could draw by analogy on this statutory and case law framework to the extent clearly applicable to mask works and semiconductor chip protection, but [in so doing one] should not be restricted by the limitation of existing copyright law." H.R. Rep. 98–781, p. 10. Under the 1909 Copyright Law 17 U.S.C. section 9(b) provided three distinct bases for issuing a Presidential proclamation, including either national treatment or reciprocity. *See, Nimmer on Copyright,* chapter 17. However, section 902 is also based in part on the present 17 U.S.C. section 104 which provides for Presidential proclamations solely on the basis of national treatment. As well, in discussing the geneal intent of the international transitional provisions of 17 U.S.C. section 914, both Congressman Kastenmeier and Senator Mathias observed that interim protection may be extended if the Secretary of Commerce finds "that the foreign nation in question is making progress (either by treaty negotiation or legislative enactment) toward a regime of mask work protection *generally similar to that under the Act,"* [emphasis added]. 130 Cong. Rec. E 4434 (October 10, 1984), 130 Cong. Rec. section 12919 (October 3, 1984).

For all of these reasons, the Commissioner believes that a more detailed inquiry into the international provisions of the SCPA is appropriate. The Commissioner is also aware that there is a pressing need to take expedited action with respect to countries already having in place laws that provide for mask work protection. International comity—mutual respect for the laws of other States—will be promoted by acknowledging the statements of other governments that their laws provide for mask work protection. Harmonization of those laws can be a continuing objective of bilateral discussions which can take place within the context of the interim order process, and it will certainly be an objective of international discussions as this issue is addressed within the World Intellectual Property Organization at a meeting planned for October 1985.

There have been no allegations that nationals, domiciliaries, and sovereign authorities of Australia, the United Kingdom or The Netherlands have been or are presently engaged in the misappropriation or unauthorized distribution of mask works. All of these countries have semiconductor industries and they are markets in which U.S. mask works need protection.

Accordingly, the Commissioner has determined that the issuance of interim orders under section 914 for these countries will promote the development of an international system assuring mask work protection. The Commissioner also believes that further public inquiry into this matter is appropriate. Consequently public comments on this decision will be accepted if submitted in writing on or before 5:00 P.M. on July 31, 1985. The interim orders follow:

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Australia

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 12, 1985, I find that: Australia is and has, since May 23, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Australian nationals, domiciliaries, and sovereign authorities of Australia and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Australia are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be May 23, 1985, and this order shall terminate on June 21, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of the United Kingdom of Great Britain and Northern Ireland

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 12, 1985, I find that: the United Kingdom of Great Britain and Northern Ireland is and has, since March 1, 1985, been making good faith efforts towards providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); nationals, domiciliaries, and sovereign authorities of the United Kingdom and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Acccordingly, nationals, domiciliaries, and sovereign authorities of the United Kingdom are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be March 1, 1985, and this order shall terminate on November 8, 1987.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of the Netherlands

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 13, 1985, I find that: The Netherlands is and has, since June 3, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); nationals, domiciliaries, and sovereign authorities of The Netherlands and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of The Netherlands are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 3, 1985, and this order shall terminate on June 21, 1986, one year from its date of signature.

Dated: June 21, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85–15546 Filed 6–27–85; 8:45 am]

BILLING CODE 3510–16–M

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of the European Economic Community

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of initiation of proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of title 17 of the United States Code to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10-14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517-44519, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On June 20, 1985, the Patent and Trademark Office received a petition for the issuance of an interim order from the Commission of the European Communities. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding for consideration of the issuance of an interim order.

In the interests of time and because of the rapidly approaching July 1, 1985, cut-off date for the acceptance by the Copyright Office of applications for the registration of mask works first commercially exploited on or after July 1, 1983, and before November 2, 1985, a date is being set for the submission of comments in accordance with paragraph F(a), and a public hearing is being scheduled.

DATES: Comments and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on July 19, 1985. A public hearing has been scheduled for July 23, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention: Assistant Commissioner for External Affairs, Box 4, Washington, D.C. 20231. The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11-C-10, 2021 Jefferson Davis Highway, Arlington, Virginia.

Materials submitted and a transcript of the hearing will be available for public inspection in Room 11-C-28, Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> a series of related images, however, fixed or encoded
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10-year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second, that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> a foreign nation extends to mask works of owner who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries, and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. To encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

> (1) that the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) entering into a treaty described in section 902(a)(1)(A), or
>
> (B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On June 20, 1985, a petition for the issuance of an interim order under 17 U.S.C. 914 was received from the Commission of the European Communities on behalf of the European Economic Community. The petition, including the supplemental information is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress * * *, the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its

Government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue. . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

We are considering issuing an interim order extending the protection of chapter 9 of title 17 of the United States Code to the nationals, domiciliaries, and sovereign authorities of member States of the European Economic Community. Written comment on the request of the petitioners and requests to testify must be received in the Office of the Comissioner of Patents and Trademarks on or before 5:00 P.M., July 19, 1985. A public hearing is being scheduled for July 23, 1985, to receive further public comment on this petition.

Dated: June 21, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

Delegation of the Commission of the European Communities

June 20, 1985.

Mr. Donald J. Quigg,
Acting Commissioner of Patents & Trademarks, Box 4, Washington, D.C. 20231

Dear Sir: I have been requested by the Commission of the European Communities to forward to you the attached petition under Section 914 of the U.S. Semiconductor Chip Protection Act of 1984.

Yours sincerely,

Roy Denman.

The United States Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231

Petition by the Commission of the European Communities on behalf of the European Economic Community under section 914(a) of the Semiconductor Chip Protection Act of 1984.

1. Section 914(a) of the Semiconductor Chip Protection Act of 1984 provides that the Secretary of Commerce may issue an order with respect to protection to be afforded on a transitional basis to nationals, domiciliaries and sovereign authorities of any nation upon the petition of any person provided *inter alia* that the foreign nation is making good faith efforts and reasonable progress towards enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a) of the said Act.

2. As far as the European Economic Community is concerned specific forms of legal protection for semiconductor products have not yet been enacted in any Member State. Though the design of such products is already protected in some jurisdictions by laws of more general application, in particular, by copyright and design law, the exact nature and degree of protection vary from one Member State to another and in many cases have yet to be determined definitively by the courts. For this reason, the Commission intends to make a proposal in the near future for a Council Directive on the creation of a legal framework for the protection of the topographies of semiconductor products in all Community Member States. An outline of this proposal, which will be finalized shortly, is annexed.

3. In so doing the Commission is also responding to demands expressed by UNICE (Union des Industries de la Communauté Européenne, an industry association the members of which represent the major semiconductor manufacturers in the territory of the E.E.C.) for a harmonized protection system in the Community.

4. The draft proposal provides that protection shall apply in favour of natural persons who are the creators of topographies of semiconductor products who are nationals or residents of a Member State and of natural persons who are the creators of such topographies which are first commercially exploited in a Member State. Without prejudice to obligations arising under international agreements, Member States shall extend protection to nationals or residents of other States on decision by the Council of the European Communities. The Council should so decide on a Commission proposal where such States protect topographies of semiconductor products created by the nationals or residents of Member States or first commercially exploited in a Member State to substantially the same extent as provided in E.E.C. Member States.

5. The Council of the European Communities has in a Resolution of 19 June declared its intention to examine the Commission's proposed Directive with a view to its adoption as rapidly as possible, subject to such changes as may appear necessary, particularly in the light of the opinions of the European Parliament and the Economic and Social Committee. The text of the Resolution is annexed. Once adopted a Council Directive has a legally binding effect for the Community's Member States.

6. The Commission declares that it is not aware that mask works of U.S. origin have been misappropriated or commercially exploited without authorization on the territories of the Community's Member States.

7. Pending adoption of the Council Directive and its implementation by Member States, the Commission requests that protection under the Semiconductor Chip Protection Act of 1984 be extended to nationals, domiciliaries, or sovereign authorities of Community Member States and that such order be issued immediately, thereby ensuring that semiconductor products, including those first marketed between 1st July 1983 and 8 November 1984 by Community producers will be eligible for protection under the Semiconductor Chip Protection Act. Any proclamation made under section 902(2) of the Semiconductor Chip Protection Act of 1984 in respect of a particular Member State of the Community will of course make unnecessary an order in respect of that State conferring transitional protection under section 914(a) on the basis of this petition.

8. Nothing in this petition shall be interpreted as an acceptance of the compatibility of the provisions of the Semiconductor Chip Protection Act of 1984 with the obligations of the United States under international law.

9. The expedited issue of an order in favour of Community producers of semiconductor products would promote international comity with respect to the legal protection of semiconductor products.

June 20, 1985.

Annex I

Outline of a draft proposal for a Council Directive on the legal protection of original topographies of semiconductor products.

I. Legal Basis

1. The Directive will be based on Article 100 of the EEC Treaty.

II. Definitions

2. The draft Directive will contain definitions of

—semiconductor products;
—the topography of semiconductor products;
—the commercial exploitation of semiconductor products.

3. Semiconductor products would be defined as the final or intermediate form of any product comprising semiconducting material having two or more layers composed of conducting, insulating or semiconducting material in a pre-determined three-dimensional pattern and intended to perform electronic functions.

4. The topography of a semiconductor product would be defined as a series of related images, however fixed or encoded, representing the pre-determined three-dimensional pattern of the materials from which the layers of an integrated circuit are composed and in which series, the relation of the images one to another is that each image has the pattern or part of the pattern of the surface of the semiconductor product in its final or any intermediate form.

5. Commercial exploitation of the topography of a semiconductor product would mean to sell or license for use a semiconductor product in which the topography is incorporated.

III. Protection of Original Topographies of Semiconductor Products

6. Member States will protect the topographies of semiconductor products by granting exclusive rights. The exclusive rights may be granted either by national copyright

laws or by provisions enacted for the specific purpose of topographies of semiconductor products. The topographies of semiconductor products shall not be protected if they are not original. Topographies of semiconductor products shall not be protected if they consist of elements that are already known unless the combination of such elements, considered as a whole, is not already known.

IV. Eligible Persons

7. The protection shall apply in favour of natural persons who are the creators of topographies of semiconductor products who are nationals or residents of a Member State and of natural persons who are the creators of such topographies which are first commercially exploited in a Member State. Without prejudice to obligations arising under international agreements, Member States shall extend protection to nationals or residents of other States on decision by the Council. The Council should so decide on a Commission proposal where such States protect topographies of semiconductor products created by the nationals or residents of Member States or first commercially exploited in a Member State to substantially the same extent as provided in EEC Member States.

V. Registration and Deposit

8. Member States may provide that protection shall be granted to the topographies of semiconductor products only if the topographies of the semiconductor products have been registered with a public authority, and/or material describing or exemplifying the topographies has been deposited with a public authority.

VI. Restricted Acts

9. The exclusive rights shall include the rights to authorize the reproduction of the topographies in whole or in part, and the distribution or importation of semiconductor products incorporating the topographies. The exclusive right to authorize reproduction of topographies shall not apply to reproduction solely for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques embodies in the topographies themselves.

VII. Exhaustion of Rights

10. The exclusive right to authorize the distribution or importation of semiconductor products incorporating the topographies shall not apply to any act of distribution or importation of a semiconductor product after it has been placed on the market in a Member State by or with the consent of the person entitled to authorize its initial marketing.

VIII. Duration of Rights

1. The exclusive rights shall come to an end in respect of a particular topography on a date at least ten years from the date on which the topography was first fixed or encoded and not later than ten years from the date on which a semiconductor product incorporating the topography was first commercially exploited.

IX. Scope of protection

12. The protection granted to the topographies of semiconductor products shall not extend to any concept, process, system or technique embodied in the topography other than the topography itself.

X. Continued Application of Other Legal Protection

13. The provisions of the Directive shall be without prejudice to any other legal provisions in the laws of Member States protecting the topographies of semiconductor products.

Annex II

Council Resolution of 19 June 1985

On a Community framework for the legal protection of the topographies of semiconductor products

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community,

Having regrad to the proposal from the Commission,

Whereas semiconductor products are playing an increasingly important role in a broad range of industries and semiconductor technology can accordingly be considered as being of fundamental importance for the Community's industrial development;

Whereas the topographies of semiconductor products are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

Whereas, the Commission is preparing as a matter of urgency a proposal for a directive on the legal protection of the topographies of semiconductor products;

Hereby adopts this resolution:

Sole Article

The Council will examine the proposal for a directive which the Commission will soon be submitting on the legal protection of the topographies of semiconductor products with a view to deciding on its adoption as rapidly as possible, subject to whatever amendments may be necessary, in particular, in the light of the Opinion of the European Parliament and the Economic and Social Committee.

[FR Doc. 85-15547 Filed 6-27-85; 8:45 am]
BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

June 25, 1985.

The Chairman of the Committee for the Implementation 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, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 29, 1985 a notice was published in the **Federal Register** (50 FR 21923), which established a staged entry amount of 1,250,266 square yards during each of five specified thirty-day periods, beginning on May 29, 1985, for cotton fabric in Category 320pt. (currently in T.S.U.S.A. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), produced or manufactured in China and exported during the fifteen-month period which began on February 29, 1984 and extended through May 28, 1985, which was in excess of the limit established for that fifteen-month period. Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, the Governments of the United States and the People's Republic of China have exchanged notes increasing the 1985 level for Category 320pt. on which the staged entry amount is based. As a result of that change, the latter amount is also being increased from 1,250,000 square yards to 2,756,000 square yards. The thirty-day periods will remain the same.

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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 25, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 24, 1985 which established a staged entry amount of 1,250,266 square yards during each of five specified thirty-day periods for cotton textile products in Category 320pt. (only T.S.U.S.A. numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), produced or manufactured in the People's Republic of China and exported during the fifteen-month period which began on February 29, 1984.

Effective on July 1, 1985, the directive of May 24, 1985 is hereby amended to increase the amount which may be permitted entry per thirty-day period to 2,756,000 square yards.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15516 Filed 6-27-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to procurement List 1985 a commodity to be produced by workshops for other severely handicapped.

EFFECTIVE DATE: June 28, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: A notice of Proposed Addition to the Procurement List of the commodities listed below was published in the **Federal Register** on April 26, 1985 (50 FR 16531). One comment was received in response to this notice. The commenter questioned the capability of the workshop to produce the poncho in compliance with the specification. The Committee considered the comment received as well as other pertinent information and determined that the workshop is capable of producing the poncho in compliance with applicable specifications based on the Government's inspection of the workshop.

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1985:

Poncho, Wet Weather: 8405-01-100-0976

C.W. Fletcher,

Executive Director.

[FR Doc. 85-15563 Filed 6-27-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 services to be provided by workshops for other severely handicapped.

EFFECTIVE DATE: June 28, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On December 7, 1984 and April 26, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 47890 and 50 FR 16531) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1985:

Services

Commissary Shelf Stocking and Custodial, Patrick Air Force Base, Florida

Commissary Shelf Stocking and Custodial, Griffiss Air Force Base, New York

C.W. Fletcher,

Executive Director.

[FR Doc. 85-15564 Filed 6-27-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Draft Environmental Impact Statement; Santa Barbara County Streams, Mission Creek Study, Santa Barbara County, CA

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

a. *Alternative.* Alternatives for flood control are discussed below.

(1) Construction of 2 debris structures in Mission and Rattlesnake Canyons, diversion of flood flows to an open concrete channel between U.S. 101 and the railroad tracks, concrete channelization downstream of the confluence with the existing channel near Los Aguajes, and improvements to the mouth of Mission Creek. Low flows will continue to flow down the existing channel from Oak Park to the confluence with the concrete channel.

(2) Construction of 2 debris structures in Mission and Rattlesnake Canyons, construction of a third debris structure of Rocky Nook Park or at a location in Rattlesnake Canyon, channel improvements from State Street to Oak Park, construction of an inlet structure of Oak Park, and rectangular concrete channelization from Oak Park to the outlet, with improvements to the mouth of Mission Creek.

(3) Construction of an inlet at Carillo Street with concrete channelization downstream to the outlet.

All of the above plans will be designed for 100-, 50-, and 25-year flood protection.

b. *Scoping Process.* A Citizen's Advisory Committee was established in December 1982 to advise the Los Angeles District Corps of Engineers on community values to be protected in studying alternative means to solve the flooding problems along Mission Creek, and to identify which alternative solutions(s) appear to have the greatest

community acceptance. The Corps is also coordinating formally with appropriate Federal, State, and local agencies to identify and resolve potential environmental problems. A broad range of concerns have been identified thus far and include impacts to biological resources, riparian, and wetland habitats; impacts to archeological and cultural resources; loss of esthetic values; impacts to recreational use of the project area; and compatibility of the proposed plan with local land use policies.

c. *Future Public Meetings.* A formal public workshop meeting will be scheduled to discuss the project and obtain public comments on the DEIS and survey report.

d. *Availability of DEIS.* The DEIS is anticipated to be circulated for public review in July 1985.

e. *Address.* Questions about the proposed action and DEIS can be answered by: Robert Brumbaugh, Project Manager, U.S. Army Corps of Engineers-Los Angeles District, P.O. Box 2711, Los Angeles, California 90053-2325.

Robert L. Wagner,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-15540 Filed 6-27-85; 8:45 am]

BILLING CODE 3710-DW-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

[ACN: 09-00002]

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the California Department of Education Funds To Be Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the California Department of Education (SEA) an amount equal to 75 percent of the funds to be recovered by the U.S. Department of Education (Department) as a result of final audit determinations. This notice describes the SEA's plan for the use of the grantback funds and the terms and conditions under which the Secretary intends to make those funds available.

DATE: All written comments must be received on or before July 29, 1985.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245-9846.

SUPPLEMENTAL INFORMATION:

A. Background

On November 26, 1979, the Deputy Commissioner for Elementary and Secondary Education (Deputy Commissioner) of the U.S. Office of Education issued final audit determinations that required the SEA to repay $28,682,142 of Federal funds misexpended under Title I of the Elementary and Secondary Education Act of 1965 (Title I). Specifically, the Deputy Commissioner determined that the Title I funds were improperly used in 62 local educational agencies (LEAs) in violation of section 141(a)(3)(B) of Title I (20 U.S.C. 241e(a)(3)(B) (1976)) to supplant State compensatory education funds which, in the absence of Title I funds, would have been used to provide services to Title I participants under California's Educationally Disadvantaged Youth Program. These final audit determinations were based on an audit of the Title I program in California for the period from July 1, 1974 through June 30, 1978 conducted by the Department of Health, Education, and Welfare Audit Agency.

The SEA challenged the final audit determinations in an application for review filed with the Education Appeal Board (EAB) on January 28, 1980. During the course of the administrative proceedings before the EAB, the SEA and the Department reached a settlement of the case. Under the terms of that settlement, the SEA will repay to the Department $5 million. This payment will be made with non-Federal funds in two installments of $2.5 million each.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary recovers funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the final audit determination have been corrected and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

As part of the settlement agreement, the SEA requested repayment of 75 percent of the $5 million under a grantback arrangement under section 456 of GEPA. The SEA certified that the practice that led to the final audit determinations have been corrected and that the SEA is in all other respects in compliance with all requirements that apply to the successor program to Title I—Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1).

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA submitted a plan on behalf of the 62 LEAs cited in the Deputy Commissioner's final audit determinations outlining how the grantback funds will be used. According to the plan, the SEA will allocate the grantback funds to each of the 62 LEAs in proportion to the percentage of the final determinations attributable to the LEA. Each of the 62 LEAs will use the grantback funds solely to augment the special educational services provided by the LEA to educationally deprived children under Chapter 1. Specifically, each LEA will indentify separately in its Chapter 1 application the schools in which the grantback funds will be used and the programs that will be augmented. Services will be provided, to the extent possible, to the population that was affected by the misexpenditures that resulted in the final audit determinations. Although the final audit determinations against the SEA resulted from improper expenditures of Title I funds, the SEA's

plan necessarily reflects the use of the grantback funds under Chapter 1—a program similar to Title I designed to serve educationally deprived children in low-income areas—because Chapter 1 has superseded Title I.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under section 456 of GEPA, the SEA's assurances described in Part C of this notice, and the SEA's plan, the Secretary has made the following deteriminations:

(1) The practices and proedures that resulted in the final audit determinations have been corrected and the SEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the 62 LEA's for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the grantback will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available to the SEA under a grantback arrangement an amount of $32,750,000, which is 75 percent of the $5 million to be recovered from the SEA. The grantback will be made in two installments of $1,875,000 each. The Secretary bases his intention to grantback funds on his determination outlined in Part E of this notice and receipt of each installment from the SEA.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a gantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which the grantback will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with all applicable statutory and regulatory requirements; and the plan submitted by the SEA.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, all funds received under each installment of the grantback will be expended by the 62 LEAs in the fiscal year for which they are allocated or in the succeeding fiscal year.

(3) The SEA will instruct the 62 LEAs to maintain fiscal records sufficient to demonstrate that the grantback funds were expended in accordance with the SEA's plan.

(4) The SEA will monitor the implementation of the plan.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the California SEA. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before July 29, 1985.

(Catalog of Federal Domestic Assistance No. 84.010—Educationally Deprived Children—Local Educational Agencies.

Dated: June 26, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-15702 Filed 6-27-85 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Institute of Laboratory Animal Resources; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b) it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences in support of the Institute of Laboratory Animal Resources. The DOE's support under this grant is limited to $21,000 over a 12 month period.

Procurement Request No. 01-85ER60260.001

Project Scope: The Institute of Laboratory Animal Resources, National Academy of Sciences, (NAS) is to continue its long standing program to provide information that will help to improve the availability, quality, care, and humane and scientifically valid use of laboratory animals. This program, an effort of the NAS since the 1950's to be continued for the foreseeable furture, forms the framework for governmental and institutional animal-welfare policies. Through timely reports and publications, this program benefits the DOE in its mulit-faceted support of basic and applied research. Therefore, it has been determined that the award of a grant for partial support of the program on a restricted eligibility basis is appropriate.

FOR FUTHER INFORMATION CONTACT: James P. Beiriger, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252-1024.

Issued in Washington, D.C., on June 21, 1985.

Ben Goldman,

Director, Contract Operations, Division "A" Office of Procurement Operations.

[FR Doc. 85-15554 Filed 6-27-85; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant to the National Academy of Sciences ("NAS") in support of a study to define criteria for the development and performance measurement of large-scale computers for scientific and engineering applications. The grant will be for a 4-month period and in the amount of $30,000.

Procurement Request No. 05-85ER25008.000

Project Scope: The NAS through its Commission on Engineering and Technical Systems and its Energy Engineering Board and Board on Telecommunications and Computer Applications proposes to conduct a

study to define criteria for the development and performance measurement of large-scale computers for scientific and engineering applications. The Boards serve as a coordinating group and a national resource for activities related to many large-scale scientific and computationally intensive problems. Eligibility for this study is, therefore, restricted to the National Academy of Sciences, chartered by Congress to conduct scientific research for the Government.

FOR FURTHER INFORMATION CONTACT: Donald M. Austin, ER-07, Scientific Computing Staff, OER, U.S. Department of Energy, Washington, DC 20545, Telephone Number: (301) 353-5800.

Issued in Oak Ridge, Tennessee, June 5, 1985.

Peter D. Dayton,

Director, Procurement & Contracts Division.

[FR Doc. 85-15555 Filed 6-27-85; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No.: IAP-1]

Near Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Near Term Intertie Access Policy.

SUMMARY: BPA has adopted the Near Term Intertie Access Policy (IAP) to replace the Interim IAP which was in effect for approximately 6 months. The Near Term IAP will be in effect through September 1986, when it will be superseded by a Long Term IAP.

Responsibile Official: James L. Jones, Deputy Power Manager.

DATE: The revised Near Term Intertie Access Policy was effective as of June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn W. Baker, Public Involvement Office, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Telephone numbers, voice/TTY, for the Public Involvement office are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; 800-547-6048 for California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming. To better serve you, BPA has additional toll-free numbers for document requests: 800-841-5867 for Oregon; 800-624-9495 for the other Western states. You will reach a recorded message where you may leave a request for any of the documents listed in this notice.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Reginald Kaiser, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

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Background

The development of BPA's Intertie Access Policy has been an extensive process. It commenced on July 22, 1983, with publication in the **Federal Register** of a Notice of Intent to Develop Intertie Policy (48 FR 33515). This notice was provided consistent with BPA's "Major Power Marketing Policy Procedures" (May 12, 1981, 46 FR 26368).

BPA also produced a Discussion Paper that was published in the **Federal Register** on February 16, 1984 (49 FR 5990). This Discussion Paper described possible BPA policies for use of the Pacific Northwest-Pacific Southwest Intertie (Intertie) by BPA and others within existing BPA contractual obligations.

On July 30, 1984, BPA published its Proposed Near Term Intertie Access Policy in the **Federal Register** (49 FR 30098). Public Comment was received through August 13, 1984.

On September 7, 1984, BPA mailed to all interested parties a copy of the "Notice of Near Term Intertie Access Policy," which was effective on that date and was subsequently published in the **Federal Register** on November 5, 1984 (49 FR 44232). This policy provided procedures for gaining access to the Federally owned portion of the Intertie for firm and nonfirm transactions to the Southwest. The initial term of this policy was to be approximately 6 months to allow for continuing public discussion, environmental analyses, and an opportunity to gain operational experience under the policy.

An initial Record of Decision was prepared in September 1984 based on the comments received on BPA's proposed policy; the comments made at the public comment forums; any previous comments specifically incorporated by reference by the commenters; and related documents.

On January 31, 1985, BPA mailed to all interested parties a proposed Near Term IAP which incorporated all information received under the Interim IAP. BPA requested comments particularly on the specific parts of this Near Term IAP which had changed from the Interim IAP. At this same time, BPA notified all interested parties that the term of the Interim IAP was being extended to allow sufficient time for completion of the Environmental Assessment on the Near Term IAP. This notice also appeared in the **Federal Register** on February 15, 1985 (50 FR 6379).

BPA prepared an Environmental Assessment on the Near Term IAP which analyzed the potential environmental impacts of the policy. On March 7, 1985, this Environmental Assessment was approved by the Department of Energy. Copies of the Environmental Assessment were mailed to interested parties for comment, with the close of comment period on April 15, 1985.

On April 26, 1985, BPA notified all interested parties that the term of the Interim IAP was again being extended to May 31, 1985 and to also extend the comment period on the Environmental Assessment to May 3, 1985. This notice appeared in the **Federal Register** on May 10, 1985 (50 FR 19781). This second

extension was necessary in order to allow BPA to evaluate the Ninth Circuit Court of Appeal's decision in the *Department of Water and Power of the City of Los Angeles* v. *BPA* (No. 84-7618, April 24, 1985) and to determine how best to incorporate the decision into the Near Term IAP and Administrator's Record of Decision. This extension was also necessary to incorporate comments received during the extended comment period on the Environmental Assessment.

The environmental analysis included in the Environmental Assessment supported a Finding of No Significant Impact (FONSI), which was submitted to the Department of Energy for approval. This approval was given when the FONSI was signed by the Acting Assistant Secretary for Policy, Safety, and Environment on May 31, 1985. The Environmental Assessment and FONSI are available on request from BPA at the locations listed in the "For Further Information Contact" section of this notice or by calling the Public Involvement documents request number.

BPA also prepared a Record of Decision to support the Near Term IAP. The Record of Decision evaluates the issues and alternatives and describes the basis on which the Administrator approved the Near Term IAP. This Record of Decision is also available on request from BPA.

I. Discussion

A. Introduction

This Near Term IAP supersedes BPA's Interim IAP and will be in effect until September 30, 1986.

BPA was especially mindful of the importance of this policy to California parties. Comments from California entities were carefully reviewed in light of the experience under the Interim IAP. The information and data provided in those comments did not support claims of harmful and unfair practices. BPA is aware that the comment letters spoke of unaffordable Pacific Northwest prices. However, there is little evidence of this. California utilities have not pursued opportunities to work with BPA to achieve maximum displacement of their thermal resources.

For a complete explanation of the decisions involved in the Near Term IAP, and a description of Intertie activity under the Interim IAP, interested parties may obtain copies of BPA's Record of Decision and Environmental Analysis by calling BPA's Public Involvement office documents request number.

B. Overview of Changes

1. *Exiting Pacific Northwest Resources.* BPA received inquires as to whether two projects, Colstrip 4 and Valmy 2, would qualify under the definition of "Existing Pacific Northwest Resources." The relevant language was in the definition of the term in the Interim IAP. It appeared that these two plants qualify under that definition as being extraregional resources dedicated to regional load on September 7, 1984. For clarity, the Near Term IAP sets them forth in the definition specifically to show that these resources are included.

2. *Assured Delivery for Qualifying Existing and New Firm Contracts.* Some clarifying language has been added to section II.D.1. of the proposed policy. There has been no change in the intent of this section which was to limit the availability of this priority transmission service to firm surplus sales of Pacific Northwest resources. Five requests were received to approve contracts for Assured Delivery under the Interim IAP. Official notice of approval was issued for one such contract—a sale between Tacoma City Light and Western Area Power Administration.

3. *Economic Override.* BPA proposed an economic override provision in the July 13, 1984, draft of the Interim IAP, and again in the proposed Near Term IAP. Once again, there were many negative comments from the California parties for whose benefit it was intended, as well as from Pacific Northwest parties who feared that it could be misused. During the Interim IAP, there was very little unused capacity to which an economic reallocation could have been applied.

Economic override is not included in this proposal. During the term of the Near Term IAP, BPA will monitor the use of the Intertie and, if appropriate, BPA may amend the Near Term IAP to provide economic override provisions.

4. *Exhibit B Firm Surpluses.* In response to comments, a technical explanation of the development of Exhibit B Average Firm Surpluses has been included in the Record of Decision. Exhibit B now contains information as to the general sources of the information. BPA expects this exhibit to be dynamic with utility surpluses subject to change from time to time. If appropriate, Exhibit B levels will be recalculated to reflect technical corrections to the firm energy capability of resources or changes to firm loans based on updated information. The most serious challenge to BPA's method of determining Exhibit B amounts came from the Idaho Power Company, who argued that they be allowed to calculate their firm surplus based on median water resource planning criteria. Since Idaho Power Company is the only Pacific Northwest utility using the median water planning criteria, BPA has determined its Exhibit B surplus using critical water assumptions so that all Exhibit B amounts are developed on a comparable basis.

II. Near Term Intertie Access Policy

A. Definitions

1. "Administrator" means the Administrator of BPA and is used interchangeably herein with BPA.

2. "Administrator's Power Marketing Program" or "BPA's Power Marketing Program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These action and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's Power Marketing Program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power and maintaining BPA's present and future rates to all customers at the lowest level possible consistent with sound business principles. BPA's Power Marketing Program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) and to assist in the marketing of the region's surplus firm power to the Southwest.

3. "Assured Delivery" means Intertie transmission service provided by BPA under this policy that is interruptible only as a result of uncontrollable forces.

4. "BPA Resources" means Federal Columbia River Power System (FCRPS) hydroelectric projects; resources acquired by the Administrator under long-term contracts in force on the effective date of enactment of the Pacific Northwest Power Act; Exchange Resources consisting of electric power purchased under section 5(c) of the

Pacific Northwest Power Act; resources acquired by the Administrator under contracts in force on September 7, 1984; and resources acquired pursuant to 11(b)(6)(i) of the Transmission Act.

5. "Entity" means an owner of a resource other than a Scheduling Utility.

6. "Existing Extraregional Resources" are those resources located outside the Pacific Northwest which were operational on September 7, 1984, other than extraregional resources which qualify as Existing Pacific Northwest Resources.

7. "Existing Pacific Northwest Resources" are: (a) The regional resources of Pacific Northwest utilities that were operational on September 7, 1984; (b) the extraregional resources of Pacific Northwest utilities dedicated to regional load on September 7, 1984, which include Colstrip 4, to the extent of the shares dedicated to regional load by Pacific Northwest utilities and a *pro rata* portion of the Montana Power Company's share, and the Idaho Power Company's share of Valmy 2; and (c) the regional resources of other Pacific Northwest Entities that were operational on September 7, 1984, and for which a continuing relationship with a Scheduling Utility to serve regional load had been established by that date. Existing Pacific Northwest Resources do not include BPA Resources.

8. "Intertie Capacity" means transmission capacity on the Pacific Intertie controlled by BPA through ownership or contract right, increased by electric power scheduled south to north and decreased by loop flow, outages, and other factors that reduce transmission capacity from north to south.

9. "Pacific Intertie" means the Pacific Northwest-Pacific Southwest Intertie that consists of three high-voltage transmission lines (two 500-kilovolt (kV) alternating current (ac) lines and one 1,000-kV direct current (dc) line) which extend from Oregon into California or Nevada and any additions thereto.

10. "Pacific Northwest" means, as defined in the Pacific Northwest Power Act, 16 U.S.C. § 839e, the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River Drainage Basin, and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of the Pacific Northwest Power Act which has a distribution system from which it serves both within and without such region.

11. "Scheduling Utility" means a utility that operates a generation control area within the Pacific Northwest, and any utility within BPA's generation control area that schedules with BPA and is designated as a Computed Requirements customer.

12. "Substantial increase" or "substantial decrease," or "substantially interfere," means a change that is of qualitative significance, of significant measurable effect, and of sufficient magnitude to require remedial action.

13. "Uncontrollable Forces" are defined in General Wheeling Provisions, GWP Form–4R.

B. Term

This policy is effective on June 1, 1985, and will terminate on September 30, 1986, unless extended by published notice.

C. Conditions for Intertie Access

1. The Administrator will provide Assured Delivery or will allocate available Intertie Capacity to BPA and to other Scheduling Utilities pursuant to the conditions and procedures for scheduling and allocations set forth in this policy, unless otherwise provided by the terms of existing contracts listed in subsection II.D.1.a., below. Any Scheduling Utility which has access to California markets via ownership or contractual rights over non-BPA transmission facilities will be required to use the capacity of such facilities prior to receiving any access on BPA Intertie Capacity. An Entity that desires access to the Pacific Intertie may request access through the Scheduling Utility in whose control are the Entity's resource is located. If such resource is in BPA's control area, arrangements shall be made regarding operation of the resource during times when Intertie deliveries cannot be made.

2. The Administrator will provide Assured Delivery or allocate available Intertie Capacity only for power from BPA Resources and Existing Pacific Northwest Resources, except to the extent that Existing Extraregional Resources are permitted access under this policy. For purposes of determining access to BPA's Intertie Capacity, utility declarations of available surplus shall not include amounts of energy which have been purchased from an extraregional utility if such purchase would interfere with the marketing of BPA power or would decrease the Intertie access which BPA and Pacific Northwest utilities would otherwise have. If BPA determines that an extraregional purchase has been improperly included, BPA shall adjust such utility's Intertie access accordingly.

3. Subject to reserving Intertie Capacity otherwise required by the Administrator to support his Power Marketing Program, the Administrator will provide Assured Delivery or allocate Intertie Capacity for an Existing Pacific Northwest Resource or an Existing Extraregional Resource only when providing such Intertie access:

a. Will not substantially interfere with:

(1) The Administrator's Power Marketing Program; or

(2) The operating limitations of the Federal system; and

b. Will not conflict with:

(1) The Administrator's existing contractual obligations; or

(2) Any other legal obligations of the Administrator; and

c. Will not result in operation of resources whose use will adversely impact fish and wildlife in a manner that results in a substantial decrease in the effectiveness of, or a substantial increase in the need for, expenditures or other actions by the Administrator to protect, mitigate, or enhance fish and wildlife; or otherwise substantially interferes with the obligations of the Administrator under the Pacific Northwest Power Act to adequately protect, mitigate, or enhance fish and wildlife including taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable the Fish and Wildlife Program adopted by the Northwest Power Planning Council pursuant to the Pacific Northwest Power Act.

4. Operating limitations on the FCRPS, which includes the Federal power and transmission systems, result from the Administrator's obligation to operate the FCRPS in an economical and reliable manner consistent with prudent utility practices. These operating limitations include, but are not limited to:

a. The BPA Reliability Criteria and Standards;

b. Western System's Coordinating Council (WSCC) Minimum Operating Reliability Criteria;

c. North American Electric Reliability Council-Operating Committee Minimum Criteria for Operating Reliability; and

d. the limitations that result from the Administrator's coordination with other utilities and Federal agencies regarding resource and river operations.

5. The Administrator's existing contractual obligations include, but are not limited to those contracts listed in subsection II.D.1.a. below. Section II.D. describes how BPA will implement its Assured Delivery and allocation

procedures to avoid conflict with these contracts.

6. To verify consistency with this policy, upon the Administrator's request, Scheduling Utilities and extraregional utilities that are requesting or have received Assured Delivery or a formula allocation, shall provide the Administrator with a list of resources that are to be operated or that were operated at such hours as access to the Pacific Intertie will be or was provided, and such other information as the Administrator may reasonably need to implement the policy. The utility shall clearly indicate whether it considers any such information proprietary. BPA will make such information available to the public to the extent it is not protected from disclosure by law.

7. The following are Special Provisions Relating to Fish and Wildlife:

a. This policy presumes that BPA Resources, Existing Pacific Northwest Resources, and Existing Extraregional Resources are being operated consistent with applicable licenses, permits, or other provisions of State and Federal law, and that the operation of these resources or providing access for these resources will not adversely impact fish and wildlife resources in a manner described in subsection II.C.3.c., above, unless the Administrator determines otherwise.

b. Any interested person who wishes to challenge the presumption that an Existing Pacific Northwest Resource or Existing Extraregional Resource is being operated consistent with applicable licenses, permits, or other applicable provisions of State and Federal law must make that challenge with the State or Federal agency responsible for regulation of the resource or administration of that law.

c. Any interested person who wishes to challenge the presumption that the operation of an Existing Pacific Northwest Resource or Existing Extraregional Resource will not adversely impact fish and wildlife in the manner described in subsection II.C.3.c., above, shall notify the Administrator in writing. The notification shall state the manner in which and the extent to which fish and wildlife are being adversely impacted. The Administrator will provide a copy of that notification to the Scheduling Utility, to any other owner or operator of the resource and accept public comment before making a determination whether fish and wildlife are being adversely impacted by the operation of the challenged resource.

d. Upon receipt of a determination by the relevant agency, under subsection II.C.7.b., above, that a resource is not in compliance with applicable licenses or permits or other applicable State or Federal law, and a determination by the Administrator under subsection II.C.7.c., above, that operation of the resource will adversely impact fish and wildlife resources in the manner described in subsection II.C.3.c., above, the Administrator will not provide access to the Pacific Intertie for that resource.

e. For a resource that is being operated in compliance with applicable licenses or permits and other applicable State or Federal law, but that the Administrator determines will adversely impact fish and wildlife in the manner described in subsection II.C.3.c., above, the Administrator will not provide access unless:

(1) The owner or operator of the resource agrees to modify the operation of the resource in a manner to assure that the operation of the resource will not have the adverse impact determined by BPA; or

(2) The owner or operator of the resource agrees to make expenditures or take other actions not inconsistent with the program adopted by the Northwest Power Planning Council to protect, mitigate, or enhance fish and wildlife to offset the adverse impact to fish and wildlife described in subsection II.C.3.C., above.

f. It is the Administrator's intent that the Long Term Intertie Access Policy will not provide access to the Intertie Capacity under that policy for resources that are not included in the definition of Existing Pacific Northwest Resources under this Near Term IAP, if construction or operation of these resources will adversely impact fish and wildlife resources in the manner described in subsection II.C.3.c., above.

D. Assured Delivery and Formula Allocation Methods for Intertie Access

1. *Assured Delivery for Firm Contracts.* a. BPA will continue to use Intertie Capacity to perform its obligations under the following existing BPA contracts:

(1) Portland General Electric's Contract No. 14–03–55063 providing annual Intertie priority access rights;

(2) Pacific Power & Light's Contract No. 14–03–56379 providing annual Intertie priority access rights;

(3) Washington Water Power's (WWPCo) transmission Contract No. 14–03–79101;

(4) Washington Water Power's transmission Contract No. DE–MS79–81BP90185;

(5) Western Area Power Administration's Contract No. DE–MS–79–84B91627 for the purchase of surplus firm power from BPA and transmission of power purchased from the Basin Electric Power Cooperative;

(6) Pacific Gas & Electric's (PG&E) Contract No. 14–03–54132 for the purchase of BPA's seasonal surplus capacity;

(7) BPA's Capacity/Energy Exchange Agreements, listed below:

Utility	Contact No.
(a) Burbank	14–03–53290
(b) Glendale	14–03–53295
(c) Pasadena	14–03–53297
(d) PG&E	14–03–54134
(e) San Diego Gas & Electric	14–03–58638
(f) Southern California Edison	14–03–54126

b. BPA will use Intertie Capacity to perform its obligations under new BPA transactions for which BPA claims Assured Delivery.

c. For existing or new contracts of a Scheduling Utility, Assured Delivery may be provided for a term not to extend beyond September 30, 1986, or the termination date of this policy if extended by BPA, to the extent that such contract:

(1) Meets the conditions of section II.C., above; and

(2) Provides for the sale of firm power from specified resources by a Scheduling Utility in which the amount of power to be delivered, the price, and terms for delivery are specified in a manner that assures that the contract is not merely an advance arrangement to sell nonfirm power.

d. BPA will consider the following factors, among others, to determine the extent to which a contract of a Scheduling Utility other than BPA can receive Assured Delivery:

(1) The extent to which the contract provides for a firm sale resulting in a net decrease in the region's surplus;

(2) The extent to which the contract provides for return of energy to the Pacific Northwest;

(3) The extent to which the selling price is subject to change based on day-to-day fluctuation in market price;

(4) The extent to which the buyer has the right to displace purchases under the contract with nonfirm energy.

e. Scheduling Utilities which desire to arrange for Assured Delivery for a firm contract must submit such contract to the Administrator. The Administrator shall determine whether the submitted contract meets the eligibility criteria set forth above, and will provide notification of this determination in writing specifying the amount and term of Assured Delivery to be provided for the contract.

f. In order to receive Assured Delivery under a contract, firm hourly schedules

must be established by the Pacific Northwest and Southwest parties, and be made available to BPA prior to allocation of Intertie Capacity. Assured Delivery will not be provided for BPA's or for a Scheduling Utility's total eligible contracts on any hour that exceeds BPA's or the Scheduling Utility's average firm energy surplus as shown in Exhibit B of this policy, as modified or revised from time-to-time. In addition, Assured Delivery will only be provided to the extent that the total energy delivery for an operating year does not exceed the utility's total energy surplus for such operating year, as set forth in Exhibit B. A limited exception to the Exhibit B upper limit will be made for WWPCo for its two transmission contracts executed prior to the Interim IAP (see subsection II.D.1.a. (3) and (4)) with a combined firm transmission demand greater than WWPCo's Exhibit B Firm Surplus. WWPCo's rights to use these transmission contracts are not changed by the policy.

g. A Pacific Northwest utility may increase its average firm energy surplus by purchasing surplus firm power from BPA or any Pacific Northwest utility. BPA will adjust the average firm surplus amounts shown in Exhibit B for the buying and selling utilities accordingly.

h. In the event that available Intertie Capacity is reduced such that it is, in BPA's determination, insufficient for BPA firm deliveries and Assured Deliveries of other Scheduling Utilities, the Pacific Northwest and Southwest parties will establish schedules for delivery.

2. *Formula Allocation Methods.* a. BPA will determine the Intertie Capacity available for formula allocations described in subsection II.D.2.b., below, after first taking into account the conditions for Intertie access specified in section II.C., above, the Intertie Capacity necessary to serve existing contractual obligations as described in subsection II.D.1.a., above, and the Intertie Capacity necessary to provide Assured Delivery for qualifying firm contracts as described in subsection II.D.1.b., above. Access to the remaining available Intertie Capacity will be allocated according to the formulae described below.

b. One of three formulae will be applied depending on which of the following three conditions exists:

(1) *Condition 1:* When Exportable Energy is being scheduled pursuant to the terms of the Exportable Agreement (BPA Contract No. 14–03–73155), then capacity will be allocated pursuant to the Exportable Agreement. An example of an allocation under Condition 1 is shown in Exhibit A. The allocation procedure of the Exportable Agreement is an existing contractual obligation and has not been changed as a result of the Intertie Access Policy development process.

(2) *Condition 2:* When the Exportable Agreement allocation formula is not in effect, but BPA and other Scheduling Utilities declare amounts of power available for access to the Intertie that exceed the available Intertie Capacity determined as described in subsection II.D.2a., above, the capacity will be allocated pursuant to the following procedure:

(a) On any day the Scheduling Utilities observe as a normal workday, each Scheduling Utility shall submit to BPA declarations of daily quantities of energy and hourly capacity it has available for sale to the Southwest for the period beginning at midnight of the day of declaration and normally continuing through midnight of the next normal workday.

(b) A Scheduling Utility's allocation for each hour will be determined and will approximate the ratio of such Scheduling Utility's declaration to the sum of all declarations for each hour multiplied by the available Intertie Capacity. An example of an allocation under Condition 2 is shown in Exhibit A.

(3) *Conditions 3:* When the Exportable Agreement is not in effect, and when BPA and other Scheduling Utilities declare power available for access to the Intertie in an amount that does not exceed the available Intertie Capacity, BPA's and each other Scheduling Utility's allocation will be equal to its declaration. An example of an allocation under Condition 3 is shown in Exhibit A.

E. Extraregional Access

Extraregional utilities will be allowed access as follows:

1. BPA will not provide Assured Delivery to extraregional utilities.

2. Under Condition 1, the Exportable Agreement provides that access to Intertie Capacity is limited to signatories to that agreement.

3. BPA may, by contract, provide extraregional utilities limited access to Intertie Capacity. Such access, however, would be conditioned on such utilities' participation in the Pacific Northwest's coordinated planning and operation to a greater extent than in the past or agreement to provide other appropriate consideration of value to the Pacific Northwest.

4. Under Condition 3, extraregional utilities will have access to the Intertie to the extent that Inertie Capacity is available in excess of the capacity used by BPA and Scheduling Utilities. Utilities outside the Pacific Northwest must fully use other available transmission before receiving access to Intertie Capacity.

F. Remedies

1. Access to Intertie Capacity is conditioned upon compliance with the terms of this policy.

2. Upon a determination by BPA that the terms of this policy are not being met. BPA will so notify the appropriate person(s) setting forth the nature of the noncompliance and the action that may be taken to achieve compliance.

3. BPA will provide a reasonable opportunity to correct such noncompliance before imposing a remedy. BPA may impose a prospective remedy to account for actions already taken that were not in compliance with this policy.

4. BPA may fashion and impose an appropriate remedy for noncompliance. Remedies that BPA may impose include, but are not limited to:

a. Denial of access for a resource;
b. Refusal to accept schedules; or
c. Reduction in future allocations.

G. Exhibits

Exhibits A and B are a part of this policy.

Issued in Portland, Oregon, on June 13, 1985.

Robert E. Ratcliffe,
Acting Administrator.

Exhibit A

Example of Formula Allocation Under Condition 1

Assumptions Used in This Example

1. There is sufficient energy to load the potential Intertie Capacity at the Exportable Agreement rate.
2. Declarations of available energy are hourly.
3. Some utilities have firm contracts.
4. Some utilities have intertie priorities.
5. Potential Intertie Capacity equals 5,800 MW.
6. Extraregional utilities are not able to declare or receive an allocation in this condition.

Example of an Hourly Declaration and Allocation (in MW):

(1)	(2) Assured Delivery	(3) Energy Declaration	(4) Formula Allocation	(5) Total Allocation	(6) Restore	(7) Adjusted Allocation	(8) Final Allocation
BPA	500	3,000	2,635	3,135		2,635	3,135
IOU_1	200	1,000	878	1,078	$\frac{878}{1,985} \times 60$	851	1,051
IOU_2	40	960	843	883	$\frac{843}{1,985} \times 60$	818	858
PGE	0	500	440	440	+ 60	500	500
PA_1	0	100	88	88	$\frac{88}{1,985} \times 60$	85	85
PA_2	0	200	176	176	$\frac{176}{1,985} \times 60$	171	171
	740	5,760	5,060	5,800		5,060	5,800

Description

Column 1=Utility that is declaring energy for the allocation procedure.
Column 2=The amount of energy to be delivered for which each utility has Assured Delivery access as specified prior to allocation of remaining intertie capacity.
Column 3=Each utility's total hourly energy declaration for allocation on nonassured intertie capacity.
Column 4=The initial allocation of the remaining Intertie Capacity after being reduced by Assured Deliveries.
Column 5=The initial allocation of Intertie Capacity (5,800 MW).
Column 6=Reallocation is required because of PGE's priority to the Intertie. NOTE: BPA does not share in these pro rata reductions necessitated by enactment of priority rights.
Column 7=The final allocation of the remaining Intertie Capacity after being reduced by Assured Deliveries.
Column 8=The final allocation of the Intertie Capacity (5,800 MW). After the final allocation for each hour of the preschedule day or days is determined, Pacific Northwest utilities would be informed of their allocation and would either negotiate sales at other than the Exportable Agreement rate or be combined with BPA's allocation at the Exportable Agreement rate and receive a pro rate share of BPA sales.

Example of Formula Allocation Under Condition 2

Assumptions Used in This Example

1. Hourly energy available at the Exportable Agreement rate within the region is not sufficient to cover the potential Intertie Capacity.
2. The hourly energy from Pacific Northwest utilities, available at any price is more than sufficient to cover the potential Intertie Capacity.
3. Utah has other transmission paths and, therefore, will not participate.
4. Some utilities have firm contracts.
5. Potential Intertie Capacity equals 5,800 MW.
6. No utility has a priority.
7. PGE has one-fourth ownership of AC Intertie Capacity.

EXAMPLE OF AN HOURLY DECLARATION AND ALLOCATION (IN MW)

(1)	As-sured deliv-ery (2)	Energy decla-ration (3)	Formu-la alloca-tion (4)	Total alloca-tion (5)
BPA	500	2,000	1,351	1,851
IOU_1	200	1,300	877	1,077
IOU_2	40	1,960	1,323	1,363
PGE	700	0	0	700
PA_1	0	100	67	67
PA_2	0	200	135	135
IOU_3	0	900	607	607
Total	1,440	6,460	4,360	5,800

Description:

Column 1=Utility which is declaring energy for the allocation procedure or using Intertie rights.
Column 2=The amount of firm energy each utility will deliver, as specified prior to allocation of energy.
Column 3=Each utility's energy declaration.
Column 4=The initial allocation of the remaining Intertie Capacity.
Column 5=Final allocation of the 5,800 MW Intertie Capacity.

Example of Formula Allocation Under Condition 3

Assumptions Used in This Example

1. Energy available at any price is not sufficient to cover the potential market, excluding extraregionals (EXR).
2. The potential market equals 5,800 MW.
3. Some utilities have firm contracts.
4. No intertie priorities remain.

EXAMPLE OF AN HOURLY DECLARATION AND ALLOCATION (IN MW)

(1)	As-sured deliv-ery (2)	Energy decla-ration (3)	Formu-la alloca-tion (4)	Total alloca-tion (5)
BPA	500	0	0	500
IOU_1	200	800	800	1,000
IOU_2	40	1,460	1,460	1,500
PGE	700	0	0	700
PA_1	0	100	100	100
PA_2	0	200	200	200
IOU_3	0	500	500	500
Subtotal	1,440	3,060	3,060	4,500
EXR	0	2,600	1,300	1,300
Total	1,440	5,660	4,360	5,800

Description:

The logic followed in columns 1–5, above, is the same as used in Condition 2, except that extraregional utilities have been added. Their allocations are based upon the capacity remaining after first reducing the Intertie Capacity by the declarations for BPA and other Pacific Northwest scheduling utilities. It is understood that the net interchange between BC Hydro and BPA is limited to 2,000 MW.

EXHIBIT B [1]

Utility	Average Firm Surplus [2] [3]		
	1984-85	1985-86	1986-87
Bonneville Power Administration	1,144	1,550	1,136
Seattle City Light	0	5	0
Tacoma City Light	34	22	22
Grant County PUD	40	45	54
Douglas county PUD	0	0	0
Chelan County PUD	23	28	28
Pend Oreille PUD	0	0	0
Eugene Water and Electric Board	0	0	0
Cowlitz County PUD	3	3	3
Snohomish County PUD	0	0	0
Montana Power Company	28	26	45
Idaho Power Company	0	75	82
Pacific Power & Light Company	379	274	215
Portland General Electric Company	191	196	229
Puget Sound Power & Light	0	1	25
Washington Water power Company	91	47	48

[1] The Average Firm Surplus (AFS) found in Exhibit B for both the Interim and Near Term IAP is based on the firm surplus for the operating years using long range planning data. The determination of the AFS is based on loads from the BPA long term load forecast of July 1984. The planned resource operation is based on PNUCC and BPA data. This data is used to develop a firm load/resource balance and the AFS for each major utility in the Pacific Northwest Region.

[2] The AFS for the months August through December of OY 1985-1986 will be the AFS shown times 1.8, except that in the months of November and December, when the Exportable Agreement is in effect, the AFS shall be the amount shown. The factor of 1.8 represents the ratio of firm resources shaped into August through December by Coordination Agreement parties for this OY.

[3] In no operating year may a Scheduling Utility have Assured Delivery for more energy than the amount of AFS shown times the number of hours in the operating year or portion of an operating year.

NOTE.—Above table subject to revision.

[FR Doc. 85-15553 Filed 6-27-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST81-415-002 et al.]

Louisiana Resources Co. et al.; Extension Reports

June 24, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before July 18, 1985, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 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 party to a 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.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [3]
ST81-415-002	Louisiana Resource Co., P.O. Box 3102, Tulsa, OK 74101	Faustina Pipe Line Co	05-17-85	C	08-18-85	
ST81-467-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001.	Transwestern Pipeline Co	05-31-85	D	09-01-85	
ST81-468-002	do	Transcontinential Gas Pipe Line Corp	05-31-85	C	09-01-85	
ST83-452-001 [1]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	LGS Intrastate, Inc	05-23-85	B	05-05-85	08-21-85
ST83-594-001 [1]	do	Florida Gas Transmission Co	05-23-85	G	07-07-85	08-21-85
ST83-706-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202.	Louisiana Intrastate Gas Corp	05-24-85	B	08-26-85	
ST83-707-001	do	Faustina Pipe Line Co	05-20-85	B	08-19-85	
ST83-708-001 [1]	do	Cajun Natural Gas Co	05-20-85	B	08-17-85	08-18-85
ST83-713-001	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001.	Citizens Gas & Coke Utility	05-28-85	B	09-07-85	
ST83-727-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Tennessee Gas Pipeline Co	05-21-85	G	08-24-85	
ST83-731-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Louisiana Intrastate Gas Corp	05-23-85	B	08-26-85	
ST84-24-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243.	Acadian Gas Pipeline Corp	05-24-85	B	08-26-85	
ST84-25-001 [1]	National Fuel Gas Supply Corp., 10 Lafayette Square, Buffalo, NY 14203.	Columbia Gas Transmission Corp	05-29-85	G	06-02-85	08-27-85
ST84-29-001	Acadian Gas Pipeline System, 1200 Milam, Houston, TX 77002.	ANR Pipeline Co	05-30-85	C	10-10-85	
ST84-32-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Gulf South Pipeline Co	05-29-85	B	09-01-85	
ST84-35-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102.	Endevco Pipeline Co	05-20-85	B	09-23-85	
ST84-104-002	do	Peoples Natural Gas Co	05-20-85	B	10-16-85	
ST85-315-001 [1]	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	Cincinnati Gas & Electric Co	05-17-85	B	08-01-85	08-15-85

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST85-319-001 [1]	Columbia Gas Transmission Corp., P.O. Box 1273, Charleston, WV 25325.	Cincinnati Gas & Electric Co.	05-17-85	B	08-01-85	08-15-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-15450 Filed 6-27-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF85-522-000 et al.]

Cogentrix of North Carolina, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.
June 19, 1985.

Take notice that the following filings have been made with the Commission.

1. Cogentrix of North Carolina, Inc.

[Docket No. QF85-522-000]

On June 3, 1985, Cogentrix of North Carolina, Inc. (Applicant) of Two Parkway Plaza, Suite 290, Charlotte, North Carolina, 28210 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 at the Everglades Sugar Refinery, Inc. at Clewiston, Florida. The facility will contain three stoker-fired boilers and a condensing/extraction steam turbine-generator. The extracted steam will be used for process at the Everglades Sugar Refinery, Inc. plant. The primary energy source will be coal. The net electric power production capacity of the facility will be 49,000 kW. The facility is scheduled to start commercial operation in June 1987.

2. ARCO Petroleum Products Company

[Docket No. QF85-526-000]

On June 6, 1985, ARCO Petroleum Products Company, (Applicant), a Division of the Atlantic Richfield Company, ARCO Watson Cogeneration Project, 333 Michelson Drive, Irvine, California 92730 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 at the Watson Refinery, 1801 Sepulveda Boulevard, Carson, California 90749. The facility will contain four combustion turbine-generators, four heat recovery boilers (HRB) and two extraction steam turbine-generators. The extracted steam together with steam from the HRB will be used in the refinery for process operations, predominantly for process heat and steam turbine drives. The primary energy source will be natural gas supplemented with refinery gas and refinery supplied butane. The average power production capacity of the facility will be 344 MW. Installation of the facility is expected to begin on August 1, 1986 with date of commercial operation in December, 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 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. 85-15499 Filed 6-27-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP85-394-000, et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation
Columbia Gulf Transmission Company

[Docket No. CP85-394-000]
June 21, 1985.

Take notice that on March 26, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85-394-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Dresser Industries, Inc. (Dresser Industries) under their certificate issued in Docket Nos. CP 83-76-000 and CP83-496-000, respectively, 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.

Applicants propose to transport up to 3.4 billion Btu equivalent of natural gas per day on behalf of Dresser Industries through June 30, 1985, or such other date as determined by the Commission for termination of authorization for service hereunder pursuant to Subpart F of Part 157 of the Commission's Regulations or until terminated by either party upon thirty days prior written notice. It is indicated that the gas to be transported would be purchased by Dresser Industries from Producer's Gas Company (Producer's Gas) pursuant to the terms of a gas sales agreement dated January 4, 1985, as amended January 9, 1985. It is also explained that Producer's Gas Company would deliver the gas to Tennessee Gas Pipe Line Company, a Division of Tenneco, Inc. (Tennessee), at an existing point of interconnection in Sabine County, Texas. Tennessee would then deliver the gas to Columbia Gulf at an existing interconnection in Egan, Louisiana, it is stated. It is further indicated that Columbia Gulf would receive the gas at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Columbia Gas of New York (CNY) for ultimate delivery to Dresser

Industries' plant in Olean, New York. It is stated that Producer's Gas is paying U.S. Natural Gas Clearing House .02 cents per Mcf as their broker for setting up the agreements between Producer's Gas and Dresser Industries.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: Offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total gas delivered into its system for company-use and accounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within CNY's total daily entitlements (TDE). Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky if the volumes are in excess of CNY's TDE. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for compay-use and unaccounted-for gas. In addition Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute.

Applicants also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: August 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

Columbia Gulf Transmission Company

[Docket No. CP5-606-000]

June 24, 1985.

Take notice that on June 10, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85-606-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for FMC Corporation (FMC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 5,000 dt equivalent of natural gas per day on behalf of FMC for an initial term of three years and from month to month thereafter. It is stated that the gas to be transported would be purchased from Amoco Production Company (Amoco) and would be used for the production of insecticides. It is explained that Columbia Gulf would receive the gas at existing points of receipt in Louisiana from Amoco and deliver it to Columbia Transmission which would deliver it to Baltimore Gas and Electric Company, the distribution company serving FMC.

Columbia Transmission states that it would charge rates set forth in its Rate Schedule TS-1; Columbia Gulf states that it would charge rates set forth in its Rate Schedule T-2. Further Columbia Transmission states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas as set forth in Rate Schedule TS-1; Columbia Gulf states that it would retain 1.50 percent as set forth in Rate Schedule T-2.

Comment date: July 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-550-000]

June 24, 1985.

Take notice that on May 29, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-550-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to enable it to make a direct interruptible sale of gas to Cargill Salt Division of Cargill, Inc. (Cargill), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central states that the gas would be used in a salt dryer and a small heating load at Cargill's plant in Woods County, Oklahoma. It is asserted that such sale would not significantly affect Northwest Central's overall gas supply and that such sale would not have a detrimental effect on existing customers. It is explained that Cargill's peak day requirements would be 360 Mcf of natural gas while annual requirements would be 90,000 Mcf of natural gas.

Northwest Central states that the proposed facilities would include a tap and appurtenances and would cost approximately $27,760, which would be paid from treasury cash.

Comment date: July 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP85-558-000]

June 24, 1985.

Take notice that on June 3, 1985, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-558-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially its transportation service for Panhandle Eastern Pipe Line Company (Panhandle) by reducing the volumes transported, all as more fully set forth in the application which is on file with Commission and open for public inspection.

Trunkline requests Commission permission to implement a November 12, 1984, amendment to a transportation agreement executed on January 15, 1980, between Trunkline and Panhandle for the transportation of natural gas from offshore Louisiana to Douglas County, Illinois. Pursuant to this amendment Trunkline proposes to reduce the volumes transported to Panhandle by 50 percent, from 1,500 Mcf per day to 750 Mcf per day and to reduce the total monthly charge from $25,737 to $13,650.

Comment date: July 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP85-603-000]

June 21, 1985.

Take notice that on June 10, 1985, United Gas Pipe Line Company (United),

P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-603-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap to supply the distributor, Terrebonne Parish, Louisiana (Terrebone), gas volumes for resale in the Bayou Black service area, under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that the sales tap would enable United to supply an estimated daily average of 68 Mcf of natural gas to Terrebone for resale to its residences in the Bayou Black service area, under United's Rate Schedule G-S.

United further states that is would construct and operate the proposed sales tap and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: August 5, 1985, in accordance with Standard Paragraph G at the end to 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, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 Commmission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15498, Filed 6-27-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2856-9]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed June 17, 1985 through June 21, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850257, Final, AFS, AZ, Bill Williams Mountain Ski Area Development and Mgmt. Plan, Kaibab National Forest, Coconino County, Due: July 29, 1985, Contact: Dennis Lund (602) 635-2681.

EIS No. 850258, Draft, FHW, AR, US 65 Bynpass Construction, US 65/US 270 Interchange and Byrant Street Intersection to US 65/US 65B Interchange, Jefferson County, Due: August 12, 1985, Contact: Edward Lydick (501) 378-5625.

EIS No. 850259, Final, COE, FL, Amelia Island Beach Erosion Control Plan, Nassau County, Due: July 29, 1985, Contact: Paul Schmidt (904) 791-2202.

EIS No. 850260, Draft, AFS, NV, Humboldt National Forest Land and Resource Mgmt. Plan, Humboldt, Lincoln, Nye and White Pine Counties, Due: September 30, 1985, Contact: B.J. Graves (702) 738-5171.

EIS No. 850261, Draft, FHW, OR, Tualatin Valley Highway Widening, 21th Avenue to East Main Street, Washington, County, Due: August 22, 1985, Contact: Campbell Gilmour (503) 378-8486.

EIS No. 850262, Draft, NSF, PRO, Scientific Ocean Drilling Program, Expansion, Drilling in High Latitudes, Drilling in or near Environmentally-Sensitive Regions, Drilling on Continental Margins and Drilling with a Riser and Blowout Prevention System, Due: September 27, 1985, Contact: Thomas Cooley (202) 357-7837.

EIS No. 850263, Final, COE, WI, Green Bay Harbor Confined Disposal Facility, Construction, Operation and Maintenance, Brown County, Due: July 29, 1985, Contact: Florence Bissell (313) 226-3510.

EIS No. 850264, Draft, IBR, CA, Freeman Diversion Improvement Project, Construction and Operation, Santa Clara River, Combat of Seawater Intrusion, Ventura County, Due: August 19, 1985, Contact: Roderick M. Hall (916) 484-4792.

EIS No. 850265, Final COE, NJ, Ramapo River Flood Control Plan, Borough of Oakland, Bergen County, Due: July 29, 1985, Contact: M. Lou Bernard (212) 264-3609.

EIS No. 850266, Final, COE, NJ, Molly Ann's Brook Flood Control Plan, Boroughs of Haledon and Prospect Park and the City of Paterson, Passaic County, Due: July 29, 1985, Contact: M. Lou Bernard, (212) 264-3609.

Amended Notices

EIS No. 850241, Draft, EPA, PR, Culebra Wastewater Treatment Facility Design and Construction Plan, Grant, Due: August 5, 1985, Published FR 6-14-85—Review period reestablished.

EIS No. 850246, Final, FHW, PA, Newtown Bypass Extension, Newtown Pike to I-95 Interchange, Completion, Bucks County, Due: July 22, 1985, Published FR 6-14-85—Incorrect bypass name.

Dated: June 25, 1985.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 85-15640 Filed 6-27-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2857-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 10, 1985 through June 14, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5475/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-COE-F32190-00, Rating LO, Lower Ohio River Navigation Study Area, Improvements, Cumberland R. to Mississippi R., KY and IL. **SUMMARY:** EPA's review of the DEIS did not identify any signficant environmental impacts requiring changes to the proposed project.

ERP No. D-COE-G36129-AR, Rating LO, L'Anguille R. and Tributaries Flood Damage Reduction, AR. **SUMMARY:** EPA has not identified any potential enviromental impacts requiring substantive changes to the proposal.

ERP No. D-SCS-H36094-MO, Rating EC2, Big Creek and Hurricane Creek Watershed Protection and Flood Prevention Plan, MO. **SUMMARY:** EPA expressed concern that the DEIS did not thoroughly evaluate the potential for floodplain land conversion resulting from the project, and that intensification of cropland farming in the protected floodplain may result in adverse impacts to stream water quality through expanded use of agricultural chemicals adjacent to the water body. EPA suggested that the Soil Conservation Service clarify provisions for mitigation of impacts to bottomland forested wetlands.

Final EISs

ERP No. F-FHW-F40204-MI, Carpenter Road Widening, Extension and Grade Separation, North Saginaw St. to Genesee Rd., MI. **SUMMARY:** EPA did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F-FHW-G40032-TX, Beltway 8 (Section II) Circumferential Freeway Construction, TX-225 to I-45, TX. **SUMMARY:** EPA has not identified any potential enviromental impacts requiring changes to the proposal.

ERP No. F-FHW-K40097-CA, Harbor Freeway Corridor (I-110) Transitway Construction, San Pedro to the Los Angeles City Convention Center, CA. **SUMMARY:** EPA had no comments on the FEIS.

Dated: June 25, 1985.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 85- 15639 Filed 6-27-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51577, FRL-2856-2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-eight PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1075, 85-1076 and 85-1077—September 11, 1985.

P 85-1078 and 85-1079—September 14, 1985.

P 85-1080, 85-1081, 85-1082, 85-1083, 85-1084, 85-1085, 85-1086, 85-1087, 85-1088, 85-1089, 85-1090, 85-1091, 85-1093, 85-1094, 85-1095, 85-1096, 85-1097 and 85-1098—September 15, 1985.

P 85-1099, 85-1100, 85-1101 and 85-1102—September 16, 1985.

P 85-1103—September 17, 1985.

Written comments by:

P 85-1075, 85-1076 and 85-1077—August 12, 1985.

P 85-1078 and 85-1079—August 15, 1985.

P 85-1080, 85-1081, 85-1082, 85-1083, 85-1084, 85-1085, 85-1086, 85-1087, 85-1088, 85-1089, 85-1090, 85-1091, 85-1093, 85-1094, 85-1095, 85-1096, 85-1097 and 85-1098—August 16, 1985.

P 85-1099, 85-1100, 85-1101 and 85-1102—August 17, 1985.

P 85-1103—August 18, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51577]" and the specific PMN number should be sent to:

Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1075

Manufacturer. Confidential.

Chemical. (G) Substituted phenylcarbonyl benzoic acid.

Use/Production. (G) Captive intermediate used in manufacturing a minor component for paper coating. Prod. range: Confidential.

Toxicity Data. Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85-1076

Manufacturer. Confidential.

Chemical. (G) Substituted phenyl isobenzofuranone.

Use/Production. (G) Captive intermediate used in manufacturing a minor component for paper coating. Prod. range: Confidential.

Toxicity Data. Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-1077

Manufacturer. Confidential.

Chemical. (G) Substituted bis phenyl isobenzofuranone.

Use/Production. (G) Minor component used in paper coatings. Prod. range: Confidential.

Toxicity Data. Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-1078

Manufacturer. Confidential.

Chemical. (S) N(alpha, alpha-dimethyl, meta-isopropenyl benzyl), poly(oxy/1,2-ethanediyl, alpha-(nonyl phenyl) carbamate.

Use/Production. (G) The use will involve some exposure to nonchemical industrial employees. Prod. range: 10,000–150,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 75 da/yr.

Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoons and landfill.

P 85–1079

Importer. Biddle Sawyer Corporation.

Chemical. (G) Substituted naphthalene, [1,2-ethenediyl bis] (sulfo-4, 1-phenylene) imino(chloro-1,3,5-triazinediyl) imino (hydroxy-substituted-naphthalenediyl)azo]] bis-, alkali metal salt.

Use/Import. (S) Reactive dye for textile. Import range: 40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–1080

Importer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Import. (S) Industrial hot melt adhesive. Import range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,000 mg/kg.

Exposure. Processing and use: dermal and/or inhalation.

Environmental Release/Disposal. Disposal by landfill.

P 85–1081

Manufacturer. Confidential.

Chemical. (G) (Triacyl)silylalkyl ester of an alkenoic acid.

Use/Production. (G) Destructive use. Prod. range: 500–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 4 workers.

Environmental Release/Disposal. Less than or equal to 1.5 kg released to land. Disposal by landfill.

P 85–1082

Manufacturer. Confidential.

Chemical. (S) Humic acids, cupric salts.

Use/Production. (G) Two categories of use: One is highly dispersive and the other is an open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water and land.

P 85–1083

Manufacturer. Confidential.

Chemical. (S) Humic acids cupric nitrate complex.

Use/Production. (G) Two categories of use: One is highly dispersive and the other is an open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release, to air, water and land.

P 85–1084

Manufacturer. Confidential.

Chemical. (S) Humic acids cupric sulfate complex.

Use/Production. (G) Two categories of use: One is highly dispersive and the other is an open, non-dispersive use. Prod. range; Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalations, a total of 3 workers.

Environmental Release/Disposal. No release to air, water and land.

P 85–1085

Manufacturer. SCM Specialty Chemicals.

Chemical. (G) Alkoxy terpenylsilane.

Use/Production. (G) Surface modifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1086

Manufacturer. Ashland Chemical Company.

Chemical. (G) Urethane of polymethylene polyphenyl isocyanate and saturated alcohol.

Use/Production. (G) Adhesion promoter. Prod. Range: Confidential

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 1 hr/da, up to 9 da/yr.

Environmental Release/Disposal. Less than 0.02 mg/m^3 released to air.

P 85–1087

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Textile biocide. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—1.52 g/kg, Female—1.29 g/kg, Combined—1.29 g/kg; Acute dermal: Male—>2 g/kg, Female—5.35 g/kg; Irritation: Skin—very slight/negligible, Eye—mild/moderate; Ames test: Negative; Skin sensitization: Non-sensitizer; LC_{50} 48 hr (Daphnia magna): 1.1 mg/L; LC_{50} 96 hr (Bluegill): 0.49 mg/L; LC_{50} 96 hr (Rainbow Trout): 0.55 mg/L; LC_{50} 8 day (Bob White quail and mallard duck): >5,000 parts per million (ppm); LD_{50} (Bob White quail): 250 mg/kg; BOD: Non-biodegradable.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1088

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to public files.

Use/Production. (G) Chemical recovery. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Not an irritant, Eye—Not an irritant; LC_{50} 96 hr (Rainbow trout): 4,250 mg/l.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Confidential.

P 85–1089

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to public files.

Use/Production. (G) Chemical recovery. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Not an irritant, Eye—Not an irritant.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Confidential.

P 85–1090

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to public files.

Use/ Production. (G) Chemical recovery. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Not an irritant, Eye—Not an irritant; LC_{50} 96 hr (Rainbow trout): 4,190 mg/l.

Exposure.. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Confidential.

P85–1091

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polystyrylpyridine resin.

Use/Production. (S) Industrial matrix resin for graphite glass laminates, glass kevlar composites used in fire blocking, structural/non structural and ablative applications. Prod. range: Confidential.

Toxicity Data. Acute oral: >1,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Nonirritant.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P85–1093

Manufacturer. Confidential.

Chemical. (G) Trisubstituted methanaminium salt.

Use/Production. (G) Open, non-dispersive use in parts for a commercial article. Prod. range: 75—100 kg/yr.

Toxicity Data. Acute oral: Males—2,540 mg/kg, Females—2,263 mg/kg; Acute dermal: >20 mL/kg; Irritation: Skin—Minimal, Eye—Slight; Skin sensitization: Low potential for human.

Exposure. Manufacture and processing: dermal, a total of 15 workers, up to 7 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Less than 0.5 to less than 13 kg/batch incinerated.

P 85–1094

Importer. Confidential.

Chemical. (G) Disubstituted-1,1'-biphenyl, bis[1-[[(alkylphenyl)amino]carbonyl]-2-oxoalkyl]azo-

Use/Import. (G) Additive for colorant in open non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Severe; Ames Test: Negative; Urine of rats: Negative.

Exposure. Processing: dermal, inhalation and ocular, up to 3 hrs/da, up to 200 da/yr in the 3rd yr.

Environmental Release/Disposal. Release to air.

P85–1095

Importer. Confidential.

Chemical. (G) Alkylamide, [dihalo-[[(substituted-phenyl)amino]carbonyl]-(2-oxoalkyl)azo] [1,1'-biphenyl]azo]-N-(subtituted-phenyl)-3-oxo-.

Use/Import. (G) Colorant for coating. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, inhalation and ocular, up to 4 hrs/da, up to 200 da/yr in the 3rd yr.

Environmental Release/Disposal. Release to air.

P85–1096

Importer. Confidential.

Chemical. (G) Copperphthalocyanine polysulfonic acid salt with alkylated amine.

Use/Import. (G) Additive for colorants used in paints. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Irritant.

Exposure. Processing: dermal, inhalation and ocular, up to 3 hrs/da, up to 100 da/yr in the 3rd yr.

Environmental Release/Disposal. Release to air.

P85–1097

Importer. Confidential.

Chemical. (G) Metal salt of hydroxynaphthalene sulfonic acid [(substituted-naphthyl)azo].

Use/Import. (G) Additive for colorants, degree of containment will be open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames Test: Non-mutagenic; Urine of rats: Negative.

Exposure. Processing: dermal, inhalation and ocular, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. Release to land

P 85–1098

Importer. Confidential.

Chemical. (G) Metal salt of hydroxynaphthalene sulfonic acid [(substituted-phenyl)azo].

Use/Import. (G) Additive for colorants, degree of containment will be open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe; Ames Test: Non-mutagenic.

Exposure. Processing: dermal, inhalation and ocular.

Environmental Release/Disposal. Release to air.

P 85–1099

Manufacturer. Confidential.

Chemical. (G) Alkoxy borated polybutylsuccinamide.

Use/Production. (G) Oil additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Slight, Eye—Slight; Ames Test: Negative.

Exposure. Confidential.

Environmental release/Disposal. Confidential.

P 85–1100

Manufacturer. Product Research and Chemical Corporation.

Chemical. (S) Polymer of: 2–ethanol, 1,1'-thiobis, ethanol, 2-mercapto, reaction product with propylene oxide, ethanol, 2-mercapto, reaction product with oxirane, [2-propenyl(oxy)methyl], 3-thiahept -5-ene-1-ol and 4,4-thiodiphenol.

Use/Production. (S) Site-limited prepolymer and industrial reactive plasticizer for vulcanizable rubbers, sealants, adhesives and coatings. Prod. range: 56,000–460,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 9 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

P 85–1101

Manufacturer. Confidential.

Chemical. (S) Triethylgallium.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 7 workers, up to 4 hrs/da.

Environmental Release/Disposal. No release. Disposal by on-site incineration and offsite landfill.

P 85–1102

Manufacturer. Helix Associates, Inc.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Chemical intermediate (destructive use). Prod. range: Confidential.

Toxicity Data. Acute oral: 1,500 mg/kg; Irritation: Skin—Mild.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1103

Manufacturer. Confidential.

Chemical. (G) Amine salt of an alkyl dithiocarbamate.

Use/Production. (G) Consumptive use. Prod. range: Confidential.

Toxicity Data. EC_{50} (Daphnia magna): 2.6 mg/L; LC_{50} (Daphnia magna): 3.3 mg/L; NOEC (Daphnia magna): 1.6 mg/L; NO_{EC} (Fathead minnow): <3.2 mg./L; LC_{50} (Fathead minnow): 10.4 mg/L.

Exposure. Confidential.

Environmental release/Disposal. Confidential.

Dated: June 21, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc 85–15578 Filed 6–27–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-59720; FRL-2855-9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. Ths notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-95—July 8, 1985.

Y 85-96, 85-97 and 85-98—July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-95

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic copolymer.

Use/Production. (S) Industrial thermosetting decorative and protective coatings. Prod. range: 181, 437-362, 874 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 1 da/yr.

Environmental Release/Disposal. No release. Disposal by EPA approved incinerator.

Y 85-96

Importer. Kay-Fries, Inc.

Chemical. (G) Polyester resin.

Use/Import. (S) Industrial fabric bonding cement. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85-97

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic copolymer.

Use/Production. (S) Industrial thermosetting decorative and protective coatings. Prod. range: 196,859-400,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 1 da/yr.

Environmental Release/Disposal. No release. Disposal by EPA approved incinerator.

Y 85-98

Manufacturer. CYRO Industiries.

Chemical. (G) Modified methyl methacrylate polymer.

Use/Production. (G) Polymer for production of molding and extrusion compounds. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: June 24, 1985

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-15580 Filed 6-27-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59198; FRL-2856-1]

(Copper (2+) Methanesulfonate); Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act-(TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exempton (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of may 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by July 15, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59198]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-53

Close of Review Period. August 3, 1985.

Manufacturer. CP Chemicals, Inc.

Chemical. (S) (Copper (2+) methanesulfonate).

Use/Production (S) For customer evaluation as an improvement on other copper salts in electroplating operations. Prod. range: 10,000 lbs/12 months.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, and inhalation, a total of 25 workers, up to 40 hrs/wk, 1-4 wks each.

Environmental Release/Disposal. No data submitted.

Dated: June 21, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-15579 Filed 6-27-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Survey of Call Report Preparers.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for conducting the information collection identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is submitting for OMB approval a request to conduct a one-time survey of the preparers of Call Reports (reports of Condition and Income) at national and insured state nonmember banks. The purpose of the survey is to help the FDIC assess the quality and the usefulness of seminars and other instructional services and aids provided to banks by the FDIC. The goal of the survey is to improve the FDIC's instrucitonal services and aids to banks in the preparation of the quarterly Call Reports. It is estimated that it would take 15 minutes of an individual's time to respond to the survey.

Dated: June 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-15624 Filed 6-27-85; 8:45 am]

BILLING CODE 6714-01-M

Market Discipline for FDIC-Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Extension of Comment Period.

SUMMARY: The FDIC is extending for an additional 31 days the period for commenting on proposed methods of enhancing market discipline of FDIC-insured banks that was published in the **Federal Register** on May 6, 1985 (50 FR 19088). As originally published, comments on the alternatives were to have been received by July 5, 1985. The FDIC has been concerned that bank depositors and other creditors of insured banks do not impose sufficient discipline on the risk-taking activities of banks. As the industry has become more deregulated, the importance of market discipline has become more important. In considering ways in which to increase market discipline and thereby increase the safe and sound operation of banks and decrease risks to the deposit insurance fund, the FDIC has considered two alternatives. One approach would be to modify the deposit payoff procedure when a bank fails so that some of the advantages of a purchase and assumption transaction could be retained, while uninsured depositors and other general creditors would still be exposed to potential loss. The other approach would be to raise capital requirements substantially, allowing subordinated debt to satisfy a significant portion of the increased requirement. Because of the impact on the banking industry and the public that would occur if the modified payoff procedure were used in every bank failure or the required capital level were increased significantly, comment is being requested in order to help the FDIC evaluate whether one or both of these approaches would be effective and should be utilized.

DATE: Comments must be received by August 6, 1985.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 6108 between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, and will be available for public inspection during that time.

FOR FURTHER INFORMATION CONTACT: John J. Quinn III, Financial Economist, Division of Research and Strategic Planning, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, at (202) 389-4547.

SUPPLEMENTARY INFORMATION: Copies of the alternatives are available upon request from the FDIC Information Office at the above mentioned address.

By order of the Board of Directors, June 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-15625 Filed 6-27-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

Citizens Savings and Loan Association, Batesville, MS; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Citizens Savings and Loan Association, Batesville, Mississippi on June 21, 1985.

Dated: June 24, 1985.

Jeff Sconyers.

Secretary.

[FR Doc. 85-15626 Filed 6-27-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-000021-010.

Title: Sacramento-Yolo Port District Terminal Agreement.

Parties:

Sacramento-Yolo Port District (Port District)

Cargill, Incorporated (Cargill)

Synopsis: Agreement No. 224-000021-010 modifies the basic agreement between the parties which provided for the lease to Cargill from the Port District

of a grain terminal facility at Sacramento, California. The amendment provides for adjustments in the monthly rental for the facility and minimum tonnage requirements through June 30, 1990. It also provides that the Port District has no obligation to make any reimbursement for expansion of the existing office building with required engineering as was referred to in paragraph 1(e) of Amendment No. 8 of the master lease. The Port District will provide Cargill with documentation of expenses so that Cargill may capitalize such expense.

Agreement No.: 202–005600–056.

Title: Philippines North America Conference.

Parties:
American President Lines, Ltd.
Hapag-Lloyd AG
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would clarify a member's responsibility for Conference expenses and liabilities incurred prior to any termination of its membership and expands to twelve months the time a member's security for such expenses and liabilities shall remain in effect. The parties have requested a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202–010689–005.

Title: Transpacific Westbound Rate Agreement.

Parties:
American President Lines, Ltd.
The East Asiatic Company, Ltd.
Evergreen Marine Corp. (Taiwan), Ltd.
Hanjin Container Lines, Ltd.
Hapag-Lloyd Trans-Pacific Service
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korean Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Ltd.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co. Ltd.
Orient Overseas Container, Line, Inc.
Zim Israel Navigation Co. Ltd.

Synopsis: The proposed amendment would prohibit the parties and the Agreement, until further amendment of the agreement, from entering into new service contracts or renewing existing service contracts in the trade covered by the agreement and would remove the applicability of independent action to service contracts.

Agreement No.: 202–010693–003.

Title: Florida/Caribbean Liner Association.

Parties:
Bernuth Lines, Ltd.
Calypso Lines
West Indies Shipping Corp.
Tropical Shipping & Construction Co., Ltd.
Shipping Corporation of Trinidad and Tobago
Saguenay Shipping, Ltd.
TEC Lines, Ltd.
Concorde/Nopal Lines

Synopsis: The proposed amendment would provide that the agreement may be implemented through administrative regulations which shall be binding upon the membership. The parties have requested a shortened review period.

Agreement No.: 206–010694–002.

Title: Trans-Atlantic Conferences Agreement.

Parties:
North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference

Synopsis: The proposed amendment would permit the parties to file a common tariff governing U.S. and European inland cargo movements and terminal services. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: June 25, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–15637 Filed 6–27–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BoRC Financial Corp. et al.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85–13985), published at page 24578 of the issue for Tuesday, June 11, 1985. The comment deadline for these applications should be corrected to read July 3, 1985.

Board of Governors of the Federal Reserve System, June 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–15510 Filed 6–27–85; 8:45 am]

BILLING CODE 210–01–M

First Jersey National Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 19, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation,* Jersey City, New Jersey; to acquire 21.8 percent of the voting shares of the Broad Street National Bank of Trenton, Trenton, New Jersey.

2. *Cayman Investment Company (Omega),* George Town, Grand Cayman and *Delta North Bankcorp, Inc.,* Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Delta National Bank and Trust Company of New York, New York, New York, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *U S Bancshares,* Morristown, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of United Southern Bank of Morristown, Morristown, Tennessee.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Central Corporation,* Monroe, Louisiana; to acquire 100 percent of the voting shares of Lincoln Bancshares, Inc., Ruston, Louisiana, thereby indirectly acquiring Lincoln Bank and Trust Company, Ruston, Louisiana.

Board of Governors of the Federal Reserve System, June 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15511 Filed 6-27-85; 8:45 am]

BILLING CODE 6210-01-M

Miners National Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 18, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Miners National Bancorp, Inc.*, Pottsville, Pennsylvania; to engage *de novo* through its proposed subsidiary, Miners Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and accident and health insurance where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act. These activities would be conducted in Eastern Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through a new subsidiary to be formed and wholly-owned by Sovran Financial Corporation, Norfolk, Virginia, in acting as investment and financial advisor including the provision of individualized advice to clients concerning their investment portfolios. These clients, whether individuals or institutions (including closed-end investment companies or open-end registered under the Investment Company Act of 1940), may, but shall not be required to, contract with the advisor to select portfolio securities. Purchases and sales of portfolio securities will be ordered on behalf of the client through unaffiliated third party brokers or dealers. The advisor may also provide general economic information and advice, general economic statistical forecasting services and industry studies, or financial advice to state and local governments.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Salem Financial Corporation*, Goshen, Indiana; to engage *de novo* through its subsidiary, Credit Life Insurance Company, Phoenix, Arizona, in underwriting credit life and credit accident and health insurance where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act. These activities would be conducted in the State of Indiana.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Centennial Beneficial Corp.*, Orange, California; to expand previously approved mortgage lending activities of its subsidiary, Beneficial Mortgage Company, Orange, California, to include the State of Arizona.

2. *First Interstate Bancorp*, Los Angeles, California; to engage *de novo* through its subsidiaries, First Interstate Mortgage Company, Pasadena, California, and its wholly-owned subsidiaries—First Interstate Mortgage Company of Colorado, Denver, Colorado; Republic Realty Mortgage Corporation, Chicago, Illinois; and First Interstate Mortgage Company of Texas, Houston, Texas, in acting as intermediary for the financing of commercial and industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors subject to the restrictions contained in Section 225.25(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, June 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15512 Filed 6-27-85; 8:45 am]

BILLING CODE 6210-01-M

Cayman Investment Co. (Delta) et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 22, 1985.

A. **Federal Reserve Bank of Atlanta,** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cayman Investment Company (Delta),* George Town, Grand Cayman, Cayman Islands, British West Indies, and *Delta South Bankcorp, Inc.,* Dover, Delaware; to become bank holding companies by acquiring 99.9 percent of the voting shares of Delta National Bank and Trust Company of Florida, Miami, Florida, a *de novo* Bank.

2. *Deposit Guaranty Corp.,* Jackson, Mississippi; to acquire 100 percent of the voting shares of Deposit Guaranty National Bank of Grenada, Grenada, Mississippi, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Old Kent Financial Corporation,* Grand Rapids, Michigan; to acquire 100 percent of the voting shares of the following banks: Commerica Bank-Jackson, N.A., Jackson, Michigan; Comercia Bank-Battle Creek, Battle Creek, Michigan; and Comerican Bank-Kalamazoo, Kalamazoo, Michigan.

Board of Governors of the Federal Reserve System, June 25, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15675 Filed 6-28-85; 8:45 am]

BILLING CODE 6210-01-M

Fishkill National Corporation; Acquisition of Co. Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writen presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Fishkill National Corporation,* Beacon, New York; to acquire North Atlantic Leasing Corporation, Millbrook, New York, thereby engaging in the activity of leasing personal property.

Board of Governors of the Federal Reserve System, June 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15676 Filed 6-28-85; 8:45 am]

BILLING CODE 6210-01-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 21, 1985.

Human Development Services

Subject: Reporting and Recordkeeping Requirements-Runaway and Homeless Youth Centers—Existing Collection

Respondents: Runaway and homeless youth centers

Subject: Runaway and Homeless Youth Centers Self-Assessment Instrument—Reinstatement (0980-0037)

Respondents: Runaway and homeless youth centers

OMB Desk Officer: Judy A. McIntosh

Public Health Service—National Institutes of Health

Subject: Informed Consent: Disclosure Requirements—Reinstatement (0925-0228)

Respondents: Individuals, non-profit institutions, businesses, small businesses, Federal government

Health Resources and Services Administration

Subject: Requirements to Disclosure Health Maintenance Organization Financial Information to Members—Extension (0915-0064)

Respondents: Health Maintenance Organizations

OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Transmittal of Labels and Circulars—Extension (0910-0039)

Respondents: Businesess, non-profit institutions, small businesses

OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Intermediary's Request to Hospitals for Medical Information on Outpatient Claims—HCFA-9051—Existing Collection

Respondents: Businesses or other for-profit institutions

Subject: Contractor Information Collection Claims Development: Physicians and Other Health Care Providers—HCFA-9023—Reinstatement (0938-0233)

Respondents: Small businesses or organizations

Subject: Contractor Information Collection Claims Development: Skilled Nursing Facilities—HCFA-9031—Reinstatement (0938-0223)

Respondents: Businesses or other for-profit institutions

Subject: Contractor Information Collection Claims Development: Beneficiaries and/or Suppliers and Providers—HCFA-9029-Reinstatement (0938-0222)

Respondents: Individuals, small businesses or organizations

Subject: Contractor Information Collection Claims Development: Data Provided by Chiropractors—HCFA-9032—Reinstatement (0938-0234)

Respondents: Businesses or other for-profit institutions

Subject: Request for Review of Part B Medicare Claim—HCFA-1964-Revision (0938-0033)

Respondents: Individuals, businesses or other for-profit institutions

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

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, D.C. 20503, Attn. (name of OMB Desk Officer).

Dated: June 25, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-15536 Filed 6-27-85; 8:45 am]

BILLING CODE 4150-04-4

Centers for Disease Control

Cooperative Agreements for State Capacity Building in Improving Performance and Utilization of Physician-Office Laboratories Through Training Availability of Funds for Fiscal Year 1985; Correction

In FR Doc. 85-13355 beginning on page 23518 in the issue of Tuesday, June 4, 1985, make the following corrections:

On page 23519, second column, under the heading "Eligibility Requirements," delete the phrase "with State regulatory responsibilities for physician-office laboratories,".

On page 23519, third column, under the heading "Submission of Applications," the date "July 15, 1985," is corrected to read: "August 5, 1985,".

On page 23519, third column, under "Submission of Applications," after the paragraph numbered 2., a third paragraph is added to read: "3. These applications are not subject to review under Executive Order 12372."

Dated: June 21, 1985.

William E. Muldoon,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85-15513 Filed 6-27-85; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Advisory Committees; August Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1985:

Name: National Advisory Council on Health Professions Education.

Date and Time: August 5-6, 1985, 9:00 a.m.

Place: Conference Room G & H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 5, 1985, 9:00 a.m. to 1:30 p.m. Closed for the remainder of meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover: welcome and opening remarks; report of the Acting Administrator; financial update; legislative update; report presentation on area health education centers; update on options for financing graduate medical education; and future agenda items. The meeting will be closed to the public on August 5, at 1:30 p.m. for the remainder of the meeting, for the review of grant application from General Internal Medicine/General Pediatrics Faculty Development, Geriatric Education Centers, Area Health Education Centers, and Public Health Capitation. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Bureau of Health Professions, Health Resources and Services Administration, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Dated: June 25, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-15596 Filed 6-27-85; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action, Direct Sale and Competitive Sale of Public Lands in Cassia County, ID; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, I-21400, direct sale and competitive sale of Public Lands in Cassia County, Idaho; Correction.

SUMMARY: This document corrects the legal description, acreage and fair market value section of Notice of Realty Action (NORA) I-21400 that was published May 9, 1985 (50 FR 19590). This section read:

Legal description	Acres	Appraised fair market value
Parcel 1; T. 13 S., R. 25 E., B.M.: Section 24: E½S½S½SE¼SE¼NW¼, S½S½SW¼SW¼NE¼, S½S½SE¼SW¼NE¼	15	$425
Parcel 2; T. 13 S., R. 25 E., B.M.: Section 24: S½N½SW¼SW¼SE¼NW¼, S½SW¼SW¼SE¼NW¼, S½N½SE¼SW¼SE¼NW¼, S½SE¼SW¼SE¼NW¼, W½S½S½SE¼SE¼NW¼	6.25	2,00
This section is corrected to read:		
Parcel 1; T. 13 S., R. 25 E., B.M.: Section 24: S½S½SW¼SW¼NE¼, S½S½SE¼SE¼NW¼, S½SE¼SW¼SE¼NW¼	[1] 6.25	830
Parcel 2; T. 13 S., R. 25 E., B.M.: Section 24: S½N½SW¼SW¼SE¼NW¼, S½SW¼SW¼SE¼NW¼	1.875	660

[1] 3.88 Acres of the 6.25 acres is occupied by Highway 77.

Dated: June 19, 1985.

John S. Davis,

District Manager.

[FR Doc. 85-15539 Filed 6-27-85; 8:45 am]

BILLING CODE 4310-22-M

[U-53103]

Realty Action; Sale of Public Lands in Uintah County, UT

The Bureau of Land Management, based on land use plans, has determined that the following described land is suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value ($3,000):

T. 3 S., R. 23 E., SLM
Sec. 31: SE¼NW¼
Total 40 acres

The above described land will be offered for sale on September 13, 1985, by sealed bids. All bids must be received by 12:00, September 13, 1985, at the Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Bids will be opened and a high bidder declared at 1300 hours, September 13, 1985. All bids should be clearly marked "Bid for Public Sale U-53103".

The land is being offered for sale in order to facilitate land-use planning in the area, enhance land-use compatibility with adjoining private lands, and to streamline administrative procedures. The land has potential for livestock grazing and limited wildlife use. The sale is consistent with the Bureau's planning for the land involved with notification to the Uintah County Commission, the Utah State Planning

Office, and the Utah Division of Wildlife Resources.

The terms and conditions applicable to the sale are:

1. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the unauthorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

2. The sale will involve the surface estate only. The subsurface estate will be reserved to the United States.

3. The sale of this land will be subject to all existing rights.

4. No preference right will be given to the adjoining private land owner. No bids will be accepted for less than the appraised price and bids must include all land in the parcel. Federal law requires that bidders be U.S. citizens or, in the case of a corporation, be subject to the laws of the State of Utah. Proof of citizenship may be required.

5. The United States will reserve the right of ingress and egress for mineral development.

6. Upon disqualification of the apparent high bidder, the next high bid will be honored.

7. A right-of-way is reserved for ditches and canals constructed by the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

8. The successful bidder agrees that he takes the real estate subject to the existing grazing use of Mr. Floyd Cook. The right of Mr. Cook to graze domestic livestock on the real estate according to the conditions and terms of the existing authorization shall cease on February 29, 1992. The successful bidder is entitled to receive annual grazing fees from Mr. Cook in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

The highest bid will establish the sale price. Each bid must be accompanied by a deposit on one-fifth of the full bid price. The ramainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Vernal District Manager, 170 South 500 East, Vernal, Utah 84078. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 85-15617 Filed 6-27-85; 8:45 am]

BILLING CODE 4310-DQ-M

Utah; Vernal District Advisory Council; Meeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a meeting of Vernal District Advisory Council will be held on the evening of July 30, 1985.

The meeting will begin at 7:00 p.m. and will be held in the conference room of the Vernal District Office located at 170 South 500 East, Vernal, Utah. The agenda for the meeting will include: (1) Selection of a chairperson and vice-chairperson, (2) a review of the Document of Decision and Rangeland Program Summary for the Book Cliffs Resource Management Plan, (3) an update of the proposed BLM-FS interchange, (4) a review of the PR Spring Hydrocarbon Lease Conversion, (5) matters at large from Advisory Council members, and (6) oral comments from the public.

The meeting is open to the public. Interested persons may make oral statements to the council as listed on the agenda, or file a written statement for the council's consideration. Anyone wishing to make an oral statement to the council must notify the District Manager at the above mentioned address by close of business on July 29, 1985.

Summary minutes of the council's meeting will be maintained in the District Office and will be available for public inspections during regular business hours.

Dated: June 20, 1985.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 85-15618 Filed 6-27-85; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Final Environmental Impact Statement

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability and public hearing for environmental impact statement/environmental impact report.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County, and California State Lands Commission have jointly prepared a Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for proposed development in the Central Santa Maria Basin, offshore Santa Barbara County, California. The Final EIS/EIR includes an evaluation of the potential effects of proposed developments by Union Oil Company and Exxon Company, USA, as well as anticipated future development of oil and gas resources in the Central Santa Maria Basin area. Single copies of the Final EIS/EIR can be obtained from Santa Barbara County, Resource Management Department, Energy Division, 123 Anapamu Street, Santa Barbara, California 93101. Technical appendices may be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

A. Geology
B. Air Quality
C. Onshore Water Resources
D. Marine Biology
E. Marine Biology
F. Terrestrial and Freshwater Biology
G. Cultural Resources
H. Visual Resources
I. Onshore Noise/Vibration
J. Commercial Fishing, Kelp Harvest, and Mariculture
K. Socioeconomics
L. Traffic
M. Systems Safety and Reliability

Copies of the Final EIS/EIR will also be available for review in the following public libraries:

County of Los Angeles, Public Library, Government Publications Unit, 330 West Temple, Los Angeles, California 90012
State Library, Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, California 95814
San Luis Obispo, City/County Library, 1354 Bishop Street, San Luis Obispo, California 93406
Main Library, Vandenberg Air Force Base, California 93437
County of Ventura Library, Documents Section, P.O. Box 771, Ventura, California 93001
Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, California 93101

University of California Library, Santa Barbara Campus, Main Library, Santa Barbara, California 93106
U.S. DOI Natural Resource Library, 18th and "C" Streets NW., Washington, D.C. 20240

Agencies, interested groups, or individuals needing further information should contact Donna Cooksey Brewer at (213) 894–4480, or write to the Regional Director, Minerals Management Service, 1340 West 6th Street, Los Angeles, California 90017.

Dated: June 25, 1985.

William E. Grant,

regional Director, Pacific OCS Region.

[FR Doc. 85–15503 Filed 6–27–85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[OP3MCF-325]

Motor Carriers; Permanent Authority Applications; Decision-Notice

Decided: June 21,1985.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal/and I.C.C. Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involve impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC–F–16415, filed June 12, 1985. West Bus Service, Inc. (West) (Rural Route 7, Box 131, Carbondale, IL 62901)—Purchase (Portion)—Gulf Transport Company (Gulf) (505 Conception Street, Mobile AL 36603). Representative: Robert J. Brooks, Vorys, Sater, Seymour & Pease, 1828 L Street NW., Suite 1111, Washington, D.C. 20036–5104. West (MC–114878) seeks authority to purchase a portion of the regular-route passenger authority of Gulf in Certificate No. MC–50655. The route segments for which authority is being conveyed are: (1) Between Red Bud, IL, and St. Louis, MO, serving all intermediate points: From Red Bud over IL Hwy 3 to East St. Louis, IL, and then across the Mississippi River to St. Louis, and return over the same route; (2) Between Red Bud, IL, and Murphysboro, IL, serving all intermediate points: From Red Bud over IL Hwy 154 to Sparta, IL, then over IL Hwy 43 to junction IL Hwy 13, then over IL Hwy 13 to Murphysboro, and return over the same route; (3) Between Springfield, IL, and Cairo, IL, serving all intermediate points: From Springfield over IL Hwy 29 to Pana, IL, then over U.S. Hwy 51 to Du Quoin, IL, then over IL Hwy 152 to junction IL Hwy 13, then over IL Hwy 13 to Carbondale, IL, and then over U.S. Hwy 51 to Cairo, and return over the same route; and (4) Between East St. Louis, IL, and junction IL Hwy 158 and U.S. Hwy 51, serving all intermediate points: From East St. Louis over U.S. Hwy 460 to junction IL Hwy 158, then over IL Hwy 158 to junction IL Hwy 13, then over IL Hwy 13 via Belleville, IL, to junction U.S. Hwy 460, then over U.S. Hwy 460 to St. Libory, then over IL Hwy 4 to junction IL Hwy 13, then over IL Hwy 13 to junction IL Hwy 13, then over IL Hwy 13 to Pinckneyville, IL, and then over IL Hwy 154 to junction U.S. Hwy 51, and return over the same route.

West also seeks to purchase Gulf's Illinois intrastate rights contained in certificates Nos. 27730, 27977, 50664, and 51386. No. 27730 authorizes operations between East St. Louis, Waterloo, and Chester, IL, over IL Hwy 3, serving all intermediate points; No. 27977 authorizes operations between East St. Louis, IL, and Cairo, IL, over IL Hwys 3, 154, 43, 13, and 146, the Black Diamond Trail, and U.S. Hwy 51; No. 50664 is identical to interstate route segment (3); and No. 51386 is identical to interstate route segment (4), but authorizes additional service south to Carbondale, IL, and then east over IL Hwys 148, 13, and 1 and U.S. Hwys 45 and 460 to the IL-IN State Line.

West is controlled through stock ownership by James B. West, Doris Hazel West, and Sherri-Lynn Hale. An application for temporary authority to lease the involved operating rights has been granted by the Motor Carrier Board.

[FR Doc. 85–15550 filed 6–27–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of a Proposed Consent Decree Pursuant to the Clean Water Act; City at West Memphis et al.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on May 24, 1985, a proposed consent decree in *United States* v. *City of West Memphis, et al.*, Civil Action No. 83-J-C-84-356 (E.D. Ark.) was lodged with the Eastern District of Arkansas. The complaint alleged violations by the City and Commission of their NPDES permit, and failure to comply with four administrative orders. The proposed Consent Decree requires the defendants to upgrade their sewage treatment facility by December 12, 1987, and to attain and thereafter maintain compliance with the terms and conditions of the NPDES Permit by March 1, 1987. The Consent Decree also requires the payment of civil penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington D.C. 20530, and should refer to the *United States* v. *City of West Memphis, et al.*, Civil Action No. J-C-84-356 (E.D. Ark.), D.J. Ref. 90-5-2-1-638.

The proposed consent decree may be examined at Office of the United States Attorney, 327 Post Office and Courthouse Building, 600 West Capitol, Little Rock, Arkansas 72203 and at the Region VI Office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. 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 and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-15619 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Magnuson Mining Co.

In accordance with Department policy, 28 CFR 50.7, a notice is hereby given that on May 21, 1985, a proposed Consent Decree in *United States v. Warren E. Magnuson and Alice M. Magnuson dba Magnuson Mining Co.*, Civil Action No. A84-396 was lodged with the United States District Court for the District of Alaska.

The proposed Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The decree also imposes reporting requirements on the defendants with respect to any mining operation in which they may become involved and imposes stipulated penalties on the defendants for any failures on their part to either obtain appropriate NPDES permits or to comply with their reporting obligations. The decree also provides for the payment of a civil penalty by the defendants in the amount of $20,000 to be paid within sixty days of the entry of the decree. With the exception of penalty obligations, the decree terminates December 31, 1986.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Warren E. Magnuson and Alice M. Magnuson dba Magnuson Mining Co.*, D.J. No. 90-5-1-1-2245.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building & U.S. Courthouse, 701 C Street, Room C-252, Mail Box 9, Anchorage, Alaska 99513; the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and decree and enclose a check in the amount of $2.40 (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. 85-15621 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Partial Consent Decree in Action Under the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act Relating to the Midco Hazardous Waste Sites in Gary, IN; Midwest Solvent Recovery, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Partial Consent Decree in *United States of America* v. *Midwest Solvent Recovery, Inc. et al.*, Civil No. H-79-566, was lodged with the United States District Court for the Northern District of Indiana on June 19, 1985.

The proposed Partial Consent Decree requires those defendants and third-party defendants participating in the settlement to (1) reimburse the Hazardous Substance Response Trust Fund (the "Superfund") for response costs incurred at the Midco I and Midco II hazardous waste sites in Gary, Indiana, by the United States Environmental Protection Agency pursuant to section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604, in the amount of $3.1 million; (2) undertake and finance remedial investigations and feasibility studies into the extent of subsurface contamination at the Midco I and II sites and remedial alternatives to abate such contamination; and (3) reimburse the Superfund for up to $100,000 in EPA's costs in overseeing the remedial investigations and feasibility studies.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty days (30) from the date of this publication. Comments should be directed to the Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Washington, D.C. 20530 and should refer to *United States of America* v. *Midwest Solvent Recovery Inc., et al.*, D.J. Ref. 90-7-1-1.

The proposed Partial Consent Decree may be examined at the offices of the United States Attorney, Federal Building, 507 State Streets, Hammond, Indiana 46320; at the Region V Office of the United States Environmental

Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Office of the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Partial 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, payable to Treasurer of the United States, in the following amount ($.10 per page) for each copy requested: Partial Consent Decree, excluding work plans and signature pages, $3.10; Partial Consent Decree including all attachments and signature pages, $19.60.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-15622 Filed 6-27-85; 8.46 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Terex Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States v. Terex Corporation,* Civil Action No. C84-3128, was lodged with the United States District Court for the Northern District of Ohio. Defendant Terex owns and operates two facilities, one located in Hudson, Ohio, the other in Brooklyn, Ohio, at which heavy construction equipment is manufactured and spray painted. The proposed Consent Order requires the defendant to bring these two facilities into compliance with the federally-enforceable Ohio State Implementation Plan (Ohio SIP). Both facilities are in violation of the limitations established by the Ohio SIP for the control of emissions of volatile organic compounds (VOC's), which are emitted from the facilities' spray painting operations. The Consent Order requires the defendant to bring the facilities into full compliance with the VOC limitations by July 1, 1985.

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 Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Terex Corporation,* D.J. reference #90-5-2-1-715.

The proposed Consent Order may be examined at the Office of the United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44144; the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Divsion of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

F. Henery Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-15620 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research Inc. and Avantek, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed a written notification on behalf of Bellcore and Avantek, Inc. simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

Avantek, Inc. is a California corporation with its principal place of business at 4401 Great America Parkway, Santa Clara, California 95054.

Bellcore and Avantek, Inc. entered into a collaborative research agreement on May 10, 1985 to understand the applications for telecommunication exchange services and telecommunication exchange access services of high speed integrated circuits and to demonstrate feasibility of research concepts by experimental prototypes of such cricuits.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-15558 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research Inc. and Racal Data Communications, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed a written notification on behalf of Bellcore and Racal Data Communications Inc., as represented by its Racal-Milgo Division ("Racal Data Communications") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

Racal Data Communications is a Delaware corporation with its principal place of business at 1601 N. Harrison Parkway, Sunrise, Florida 33323-2899.

Bellcore and Racal Data Communications entered into a collaborative research agreement on May 10, 1985 to explore (1) new technologies for end-to-end and intra exchange digital connectivity, specifically in research on new techniques for dynamic bandwidth allocation over pulse code modulation transmission systems, (2) new technologies in image conferencing systems, or (3) other related areas of research that are directed to telecommunications applications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-15561 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research Inc. and U.S. Department of Army

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed a written notification on behalf of Bellcore and the U.S. Department of the Army simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

The U.S. Department of the Army is represented by the Electronics Technology and Devices Laboratory, located at Fort Monmouth, New Jersey 07703–5302.

Bellcore and the U.S. Department of the Army entered into an agreement on May 1, 1985 whereby the U.S. Department of the Army will participate with Bellcore's owners in the funding of Bellcore's investigation of the processes required to make miniature arrays of gallium arsenide crystals. The project, entitled "Research into Fabrication of Submicron Arrays on Group 111–V Compound Semiconductors," involves increasing the subminiaturization of semiconductor devices which can be used for very high speed switching applications, as sources of millimeter waves, and in the newly emerging area of optical signal processing devices. This research is directed at potential applications to telecommunication exchange services and telecommunications exchange access services.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–15559 Filed 6–27–85; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), Semiconductor Research Corporation ("SRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the withdrawal of General Instrument Corporation from SRC membership and the addition of the following companies to the Semiconductor Equipment and Materials Institute, Inc. ("SEMI") Chapter of the SRC:

FEP ANALYTIC (division of Verity Instruments, Inc.)
Flexible Manufacturing Systems, Inc.
Ion Beam Technologies, Inc.
Isitec Corporation
Mac Dermid, Inc.
Machine Technology, Inc.
Micrion Corporation
Micronix Corporation
Semi-Gas Systems, Incorporated
Silsco, Inc.
Universal Energy Systems, Inc.
VLSI Standards, Inc.

SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to SRC and SRC's general areas of planned activity are given below.

SRC is a joint venture which, with the withdrawal of General Instruments Corporation and the addition of the previously identified companies to the SEMI Chapter, is comprised of the following members:

Advanced Micro Devices, Incorporated
AT&T Technologies, Incorporated
Burroughs Corporation
Control Data Corporation
Digital Equipment Corporation
E. I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
GCA Corporation
General Electric Corporation
General Motors Corporation
Goodyear Aerospace Corporation
GTE Laboratories, Incorporated
Harris Corporation
Hewlett Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Monolithic Memories, Incorporated
Monsanto Company
Motorola, Incorporated
National Semiconductor Corporation
Perkin-Elmer Corporation
RCA Corporation
SEMI Chapter, comprised of
  FEP ANALYTIC (division of Verity Instruments, Inc.)
  Flexible Manufacturing Systems, Inc.
  Ion Beam Technologies, Inc.
  Isitec Corporation
  Micro Mask, Incorporated
  Pacific Western Systems, Incorporated
  Probe-Rite, Incorporated
  Pure Aire Corporation
  Mac Dermid, Inc.
  Machine Technology, Inc.
  Micrion Corporation
  Micronix Corporation
  Semi-Gas Systems, Incorporated
  Silsco, Inc.
  Universal Energy Systems, Inc.
  VLSI Standards, Inc.
Silicon Systems, Incorporated
Sperry Corporation
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation
Zilog, Incorporated

SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members;

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-15560 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-29]

Diphenoxylate Importation by MD Pharmaceutical, Inc.; Importation of a Controlled Substance; Objections, Request for Hearing and Hearing

On May 16, 1985 at 50 FR 20509, notice was given that MD Pharmaceutical, Inc. (MD Pharmaceutical), 3501 West Garry Avenue, Santa Ana, California 92704, had made application to the Drug Enforcement Administration to be registered as an importer of two basic classes of controlled Substances, methylphenidate and diphenoxylate, both of which are listed in Schedule II of the schedules established by the Controlled substances Act of 1970. Opportunity was given for the filing of comments, objections and requests for hearing with respect to the application.

A request for hearing with respect to MD Pharmaceutical's application for registration as an importer of diphenoxylate was filed on behalf of Mallinckrodt, Inc. (Mallinckrodt).

Mallinckrodt is presently registered as a bulk manufacturer of diphenoxylate and states its desire to be heard on two issues, (1) whether a regulation should be issued under section 1002(a) of the Controlled Substances Import and Export Act to authorize the importation of diphenoxylate, and (2) whether MD Pharmaceutical should be registered under section 1008 of that Act as an importer of the substance.

Mallinckrodt's postition on these issues is that there is a presumption embodied in the Act against the importation of Schedule II substances and therefore, Mallinckrodt contends, the burden of establishing that all the statutory criteria for importation and registration have been met is on MD Pharmaceutical. In addition, Mallinckrodt believes that importation of diphenoxylate is unnecessary to satisfy domestic needs; that there is no emergency shortage of this substance in the United States; and that there is no evidence that competition in the market for it in the United States is inadequate. Finally, Mallinckrodt states its belief that the subject registration of MD Pharmaceutical would not be consistent with the international obligations of the United States and would be incompatible with the public interest.

Accordingly, notice is hereby given pursuant to 21 CFR 1311.42 that a hearing will be held on the aforesaid application for registration commencing at 10:00 a.m. on August 6, 1985 in Room 1213, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C., the proceedings on that day to be limited to a preliminary discussion to identify proper parties and issues, and to determine procedures and set dates and locations for further proceedings. Any person entitled to participate in said hearing and desiring to do so should file a notice of appearance pursuant to 21 CFR 1301.54 and 1316.48 within thirty days of the date of publication of this notice. A person who has filed a request for hearing (i.e., Mallinckrodt) need not also file a notice of appearance.

Dated: June 24, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85-15557 Filed 6-27-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background:

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review:

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions:

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Women's Bureau
Women in Nontraditional Program Questionnaire
Other—one-time survey
State and local governments
135 responses; 71 hours; 1 form

The data collection is designed to assess the status of the Women in Nontraditional Careers initiative. This initiative, which offers services to young women, focuses on (1) career planning, awareness of nontraditional career options, labor market information job exploration, and employability skills development and on (2) services to staff to enable them to counsel young women.

Uniform Project Performance Information System (UPPIS)
Quarterly
Individuals or households; businesses or other for profit; small businesses or organizations
1,000 responses; 2,240 hours; 1 form

The Quarterly Status Report is needed to provide the data required for the monitoring and evaluation of Women's Bureau demonstration on projects. A

standard reporting format is needed to assure the availability of comparable data on the diverse projects funded by the Women's Bureau.

Revision

Employment and Training Administration
Weekly Claims and Extended Benefits Data
1205–0028 ETA 539
State or local governments
53 respondents; 4,220 hours; 1 form

Data for the determination of the beginning, continuance, or termination of an extended benefit period in any State by reason of the EB trigger rate. Also data on initial and continued claims are used as economic indicators.

Extension

Employment and Training Administration
ETA 204, Experience Rating Report
1205–0164; ETA 204
Annually
State or local governments
53 respondents; 14 hours; 1 form

Measures experience rating systems, permits analysis of factors influencing rates, equity, and soundness of the system.

CAP and Interest
1205–0205; ETA RC 59
Annually
20 respondents; 800 hours

This data will provide the basis for the Secretary to certify that a State may obtain a cap or partial limitation on offset credit reduction, deferral and delay of interest payment, and a discounted interest rate.

Signed at Washington, D.C., this 25th day of June, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–15594 Filed 6–27–85; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–85–24–C]

AMAX Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Coal Company, 105 South Meridian Street, P.O. Box 967, Indianapolis, Indiana 46206 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that portable trailing cables shall not exceed 500 feet in length.

2. Petitioner uses the room and pillar method of mining on 100-foot centers. To alleviate problems associated with mining on 100-foot centers, petitioner is using a sequence cut system. This system uses remote control devices on the continuous miner, which takes a 35-foot cut in lieu of a 20-foot cut taken under the previous mining system. The sequence cut will create up to six working places instead of two.

3. As an alternate method, petitioner proposes to use 800 feet of No. 4 3/C G–GC portable trailing cables on roof bolting machines. Petitioner believes that increasing the length of the portable trailing cables on the roof bolters can improve the sequence cut system by reducing the number of power moves.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the Standard.

Request for Comments

Persons interested in this petition may furnish writen comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 29, 1985. Copies of the petition are available for inspection at that address.

Dated: June 21, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 85–15542 Filed 6–27–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–85–38–C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, P.O. Box 176, Marion Center, Pennsylvania 15759–0176 has filed a petition to modify the application of 30 CFR 75.523–2 (deenergization of self-propelled electric face equipment; performance requirements) to its Tanoma Mine (I.D. No. 36–06967) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that there be an emergency stop bar or lever to permit quick deenergization of the tramming motors of self-propelled electric face equipment.

2. As an alternate method, petitioner proposes to eliminate the actuating bar from the remote control continuous miners and use the emergency stop button located on the remote control unit. In support of this request, petitioner states that:

(a) The continuous miners are operated from a remote location via a hand-held remote control unit. If the emergency stop lever is accidently struck with coal or rock, a person would have to go along side the miner to reset the emergency stop switch exposing himself or herself to a potentialy hazardous situation; and

(b) Operating control levers will be deactivated by removing the levers or the pins, making it impossible to operate the machine from the operator's compartment.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 405 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 29, 1985. Copies of the petition are available for inspection at that address.

Dated: June 21, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–15544 Filed 6–27–85 am]

BILLING CODE 4510–43–M

[Docket No. M–85–7–M]

Domtar Industries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Domtar Industries, Inc., P.O. Box 8, New Iberia, Louisiana 70561–0008 has filed a petition to modify the application of 30 CFR 57.21–78 (permissible equipment) to its Cote Blanche Mine (I.D. No. 16–00358) located in St. Mary Parish, Louisiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that only permissible

equipment maintained in permissible condition be used beyond the last open crosscut or in places where dangerous quantities of flamable gases are present or may enter the air current.

2. Petitioner believes that the standard does not adequately address the working conditions of the mine or properly consider the equipment actually available for use in the mine.

3. Petitioner states that methane does not continuously emanate in salt mines as it does, for instance, in coal mines. Methane is associated with the phenomenon known as "outbursts". The danger of methane inundation of the mine or part of the mine only occurs during those parts of the mining cylce in which large amounts of salt are suddenly removed from the salt mass.

4. Petitioner further states that the sudden removal of large amounts of salt from the main salt mass which have triggered outbursts have only occured at the mine during the blasting operations. All blasting is initiated from the surface with all personnel accounted for and out of the mine. Methane detectors are used continously and re-entry to the mine. after a blast is only permitted after a suitable preshift examination and confirmation that methane is less than 0.5 percent.

5. As an alternate method, petitioner proposes that:

a. All equipment used at the mine face during the portions of the production cycle up to and including blasting will be permissible and maintained in permissible condition. This equipment includes undercutters, face drills and floor drills;

b. Electrical distribution boxes will be permissible boxes and maintained in permissible condition;

c. Other equipment will not be taken beyond the nearest complete intersection during the pertinent activities of the production cycle;

d. The primary vehicle for personnel transportation, a 12-person personnel carrier, will be permissible and maintained in permissable condition. This vehicle will be used to "Fire Boss" and preshift inspect after blasting;

e. The methane detection system now in place will be maintained as described in 30 CFR 57.21-80; and

f. Mine power transformers will be installed out by the area methane detectors or in the fresh air.

6. Petitioner states that the proposed alternate method willprovide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Relgulations and Variances, Mine Safety and Health Adminstration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 29, 1985. Copies of the petition are available for inspection at that address.

Dated: June 21, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15543 Filed 6-27-85; 8:45 am]

BILLING CODE 4510-43-M

New Personal Audio Dosimeter Accepted

AGENCY: Mine Safety and Health Administration (MSHA) Labor.

ACTION: Notice of MSHA acceptance of a new personal audio dosimeter.

SUMMARY: After testing and evaluation, the Mine Safety and Health Administration (MSHA) announces the acceptance of the Quest Electronics Model Micro-15 Audio Noise Dosimeter for use in coal mines.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Peluso, Pittsburgh Technical Support Center, Mine Safety and Health Administration, 4800 Forbes Avenue, Pittsburgh, PA 15213, (412) 621-4500.

SUPPLEMENTARY INFORMATION: On September 12, 1978, the Mine Safety and Health Administration (MSHA) published a final rule that became effective on October 1, 1978 and amended the mandatory health standards governing noise dosimeters (43 FR 40760). Those amendments to 30 CFR Parts 70 and 71 permitted the use of personal noise dosimeters to make required noise exposure measurements in coal mines and set forth the procedures to be followed in taking such noise measurements. When noise exposure measurements and surveys required by Parts 70 and 71 are taken by personal noise dosimeters, the dosimeters must be acceptable to MSHA.

The test and criteria used by MSHA to determine acceptability of personal noise dosimeters are published in "MSHA Test Procedures and Acceptability Criteria for Noise Dosimeters," MSHA Informational Report IR-1072.

MSHA has recently completed testing and evaluation of the Quest Electronics Model Micro-15 Audio Noise Dosimeter. MSHA has determined that the dosimeter met all of the criteria listed in MSHA Informational Report IR-1072 and hereby gives notice that this dosimeter is acceptable for use under 30 CFR 70.505 and 71.801.

Accordingly, operators may use the Quest Electronics Model Micro-15 Audio Noise Dosimeter to take the noise exposure measurements and surveys at underground coal mines as required by 30 CFR 70.503, 508 and 509 and at surface coal mines as required by 30 CFR 71.802, 803 and 804.

Dated: June 21, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15528 Filed 6-27-85; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[V-85-3]

St. Regis Corp.; Grant of Variance

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Grant of variance.

SUMMARY: This notice announces the Grant of Variance to St. Regis Corporation from the part of 29 CFR 1910.261(c)(9)(i) which requires that the flagman must always remain in sight of the operator when the crane or locomotive is in motion. This variance does not apply to locomotives being operated by remote control. This variance authorizes radio communication as a substitute for visual observation of hand signals between a railroad crew and a locomotive being operated by an engineer.

DATE: The effective date of the Variance is June 28, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, U.S. Department of Labor—OSHA, Third Street & Constitution Avenue, NW., Room N-3656, Washington, D.C. 20210, Telephone: 202-523-7193.

or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294

U.S. Department of Labor—OSHA, Petroleum Building, Suite 210, 2812 1st Avenue North, Billings, Montana 59101.

SUPPLEMENTARY INFORMATION:

I. Background

St. Regis Corporation, Post Office Box V–X, Libby, Montana 59923–1284, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the part of 29 CFR 1910.261(c)(9)(i) which requires that the flagman must always remain in sight of the operator when the crane or locomotive is in motion.

The place of employment that will be affected by the application is the applicant's Lumber and Plywood Division, Plywood/Sawmill Complex, Libby, Montana.

Notice of the application and the grant of interim order were published in the **Federal Register** on April 19, 1985 (50 FR 15654). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the variance application. No written comments or requests for a hearing were received.

II. Facts

The applicant is involved in the lumber and plywood business and requested the variance for its Lumber and Plywood Division, Plywood/Sawmill Complex, Libby, Montana. The applicant contends that radio communication between the railroad crew is as safe and healthful as visual contact between the railroad crew as required by § 1910.261(c)(9)(i). The applicant proposed that their railroad crew use portable radios to relay verbal instructions in directing movement of the locomotives rather than using visual observation of hand signals. The railroad crew would thus be able to maintain voice contact when throwing switches, coupling, uncoupling or spotting rail cars within the applicant's railroad system. The applicant contends that constant visual contact while the locomotive is in motion is not the exclusive means of achieving the safe operation. The products involved in its railroad operation are lumber, plywood and wood chips.

The applicant has shown that the operating area of the locomotive encompasses approximately two miles of track, all within the confines of its property. The applicant has submitted written operations procedures for railroad operations. The applicant's employees are instructed to abide by the railroad operation procedures. The applicant maintains that a variance from the requirement that the railroad crew be in visual contact with the locomotive engineer at all times should be granted because the use of radios in conjunction with written operations procedures provides an operation which is as safe as, or safer than the outdated method of hand signals.

III. Decision

Section 1910.261(c)(9)(i) sets forth the requirement that the flagman must always remain in sight of the operator when the locomotive is in motion. The applicant has shown that its variance should be granted by providing the appropriate evidence and the following rationale:

(a) Without the visual contact requirement, crew members' mobility will be enhanced and will be able to position themselves at the safest possible location during train movement;

(b) Radios will provide a means of communication instantaneously, whereas hand signals must await visual contact between the parties; and

(c) Radios improve communication under adverse weather conditions and after nightfall.

The applicant has taken the following steps to assure that the system of radio communication will work safely and efficiently:

(a) The applicant has purchased a sufficient number of radios and microphones to supply all required employees;

(b) The radios purchased are a 40 watt FM system and a 2 watt FM system providing a clear and audible signal;

(c) The applicant has obtained a separate radio frequency from the Federal Communications Commission. The frequency will be used solely among members of the train crew to direct the movement of the locomotive.

(d) The radios, when not in use, will be maintained in a secure place under the control of the applicant's supervision; employees will be responsible for the security of radios which have been issued to them;

(e) The radios will be checked regularly and recharged when appropriate; and,

(f) Employees will be trained in the use of the radios as well as in the operational procedures which apply during the use of radios. The locomotive engineer will be under instruction not to move the train until given a radio signal from the crew. Should radio failure or interference occur after an order to move has been given, the locomotive engineer will stop. The engineer will not move the trian again until radios are repaired, replaced or until interference has cleared. Established operational procedures will be followed.

Further, the applicant has shown that its request for a variance should be granted because of OSHA requirement for visual contact applies only to the pulp and paper and paperboard mill industry. Locomotives routinely operate in other industries using radio communication in lieu of visual contact. There is nothing unique about the pulp, paper and paperboard mill industry which justifies a visual contact requirement.

The Occupational Safety and Health Administration conducted an onsite variance investigation at the applicant's facility on December 18, 1984, to examine plant and railroad operations and procedures. The conditions at the facility were found to be as stated in the variance application.

Therefore, OSHA believes that the applicant's alternative method as described above is as safe and healthful as the requirements of the standard from which a variance is sought.

IV. Order

Pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor's Order No. 9–83 (48 FR 35736), and in 29 CFR Part 1905, it is ordered that St. Regis Corporation is hereby subject to the following conditions in lieu of complying with the provisions in 29 CFR 1910.261(c)(9)(i) which requires that the flagman must alway remain in sight of the operator when the locomotive is in motion.

The applicant shall:

(a) Institute a radio control program for assignment, storage, security, recharging and periodic maintenance of the radio equipment.

(b) Clearly designate the area where the two-way radio communications may be conducted.

(c) Develop safe operating procedures in the use of the radio communications system and provide a copy to each employee required to work with a two-way radio.

(d) Instruct and thoroughly train each employee who is authorized to use the two-way radio in the proper methods for using the radio communications.

(e) Assure testing of the radio before and at least once during each railroad crew shift to verify that the radio is operating properly. The test at a

minimum shall consist of an exchange of voice transmissions.

(f) Immediately remove from service all improperly functioning radios until they have been repaired.

(g) Assure that when radio communication is used in lieu of hand signals in connection with the switching, backing or pushing of a train, engine, or car, the employee directing the movement shall give complete instructions or keep continuous radio contact with the employees receiving the instruction. When backing or pushing a train, engine or cars, the distance of the movement must be specified, and the movement must stop in one-half the remaining distance unless additional instructions are received. If the instructions are not understood or continuous radio contact is not maintained, the movement shall be stopped immediately and may not be resumed until the misunderstanding has been resolved, radio contact has been restored, or communication has been achieved by hand signals.

(h) Assure that a traffic pattern across and on the railroad tracks be well defined and a safe operating procedure established.

(i) Install and maintain appropriate and practical warning signs at each vehicular and pedestrian crossing of the railroad track and the blind areas of the track.

(j) Require that an audible signal be given when approaching a crossing. The sound of the engine whistle or horn shall be distinct, with intensity and duration proportionate to the distance the signal is to be conveyed.

(k) Assure that when outside railroad company operations are on the premises, operations of the applicant's crew shall be fully coordinated with those of the outside railroad company to assure a safe joint operation. Crews of any company shall be informed of the operating procedures of the other company.

(l) Allow OSHA to inspect its premises in connection with this order.

Effective date: This order shall become effective on June 28, 1985, and shall remain in effect unless otherwise modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. on this 20th day of June, 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-15545 Filed 6-27-85; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-109; Exemption Application No. D-5560 et al.]

Grant of Individual Exemptions; First Citizens National Bank et al.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

First Citizens National Bank, Tupelo, Mississippi, Investment Funds for Qualified Employee Benefit Plans—Funds A and B (the Funds) Located in Tupelo, Mississippi

[Prohibited Transaction Exemption 85-109; Exemption Application No. D-5560]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale by the Funds of all mortgage notes (the Notes) held by First Citizens National Bank, Tupelo, Mississippi (the Bank) as trustee of the Funds, to the Bank, provided that the sales price was no less than the greater of the fair market value of the Notes or the unpaid principal amounts plus accrued interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15244.

Effective Date: The effective date of this exemption is March 21, 1984.

For Further Information Contact: Mr. David Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Tom Shaw, Inc. Retirement Plan (the Retirement Plan) and Tom Shaw, Inc. Profit Sharing Plan (the Profit Sharing Plan) (Collectively, the Plans) Located in Cheboygan, Michigan

[Prohibited Transaction Exemption 85-110; Exemption Application No. D-5667 and D-5668]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $88,500 by the Retirement Plan to Tom Shaw, Inc. (the Plans' Sponsor) and the loan of $26,700 by the Profit Sharing Plan to the Plans' Sponsor, for a ten-year period; and the guarantee of the proposed loans by the Plans' Sponsor and Mr. Tom Shaw, parties in interest with respect to the Plans, provided that the terms of the proposed loans are not less favorable to the Plans than those obtainable in an arms'-length

transaction with an unrelated party at the time of its consummation.

The applicant was unable to notify interested persons within the time period specified in the Federal Register notice published on March 1, 1985. Interested persons were notified on April 26, 1985 and advised of their right to comment or request a hearing within 45 days from the receipt of their notification.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 1, 1985 at 50 FR-8417.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Neurosurgical Associates of Roanoke, Inc. Defined Benefit Plan A (the Plan) Located in Roanoke, Virginia

[Prohibited Transaction Exemption 85–111; Exemption Application No. D–5702]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of a certain parcel of improved real property and personal property (the Property) to Dr. Ward W. Stevens, a disqualified person with respect to the Plan, for cash in the amount of $232,587.39 provided that this amount is the fair market value of the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 25, 1985 at 50 FR 16371.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Electronic Data Systems Corporation Retirement Plan, Electronic Data Systems Corporation Deferred Compensation Plan (collectively, the Plans) Located in Dallas, Texas

[Prohibited Transaction Exemption 85–112; Exemption Application No. D–5790]

Exemption

The restrictions of sections 406(a), 406 (b)(1), and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective August 13, 1984, to the sale by the Plans of all of their shares of Electronic Data Systems common stock to General Motors Corporation (GM) in exchange for cash and certain notes and stock issued by GM, provided that the terms of the transaction are at least as favorable to the Plans as those obtainable in a similar transaction with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1985 at 50 FR 13100.

Written Comment: The applicant submitted the only comment regarding the proposed exemption. The applicant requested the Department clarify whether the exemption provides relief for the acquisition and holding by the Plans of the notes and stock issued by GM in connection with the sale. The Department clarifies herein that the exemption provides relief for the acquisition and holding by the Plans of the notes and stock described in the notice of proposed exemption.

The applicant also stated that the notice of proposed exemption contained various inaccurate descriptions of MBank Dallas N.A. (MNB). In this regard the notice should have indicated that MNB holds approximately $3 billion (rather than $3 million) of assets as a trustee, custodian or in other fiduciary capacities, and that $1 billion (rather than $1 million) are funds of employee benefit plans. As well, the applicant states that the parent corporation of MNB is now known as MCorp rather than Mercantile Texas Corporation as described in the notice.

After consideration of the entire record the Department has determined to grant the exemption.

Effective Date: This exemption is effective August 13, 1984.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit-Sharing Plan & Trust Agreement of John V. Krippaehne, D.M.D., P.C. (the P/S Plan); Money-Purchase Pension Plan & Trust Agreement of John V. Krippaehne, D.M.D., P.C. (the M/P Plan) Located in Portland, Oregon

[Prohibited Transaction Exemption 85–113; Exemption Application Nos. D–5912 and D–5913]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code, shall not apply to the lease, effective January 1, 1985, of certain real property by the above named plans (collectively, the Plans) to Dr. John V. Krippaehne, a party in interest with respect to the Plans, provided that: (a) The terms of the transaction are at least as favorable to the Plans as those the Plans could obtain in a similar transaction with an unrelated party, and (b) Form 5330 is filed and excise taxes are paid as stated in the notice of proposed exemption.

Effective Date: This exemption is effective January 1, 1985.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985, at 50 FR 15247.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Teamsters Local 639—Employers Health Trust Fund (the Plan) Located in Washington, D.C.

[Prohibition Transaction Exemption 85–114; Exemption Application No. L–5948]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries from preferred prescription drug providers (the Providers), whether or not the Providers employ Plan participants,[1] provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Written Comments

The applicant represents that all interested persons were notified of the proposed exemption by April 12, 1985, and that such notice also advised the interested persons of their rights to submit written comments prior to May 14, 1985, on the proposed exemption.

Description of Comments Received

The Department has received three comments, all of which opposed the

[1] The Department notes that all Providers are parties in interest with respect to the Plan pursuant to section 3(14)(B) of the Act because they provide services to the Plan which are related to the prescriptions they fill for Plan participants and beneficiaries. For example, as mentioned in the Notice of Proposed Exemption, some of such services include monitoring of drug abuse, offering generic equivalent drugs, and using computers to warn participants and beneficiaries to avoid harmful combinations of drugs. This exemption provides no relief with respect to the services to be provided by the Providers beyond that exempted under section 408(b)(2) of the Act.

proposed exemption. Two of the comments were from Plan participants expressing concern that the proposed exemption would adversely affect their prescription drug benefits under the Plan. After receiving an explanation (by telephone) of the proposed exemption, these participants understood that the exemption would not adversely affect such benefits and no longer objected to the exemption.

The third comment letter was from People Drug Stores (Peoples). Peoples alleged that the Plan had made no attempt to establish a preferred provider relationship with drug stores in the Washington, D.C. area that are not parties in interest to the Plan.[2] Peoples argued that before receiving an exemption for the provision of prescription drugs to Plan participants by parties in interest with respect to the Plan, the Plan should be required to negotiate with other providers in the area to determine whether the prices offered by Giant and Safeway are indeed the lowest that could be obtained under a preferred provider arrangement.

Peoples pointed out that it operates 149 pharmacies in the Washington, D.C. metropolitan area, whereas together Giant and Safeway operate approximately 60 pharmacies in such area, and that many Plan participants currently purchase prescription drugs from Peoples. Nevertheless, according to Peoples, the Plan did not explore the possibility of establishing a preferred provider relationship with Peoples, and the first notice Peoples had of the proposed arrangement was publication of the Notice of Proposed Exemption.

Peoples asserted that it believes it can match any price offered on a preferred provider basis and that it offers greater service to Plan participants because of both the number of Peoples pharmacies and their geographical distribution. Peoples stated that it had requested the Plan to consider selecting Peoples as a preferred provider to the Plan. Peoples also requested that if the exemption is granted, it should be extended to any preferred provider chosen by the Plan, whether or not the provider was previously a party in interest to the Plan.

Applicant's Response to Comments

The applicant confirmed that the exemption would not adversely affect the prescription drug benefits to which any participants, including the two who submitted comments, would be entitled under the Plan.

With respect to the comment letter from Peoples, the applicant makes the representations summarized below.

1. If other companies can, and are willing to, provide prescription drugs to Plan participants and beneficiaries at the same or lower charges than Giant and Safeway, with the same administrative capacities or more conveniently than Giant and Safeway, the Plan would most certainly engage such companies as additional preferred providers. Prior to filing the application for exemption, the Plan trustees, through their consultant, the Martin E. Segal Company, explored the possibilities of having other companies, including Peoples and Rite Aid, provide prescription drug services to Plan participants and beneficiaries. At that time, the other potential providers conditioned their participation in an agreement with the Plan to use them as the *exclusive* provider. The Plan trustees were not interested in entering into an arrangement which would make any company an exclusive source for prescription drug coverage for Plan participants and beneficiaries. Rather, in order to insure that all participants and beneficiaries could conveniently receive benefits, the Plan trustees were seeking the availability of several companies which would provide discounts to the Plan but which would not condition such discounts upon exclusive use.

2. As stated in the exemption application, Safeway and Giant were selected as Providers because they agreed to make prescription drugs and related services available to the Plan at substantial savings (approximately 23%) over the Plan's then current costs. Safeway and Giant had also demonstrated their administrative ability to process prescription drug claims efficiently and had computer systems which would provide significant control over dispensing prescription drugs. Further, Safeway and Giant did not require that the Plan require participants to buy from them exclusively in order to provide prescription drugs at a discount.

3. In 1984, the Plan trustees were attempting to develop various methods of cost containment for the prescription drug program and other areas. The Plan's consultant (Martin E. Segal Company) was asked to explore with various retail drug outlets the best means of controlling prescription drug costs. In the course of their investigation, the consultant approached various major retail companies, including Giant and Safeway. The program offered by these various retail companies differed in many respects from other another. For example, some companies conditioned any discounts on being made the exclusive provider for prescription drugs and related services. Other companies offered only minimal savings from the program that was then being utilized by the Plan; others did not have the administrative capacity to insure the efficient processing of claims. Specifically, in March 1984, Peoples was approached. The savings offered by Peoples at that time represented only a minimal savings compared to the Prescription Drug Incorporated program that the Plan had in effect. Moreover, Peoples conditioned any discount upon an exclusive arrangement. Both of these reasons mitigated against further discussions with Peoples, given the nature of the discounts offered by Giant and Safeway.

4. As stated in the exemption application, the 23% savings mentioned in 2, above, is based upon a survey of 121 actual claims paid by the Plan in March 1984. Safeway and Giant have agreed to give the Plan a 10% discount off their regular retail prices for prescription drugs in any prescriptions they fill. Currently, the Plan pays the average wholesale price for drugs, plus a dispensing fee of $2.75, [3] and an administrative fee of 44¢. The willingness of Safeway and Giant to discount their retail price by 10% and to discontinue charging a dispensing fee or administrative fee would result in a 23% saving over the costs of the prescription drug card system currently in effect. Under the proposed agreement, claims for prescriptions filled by Giant and Safeway would not be processed by the Prescription Drug Card Company; claims for prescriptions filled by other providers would either be processed by the Prescription Drug Card Company or

[2] The Notice of Proposed Exemption proposed relief for the purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries from Giant Food, Inc. (Giant) and Safeway Stores, Inc. (Safeway), both of whom employ Plan participants, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party. Under the proposed arrangement with Giant and Safeway, Plan participants and beneficiaries may continue to have prescriptions filled at other pharmaceutical outlets, but if they patronize pharmacies of Giant or Safeway, the participants and beneficiaries would receive greater benefits under the Plan than they currently receive.

[3] The copy of the survey of the 121 claims paid in March 1984, mentioned above, (submitted with the applicant's response to Peoples' comment letter) shows that the amount of the dispensing fee charged to the Plan was $2.75 (not $2.25, as stated in the application for exemption and the Notice of Proposed Exemption).

directly by the Plan's administrative office.

5. Under the proposed agreement, the cost to the Plan participant or beneficiary would be less if he or she went to a Provider rather than to another company. This result would be achieved by charging the Plan participant a lower deductible to encourage patronizing a Provider. Hypothetically, it is possible that a prescription drug company that is not a Provider may charge less to fill a given prescription than a Provider would charge. In that situation, the Plan participant would not benefit directly; however, all Plan participants would benefit indirectly from the savings to the Plan. It would be administratively impossible to review each claim from many different sources of prescription drugs to ascertain whether in each separate case the cost of the drug is greater or less than the average wholesale cost or the 10% discounted cost charged by Safeway and Giant.

6. The Plan trustees are in the process of exploring with Peoples precisely what Peoples is currently prepared to provide as a mechanism for including Peoples among the Providers. If Peoples no longer requires exclusive patronage as a condition to giving a discount to the Plan, and if the Peoples' discount is equal to or greater than that being offered by Giant and Safeway, the Plan trustees intend to enter into an arrangement with Peoples to include Peoples among the Providers. The applicant also requests that the exemption be extended to any Provider chosen by the Plan, whether or not the Provider was previously a party in interest to the Plan.

The Department's Response

The Department agrees with both Peoples and the applicant that the exemption should cover any Provider chosen by the Plan, whether or not the Provider chosen by the Plan, whether or not the Provider was previously a party in interest to the Plan, and has modified the exemption accordingly, as shown above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this modified exemption refer to the notice of proposed exemption published on March 15, 1985 at 50 FR 10557.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Sherman Clay & Co., Defined Benefit Pension Plan (the Plan) Located in San Bruno, California

[Prohibited Transaction Exemption 85-115; Exemption Application No. D-5543]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to certain past sales by the Plan of Federal Home Loan Bank Bonds bearing an interest rate of 14.2 percent due June 27, 1983, for cash in the amount of $543,975 to Parker Pace Corp. and Ashuelot Paper Company, parties in interest with respect to the Plan, provided that the amount the Plan received in such sales was at least equal to what it could have received in similar transactions with an unrelated party.

Effective Date: If the proposed exemption is granted, the effective date will be September 17, 1982.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 3, 1985 at 50 FR 18947.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York

[Prohibited Transaction Exemption 85-116; Exemption Application No. D-5962]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The acquisition of shares of common stock (the Common Stock) of Donaldson, Lufkin, and Jenrette, Inc. (DLJ) from employee benefit plans (the Plans) by ELAS Acquisition Corp. (Acquisition Corp.), an indirect wholly-owned subsidiary of Equitable, which is a party in interest with respect to the Plans, by means of an offer to purchase for cash, the Common Stock between DLJ and Acquisition Corp.; and (2) any cancellation, extinction, and conversion of such Common Stock held by the Plans into the right to receive cash, pursuant to the agreement of merger between DLJ and Acquisition Corp., provided that the price received by the Plans is at least equal to the price received by other shareholders of the Common Stock.

Effective Date: The effective date for the exemption is December 13, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 9, 1985 at 50 FR 14048.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Columbia Mortgage Company-Orbanco Real Estate Services Co. (ORESCO) Located in Portland, Oregon

[Prohibited Transaction Exemption 85-117; Exemption Application No. D-5964]

Exemption

I. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed sale, exchange or transfer between ORESCO and certain employee benefit plans (the Plans) of participation interests (the Participation Interests) in individual multi-family residential and commercial mortgage loans (the Mortgages), or in pools of Mortgages which are originated by ORESCO provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of ORESCO who has authority to manage or control those Plan assets being invested in the Participation Interests;

B. The terms of all transactions between the Plans and ORESCO involving the Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to ORESCO with regard to such sale, exchange or transfer;

D. The decision to invest in a Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of ORESCO, causes a transaction to be made with or for the benefit of a party in interest [as defined in section 3(14) of the Act] with respect to the Plan; and

E. ORESCO shall maintain for the duration of any Participation Interest which is sold to a Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for

purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan [or who has a relationship to such service provider described in section 3(14), (F), (G), (H), or (I) of the Act] solely because of the ownership of a Participation Interest by such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 3, 1985 at 50 FR 18949.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Central Orthopaedic Clinic, P.A. Profit Sharing Plan and Trust (the P/S Plan); Central Orthopaedic Clinic, P.A. Money Purchase Pension Plan and Trust (the M/P Plan) Located in Jackson, Mississippi

[Prohibited Transaction Exemption 85-118; Exemption Application Nos. D-5993 and D-5994]

Exemption

The restrictions of section 406(a) and 406 (b)(1) (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the: (1) Purchase by the P/S Plan and the M/P Plan (together, the Plans) of certain real property (the Property) from The Central Orthopaedic Partnership (the Partnership), whose partners are officers and directors of the employer (the Employer) of the Plans' participants and beneficiaries, provided the purchase price is not more than the fair market value of the Property on the date of the purchase, (2) assumption by the Plans, in connection with the proposed purchase, of certain debt obligations of the Partnership, (3) extension of credit by the Partnership to the Plans, and (4) lease of the Property by the Plans to the Employer, provided the terms of transactions (2), (3), and (4) are at least as favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1985, at 50 FR 13104.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 25th day of June 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-15652 Filed 6-27-85; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Practice and Procedure; Modification of Fixed Hearing Site Policy and Revision of List of Fixed Hearing Sites

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Modification of Fixed Hearing Site Policy and Revision of List of Fixed Hearing Sites.

SUMMARY: The Merit Systems Protection Board, upon review of its fixed site hearing policy as previously announced on November 5, 1982, has modified the policy to permit presiding officials to schedule and conduct hearings at agency facilities within the metropolitan areas of fixed sites designated by the Board. In addition, the Board has revised its list of fixed sites to include 106 metropolitan areas throughout the United States.

DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Doheny (202) 653-7980.

SUPPLEMENTARY INFORMATION: On November 5, 1982, the Board announced a policy generally requiring its presiding officials to schedule and conduct hearings at fixed neutral sites in 92 designated metropolitan areas throughout the United States. 47 FR 50386. The Board intended the policy to conserve the Board's travel resources and to accommodate to the greatest extent possible the occasionally competing interests of the Board and the parties for a reasonably convenient hearing location.

During the past two years the Board has carefully reviewed the hearing site policy and other alternatives in terms of their advancement of fair and impartial adjudication by the Board and travel cost-effectiveness. On the basis of its review, the Board has determined that objectivity and neutrality with the Board's adjudicatory processes can continue to be maintained by scheduling and conducting Board hearings on the premises of federal agencies.

Accordingly, the Board has modified its hearing site policy to permit its presiding officials to schedule and conduct hearings at agency facilities within the metropolitan areas of Board-designated hearing sites, subject to the approval of the respective regional directors.

Under the new policy, presiding officials will have the discretion to schedule and conduct hearings at agency facilities so long as such scheduling and conduct will not result in increased cost to the government, not

prejudice any party to the proceeding, and not cause undue disruption to the activities of the agency within whose facilities the hearing will be held.

As previously noted, the Board as part of its original policy in 1982 designated 92 fixed sites throughout the United States for the conduct of hearings. These 92 sites comprised the metropolitan areas in which the Board's eleven regional offices are located, as well as 81 other metropolitan areas. The Board selected the 92 sites on the basis of analysis of the various locations at which hearings previously had been scheduled, as well as review of the extent to which these locations promoted convenience of travel and cost-effectiveness by the Board and the parties appearing before it.

During the past year the Board has re-examined the 92 fixed sites based upon their appeal volume and travel convenience and cost. On the basis of that review, the Board has deleted seven sites and has added twenty-one sites to its list of fixed sites.

The Board's new list of fixed sites is set out below. As before, hearings scheduled within fixed site areas in which Board regional offices are located shall be conducted at the regional office itself.

In addition, regional directors of the Board shall continue to have the authority to approve travel for presiding officials to schedule and conduct hearings in localities other than the fixed sites when, upon a showing of good and sufficient reason, it would be more advantageous to schedule a hearing at another location. Finally, presiding officials shall continue to schedule and conduct hearings at overseas locations as necessary and in appropriate cases.

Approved MSPB Hearing Sites (*Denotes additions)

Atlanta Region

Atlanta, Georgia
*Augusta, Georgia
Macon, Georgia
*Savannah, Georgia
Birmingham, Alabama
* Huntsville, Alabama
Montgomery, Alabama
*Jacksonville, Florida
Miami, Florida
Orlando, Florida
*Pensacola, Florida
*Tampa/St. Petersburg, Florida
Jackson, Mississippi
*Jacksonville, North Carolina
*Asheville, North Carolina
Raleigh, North Carolina
Columbia, South Carolina
Charleston, South Carolina

Boston Region

Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Potland, Maine
*Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

Chicago Region

Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Columbus, Ohio
Cincinnati, Ohio
*Dayton, Ohio
Milwaukee, Wisconsin

Dallas Region

Dallas, Texas
*Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
*Temple, Texas
*Texarkana, Texas
Little Rock, Arkansas
*Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Region

Denver, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Las Vegas, Nevada
Reno, Nevada
Alburqueque, New Mexico
Bismarck, North Dakota
*Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

New York Region

*Albany, New York
New York, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey

Philadelphia Region

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
*Wilkes-Barre, Pennsylvania
Dover, Delaware
Baltimore, Maryland
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
*Morgantown, West Virginia

Seattle Region

Seattle, Washington
Spokane, Washington
*Richland, Kennewick and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
*Medford, Oregon
Portland, Oregon

San Francisco Region

San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California

St. Louis Region

St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
*Louisville, Kentucky
Knoxville, Tennessee
Memphis, Tennessee
Nashville, Tennessee

Washington Region

*Bailey's Crossroads, Virginia
Washington, D.C.

Deleted MSPB Hearing Sites

Clarksburg, West Virginia
Lubbock, Texas
Pendleton, Oregon
Shreveport, Louisiana
Juneau, Alaska
Fairbanks, Alaska
Fargo, North Dakota

Dated: June 24, 1985.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 85-15502 Filed 6-27-85; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-42]

NASA Advisory Council (NAC); Life Science Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life Sciences Advisory Committee (LSAC).

DATES: Date and Time: July 18, 1985, 8:30 a.m. to 7 p.m.; and July 19, 1985, 8 a.m. to 5 p.m.

ADDRESS: NASA Headquarters, FB 10–B, Room 226–A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Henry V. Bielstein, M.D., Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1536).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee provides advice and coordination of NASA Life Sciences research programs. They assist in long-range planning for Spacelab, Space Station, and STS experiments, as well as ground-based biomedical research. The Committee, chaired by Dr. Robert E. Moser, is comprised of approximately 24 members.

This meeting will be closed to the public from 5 p.m. to 7 p.m. on July 18 for a discussion of candidates being considered for Committee membership. During this session, the qualifications of proposed new members will be candidly discussed and appraised. Since this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including committee members and other participants).

Type of Meeting: Open—except for a closed session as noted in the agenda below.

July 18, 1985

8:30 a.m.—Opening Remarks (Open session).
9 a.m.—Current Status of Life Sciences Programs and Funding (Open session).
10 a.m.—Medical Results of Spacelab 3, Recent Flights, and Echocardiograms (Open session).
11 a.m.—Discussion—Space Station Atmospheric Pressure (Open session).
1 p.m.—LSAC Discussion (Open session).
5 p.m.—Discussion of New Members (Closed session).
7 p.m.—Adjourn.

July 19, 1985

8 a.m.—Exobiology Program (Open session).
11 a.m.—Tethered Satellite Capability (Open session).
1 p.m.—Discussion.
5 p.m.—Adjourn.

L. W. Vogel,

Director, Logistics Management and Information Programs Division; Office of Management.

June 24, 1985.

[FR Doc. 85–15500 Filed 6–27–85; 8:45 am]

BILLING CODE 7510–01–M

[Notice 85–41]

NASA Advisory Council, Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATES: Dates and time July 16, 1985, 8:30 a.m. to 5 p.m.; July 17, 1985, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, FB 10–B, Room Nos. as noted in the agenda below, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202–453–1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Artur Mager and is composed of 32 members. The committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all committee and subcommittee sessions. Each of the sessions will be open to the public up to the seating capacity of the room.

Type of Meeting: Open.

Agenda

July 16, 1985

8:30 a.m.—Opening Remarks.
8:45 a.m.—Status of NASA Consideration of Space Applications Advisory Committee (SAAC) Recommendations.
10 a.m.—Status of NASA Consideration of SAAC Recommendations on the Space Station.
10:45 a.m.—Subcommittee Deliberations.

Communications Subcommittee—Room 226B.

11 a.m.—Briefing on NASA-Wide Plan for Communications Research and Development (R&D).
1 p.m.—Fiscal Year (FY) 1987 Budget Planning for Communications R&D.
5 p.m.—Adjourn.

Microgravity Subcommittee—Room 268

11 a.m.—Report on Microgravity Experiments Conducted on Spacelab-3.
12:45 p.m.—Discussion of Soviet, European, and Japanese Microgravity Research.
2:30 p.m.—FY 1987 Budget Planning.
3:30 p.m.—Discussion of Microgravity Budget Strategy.
4 p.m.—Task Definition and Planning for 1985/86.
5 p.m.—Adjourn.

Remote Sensing Subcommittee—Room 226A

11 a.m.—FY 1987 Budget Planning.
1 p.m.—Briefing by the Earth Observation Satellite Company (EOSAT) on Plans for the Operational Remote Sensing Program.
3 p.m.—Discussion of the NASA/National Oceanic and Atmospheric Administration Remote Sensing Report (Required by the Landsat Act).
5 p.m.—Adjourn.

July 17, 1985

8:30 a.m.—All Subcommittees Reconvene to Collect and Review Comments on SAAC's Rationale/Constituency Report.
10:30 a.m.—Collective Review of Subcommittee Comments on the Rationale/Constituency Report.
11:30 a.m.—Wrap-Up Session with Dr. Edelson.
12:30 p.m.—Adjourn.

L. W. Vogel,

Director, Logistics Management and Information Programs Division, Office of Management.

June 24, 1985.

[FR Doc. 85–15501 Filed 6–27–85; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Cleveland Electric Illuminating Company (the applicant) for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio on the shore of Lake Erie, approximately 35 miles northeast of Cleveland, Ohio.

Environmental Assessment

Identification of Proposed Action: The exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J normal airlock opening and substitute a seal leakage test to be conducted at a pressure specified in the plant Technical Specifications. The proposed exemption is in accordance with the applicant's request submitted by letter PY-CEI/NRR-0218L dated April 8, 1985.

The Need for the Proposed Action: The proposed exemption is needed to provide the applicant with greater plant availability over the 40-year lifetime of the plant by reducing the duration of plant outages in the performance of the full pressure test required by Paragraph III.D.2.(b)(ii) of Appendix J.

Environmental Impact of the Proposed Action: The proposed exemption could permit the substitution of an air lock seal leakage test for an air lock full pressure test when an airlock test is required prior to establishing containment integrity. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased possibility of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small due to the added seal tests and other tests required by Appendix J which are to be performed by the applicant.

Alternative to the Proposed Action: Because the NRC staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no environmental impact or greater environmental impact. The principal alternative would be to deny the requested exemption which would not reduce environmental impacts of plant operation and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Perry Nuclear Power Plant, Units 1 and 2," NUREG-0884, dated August 1982.

Agencies and Persons Contacted: The NRC staff did not consult other agencies or persons in assessing the proposed exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applicant's request for exemption dated April 8, 1985 (letter PY-CEI/NRR-0218L), which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Perry Public Library, 3735 Main Street, Perry, Ohio.

Dated at Bethesda, Maryland, this 21st day of June, 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-15648 Filed 6-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-187]

Northrop Corp.; Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated January 14, 1985, as supplemented, Northrop Corporation (the licensee) requested authorization to dismatle the TRIGA reactor facility, License No. R-90, located in Hawthorne, Los Angeles County, California and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, disposition of Component Parts, and Termination of Facility License" was published in the Federal Register on May 22, 1985 at 50 FR 21153. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of the findings is set forth in the concurrently issued Safety Evalustion by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment, dated May 28, 1985, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an Environmental Impact Statement need not be prepared.

Accordingly, Northrop Corporation is hereby authorized to dismantle the TRIGA reactor facility covered by License No. R-90, as amended, and disposed of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, Northrop Corporation will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R-90.

For further details with respect to this action, see (1) the Northrop Corporation application for authorization to dismantle the facility and dispose of component parts, dated January 14, 1985, as supplemented, (2) the Commission's related Safety Evaluation, and (3) the Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 24th day of June 1985.

Hugh L. Thompson Jr.,

Director, Division of Licensing.

[FR Doc. 85-15649 Filed 6-27-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Anticipated Transients Without Scram; Meeting

The ACRS Subcommittee on Anticipated Transients Without Scram (ATWS) will hold a meeting on July 17, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 17, 1985—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss reactor protection system and scram breaker reliability.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then bear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 25, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-15650 Filed 6-27-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Diablo Canyon; Changed Meeting

The **Federal Register** published on Friday, June 21, 1985 (50 FR 25800) contained notice of a meeting of the ACRS Subcommittee on Diablo Canyon to be held on Wednesday, July 10, 1985, Room 1167, 1717 H Street, NW, Washington, DC. The starting time for the meeting has been changed to 8:00 a.m. until 12:00 Noon. All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the congnizant ACRS staff member, Mr. Elpidio G. Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, ets., which may have occurred.

Dated: June 24, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Reviews.

[FR Doc. 85-15651 Filed 6-27-85; 8:45 am]

BILLING CODE 7590-01-M

[License No. SNM-770]

Finding of No Significant Impact; Westinghouse Electric Corp., Waltz Mill Site, Pittsburgh, PA

The U.S. Nuclear Regulatory Commission (the Commission) is considering an amendment of Special Nuclear Material License No. SNM-770 to permit Westinghouse Electric Corporation to operate a decontamination, disposal, and recycle service at its Waltz Mill Site. The purpose of this operation is to receive, process, and repackage contaminated obsolete equipment from other licensed facilities and ship it to another licensed facility.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-770. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 21st day of June, 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-15646 Filed 6-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370; License Nos. NPF-9 and NPF-17; EA 84-130]

Duke Power Co. (McGuire Units 1 and 2); Order Imposing Civil Monetary Penalty

I

Duke Power Company (the "licensee") is the holder of Operating License Nos. NPF-9 and NPF-17 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission"). The licenses authorize the licensee to operate McGuire Units 1 and 2 in accordance with the conditions specified therein. The licenses were issued on January 23, 1981 and March 3, 1983, respectively.

II

A special inspection of the licensee's activities was conducted on November 2-3, 1984. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated February 20, 1985. The Notice states the nature of the violations, the

requirements of the Commission that were violated, and the amount of the civil penalty proposed for the applicable violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with a letter dated March 22, 1985.

III

Upon consideration of Duke Power Company's response (March 22, 1985) and the statements of fact, explanation, and argument regarding mitigation contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

V

The license may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

A copy of the hearig request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether on the basis of such violations this Order should be sustained.

Dated at Bethesda, Maryland, this 21st day of June, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluations and Conclusions

The licensee's March 22, 1985 response to the February 20, 1985 Notice of Violation and Proposed Imposition of Civil Penalty for the Duke Power Company's McGuire Units 1 and 2 admits that the violations occurred as stated in the Notice and that the violations were properly categorized at Severity Level III. The violations involved the failure of the Upper Head Injection (UHI) accumulator system isolation valves to close at the required UHI accumulator water level. The licensee requests mitigation of the proposed civil penalty.

Licensee Response and NRC Evaluation

Although the licensee admits that the violations occurred and were appropriately categorized as a Severity Level III problem, the licensee believes that factors exist which support a reduction of the proposed civil penalty as allowed by the Enforcement Policy. The licensee's argument on each of these factors and the NRC's response is as follows:

1. Prompt Identification and Reporting

Licensee Response: The licensee contends that the event was identified by technicians following a routine boron sample of the UHI system, that reasonably prompt actions were taken to confirm the presence of nitrogen saturated water on Unit 1, and that similar efforts were then taken for Unit 2. Unit 1 was shut down and Unit 2 was reduced in power to below 46 percent of full power in accordance with Technical Specifications. Once the units were in these modes, and the additional level instrumentation errors identified, prompt actions were taken to correct the errors and to report the events.

NRC Evaluation: The NRC agrees that reasonably prompt actions were taken to confirm the presence of nitrogen saturated water. However, the isolation valve closure setpoint for the UHI system was set in such a way that it would not have met the safety analysis for low pressure safety injection. This condition existed for eighteen months and post-installation testing and reviews failed to identify the error. In addition, the installation of the pressure transmitters backwards would have caused the UHI system for Unit 1 to inject the contents of the accumulator completely, including nitrogen gas. This condition was not detected during post-installation testing and went undetected for six months. As the UHI systems for both units were inoperable for eighteen months while the plants were in modes that required their operability in accordance with Technical Specification 3.5.1.2., the staff does not consider mitigation of the civil penalty for prompt identification appropriate.

2. Corrective Action to Prevent Recurrence

Licensee Response: The licensee contends that the UHI system is unique at McGuire in its design and consideration of operational requirements. It was designed as a static system yet it operates as a quasi-static system. The problems that have occurred appear to have been unique to the UHI system. Nevertheless, as detailed in Attachment 3 of the licensee's response, a review of other differential pressure transmitter installation has identified no other installation errors.

To provide assurance that future modifications of differential transmitters will not result in crossed impulse lines or improper setpoints, several procedural changes have been implemented. These were also detailed in Attachment 3 to the March 22, 1985 letter.

NRC Evaluation: Although the NRC staff finds the licensee's corrective actions to be adequate for these particular violations, the staff does not find that the corrective actions were unusually prompt or extensive. The licensee's actions were focused on the specific violation rather than more broadly on the general area of concern relating to the licensee's surveillance testing program. The NRC staff believes that a proper functional post-modification testing program which is capable of detecting installation errors in conjunction with a more thorough engineering review would have precluded these events. Actions regarding these causes were not addressed as part of the licensee's corrective actions. Therefore, the staff does not consider mitigation of the proposed civil penalty appropriate for unusually prompt and extensive corrective actions.

3. Past Performance

Licensee Response: In this general area of concern, the licensee contends there has been no previous history.

Modifications and setpoints have been, in general, properly implemented. The licensee believes this particular event was created by the unique design of the UHI system.

NRC Evaluation: The licensee's previous performance in this general area of concern is not particularly bad nor is it good enough to warrant mitigation. Violations involving reactor operations have occurred, but were not specifically caused by deficiencies in surveillance or post-modification testing. The NRC staff does not see the design of the UHI system as unique. Although special circumstances arose in connection with the system as they sometimes do with any system, the licensee's control systems are expected to deal with such circumstances. In this case, the licensee's control systems did not ensure that the operability requirements of the Technical Specifications were satisfied. In sum, the staff does not agree that there is good prior performance such that mitigration of the civil penalty is appropriate, nor did the staff believe escalation for poor performance was appropriate.

4. Prior Notice of Similar Event

Licensee Response: The licensee contends that it has no prior knowledge of any event directly related to this particular situation.

NRC Evaluation: The NRC staff concurs. However, under the Enforcement Policy, this factor may result in escalation of a civil penalty. It is not applied to mitigate a civil penalty and was not applied in this case.

5. Multiple Occurrences

Licensee Response: The licensee contends that this factor does not appear to be applicable in this instance.

NRC Evaluation: The NRC staff did not apply this factor in this case.

NRC Conclusions

Based on our evaluation, as indicated above, inadequate calibration, improper instrument installation, and inadequate post-modification testing procedures allowed the UHI system to be rendered inoperable and the inoperability remained undetected for an eighteen month period.

In particular, we note that the violations resulted from errors committed by Duke Power Company personnel: an engineering error in the calibration of the setpoint and improper installation of the transmitter. In the case of the incorrect setpoint, improper data was used in calculating the set point and the second review of this set point determination was not of adequate depth to detect this error. In the case of the improperly installed differential pressure transmitters, the installation procedures and drawings did not contain sufficient detail to ensure that the proper impulse line was connected to the proper instrument port, and post-modification testing did not detect the error. In neither case does the NRC consider that the problems were promptly identified since discovery of the problems occurred approximately eighteen months and six months, respectively, after the errors occurred.

Therefore, the staff concludes that the violations of NRC requirements have been properly categorized as a Severity Level III problem. Although recognizing that Duke Power Company identified these violations, the extended time period during which the violations existed and the opportunities to identify the violations must also be considered. In fact, the civil penalty could have been increased in accordance with the Enforcement Policy to reflect the added significance resulting from the duration of the violation. The staff did not apply this factor as the licensee did promptly report this problem to the NRC when it became aware of the problem. At the same time, the staff could not reasonably consider any mitigation of the penalty for prompt identification because of the lengthy duration of the violation. For all these reasons the NRC staff concludes that migitation of the civil penalty would not be warranted in this case.

[FR Doc. 85-15647 Filed 6-27-85; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13891]

Application and Opportunity for Hearing; Citicorp

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures and two Pooling and Servicing Agreements, each dated as of April 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreements.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the Indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the Indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the Indenture dated as of April 21, 1980 involved the issuance of various series of unsecured subordinated Notes. Said Indentures were filed as, respectively, Exhibits 4(a), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four Indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On April 25, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of April 1, 1985 (the "1985-B Agreement") with Citibank, N.A., Originator and Servicer,

and Citicorp Homeowners, Inc., under which there were issued on April 25, 1985 Mortgage Pass-Through Certificates, Series 1985–B 12.50% Pass-Through Rate (the "Series 1985–B Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985–B Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $162,186,514.38 at the close of business on April 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985–B Certificates. On April 25, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985–b Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985–B Certificates, to be liable for 9% of the initial aggregate principal balance of the 1985–B Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985–B Guaranty. The 1985 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebteness of Applicant, and accordingly, if enforced against Applicant, the 1985–B Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985–B Certificates were registered under the Securities Act of 1933 (Registration Statement on Form S–11 and S–3, File No. 2–96656) as part of a delayed or continuous offering of $350,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985–B Certificates were offered by a Prospectus Supplement dated April 9, 1985, supplemental to a Prospectus dated March 26, 1985. The 1985–B Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) On April 29, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of April 1, 1985 (the "1985–C Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on April 29, 1985 Mortgage Pass-Through Certificates, Series 1985C, 12.50% Pass-through Rate (the series 1985–C Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985–C Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $46,809,866.78 at the close of business on April 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985–C Certificates. On April 29, 1985, Applicant entered into a Guaranty of even date (the "1985–C Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1985–C Certificates, to be liable for 8% of the initial aggregate principal balance of the 1985–C Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985–C Guaranty. The 1985–C Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985–C Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985–C Certificates were registered under the Securities Act of 1933 (Registration Statement on Form S–11 and S–3, File No. 2–96656) as part of a delayed or continuous offering of $350,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985–C Certificates were offered by a Prospectus Supplement dated April 12, 1985, supplemental to a Prospectus dated March 26, 1985. The 1985–C Agreement has not been qualified under the Trust Indenture Act of 1939.

The 1985–B Agreement and the 1985–C Agreement are hereinafter called the 1985 Agreements and the 1985–B Guaranty and the 1985–C Guaranty are hereinafter called the 1985 Guarantees.

(5) The obligations of Applicant under the Indentures and the 1985 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985 Guarantees are unlikely to cause any conflict of interest among the trusteeship of the Trust Company under the Indentures and the 1985 Agreements.

(6) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the Office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than July 23, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

June 24, 1985.

[FR Doc. 85–15633 Filed 6–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23742; 70–7105]

Consolidated Natural Gas Co. et al.; System Financing

June 24, 1985.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, The Peoples Natural Gas Company, Pittsburgh, Pennsylvania, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, Clarksburg, West Virginia, CNG Producing Company, New Orleans, Louisiana, West Ohio Gas Company, Lima, Ohio, CNG Development Company, Pittsburgh, Pennsylvania, The East Ohio Gas Company, The River Gas Company, Cleveland, Ohio, Hope Gas, Inc., Union Natural Gas, Clarksburg, West Virginia ("subsidiary companies"), have filed an application-declaration subject to sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, 50(a)(2), 50(a)(5), and 70 thereunder.

Consolidated proposes to finance its subsidiary companies as follows:

(a) Consolidated proposes to finance the seasonal increase in gas storage inventories of subsidiary companies by borrowing, from time to time, through June 15, 1986, up to $175 million from banks on its unsecured promissory notes having a maturity of not more than twelve months from the date of first borrowing, without a commitment fee.

The interest rate on the notes will be either (i) the prime rate at Chase Manhattan Bank, (ii) the London Interbank Offered Rate plus 0.375%, or (iii) the bid rate for Certificates of Deposit plus 0.50%.

(b) Consolidated, in order to meet working capital requirements, proposes to issue and sell commercial paper, in the form of short-term bearer notes, to Merrell Lynch Money Market, Inc. ("Merrill"), a dealer in commercial paper, in a principal amount not to exceed $300 million outstanding at any one time, from time to time, through June 15, 1986. The commercial paper will have varying maturities of not more than 270 days after date of issue and will be issued and sold in varying denominations of not less than $50,000 nor more than $5 million directly to Merrill, at a discount which will not be in excess of the discount rate per annum for commercial paper of comparable quality and like maturity. Consolidated proposes to sell commercial paper only so long as the discount rate or the effective interest cost on the date of sale does not exceed the equivalent cost of borrowings from a commercial bank.

(c) Consolidated proposes, if it becomes impractical to issue commercial paper, to make short-term bank borrowings from Chase Manhattan ("Chase") and Citibank, N.A. ("Citibank"). Consolidated would borrow (i) from Chase from time to time through June 15, 1986 and aggregate principal amount not to exceed $75 million outstanding at any one time, without collateral or commitment fees, at the prime commercial rate of interest at Chase in effect on the date of each borrowing, and (ii) from Citibank, from time to time through June 15, 1986, an aggregate principal amount not to exceed $50 million outstanding at any one time, without collateral but with a commitment fees of one-eighth of one percent (0.125%) on said principal amount, at the base rate of interest at Citibank in effect on the date of each borrowing. Borrowings from both banks would be evidenced by the promissory notes of Consolidated with the right of prepayment, having a maturity date within 90 days of each borrowing date. The additional back-up $175 million required to support the issuance of $300 million of commercial paper notes will be supported by existing bank lines.

(d) Consolidated proposes to make, from time to time through June 15, 1986, open account advances in an amount not to exceed $464,100,000 at any one time, to the subsidiary companies for inventory gas financing and working capital requirements. Such advances may be made as requested by letter agreement by the treasurer of each subsidiary and will be repaid within one year from the date of the first advance to such subsidiary company with interest at substantially the same effective rate of interest as the related gas storage bank loan, sale of commercial paper, and/or bank borrowings by Consolidated. If there is no outstanding short-term debt, the interest rate would be at the prime commercial rate of interest in effect from time to time at Chase. Such advances will be made up of the following principal amounts:

Company	Amount
CNG Development Co	$30,000,000
CNG Producing Co	50,000,000
Consolidated Gas Transmission Corp	120,000,000
Consolidated Natural Gas Service Co	1,000,000
Hope Gas, Inc	10,000,000
The East Ohio Gas Co	190,000,000
The Peoples Natural Gas Co	55,000,000
The River Gas Co	2,100,000
West Ohio Gas Co	6,000,000
Total	464,100,000

Consolidated seeks to have the 5% limitation under section 6(b) of the Act raised to 33% from the order date through June 15, 1986. Such an increase would permit Consolidated to have outstanding at any one time up to $300 million aggregate principal amount of short-term notes.

(e) Consolidated proposes to make long-term, non-negotiable loans, from time to time through June 15, 1986, of up to $182,500,000 to the subsidiary companies set forth below. These loans will be evidenced by long-term, non-negotiable notes of the subsidiaries maturing over a period to be determined by Consolidated's officers, with the interest rate predicated on the prime rate at Chase. The loans would partially finance the capital expenditures of these subsidiaries, up to the following principal amounts:

Company	Amount
CNG Development Co	$28,000,000
CNG Producing Co	104,000,000
The East Ohio Gas Co	25,000,000
The Peoples Natural Gas Co	25,000,000
The River Gas Co	500,000
Total	182,500,000

(f) Consolidated proposes to make revolving credit advances not to exceed $100,000,000 at any one time outstanding to subsidiary companies set forth below to finance revolving credit advances made in 1984 and repaid in 1985. Such advances may be made through June 15, 1986, upon letter agreement by each such subsidiary company, in accordance with Consolidated's Credit Agreement with Chase (HCAR No. 22362 January 8, 1982), with interest at substantially the same effective rate of interest as paid by Consolidated under such Credit Agreement. Should Consolidated have no outstanding amount under its Credit Agreement, the interest rate would be the prime rate in effect from time to time at Chase. Such advances will be made up of the following principal amounts:

Company	Amount
CNG Producing Co	$40,000,000
Consolidated Gas Transmission Corp	30,000,000
The East Ohio Gas Co	25,000,000
The Peoples Natural Gas Co	5,000,000
Total	100,000,000

(g) Consolidated proposes to purchase from the four subsidiary companies listed below and such subsidiary companies propose to issue and sell to Consolidated to finance, in part, their capital expenditures, an aggregate of up to $72,700,000 in common stock, at par value, as called for from time to time through June 15, 1986, as follows:

Company	Number of shares	Aggregate par value
CNG Coal Co	15,000 ($100 par)	$1,500,000
CNG Development Co	310,000 ($100 par)	31,000,000
CNG Producing Co	400,000 ($100 par)	40,000,000
CNG Research Co	2,000 ($100 par)	200,000
Total		72,700,000

Due to an error in the notice, the return date in this proceeding was stated as June 21, 1985, rather than June 19, 1985. Since a number of subsidiary companies required financing before June 20, 1985, the Commission issued an interim order on June 19, 1985 (HCAR No. 23736), effective through June 25, 1985, authorizing Consolidated to make open account advances to its subsidiary companies in the following amounts: The East Ohio Gas Company—$40 million, The Peoples Natural Gas Company—$35.4 million, CNG Producing Company—$15 million, and the River Gas Company—$.3 million. Consolidated was also authorized to purchase from CNG Coal Company, and CNG Coal Company was authorized to issue and sell to Consolidated, 1,000 shares of common stock, $100 par value for an aggregate amount of $100,000. The transactions authorized in the interim order are encompassed within this final authorization. Thus, in no event will the total amount of open account advances to the subsidiary companies, and the purchase of subsidiary common stock by

Consolidated, exceed the amounts as stated in the application-declaration.

The fees and expenses expected to be incurred in connection with the proposed transactions are estimated at $13,000, including a fee of $10,000 to Consolidated Natural Gas Service Company, Inc. representing services at cost. The Public Service Commission of West Virginia has jurisdiction over the short-term borrowing by Hope Gas, Inc. The Public Utilities Commission of Ohio has jurisdiction over the long-term borrowings proposed by East Ohio Gas Company and The River Gas Company. The Pennsylvania Public Utility Commission has jurisdiction over the long-term borrowing of The Peoples Natural Gas Company. No other state commission and no federal commission other than this Commission has jurisdiction over any of the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 23710), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied:

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is granted and permitted to become effective forthwith, subject to the conditions of Rule 24, including the conditions set forth in Rule 24(c)(2), except that the certificates required by Rule 24 shall be filed quarterly.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

June 24, 1985.

[FR Doc. 85-15630 Filed 6-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14595; File No. 811-3527]

First American International Fund, Inc.; Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

June 21, 1985.

Notice is hereby given that First American International Fund, Inc. (formerly, First American Government Securities Fund, Inc.) ("Applicant"), 3033 Excelsior Blvd., Minneapolis, Minnesota 55416, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on December 21, 1984, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to section 8(b) of the Act on July 28, 1982, never made a public offering of its securities, has fewer than 100 security-holders for purposes of 3(c)(1) of the Act and the rules thereunder, and does not propose to make another public offering or engage in business of any kind. Applicant states that it has one securityholder, American Hardware Mutual Insurance Company ("American Hardware"), the sponsor and administrator of Applicant, and $241,637 in assets which will be distributed to American Hardware upon dissolution. Applicant represents that it is not a party to any litigation or administrative proceeding and it does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Finally, the application represents that Applicant is presently a corporation in good standing under Minnesota state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 16, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-15634 Filed 6-27-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13920]

Application and Opportunity for Hearing; Shell Oil Co.

Notice is hereby given that Shell Oil Company (the "Applicant") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Irving Trust Company (the "Bank") under indentures dated as of August 1, 1961 (the "1961 Indenture") and March 15, 1967 (the "1967 Indenture") between the Applicant and Bank which were heretofore qualified under the Act, the trusteeship by Bank under an indenture dated as of March 15, 1966 between Applicant and Bank which was not qualified under the Act (the "1966 Indenture"), the trusteeship by Bank under an indenture dated as of May 1, 1982 between the Industrial Pollution Control Financing Authority of Middlesex County, New Jersey (the "Authority") and Bank which was not qualified under the Act (the "1982 Indenture"), and the trusteeship by Bank under an indenture dated as of May 1, 1985 between The Parish of St. Charles, Louisiana (the "Parish") and Bank which has not been qualified under the Act (the "1985 Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under any of the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Applicant alleges:

(1) Pursuant to the 1961 and 1967 Indentures, the Applicant issued $200,000,000 aggregate principal amount of its 4⅝% Sinking Fund Debentures Due 1986 (the "1961 Debentures") and $150,000,000 aggregate principal amount of its 5.30% Debentures Due 1992 (the "1967 Debentures"). The 1961 and 1967 Debentures were registered under the Securities Act of 1933 and the 1961 and

1967 Indentures were qualified under the Act.

(2) Pursuant to the 1966 Indenture, the Applicant issued $150,000,000 aggregate principal amount of its 5% Debentures Due 1991 (the "1966 Debentures"). The 1966 Indenture was not qualified under the Act on the basis of the provision in section 304(b) relating to securities sold without registration in reliance on section 4 of the 1933 Act.

(3) On May 19, 1982, the Authority, a public body politic and corporate and a political subdivision of the State of New Jersey, and the Bank, as a Trustee, entered into an Indenture dated as of May 1, 1982 (the "1982 Indenture") pursuant to which the Authority issued its Pollution Control Revenue Bonds Series 1982 (Shell Oil Company Project) in the aggregate principal amount of $6,000,000 (the "1982 Bonds"). The 1982 Bonds were issued to finance the cost of certain pollution control facilities at the Applicant's marketing distribution plant located in Middlesex County, New Jersey. The Authority entered into an Agreement of Sale dated as of May 1, 1982 with the Applicant (the "1982 Agreement of Sale") pursuant to which said facilities were, upon completion thereof from time to time, acquired by the Authority from the Applicant and simultaneously resold to the Applicant. The 1982 Bonds are payable from, and secured by a pledge of, the income and revenues derived from the sale of said facilities, which income and revenue will be sufficient to pay the principal of and interest on the 1982 Bonds. The 1982 Bonds were not registered under the 1933 Act on the basis of the exemption provided by section 3(a)(2) thereof and the 1982 Indenture was not qualified under the Act on the basis of the provisions of section 304(a)(4)(A) thereof.

(4) The Parish, a political subdivision of the State of Louisiana, and the Bank, as Trustee, have entered into an Indenture dated as of May 1, 1985 (the "1985 Indenture") pursuant to which the Parish will issue its Parish of St. Charles, State of Louisiana, 7&7 Pollution Control Revenue Refunding Bonds (Shell Oil Company Project), Series 1985, in the aggregate principal amount of $15,000,000 (the "1985 Bonds"). The 1985 Bonds will be issued to refund the cost of certain pollution control facilities at the Applicant's chemical plant located in the Parish. The Parish has entered into a Sale Agreement dated as of May 1, 1985 with the Applicant (the "1985 Sale Agreement") pursuant to which said facilities will be acquired by the Parish from the Applicant and simultaneously resold to the Applicant. The 1985 Bonds will be payable from, and secured by a pledge of, income and revenues derived from the sale of said facilities, which income and revenues will be sufficient to pay the principal of and the redemption premium (if any) and interest on the 1985 Bonds. The 1985 Bonds will not be registered under the 1933 Act on the basis of the exemption provided by section 3(a)(2) thereof and the 1985 Indenture has not been qualified under the Act on the basis of the provisions of section 304(a)(4)(A) thereof.

(5) The Company is not in default under the 1961 Indenture, the 1966 Indenture, the 1967 Indenture, the 1982 Agreement of Sale or the 1985 Sale Agreement. The Company's obligations under the 1961 Debentures, the 1966 Debentures and the 1967 Debentures and its obligations under the 1982 Agreement of Sale and the 1985 Sale Agreement as they relate to the 1985 Bonds are wholly unsecured and rank equally *pari passu.*

(6) The provisions of the 1961 Indenture, the 1966 Indenture, the 1967 Indenture, the 1982 Agreement of Sale, the 1982 Indenture, the 1985 Indenture and the 1985 Sale Agreement are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of said Indentures.

The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than July 19, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

June 24, 1985.

[FR Doc. 85-15631 Filed 6-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22165; File No. SR-MSRB-85-15]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Uniform Practice and Customer Confirmations

The Municipal Securities Rulemaking Board on June 14, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing herewith certain amendments to Board rule G-12 on uniform practice and rule G-15 on customer confirmations (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows:

Rule G-12. Unform Practice[1]

(a) Through (d) No change.

(e) Delivery of Securities. The following provisions shall, unless otherwise agreed by the parties, govern the delivery of securities:

(i) Through (ii) No change.

(iii) Delivery Ticket. A delivery ticket shall accompany the delivery of securities. Such ticket shall contain the information set forth in subparagraphs (A), (B), (D) *except in the case of transactions in zero coupon, compound interest and multiplier securities, in which case the maturity value shall be shown), (E)* through (H), (M) and (N) of paragraph (c)(v) and, to the extent applicable, the information set forth in

[1] Italics indicate new language; [brackets] indicate deletions.

subparagraphs (A) [, (B), (D), (E) and (F)] *through (G)* of paragraph (c)(vi) and shall have attached to it an extra copy of the ticket which may be used to acknowledge receipt of the securities.

(iv) through (xvi) No change.

(f) Through (k) No change.

Rule G–15. Confirmation, Clearance and Settlement of Transactions with Customers.

(a) Through (b) No change.

(c) Deliveries to Customers. Except as provided in section (d) below, a delivery of securities by a broker, dealer, or municipal securities dealer to a customer or to another person acting as agent for the customer shall, unless otherwise agreed by the parties or otherwise specified by the customer, be made in accordance with the following provisions:

(i) No change.

(ii) Delivery Ticket. A delivery ticket shall accompany the delivery of securities. Such ticket shall contain the information set forth in subparagraphs (A), (B), (D) *(except in the case of transactions in zero coupon, compound interest and multiplier securities, in which case the maturity value shall be shown), (E)* through (H), [(M)] *(L)* and](O)] *(N)* of paragraph (a)(i) and, to the extent applicable, the information set forth in subparagraphs (A), (B), (C), *and* (E) [, (F) and (G)] *through (H)* of paragraph (a)(iii).

(iii) Through (xii) No change.

(d) No change.

B. Not applicable.

C. Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The "good delivery" provisions of rules G–12(e) and G–15(c) require that deliveries of securities by accompanied by a delivery ticket setting forth certain information about the transaction on which the delivery is made. These parallel provisions of rules G–12 and G–15 impose delivery ticket requirements by reference to the confirmation content requirements as specified in paragraphs (c)(v) and (vi) of rule G–12 and paragraph (a)(i) of rule G–15. The two provisions differ, in that rule G–15 requires that the delivery ticket designate whether the securities are "called" or "prerefunded" and rule G–12 does not. Since, under both rules, a delivery ticket is required to provide a substantive description of the securities, the Board has adopted the proposed rule change to conform the delivery ticket provisions of rule G–12 to the more detailed requirements of rule G–15. The proposed rule change, therefore, would require that an inter-dealer delivery ticket designate "called" or "prerefunded" securities.

Rules G–12 and G–15 both provide that the delivery ticket include the information set forth in subparagraphs G–12(c)(v)(D) and G–15(a)(i)(D), the primary confirmation content provisions, which require that the par value of the securities be stated. In most circumstances, requiring that the par value of the securities be stated is appropriate but, as the Board has previously determined, in the case of zero coupon, compound interest and multiplier securities, maturity value rather than par value should be used as the measure of quantity of securities. Thus, the proposed rule change would require that in regard to zero coupon bonds, compound interest, and multiplier securities the maturity value be stated on the delivery ticket.

Finally, the proposed rule change would replace in rule G–15(a)(i) incorrectly cited subparagraphs with the correct citations by redesignating subparagraphs (M) and (O) as (L) and (N), respectively.

(2) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules

> Designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest . . .

The Board believes that it is appropriate to conform the delivery ticket provisions of rules G–12 and G–15 so that the same substantive descriptions are contained on delivery tickets on all transactions in municipal securities. The proposed rule change also would achieve the goals of the Act by requiring that in disclosing the quantity of securities the most meaningful information to purchasers be placed on the delivery ticket for zero coupon, compound interest, and multiplier securities and would make the delivery ticket disclosures conform to those contained on the confirmation of the transaction.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Board does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not solicit or receive comments on the proposed rule change from members of the municipal securities industry or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve 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 Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 24, 1985.
John Wheeler,
Secretary.
[FR Doc. 85-15632, Filed 6-27-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-22167; SR-PSE-85-10]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") submitted on April 18, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT") and Rule 19b-4 thereunder, to amend PSE Rule VIII, section 2(d) to provide that a registered employee engaged in any other business or employed by another employer in any capacity or receiving compensation, must obtain the prior written and continuing approval of his member or member organization, rather than approval from the PSE.[1] The rule also provides that such registered employee is to devote a substantial portion of the business day to the activities of his firm.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22014, May 6, 1985) and by publication in the **Federal Register** (50 FR 20309, May 6, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 24, 1985.
John Wheeler,
Secretary.
[FR Doc. 85-15629 Filed 6-27-85; 8:45 am]
BILLING CODE 8010-01-M

[1] See letter from Kenneth Marcus, Staff Attorney, PSE, to Pamela Konieczka, Attorney, Division of Market Regulation, dated May 30, 1985, amending section 2(d) to clarify that the prior approval from the registered employee's member or member organization must be written.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-6-77]

Fitness Determination of Sallee's Aviation, Inc.; Order To Show Cause

AGENCY: Department of Transportation.
ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85-6-77, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Sallee's Aviation, Inc. is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-6-77 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85-6-77 to that address.

Dated: June 24, 1985.
Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 85-15588 Filed 6-27-85; 8:45 am]
BILLING CODE 4910-62-M

[Docket 43211; Order 85-6-74]

U.S.-Japan Route Authority; Order Requesting Comments

Issued by the Department of Transportation on the 24th day of June 1985.

The Department intends to institute a proceeding to award new route authority between the United States and Japan permitted under an interim agreement recently concluded between the two governments. The interim agreement is reflected in a Memorandum of Understanding (MOU) signed on April 30, 1985.[1] The Department has already received a number of applications for various Japan routes, and anticipates receiving others now that the nature and scope of the new route authority have been established.[2] For these reasons, the Department is issuing this order to solicit comments on how the route proceeding should be structured and conducted.

Comments on this issue are particularly appropriate because of the complex nature of the MOU and the routes it authorizes. Among other matters, it provides for up to three new combination services, to be selected from one of two "menus." Each menu permits the designation of up to two new U.S. gateway cities for service to and from Tokyo, as well as service between one or two existing gateways and either Tokyo or Nagoya. These routes may be served either by carriers new to the Japan market or by carriers currently serving Japan. Roundtrip frequencies for the routes are limited by year: 10 per week will be available starting April 1, 1986, increasing to 18 in 1987, 20 in 1988, and finally 21 in 1989. No carrier, however, may operate more than 7 roundtrip frequencies per week. The MOU also permits the substitution of a small package carrier for one of the combination services, to begin not sooner than April 1, 1987. In contrast to the typical carrier selection case, the Department therefore must make four basic determinations: which gateways should be selected; which carriers should serve them; how to allocate limited frequencies; whether and how to select a small package carrier.[3]

At the outset, we have decided that the parties to this proceeding should have the benefit of at least the tentative decision in the *Pacific Division Transfer Case*[4] before entering the critical

[1] The relevant portions of the MOU are attached as an appendix.

[2] These applications for Japan authority include both those filed recently and others already filed in conjunction with the *Transpacific Low-Fare Route Investigation (Japan Phase)*, Docket 33068.

[3] We have decided that it would be inadvisable to complicate the selection proceeding further by including the Japan-Saipan/Guam routes that the MOU provides for, especially as that authority involves markets that are essentially distinct and severable from the other authority at issue here. We will deal with that authority in a separate proceeding.

[4] Pan American and United have applied, under sections 401(h) and 408 of the Act, for Departmental approval of a transaction whereby Pan American would sell its entire transpacific operation, including all its current U.S.-Japan authority, to United. *See* Order 85-6-44, June 13, 1985.

evidentiary phases of this proceeding, as the Department's decision in the transfer case will play a significant role in defining the structure of the overall transpacific market. We believe that it would be an unfair burden on potential litigants in the route case to require them to submit evidence, without at least a preliminary resolution of the transfer case.

Against this background, we anticipate instituting this proceeding at about the time that we issue our tentative decision in the transfer case, which is targeted for October 7, 1985. We will also call for applications conforming to the Japan route authority at issue. At that time, carriers that have already filed applications with the Department for Japan routes may amend, as necessary, and move to consolidate those applications.

Before instituting this case, we seek parties' advice on several procedural points. First, we face several choices regarding how and when to allocate frequencies between the various routes for which authority will be granted; included in this problem is the question of whether to delay allocation of the frequencies that will become available in 1987 and 1988.[5] We also ask that commenters focus on the criteria that we might use in determining the allocation of frequencies. A subsidiary but important question is whether we should, as an evidentiary matter in the interest of achieving direct comparability of exhibit materials, require filings reflecting a common level of frequencies, as well as the level or levels that carriers actually seek. Because it may prove impossible to grant all of the selected carriers the frequency levels they have proposed, it may prove useful for all applicants to submit their exhibits based upon a hypothetical common frequency level, while allowing carriers interested in other frequency levels to file alternative proposals. Parties should comment on the desirability of such an approach and on what common frequency level, if any, should be set. In addition, we face the question of the selection of carriers for backup authority. For example, should backup carriers be selected only for those gateways where a carrier has been awarded primary authority, or might backup authority also be awarded for altogether different gateways? The Department seeks comments on these questions.

[5] In view of the fact that the MOU limits each carrier to 7 weekly frequencies, we anticipate that each of the selected carriers will be allowed the full allocation in 1989 and beyond.

Finally, we invite comments on the procedural options for dealing with the issue of a small package service. In this regard, we solicit comments on whether the Department should, in its instituting order, reserve one route for the exclusive use of a small package service or whether the question of such a reservation should either be decided after hearing procedures this year or deferred entirely until next year. Also, were the Department to reserve one route for small package services, should the selection of a small package carrier be made this year or next, given the April 1, 1987, inauguration date imposed by the MOU.

We request interested parties to submit comments in this docket on these topics, and on other related procedural issues, within 30 days from the service date of this order. Any reply comments must be filed within 15 days thereafter.

Accordingly,

1. We request comments from interested parties addressing the procedural issues discussed above, within 30 days of the service date of this order; (i.e. July 29, 1985);

2. Any reply comments will be due 45 days from the service date of this order;

3. We will serve this order on all certificated air carriers; and

4. This order will be published in the **Federal Register.**

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

Appendix—Memorandum of Understanding

Delegations representing the Governments of the United States of America and Japan met in Tokyo on April 29 and 30, 1985, and agreed to record the following provisions, which constitute either understandings relating to implementation of the bilateral Civil Air Transport Agreement signed at Tokyo on August 11, 1952, as amended, or amendments of the schedule attached to the Agreement. These provisions constitute an interim agreement, pending conclusion of the comprehensive revision talks.

I. Cargo Services

2. (A) Subject to the provisions of notes 2 and 6 of paragraph III of this Memorandum of Understanding, either side may designate an airline not operating scheduled services in the U.S.-Japan market at the time of such designation to operate exclusively a small package service between any point in Japan and any point in the United States commencing no sooner than April 1, 1987, subject to the following:

(i) For the United States, the air transportation portion of this service may be operated between Tokyo and any point in the United States, except that Chicago shall not be the last point of departure or the first point of arrival in the United States.

(ii) For Japan, the air transportation portion of this service may be operated between any point in Japan and a point in the United States available to the designated airlines of Japan for combination service under the agreement or this Memorandum of Understanding other than Chicago.

(iii) Individual packages shall not exceed a gross weight of 70 pounds each.

(iv) There shall be a separate airwaybill, issued under the name of the airline operating such service, for each package.

(v) There shall be no restrictions as to aircraft type.

(vi) The airline shall be permitted to charge shippers a single through price for the air and surface portions of the service. This does not preclude any requirement that airlines file separate tariffs for the air and surface portions of the service with the appropriate authorities.

(vii) Nothing herein may be deemed to prejudice the rights of any other designated airline to provide expedited small package service, or to operate the air transportation portion of this service between any points which the airline is otherwise permitted to serve.

(B) In order to facilitate the expeditious movement from shipper to consignee, which represents the principal characteristic of this service, the two sides agree to exert their best efforts to provide the most expeditious treatment of small package shipments.

III. New Combination Service

The two sides have agreed to take the following interim measures pending the conclusion of a new civil air transport agreement between the two countries.

(1) Each side will permit presently operating or newly designated airlines of the other side to operate new combination services under either subparagraph (a) or (b), but not both as of April 1, 1986: [1]

[1] Each side may authorize the same or a different airline to operate on each of the routes. Not more than one additional airline for each side will be permitted to operate a new service on each of these routes.

(a) On three [2] [3] of the five routes specified below:

i. Nagoya [4]—Honolulu.

ii. Tokyo [4]—Honolulu.

iii. Tokyo—Portland.[4]

iv. Tokyo—one point [4] in the United States not served as a non-stop gateway point by the airlines of either side as of April 1, 1985.[5]

v. Tokyo—another point [4] in the United States not served as a non-stop gateway point by the airlines of either side as of April 1, 1985.[5]

(b) on three [2] [3] out of the our routes specified below:

i. Nagoya—Honolulu.

ii. Tokyo—Los Angeles.

iii. Tokyo—one point [4] in the United States not served as a non-stop gateway point by the airlines of either side as of April 1, 1985.[5]

iv. Tokyo—another point [4] in the United States not served as a non-stop gateway point by the airlines of either side as of April 1, 1985.[5]

(2) Total frequencies for the airlines of each side on the new combination services specified above may not exceed ten (10) frequencies a week beginning April 1, 1986, eighteen (18) a week beginning April 1, 1987, twenty (20) a week beginning April 1, 1987 and twenty-one (21) a week beginning April 1, 1989, respectively.

Frequencies to be provided by an airline for these new combination services on any route will not exceed seven (7) per week.

[FR Doc. 85-15591 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended June 21, 1985

Subpart Q—Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings (*See,* 14 CFR 302.1701 *et. seq.*).

Date filed	Docket No.	Description
June 17, 1985	43201	Tropical Airways, Inc., c/o Courtney A.B. Hamilton, Courtney A.B. Hamilton & Assocs., 182-38 Hillside Avenue, Jamaica, New York 11432. Application of Tropical Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity to engage in scheduled air transportation of persons, property and mail in overseas transportation. Conforming Applications, Motions to Modify Scope and Answers may be filed by July 15, 1985.
June 21, 1985	38034	Kuwait Airways Corporation, c/o G. Joseph Minetti, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, D.C. 20037. Amendment to the Application of Kuwait Airways Corporation to add new and more current information with respect to the operation and management of KAC and to delete superseded data. Answers may be filed by July 19, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-15592 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43065]

Pacific Division Transfer Case; Notice to all Parties

Information responses, direct exhibits, and rebuttal exhibits in the above-captioned proceeding must be served on all parties listed on the Exhibit Exchange List (attached as Appendix B to the Prehearing Conference Report issued June 21, 1985) and in accordance with the number of copies indicated for each party.

One copy of any motions or other pleadings in this case must be served on all parties listed on the Service List (attached as Appendix A to the Report, *supra*). In addition, an original and twelve copies of the documents must be filed with the Docket Section at the Department of Transportation pursuant to Rule 3(c) of the Department's Rules of Practice (14 CFR 302.3(c)).

To assure prompt consideration by the Chief Judge of any motions or pleadings in this highly expedited proceeding, the parties should submit one copy directly to his office in Room 9400A at the Department.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-15590 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43065]

Pacific Division Transfer Case; Hearing

Notice is hereby given that a Hearing in the above-entitled proceeding is scheduled to be held commencing on July 29, 1985, at 9:30 a.m. (local time), in Room 2230, Nassif Bldg., 400 7th Street, SW., Washington, D.C. before the undersigned.

Dated at Washington, D.C., June 24, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-15589 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Deadline for Submission of Preapplications for Airport Grant Funds Under the Airport Improvement Program for Fiscal Year 1986

Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for entitlement funds. Notification of the sponsor's intent to apply during Fiscal Year 1986 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project preapplication or application (SF 424

[2] If either side designates an airline to operate a small package service as provided by subparagraph 2, paragraph 1 of this Memorandum of Understanding, it may select only two combination services under subparagraph 1 above. It may, nevertheless thereafter, designate a third airline for either combination service or exclusively small package service under this section in substitution for the airline designated for the small package service.

[3] Each side may select its routes and, upon six months notice to the other side, may change its selection.

[4] These points may be used as coterminals, and in that case, the airline serving them is deemed to operate on each of the routes.

[5] Each side may select the new points in the United States to be served by its designated airline, and, upon six months notice to the other side, may change the point.

Note: If either side designates an airline to operate a small package service as provided by subparagraph 2, paragraph 1 of this Memorandum of Understanding, the number of frequencies available to that airline for small package service will be drawn from the total number of frequencies provided by this section, but will not exceed seven (7) per week.

and FAA Forms 5100–30 or 5100–100, as appropriate) submitted to the FAA field office no later than January 31, 1986. Approval of preapplications or applications received after that date may be deferred by the FAA until the following fiscal year. FAA field offices, in developing their regional programs, may request sponsors' input at an earlier date. Every effort should be made to meet these regional deadlines.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadlines. These offices will assist in the preparation of preapplications/applications and provide procedural information as needed.

This notice is being published early to allow adequate time for sponsors to prepare their preapplications or applications.

Prompt submission of complete requests will allow earlier funding decisions by the FAA. This, in turn, may be advantageous to sponsors in competing for available funds and in maximizing construction during a construction season.

This notice submitted by Mr. Edgar Williams, APP–510, on (202) 426–3857.

Issued in Washington, D.C. on June 13, 1985.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 85-15492 Filed 6–27–85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 150—Minimum System Performance Standards for Vertical Separation above Flight Level 290; 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 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on July 16–18, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minute of the Committee Meeting Held on March 8–9, 1985; (3) Report of Working Group Activities; (4) Review of Comments Received on the Initial Altitude Data Collection Report; (5) FAA Report on Additional Data Analysis Activity; (6) Review and Discuss Committee Progress and Plan Future Activities; and (7) Other Business.

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, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 13, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–15509 Filed 6–27–85; 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 23–24, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Committee Meeting Held on April 23–24, 1985; (3) Review of Task Assignments from Previous Meeting; (4) Consideration of Interference to Airborne Systems/Equipment other than Radio Receiving Equipment; (5) Discuss Possible Use of a Standardized Interference Reporting Form; (6) Review of the Final Committee Report; (7) Assignment of Tasks; and (8) Other Business.

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, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on June 13, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–15508 Filed 6–27–85; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular—Floor Proximity Emergency Escape Path Marking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular 25.812–XX and request for comments.

SUMMARY: This notice announces the availability of and request comments on a proposed advisory circular (AC) which provides guidance for use in demonstrating compliance with the transport airplane airworthiness standards concerning floor proximity emergency escape path markings.

DATE: Comments must be received on or before July 29, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention Transport Standards Staff, ANM–110, FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Transport Standards Staff, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.562–1 and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

Following public rulemaking, Amendments 25–58 and 121–183 (49 FR

43182; October 26, 1984) were issued, establishing requirements for floor proximity emergency escape path markings which will provide visual guidance for emergency cabin evacuation when all sources of cabin lighting more than 4 feet above the aisle floor are totally obscured by smoke. These amendments make the standards applicable to future type certification of transport category airplanes and require that airplanes type certificated after January 1, 1958, and operating under Part 121 (air carrier) of the Federal Aviation Regulations be equipped with a system meeting these standards by November 26, 1986. Because the preamble to the rule contains guidance for use by applicants in demonstrating compliance with the rule, it was not considered necessary at the time the rule was being developed to publish a separate advisory circular. As preliminary evaluation of the variety of systems began, questions concerning acceptable means of compliance arose which were not anticipated earlier. For this reason, the FAA is publishing an advisory circular. This advisory circular provides guidance and does not contradict anything stated in the preamble to the rule.

Issued in Seattle, Washington, on June 21, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15507 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of System Notice and New Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of VA records entitled "Compensation, Pension, Education and Rehabilitation Record—VA" (58VA21/22/28) as set forth on page 372 of the **Federal Register** of January 5, 1982.

The Department of the Treasury, Internal Revenue Service, under the authority of the Internal Revenue Code, section 7602 plans to conduct an annual computer match to determine the eligibility for and the proper amount of Elderly and Disabled Credits claimed on IRS Form 1040, Schedule R. The matches will compare Veterans Administration compensation and pension payment information with the amount of Elderly and Disabled Credits claimed on Federal income tax returns.

In order to disclose information required by another agency of the United States Government under the authority of 38 U.S.C. 3301(b)(3), a new routine use must be added.

The proposed new routine use No. 47 permits the disclosure of identifying information and the computed annual amount of VA benefits regarding veterans and the dependents of veterans, to the Department of the Treasury, Internal Revenue Service.

The VA has determined that release of information for the purpose of this computer match is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before July 29, 1985 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 12, 1985. Any person visiting Central Office for the purpose of inspecting any such comments will be received by Central Office Veterans Service Unit in room 132. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective July 29, 1985.

Approved: June 19, 1985.

Harry N. Walters,

Administrator.

Notice of System of Records

In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records—VA," appearing at 47 FR 372, the following changes are made:

58 VA21/22/28

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Identifying information, including the initials and abbreviated surname, the social security number, the date of birth and coding indicating the category of the individual's records, the degree of disability, the benefit program under which benefits are being paid and the computed amount of VA benefits for a calendar year may be released to the Department of the Treasury, Internal Revenue Service (IRS) in order for IRS to conduct a computer matching program against the Internal Revenue Service's Forms 1040, Schedule R, Credit for the Elderly and the Permanently and Totally Disabled. This match will permit IRS to determine the eligibility for and the proper amount of Elderly and Disabled Credits claimed on IRS Form 1040, Schedule R. This matching program is performed pursuant to the provisions of Internal Revenue Code Section 7602. This disclosure is consistent with 38 U.S.C. 3301(b)(3).

* * * * *

[FR Doc. 15535 Filed 6-27-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 125
Friday, June 28, 1985

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).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE: 2:00 p.m. (eastern time), Monday, July 1, 1985.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

CHANGE IN THE MEETING: The following matter has been withdrawn from the closed portion of the meeting and will not be rescheduled:

"Proposed Contract for Expert Services in Connection with a Court Case"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: June 25, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued June 25, 1985.

[FR Doc. 85-15712 Filed 6-26-85; 2:02 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, July 9, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

Closed

1. Litigation Authorization; GC Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: June 26, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued June 26, 1985.

[FR Doc. 85-15713 Filed 6-26-85; 2:02 pm]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 24, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Oregon First Bank, Portland, Oregon, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Northeast Ninth and Halsey, Portland, Oregon, and the 3425 Southwest Cedar Hills Boulevard, Beaverton, Oregon, branches of the Canadian Imperial Bank of Commerce, Toronto, Canada, and to establish those two offices as branches.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,259-L
United American Bank in Knoxville, Knoxville, Tennessee
First Commerce Bank of Hawkins County, Rogersville, Tennessee
First Peoples Bank of Washington County, Johnson City, Tennessee
City and County Bank of Knox County, Knoxville, Tennessee
City and County Bank of Anderson County, Lake City, Tennessee
City and County Bank of Roane County, Kingston, Tennessee

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: June 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-15690 Filed 6-26-85; 11:41 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government In the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 24, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a resolution making funds available for the payment of insured deposits made in Golden Pacific National Bank, New York (Manhattan), New York, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Friday, June 21, 1985.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(B)).

Dated: June 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–15691 Filed 6–26–85; 11:41 am]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 3, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–15677 Filed 6–26–85; 10:28 am]

BILLING CODE 6210-01-M

federal register

Friday
June 28, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Kansas: KS84–4053	Aug. 24, 1984.
Michigan: MI83–2008	Feb. 11, 1983.
Montana: MT84–5041	Dec. 14, 1984.
Ohio: OH85–5026	May 24, 1985.
Oklahoma: OK85–4012	May 10, 1985.
Rhode Island: RI84–3043	Nov. 30, 1984.
West Virginia: WV83–3022	Nov. 18. 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Michigan: MI83–2021 (MI85–5024)	Mar. 18, 1983.
Minnesota: MN81–2026 (MN85–5029)	May 29, 1981.
Oregon: OR84–5020 (OR85–5030)	June 22, 1984.

Signed at Washington, D.C., this 21st Day of June 1985

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. KS84-4053
MOD. # 5 (49FR33784-
August 24, 1984

Leavenworth County,
Kansas

CHANGE:

ELECTRICIANS:
Zone 1:

	Basic Hourly Rates	Fringe Benefits
Deleware, High Prairie & Kickapoo Townships - The City of Leavenworth and the Ft. Leavenworth Military Reservations	$16.18	$2.51+ 10%

DECISION NO. MI83-2008—
MOD #15
(48 FR 6456-February 11, 1983)
Alger, Baraga, Chippewa, etc. Counties, Michigan

Change:
Electricians:
Alger and Marquette Counties:

	Basic Hourly Rates	Fringe Benefits
Contracts $80,000 or less:		
Electricians	$13.09	$2.33 +3.75%
Cable Splicers	15.09	2.33 +3.75%
Contracts over $80,000:		
Electricians	16.02	2.33 +3.75%
Cable Splicers	18.02	2.33 +3.75%

DECISION NO. MT84-5041 - Mod. #4
(49 FR 48883 - December 14, 1984)
Statewide, Montana

Change:
LINE CONSTRUCTION:
Flathead, Lake and Lincoln Counties:

All work for power utilities, all highway lighting, street lighting and motor traffic controlling.

	Basic Hourly Rates	Fringe Benefits
Lineman	$17.68	$1.50+ 3⅛%
Cable Splicers	19.68	1.50+ 3⅛%
Pole Sprayer	15.71	1.50+ 3⅛%
Line Equipment Op.	15.07	1.50+ 3⅛%
Jackhammer, Compressorman	13.06	1.50+ 3⅛%
Groundman "A"	12.26	1.50+ 3⅛%
Tree Trimmer	16.30	1.50+ 3⅛%
Powerman	13.06	1.50+ 3⅛%

Head Groundman and Groundman "B" are not applicable

DECISION NO. OH85-5028 - MOD. #1
(50 FR 21550 - May 24, 1985)
Statewide, Ohio

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers & Stonemasons:		
Area 1	$16.35	$2.55
Area 3	16.63	3.54
Area 8	17.59	3.27
Area 9	15.67	3.56
Area 10	15.67	3.56
Area 13	14.15	3.37
Area 15	15.67	3.56
Area 17	16.23	3.35
Area 18	16.18	3.53
Area 23	15.67	3.56
Area 25	15.75	2.85
Ironworkers:		
Area 11	16.40	5.33
Area 13	16.30	5.33
Area 14	16.15	5.33
Painters:		
Area 4:		
Brush	19.46	3.17
Bridge & Open Steel; Closed Steel over 55'	20.16	3.17
Closed Steel Below 55' & Spray	19.86	3.17
Pipefitters; Plumbers; & Steamfitters:		
Area 6:		
Plumbers; Gas Fitters	16.15	4.32
Area 8	17.50	3.39+h
Area 9	18.32	1.81
Area 17	18.10	1.88
Line Construction:		
Area 2:		
Linemen	17.72	8 1/2% +1.00
Equipment Operators	15.95	8 1/2% +1.00
Groundmen Truck Drivers	11.60	8 1/2% +1.00
Area 13:		
Linemen; Line Equipment Operators; Truck Drivers	18.00	14 1/2% + k
Groundmen	10.80	14 1/2% + k

Omit:	Basic Hourly Rates	Fringe Benefits
Line Construction:		
Areas 14, 16, & 20		
Area Descriptions:		
Painters:		
Areas 4 & 9		
Add:		
Painters:		
Area 21:		
Brush	$18.00	$3.17
Spray	18.25	3.17
Line Construction:		
Area 14:		
Linemen; Cable Splicers	16.83	3 1/2% +1.00
Operators	14.67	3 1/2% +1.00
Area 16:		
Linemen; Cable Splicers	16.83	3 1/2% +1.00
Operators	14.67	3 1/2% +1.00
Area 20:		
Cable Splicers; Linemen	16.83	3 1/2% +1.00
Equipment Operators	14.67	3 1/2% +1.00
Area Descriptions:		
Painters:		
Area 4: Ashtabula, Cuyahoga, Geauga, Lake, Portage (North of the Ohio Turnpike), & Summit (North of the Ohio Turnpike) Cos.		
Area 9: Carroll, Coshocton, Holmes, Stark, Tuscarawas, & Wayne Cos.		
Area 21: Lorain Co.		

DECISION NO. RI84-3043 - MOD. #5
(49 FR 47171 - November 30, 1984)
Statewide, Rhode Island

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS:		
Heavy & Highway Construction		
Bricklayers, Stonemasons, Catch Basin & Manhole Builders	14.55	5.15
CARPENTERS:		
Carpenters, Soft Floor Layers, Pildrivermen:		
Building Construction	14.75	5.05
Residential Construction (4 stories or less)	11.80	5.05
Heavy & Highway Construction	14.80	5.05
ELECTRICIANS:		
Tiverton & Little Compton	15.75	2.60+ 18½%
Westerly Township	18.10	4.65+ 3.5%
Remainder of State	17.35	.04+ 29%
IRONWORKERS	16.03	5.70
MARBLE, SETTERS, TERRAZZO WORKERS & TILE SETTERS	16.67	5.23
POWER EQUIPMENT OPERATORS:		
Digging Machine; Ross Carriers; Cranes; Pile-drivers; Lighters; Locomotives; Derricks; Hoists Pavers; & Front End Loaders 3 yds. and over	17.515	3.10
Economobile Type Equipment	17.29	3.10
Fork Lift	17.09	3.10
Firemen and Oilers	13.29	3.10
Bulldozers; Graders; Spreaders; Tractors; Scrapers and Rollers	16.09	3.10
Front-end Loaders less than 3 yards	16.59	3.10
Pipping Type Backhoe	16.44	3.10
Well-point Installation	16.165	3.10
Gas or Electric Driven Pumps; Air Compressors; Heaters; Concrete Mixers; Concrete Pumps; Stone Crusher; Welding Machines & Generators for Light Plants	13.84	3.10
BRIDGES, CAISSONS, DOCKS, MARINES PIERS, SUB-BASEMENT SUBTERRANEAN, TUNNELLS, & HEAVY CONSTRUCTION		
Digging Machine; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; & Front End Loaders, 3 yds. & Over	18.24	3.10
Firemen and Oilers	13.865	3.10
Bulldozers; Graders; Spreaders; Scrapers; Rollers	16.79	3.10
Front-end Loaders, Less than 3 yards	17.29	3.10
Well-point Installation Crews	16.965	3.10
Air Compressors, Gas or Electric Driver Pumps Heaters; Concrete Pumps; Stone Crushers; Welding Machines; and Genrators for Light Plants	13.24	3.10
Boat and Tug Operators	17.865	3.10
WATER AND SEWERLINE PROJECTS, HIGHWAY AND BRIDGE INCIDENTAL TO HIGHWAY CONSTRUCTION PROJECTS		
Class 1	17.22	3.10
Class 2	15.37	3.10
Class 3	15.75	3.10
Class 4	12.625	3.10
Class 5	15.70	3.10
Class 6	16.20	3.10
Class 7	15.82	3.10
Class 8	15.80	3.10
Class 9	13.32	3.10
Class 10	14.80	3.10
Class 11	14.60	3.10
Class 12	15.27	3.10
Class 13	15.20	3.10
Class 14	15.65	3.10
Class 15	12.145	3.10

DECISION NO. OK85-4012
MOD. NO. 3 - 50FR 19039
May 10, 1985

Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma

ADD

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (except Braden, Pacola and Spiro Townships in Leflore County:		
Line Truck Driver (Winch Operator)	$12.69	$1.25+ 3½%

DECISION NO. WV83-3022 - Mod. #16
(48 FR 52547 - November 18, 1983)

Building Construction, State Wide West Virginia, excluding the Counties of Berkeley, Jefferson, and Morgan

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Sheetmetal Workers: Area 3	$16.20	4.10

SUPERSEDEAS DECISION

STATE: MICHIGAN DECISION NUMBER: MI85-5024
COUNTIES: Bay, Genesee, Huron, Iosco, Lapeer, Saginaw, St. Clair, Sanilac, Shiawassee, and Tuscola Counties
Supersedes Decision Number MI83-2021, dated March 18, 1983, in 48 FR 11616.
DESCRIPTION OF WORK: Building construction (does not include single family homes and apartments up to and including 4 stories), and Heavy Construction (does not include Bridge, Airport, Sewer, Water Lines, or TV/Grout projects)
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$17.38	$5.02
Area 2	15.93	4.00
BOILERMAKERS	16.94	5.70
BRICKLAYERS:		
Area 1	14.92	3.41
Area 2	16.09	3.25
Area 3	13.52	2.95
CARPENTERS:		
Area 1	16.07	1.70+ 22%
Area 2:		
Carpenters	15.20	2.12
Soft Floor Layers	10.95	2.12
Area 3:		
Carpenters	14.60	2.12
Soft Floor Layers	10.95	2.12
CEMENT MASONS:		
Area 1	12.80	2.17
Area 2:		
Cement Masons	13.05	3.20
Plasterers	13.30	3.20
Area 3:		
Cement Masons	15.21	3.25
Plasterers	15.49	3.25
Area 4:		
Cement Masons	13.32	2.20
Plasters	15.90	1.45
ELECTRICIANS:		
Area 1	14.98	2.54+ 3.5%
Area 2	17.09	2.54+ 3.5%
Area 3	16.24	1.08+ 14%
Area 4	18.55	3.13+ 3%
Area 5	18.10	4.51+ 3%
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	17.30	3.00+ a
Helpers	12.11	3.00+ a
Probationary Helpers	8.65	
Area 2:		
Mechanics	17.38	3.29+a
Helpers	12.17	3.29+a
Probationary Helpers	8.69	
GLAZIERS:		
Area 1	13.14	2.31
Area 2	14.69	3.55
IRONWORKERS:		
Fence Erectors	14.26	47%+.09
Reinforcing	13.53	.64%+ 7.52
Structural	15.26	47%+.09
LATHERS:		
Area 1	16.97	4.34
Area 2	15.02	2.57
LINE CONSTRUCTIONS:		
Area 1:		
Linemen and Technicians	17.63	2.05+ 13.5%
Cable Splicers	18.38	2.05+ 13.5%
Combination equipment operator and groundmen	14.14	2.05+ 13.5%
Combination driver/ groundman	13.31	2.05+ 13.5%
Groundman	12.26	2.05+ 13.5%
Area 2:		
Linemen and Technicians	15.50	1.00+ 8.5%+c
Cable Splicers	16.13	1.00+ 8.5%+c
Combination digger operators, tractor operators & groundmen	12.07	1.00+ 8.5%+c
Light equipment operator-groundman; (D-4 tractor equivalent or smaller	10.59	1.00+ 8.5%+c
Combination winch truck drivers and groundmen	10.10	1.00+ 8.5%+c
Combination truck drivers and groundmen	8.55	1.00+ 8.5%+c

	Basic Hourly Rates	Fringe Benefits
MARBLE, TERRAZZO AND TILE FINISHERS:		
Area 1	10.30	1.55
Area 2	9.83	1.55
Area 3:		
Marble finishers	13.77	3.05
Terrazzo Finishers	14.48	2.30
Tile finishers	13.77	3.55
MARBLE SETTERS, TERRAZZO WORKERS AND TILE SETTERS:		
Area 1	13.90	4.25
Area 2:		
Marble Setters	16.23	3.80
Terrazzo Workers	15.07	3.80
Tile Setters	15.62	3.82
Area 3	14.36	.40
MILLWRIGHTS	15.4037	33.5% +2.8611
PAINTERS:		
Area 1:		
New construction:		
Brush, roller and taper	12.55	1.65
Spray and sandblast	13.40	1.65
Repaint work:		
Brush, roller and taper	11.95	1.65
Spray and sandblast	12.80	1.65
Industrial construction:		
Brush, roller & taper	13.35	1.65
Spray and sandblast	14.20	1.65
Area 2:		
Brush and roller	12.60	1.72
Wall covering, open structural steel, swing stage, and boatswain chair	13.20	1.72
Sandblast and Spray	13.35	1.72
Area 3:		
Brush, roller, drywall-hand	14.20	1.7525
Structural Steel, towers	14.60	1.7525
Spray, sandblast, drywall (machine)	14.95	1.7525
Paperhangers	14.55	1.7525
Area 4:		
Brush and roller	13.45	2.26
Paper and vinyl hangers	13.75	2.26
Pressure roller	14.25	2.26
Sandblasting, steam-cleaning & acid cleaning	13.95	2.26
Area 4 (Cont'd):		
Swing stage, boatswain chair, window jacks and brush and preparatory work above		
30 ft. in height (plus 10¢ for each additional 15 ft.)	13.75	2.26
Spray gun work and Sprayman helpers, pack pullers	13.75	2.26
Area 5:		
New construction:		
Brush and roller	15.71	1.92
Spray and sandblast	16.21	1.92
Repaint works:		
Brush and roller	14.14	1.92
Spray and sandblast	14.59	1.92
PLUMBERS and PIPEFITTERS:		
Area 1	16.16	2.87
Area 2	15.09	6.43
Area 3	19.71	4.82
Area 4	14.30	3.96
ROOFERS:		
Area 1	11.80	
Area 2	14.65	3.20
Area 3	13.00	3.95
SHEET METAL WORKERS:		
Area 1	16.13	3.26+ 26.01%
Area 2	14.73	6.31
Area 3	15.53	2.26
SPRINKLER FITTERS	17.17	2.83
TRUCK DRIVERS:		
Area 1	11.54	120.50*
Area 2:		
Group 1	13.80	111.50*
Group 2	13.95	111.50*
Group 3	14.05	111.50*
Area 3:		
Group 1	10.30	104.50*
Group 2	10.40	104.50*
Group 3	10.50	104.50*
Group 4	10.60	104.50*

*PER WEEK PER EMPLOYEE.

Welders: Receive rate prescribed for craft performing operation to which welding is incidental.

DECISION NO. MI85-5024

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Area 1:		
Group 1	13.40	1.69
Group 2	13.52	1.69
Group 3	13.65	1.69
Group 4	13.57	1.69
Group 5	13.75	1.69
Area 2:		
Group 1	9.50	1.69
Group 2	10.10	1.69
Area 3:		
Group 1	11.16	2.14
Group 2	11.31	2.14
Group 3	11.41	2.14
Group 4	11.51	2.14
Group 5	11.76	2.14
Area 4:		
Group 1	11.24	1.69
Group 2	11.36	1.69
Group 3	11.44	1.69
Group 4	11.74	1.69
Group 5	12.24	1.69
LABORERS- open cut const.		
Area 1:		
Contracts over $400,000:		
Group 1	9.55	2.54
Group 2	9.66	2.54
Group 3	9.76	2.54
Group 4	9.81	2.54
Group 5	9.91	2.54
Contracts $400,000 or less:		
Group 1	7.91	2.54
Group 2	8.02	2.54
Group 3	8.12	2.54
Group 4	8.17	2.54
Group 5	8.27	2.54
Area 2:		
Contracts over $400,000:		
Group 1	11.62	2.99
Group 2	11.72	2.99
Group 3	11.82	2.99
Group 4	11.87	2.99
Group 5	11.98	2.99
Contracts $400,000 or less:		
Group 1	10.07	2.54
Group 2	10.17	2.54
Group 3	10.27	2.54
Group 4	10.32	2.54
Group 5	10.43	2.54

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	Basic Hourly Rates	Fringe Benefits
LABORERS-open cut const. (Cont'd)		
Area 3:		
Contracts over $400,000:		
Group 1	12.07	2.54
Group 2	12.17	2.54
Group 3	12.27	2.54
Group 4	12.32	2.54
Group 5	12.43	2.54
Contracts $400,000 or less:		
Group 1	10.07	2.54
Group 2	10.17	2.54
Group 3	10.27	2.54
Group 4	10.32	2.54
Group 5	10.43	2.54
Area 4:		
Contracts over $400,000:		
Group 1	11.98	2.54
Group 2	12.09	2.54
Group 3	12.19	2.54
Group 4	12.24	2.54
Group 5	12.34	2.54
Contracts $400,000 or less:		
Group 1	9.62	2.99
Group 2	9.72	2.99
Group 3	9.82	2.99
Group 4	9.87	2.99
Group 5	9.98	2.99
LABORERS-Tunnel, Shaft and Caisson Construction:		
Area 1:		
Contracts over $400,000:		
Group 1	12.56	2.99
Group 2	12.65	2.99
Group 3	12.70	2.99
Group 4	12.85	2.99
Group 5	13.06	2.99
Group 6	13.31	2.99
Area 1:		
Contracts $400,000 or Less:		
Group 1	10.55	2.99
Group 2	10.63	2.99
Group 3	10.68	2.99
Group 4	10.84	2.99
Group 5	11.04	2.99
Group 6	11.30	2.99
Area 2:		
Contracts over $400,000:		
Group 1	13.01	2.54
Group 2	13.10	2.54
Group 3	13.15	2.54
Group 4	13.30	2.54
Group 5	13.51	2.54
Group 6	13.76	2.54

DECISION NO. MI85-5024

	Basic Hourly Rates	Fringe Benefits
LABORERS-Tunnel, Shaft and Caisson Const. (Cont'd)		
Area 2 (Cont'd)		
Contracts $400,000 or less:		
Group 1	11.01	2.54
Group 2	11.09	2.54
Group 3	11.15	2.54
Group 4	11.30	2.54
Group 5	11.51	2.54
Group 6	11.76	2.54
LANDSCAPE LABORERS:		
Area 1:		
Group 1	8.60	
Group 2	8.18	
Area 2:		
Group 1	6.56	
Group 2	6.14	
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	16.47	4.35
Group 2	16.25	4.35
Group 3	15.69	4.35
Group 4	15.21	4.35
Group 5	14.84	4.35
Group 6	12.59	4.35
Group 7	11.77	4.35
Area 2:		
Group 1	16.10	4.35
Group 2	15.85	4.35
Group 3	15.35	4.35
Group 4	13.75	4.35
Group 5	13.45	4.35
Group 6	12.05	4.35
Group 7	11.20	4.35
POWER EQUIPMENT OPERATORS-Steel Erection:		
Area 1:		
Group 1	18.52	3.35+13%
Group 2	18.24	3.35+13%
Group 3	17.25	3.35+13%
Group 4	17.02	3.35+13%
Group 5	13.95	3.35+13%
Group 6	12.65	3.35+13%
Area 2:		
Group 1	16.45	4.35
Group 2	16.20	4.35
Group 3	15.70	4.35
Group 4	14.10	4.35
Group 5	12.75	4.35
Group 6	11.40	4.35

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS-Underground Construction:		
Area 1:		
Contracts over $400,000:		
Group 1	13.42	4.35+13%
Group 2	12.89	4.35+13%
Group 3	12.45	4.35+13%
Group 4	12.20	4.35+13%
Contracts $400,000 or less:		
Group 1	12.09	4.35+13%
Group 2	11.57	4.35+13%
Group 3	11.12	4.35+13%
Group 4	10.88	4.35+13%
Area 2:		
Contracts over $400,000:		
Group 1	14.93	4.35+13%
Group 2	14.55	4.35+13%
Group 3	13.90	4.35+13%
Group 4	13.40	4.35+13%
Contracts $400,000 or less:		
Group 1	14.04	4.35+13%
Group 2	13.66	4.35+13%
Group 3	13.02	4.35+13%
Group 4	12.51	4.35+13%

FOOTNOTES:

a. Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas; Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% for employees with 6 months to 5 years of service.
b. Four Paid Holidays: New Year's Day, Decoration Day, Christmas Day.
c. Holiday Pay: New Year's Day, Good Friday afternoon, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day provided employee has 30 days of continous employment with any contractor and works the scheduled workday preceding & following the day observed.
d. Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, & Christmas Day provided the employee works the scheduled work day preceding & following the day observed.

AREA DESCRIPTIONS

ASBESTOS WORKERS:

Area 1: St. Clair County
Area 2: Remainder of Counties

BRICKLAYERS:

Area 1: Genesee, Lapeer and Shiawassee Counties
Area 2: St. Clair and Sanilac Counties
Area 3: Remainder of Counties

CARPENTERS:

Area 1: Sanilac County (Except the township of Evergreen, Greenleaf, Lamotte and Marlette)
Area 2: Genesee, Lapeer and Shiawassee Counties
Area 3: Remainder of Counties

CEMENT MASONS:

Area 1: Genesee and Shiawassee Counties
Area 2: Lapeer Counties
Area 3: St. Clair and Sanilac Counties
Area 4: Remainder of Counties

ELECTRICIANS:

Area 1: Iosco County (Northern half of County)
Area 2: Bay County and Iosco County (township of Alabaster, Baldwin, Burleigh, Grant, Reno, Sherman and Tawas)
Area 3: Genesee, Lapeer and Shiawassee Counties
Area 4: Saginaw and Tuscola Counties
Area 5: Remainder of Counties

AREA DESCRIPTIONS (Cont'd)

ELEVATOR CONSTRUCTORS:

Area 1: St. Clair County
Area 2: Remainder of County

GLAZIERS:

Area 1: Genesee, Lapeer and Shiawassee Counties
Area 2: St. Clair and Sanilac Counties

LATHERS:

Area 1: St. Clair County (Southeast portion including Memphis, Marysville and Sparlingville)
Area 2: Remainder of Counties

LINE CONSTRUCTION:

Area 1: Huron, Lapeer, St. Clair, Sanilac, and Tuscola Counties
Area 2: Remainder of Counties

MARBLE, TERRAZZO AND TILE FINISHERS:

Area 1: Genesee and Shiawassee Counties
Area 2: Bay and Saginaw Counties
Area 3: Remainder of Counties

MARBLE SETTERS, TERRAZZO WORKERS AND TILE SETTERS:

Area 1: Genesee and Shiawassee Counties
Area 2: Lapeer, St. Clair and Sanilac Counties
Area 3: Remainder of Counties

PAINTERS:

Area 1: Bay County, Huron County (West of M-53), Iosco County, and Tuscola County (townships of Akron, Almer, Columbia, Elkland, Ellington, Elmwood, Fiargrove, Gilford, Novesta, and Wisner)
Area 2: Saginaw County and Tuscola County (Remainder of County)
Area 3: Shiawssee County (Western Half of County)
Area 4: Genesee County, Lapeer County and Shiawassee County (Eastern half of County)
Area 5: Huron County (East of M-53). St. Clair County, and Sanilac County

PLUMBERS:

Area 1: Bay County, Huron County (Western Half of County), Iosco County and Tuscola County (North Half of County)
Area 2: Huron County (Eastern Half of County), St. Clair County and Sanilac County
Area 3: Genesee, Lapeer and Shiawassee Counties
Area 4: Saginaw County and Tuscola County (South Half, including Caro, Wahjamerga, and South to the Lapeer County Line)

AREA DESCRIPTIONS (Cont'd)

POWER EQUIPMENT OPERATORS and POWER EQUIPMENT OPERATORS-STEEL ERECTION:

Area 1: St. Clair County
Area 2: Remainder of Counties

POWER EQUIPMENT OPERATORS - Underground Construction:

Area 1: Iosco County
Area 2: Remainder of Counties

ROOFERS:

Area 1: St. Clair and Sanilac Counties
Area 2: Genesee, Lapeer and Shiawassee Counties
Area 3: Remainder of Counties

SHEET METAL WORKERS:

Area 1: St. Clair and Sanilac Counties
Area 2: Genesee, Lapeer and Shiawassee Counties
Area 3: Remainder of Counties

TRUCK DRIVERS:

Area 1: Genesee, Lapeer and Shiawassee Counties
Area 2: Huron, St. Clair and Sanilac Counties
Area 3: Remainder of Counties

LABORERS:

Area 1: St. Clair and Sanilac Counties
Area 2: Iosco County
Area 3: Genesee, Lapeer and Shiawassee Counties
Area 4: Remainder of Counties

LABORERS- Open Cut Construction:

Area 1: Iosco County
Area 2: Genesee, Lapeer and Shiawassee Counties
Area 3: St. Clair and Sanilac Counties
Area 4: Remainder of Counties

LABORERS- Tunnel, Shaft and Caisson Construction:

Area 1: Genesee, Lapeer and Shiawassee Counties
Area 2: Remainder of Counties

LANDSCAPE LABORERS:

Area 1: Genesee, Lapeer, St. Clair and Shiawassee Counties
Area 2: Remainder of Counties

DEFINITION OF GROUP (Cont'd)

LABORERS:
Area 2:
Group 1: General Laborers, Mortar Mixers (whether done by hand or machine), Vibrator Operators, Operators of Concrete Mixers, Chipping Hammers, Tamping Machines (whether run by Air, Electric, or Gas), sand Blasterers, Operators of Motor-Driven Buggies, Plaster Mixers and Plasterer Tenders, Pipe or Crock Layers, Caisson work in building only
Group 2: Concrete Breaker (90-lb. Hammer or Less), and Cement Gun Nozzleman
Area 3:
Group 1: General Laborers
Group 2: Mortar Mixer, Concrete Mixer ½ cu. yd. or smaller, Signal Man and Top Man on Caisson Work, Air/Electric/Gas Tool Operator
Group 3: Jackhammer, Air Spade, Tunnel Men, Windlass Operators on Caisson work, Burner
Group 4: Crock and Pipe Layers, Caisson Worker and Tunnel Mucker
Group 5: Tunnel Miner
Area 4:
Group 1: General Laborers, Pumps with a 3-in. or less discharge and not hookerd up in battery; Mechanized Buggy Operators and Mortar Mixer when done by hand
Group 2: Mechanized Mortar Mixing; Air, Electric and Gas Driven Tools
Group 3: Air or Electric Driven Pavement Breakers, Concrete Vibrators, Plaster Tenders and Plaster Mixers, Crock and/or Pipelayers, Signal Man and Top Man on Caisson Work
Group 4: Tunnel Miners and Tunnel Muckers and Tunnel and Shaft Underpinning
Group 5: Drillers and Blasters, Burners and Welders

LABORERS- Open Cut Construction:

Areas 1, 2, 3, and 4:
Group 1: Construction laborers
Group 2: Mortar & material mixer, concrete form man, signal man, well point man, manhole, headwall & catch basin builder, guardrail builder, & fence erector
Group 3: Air/gas/electric tool operators, vibrator operator, driller, pump man, tar kettle operator, bracer, rodder, reinforced steel or mesh man (e.g. wire mesh, steel mats, dowel bars), cement finisher's laborer, pipe jacking & boring man, wagon drill & air track operator, concrete saw operator (under 40 HP.), windlass & tugger man
Group 4: Trench or excavating grade man
Group 5: Pipe layer (including crock, metal pipe, multi-plate or other conduits).

DEFINITION OF GROUPS (Cont'd)

LABORERS: Tunnel, Shaft, & Caisson Construction:

Areas 1 and 2:
Group 1: Tunnel, shaft, & caisson laborer, dump man, shanty man, hog house tender, testing man on gas
Group 2: Manhole, headwall, catch basin builder, bricklayer tender, mortar man, material mixer, fence erector, & guard rail builder
Group 3: Air tool operator (jackhammer, bush hammer, & grinding), first bottom man, second bottom man, cage tender, car pusher, carrier man, concrete man, concrete form man, concrete repair man, cement invert laborer, cement finisher laborer, concrete shoveler, conveyor man, floor man, gas & electric tool operator, gunnite man, grout operator, pump man, outside lock tender, scaffold man, top signal man, switch man, track man, tugger man, utility man, vibrator man, winch operator, pipe jacking, boring man, wagon drill/air track operator/ concrete saw operator (under 40 HP.)
Group 4: Tunnel, shaft, & caisson mucker, bracer man, liner plate man, long haul dinky driver, & well point man
Group 5: Tunnel, shaft, & caisson miner, drill runner, power knife operator, reinforced steel or mesh man (e.g. wire mesh, steel mats, dowel bars)
Group 6: Dynamite man & powder man.

LANDSCAPE LABORERS:

Areas 1 and 2:
Group 1: Landscape specialist including Air/gas/diesel
Group 2: Landscape Laborers and all others not classified under Class A; includes material haulers and small power equipment

LABORERS:
Area 1:
Group 1: General Laborers
Group 2: Mortar Mixers
Group 3: Air/Electric/Gas Tool Operators, Pump Operator
Group 4: Concrete Gas Buggy, Concrete Saw Operator, Plasterer Tender
Group 5: Crock or Pipe Layers, Caisson Workers in Buildings

DEFINITION OF GROUPS

POWER EQUIPMENT OPERATORS:

Area 1:
Group 1: Engineer when operating Boom and Jib or Leads 220' or longer
Group 2: Crane with Boom and Jib or Leads 140' or longer
Group 3: Crane with Boom and Jib or Leads 120' or longer
Group 4: Crane Operator
Group 5: Regular engineer
Group 6: Compressor or welding machine operator
Group 7: Fireman or oiler
Area 2:
Group 1: Crane with main Boom and Jib 220' or longer
Group 2: Crane with main Boom and Jib 140' or longer, Tower Crane, Gantry Crane, Whirley Derrick
Group 3: Regular Equipment Operator, Crane Stiff Leg Derrick, Scraper, Dozer, Grader, Front End Loader, Hoist, Mechanic
Group 4: Air Tugger (Single Drum), Material Hoist, Boiler Operator, Sweeping Machine, Winch Truck, Bobcat and similar type equipment Fork Truck (over 20' Lift)
Group 5: Pump 6" or over, well points, Freeze systems, Boom Truck (non-swinging) and Fork Truck (20' Lift or under)
Group 6: Air compressor, Welder, Generator, Pumps under 6", Grease Man, conveyor
Group 7: Oiler, Fireman and Heater Operator

POWER EQUIPMENT OPERATORS- Steel Erection:

Area 1:
Group 1: Cranes with Boom and Jib 220' or longer
Group 2: Cranes with Boom and Jib 140' or longer
Group 3: Crane, Mechanic
Group 4: Hoisting Operator
Group 5: Compressor, Welder
Group 6: Oiler, Fireman
Area 2:
Group 1: Crane with Main Boom and Jib 220' or longer
Group 2: Crane with Boom and Jib 140' or longer, Tower Cranes, Gantry Crane, Whirley Derrick
Group 3: Regular Equipment Operator, Crane, Dozer, Loader, Hoist, Straddle Wagon & Job Mechanic
Group 4: Air Tugger (Single Drum), Material Hoist, Pump 6" or over
Group 5: Air compressor, Welder, Generators, Conveyors
Group 6: Oiler and Fireman

DEFINITION OF GROUPS (Cont'd)

POWER EQUIPMENT OPERATORS- Underground Construction:

Areas 1 and 2:
Group 1: Backfiller tamper, backhoe, batch plan operator (concrete), clamshell, concrete paver (2-drum or larger), conveyor loader (Euclid type), crane (crawler, truck type or pile driving), dozer (9' blade & over), dragline, elevating grader, end loader (0ver 1½ cu. yds. capacity), gradall, mechanic, power shovel, roller (asphalt), scraper (self-propelled or tractor drawn), side boom tractor (D-4 type), slip form paver, slope paver, trencher (over 8' digging capacity), well drilling rig;
Group 2: Boom truck (power swing type boom), crusher, dozer (less than 9' blade), end loader (1½ cu. yds. & smaller), hoist, pump (1 or more - 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps. or more - inclusive of generator), side boom tractor (smaller than D-4 type), sweeper (Wayne type), tractor (pneu-tired, other than backhoe or front end loader), trencher (8' digging capacity);
Group 3: Air compressor (600 CFM or larger), air compressor (2 or more - less than 600 CFM), boom truck (non-swinging, non-powered type boom), concrete breaker (self-propelled or truck mounted - includes compressor), concrete paver (1-drum, 1½ yd. or larger), elevator (other than passenger), maintenance man, mechanic tender, pump (2 or more, 4" to 6" discharge, gas or diesel powered, excluding submersible pumps), pumpcrete machine, wagon drill (multiple), welding machine or generator (2 or more, 300 amps or larger, gas or diesel powered)
Group 4: Boiler, concrete saw (40 HP. or over), curing machine (self-propelled), farm tractor with attachment, finishing machine (concrete), fireman, hydraulic pipe pushing machine, mulching equipment, oiler, pumps (2 or more up to 4" discharge, gas or diesel powered, excluding submersible pumps), roller (other than asphalt), stump remover, trencher (service), vibrating compaction equipment (self-propelled, 6' wide or over).

TRUCK DRIVERS

Area 2:
Group 1: Pole Trailer, Low Boy, Straddle Carrier, Double Bottom, and Special Load Permit Driver
Group 2: Semi Driver
Group 3: All other trucks
Area 3:
Group 1: Trucks under 8 cu. yds.
Group 2: Trucks 8 cu. yds. and over
Group 3: Semi, Double Bottom, Low Boy, Pitman Operators or Related Equipment
Group 4: Euclid Type Equipment

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clause (29 CFR 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: MINNESOTA COUNTY: BROWN
DECISION NUMBER: MN85-5029 DATE: Date of Publication
Supersedes Decision No. MN81-2026, dated May 29, 1981 in 46 FR 29173
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$11.37	
CEMENT MASONS	12.60	
LABORERS:		
Common	8.87	
Skilled	11.33	$ .50
TRUCK DRIVERS:		
Tandem/3 Axles	8.87	
Five Axles	9.21	
POWER EQUIPMENT OPERATORS:		
Backhoes; Cranes; Derricks; & Draglines	$12.13	$ .55
Crusher & Screening Plants	10.92	1.05
Front End Loaders	10.27	.55
Grader Operators	10.45	.55
Mechanics; & Welders	11.36	.55
Motor Patrols	9.37	
Screedmen	9.63	
Tractors, Rubber Tired	11.37	
Tractor, D 2	9.93	.55
Tractor, Over D 2	10.70	.55
Turnapull Operators	11.04	.55

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: OREGON
DECISION NUMBER: OR85-5030
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision No. OR84-5020 dated June 22, 1984, in 49 FR 25821
DESCRIPTION OF WORK: Building Projects (does not include single-family homes and apartments up to and including 4 stories), Heavy and Highway Projects, and Dredging.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$19.52	$3.52
BOILERMAKERS:		
Work on Storage Tanks:		
Erection	17.25	4.25
Repair	16.05	4.25
All other work	19.67	4.25
BRICKLAYERS; STONEMASONS:		
Area 1	17.29	3.80
Area 2		
Projects under $1 million	14.23	3.27
Projects over $1 million	17.10	3.27
CARPENTERS: (See Footnote "C")		
Zone 1:		
Group 1	17.02	4.02
Group 2	17.17	4.02
Group 3	17.27	4.02
Group 4	17.42	4.02
Group 5	17.12	4.02
Group 6	17.22	4.02
Zone Differential (Add to Zone 1 rates):		
Zone 2 $0.65		
Zone 3 1.15		
Zone 4 1.70		
Zone 5 2.75		
CEMENT MASONS: (See Footnote "c")		
Cement Masons	16.19	4.72
Composition Workers and Power Machinery Operators	16.51	4.72
DRYWALL & ACOUSTICAL APPLICATORS	14.40	4.02
ELECTRICIANS:		
Area 1:		
Electricians	15.05	2.00+4%
Cable Splicers	16.56	2.00+4%
Area 2:		
Electricians	18.76	3.61+3%
Cable Splicers	19.70	3.61+3%
Area 3:		
Electricians	15.00	4.35+3%
Area 4:		
Electrical Contracts under $100,000:	c	
Electricians	15.00	2.42+3%
Cable Splicers	110%	2.42+3%
Electrical Contracts over $100,000:		
Electricians	18.00	2.42+3%
Cable Splicers	110%	2.42+3%
Area 5:		
Electricians	18.80	3.50+3%
Cable Splicers	19.55	3.50+3%
Area 6:		
Electricians	15.00	3.75+3%
Cable Splicers	16.50	3.75+3%
ELEVATOR CONSTRUCTORS:		
Mechanics	19.51	3.29+a
Helpers	70%	3.29+a
Probationary Helpers	50%	
GLAZIERS:		
Area 1	16.97	2.88
Area 2	13.76	1.37
IRONWORKERS:		
Structural; Reinforcing; Ornamental; Riggers; Fence Erectors; and Signal Men	18.26	4.71
LATHERS:	13.55	4.87
MARBLE SETTERS:		
Area 1	17.11	2.85
MASON TENDERS:		
See Footnote "c"		
Tenders to Plasterers, Bricklayers, Tile setters, Marble setters & terrazzo workers, topping for cement finishers and mortar mixers	14.05	4.06
PAINTERS:		
Area 1:		
Painters and Tapers	12.25	1.78
Area 2:		
Brush	12.87	2.66
Spray	13.37	2.66
Bridges, high work over 50 ft (Brush)	13.62	2.66
Bridges, high work over 50 ft (Spray)	14.12	2.66
Drywall Tapers	15.48	2.11
Area 3:		
Highway & parking lot painter	17.64	1.05
PLASTERERS:		
Area 1	15.30	3.57
Area 2	15.23	3.56
PLUMBERS & PIPEFITTERS:		
Area 1	16.79	4.31
Area 2	19.43	7.23
Area 3	17.75	3.97

DECISION NO. OR85-5030

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS (Cont'd)		
Area 4:		
Pipefitters	$20.48	$3.70
Plumbers:		
Where cost of plumbing (Labor + Material) is more than $50,000	20.48	3.70
Where cost of plumbing (Labor + Material) is less than $50,000	16.00	3.70
Area 5:		
Pipefitters	20.36	3.56
PLUMBERS:		
Where cost of plumbing (Labor + material) is more than $50,000	19.54	3.56
Where cost of plumbing (Labor + material) is less than $50,000	16.00	2.06
Area 6:		
Where cost of plumbing & pipefitting (labor + material) is more than $50,000	19.58	4.15
Where cost of plumbing & pipefitting (labor + material) is lesss than $50,000	17.50	4.15
Area 7	20.48	3.15
SOFT FLOOR LAYERS:		
Area 1	14.454	2.65+b
Area 2	13.66	1.19
SPRINKLER FITTERS	19.17	3.23
STEAMFITTERS:		
Area 1	20.48	3.65
TILE SETTERS:		
Area 1	17.01	3.57
Area 2	15.43	2.40
TILE & TERRAZZO HELPERS:		
Area 1	13.27	2.20
LINE CONSTRUCTION:		
Area 1:		
Zone 1 :		
Group 1	20.03	3.25+ 3 1/2%
Group 2	18.11	3.25+ 3 1/2%
Group 3*	16.35	3.25 3 1/2%
Group 4	15.61	2.55 3 1/2%
Group 5	13.66	2.55 3 1/2%
Group 6*	13.66	2.55 3 1/2%
Group 7	12.84	2.55 3 1/2%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Cont'd)		
Area 1 (Cont'd):		
Zone Differential (Add to Zone 1 rates)		
Zone 2 -$2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
*Groups 3 and 6 receive Zone 1 rates only		
Area 2:		
Cable Splicer	18.06	2.25+ 3 1/2%
Journeyman Lineman	16.42	2.25+ 3 1/2%
Line Equipment Mechanic (Right of Way)	15.55	2.25+ 3 1/2%
Line Equipment Mechanic (Base Shiop)	14.57	2.25+ 3 1/2%
Line Equipment Serviceman	14.57	2.25+ 3 1/2%
Line Equipment Operator	14.81	2.25+ 3 1/2%
Groundman	11.55	2.25+ 3 1/2%
ROOFERS:		
Area 1:		
Roofers	14.60	2.90
Handling coal tar & pitch	16.06	2.90
Area 2:		
Roofers	14.75	1.72
Spray and/or application of irritating materials in a confined area	15.75	1.72
Area 3	13.46	2.05
Area 4	14.56	4.10
Area 5	16.48	2.55
SHEET METAL WORKERS:		
Area 1	20.04	4.54
Area 2	16.97	2.29+3%
Area 3	17.86	3.07+3%
Area 4	15.50	2.58
PLASTERER'S TENDERS	13.56	4.06
DREDGING:		
Leverman, Hydraulic	17.83	5.05
Leverman, Dipper	18.57	5.05
Assistant Engineer (including watch engineer, welder, mechanic, machinist); Mate	17.26	5.05
Tenderman (Boatman, attending dredge plant), Fireman	16.83	5.05
Assistant Mate (Deckhand)Oiler	16.46	5.05

	Basic Hourly Rates	Fringe Benefits
TIMBER SALES ROADS:		
Operating Engineer	$10.37	$4.15
Teamster	9.74	3.74
Laborer	8.35	4.30
Power Saw, Driller, Powderman	9.12	4.30
LABORERS (See Footnote "c"):		
Zone 1:		
Group 1	12.84	5.06
Group 2	13.19	5.06
Group 3	13.49	5.06
Group 4	13.74	5.06
Group 5	8.00	5.06
Zone Differential (Add to Zone 1 rates):		
Zone 2 -$0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
POWER EQUIPMENT OPERATORS: (See Footnote "c"):		
Group 1	15.52	5.15
Group 2	15.71	5.15
Group 3	15.87	5.15
Group 4	16.07	5.15
Gropp 5	16.10	5.15
Group 6	16.22	5.15
Group 7	16.29	5.15
Group 8	16.43	5.15
Group 9	16.52	5.15
Group 10	16.60	5.15
Group 11	16.62	5.15
Group 12	16.82	5.15
Group 13	17.06	5.15
Group 14	17.25	5.15
Group 15	17.50	5.15
Group 16	17.70	5.15
Group 17	17.95	5.15
Group 19	18.13	5.15
Zone Differential (Add to Zone 1 rates):		
Zone 2 -$0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
TRUCK DRIVERS (See Footnote "c"):		
Zone 1:		
Group 1	15.24	4.77
Group 2	15.29	4.77
Group 3	15.34	4.77
Group 4	15.39	4.77
Group 5	15.44	4.77
Group 6	15.54	4.77
Group 7	15.64	4.77
Group 8	15.74	4.77
Group 9	15.84	4.77
TRUCK DRIVERS (Cont'd):		
Group 10	16.01	4.77
Group 11	16.11	4.77
Group 12	16.21	4.77
Group 13	16.31	4.77
Group 14	16.41	4.77
Zone Differential (Add to Zone 1 rates):		
Zone 2 -$0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		

FOOTNOTES:

a. Vacation Pay: 8% with 5 or more years of service, 6% for 6 months to 5 years service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day

b. Vacation Pay: 6% with more than one year of service, 4% with less than one year. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, & Christmas Day.

c. CARPENTERS, CEMENT MASONS, MASON TENDERS, PLASTERER'S TENDERS, LABORERS, POWER EQUIPMENT OPERATORS & TRUCK DRIVERS:
All projects with a total value, including the cost of utilities, of less than $1,000,000; or projects which involve work on buildings, bridges, or docks and meet both of the following criteria:
(A) The total cost of the project is less than $1.5 million excluding the cost of underground utilities which are located 5 ft or more outside of or away from the building, bridge, or dock and which are incidental or subordinate to it. "Utilities" are facilities for the conveyance of electricity, water, gas, sewerage (including storm), and communications
(B) Work on buildings, bridges, or docks shall constitute 20% or more of the cost of the project.
On work which meets the above criteria, employees may be paid 80% of the basic hourly rate plus full fringes. All other work shall be paid at the 100% rate.

AREA AND GROUP DESCRIPTIONS

BRICKLAYERS, STONEMASONS
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, Hood River, Malheur (North part), Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco (North of the City of Maupin), Washington, and Yamhill Counties.
Area 2: Benton, Crook, Coos, Curry, Deschutes, Douglas, Grant, Harney, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur (South part), Wasco (including the City of Maupin and south thereof), and Wheeler County.

CARPENTERS:
Group 1: Carpenters, Automatic Nailing machine, Form Strippers, Man hole Builders.
Group 2: Floor Layers and Finishers, Stationary power saw operators.
Group 3: Millwrights and Machine Erectors
Group 4: Certified Welders
Group 5: Piledrivermen, Bridge, Dock and Wharf builders
Group 6: Boom Man

ELECTRICIANS:
Area 1: Malheur County
Area 2: Baker, Gilliam, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties.
Area 3: Coos, Curry, and Lincoln Counties; Douglas and Lane Counties (Area lying West of a line North and South from the N.E. corner of Coos County to the S.E. corner of Lincoln County.
Area 4: Benton, Crook, Deschutes, Jefferson, Lane (Eastern part), Linn, Marion, Polk, and Yamhill (Southern part)
Area 5: Clackamas, Clatsop, Columbia, Hood River, Multnomah, Sherman, Tillamook, Wasco, Washington, Yamhill (Northern part of Co.)
Area 6: Harney, Jackson, Josephine, Klamath, Lake, and Douglas County (Area lying East of a line running North and South from the NE corner of Coos County to the SE corner of Lincoln County)

GLAZIERS:
Area 1: Statewide except Malheur County
Area 2: Malheur County.

AREA DESCRIPTIONS (Cont'd)

LATHERS:
Area 1: Clackamas, Clatsop, Columbia, Gilliam, Harney, Hood River, Morrow, Multnomah, Sherman, and Yamhill Counties

MARBLE SETTERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River Counties; Malheur County (north half); Multnomah, Morrow, Sherman, and Tillamook Counties; Union, Umatilla, and Wallowa Counties; Wasco County (north of the City of Maupin); Washington County; Yamhill County (north half)

PAINTERS:
Area 1: Malheur County
Area 2: Remaining Counties
Area 3: Statewide

PLASTERERS:
Area 1: Benton, Coos, Crook, Curry, Douglas, Deschutes, Harney, and Jefferson Counties; Klamath County (northern one-third); Lane County; Lincoln, Linn, Wasco, and Wheeler Counties (south half)
Area 2: Remaining Counties

PLUMBERS:
Area 1: Baker County; Harney (except NW portion); Malheur County
Area 2: Grant County (except SW corner); Morrow, Umatilla, Wallowa, and Union Counties
Area 3: Benton, Lincoln, and Linn Counties (north half); Marion and Polk Counties; Tillamook and Yamhill Counties (south half)
Area 4: Clackamas, Clatsop, Columbia, Gilliam, Hood River, Jefferson, Multnomah, Sherman, Wasco, Wheeler, and Washington Counties; Tillamook and Yamhill Counties (north half)
Area 5: Coos and Curry Counties; Douglas County (West Coast portion); Lane County (including the City of Florence)
Area 6: Benton County (south half); Crook and Deschutes Counties; Douglas County (except Coast portion); Grant County (SW corner); Harney County (NW portion); Jefferson County (south half); Klamath and Lake Counties (northern portion); Lane County (except the City of Florence); Lincoln and Linn Counties (south half)
Area 7: Remainder of Klamath and Lake Counties, Jackson and Josephine Counties

ROOFERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Grant, Gillian, Hood River, Multnomah, Sherman, Tillamook, Wasco, Washington, and Wheeler Counties
Area 2: Benton, Coos, Crook, Curry, Deschutes, Douglas, Harney, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Polk, and Yamhill Counties
Area 3: Malheur County
Area 4: Umatilla, Union, and Wallowa Counties
Area 5: Morrow County

AREA AND GROUP DESCRIPTIONS (CONT'D)

SHEET METAL WORKERS:
Area 1: Benton, Clackamas, Clatsop, Columbia, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Wasco, Washington, Wheeler, and Yamhill Counties
Area 2: Baker and Malheur Counties
Area 3: Morrow, Umatilla, Union, and Wallowa Counties
Area 4: Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Line

SOFT FLOOR LAYERS:
Area 1: All Counties except Malheur County
Area 2: Malheur County

STEAMFITTERS
Area 1: Clackamas, Clatsop, Columbia, Gilliam, Hood River, Jefferson Multnomah, Sherman, Wasco, Wheeler, and Washington Counties; Tillamook and Yamhill Counties (north half)

TILE SETTERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River Counties, Malheur County (north half); Morrow, Multnomach, Sherman, Tillamook, Umatilla, Union, and Wallow Counties; Wasco County (north of Maupin); Washington County; Yamhill County (north half)
Area 2: Benton, Coos, Crook, Curry, Deschutes, Douglas, Grant, Harney, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, and Linn Counties; Malheur County (south half); Wasco County (Maupin and south thereof); Wheeler County (south half)

TILE and TERRAZZO HELPERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River Counties; Malheur County (north half); Marrow, Multnomach, Sherman, Tillamook, Umatilla, Union, and Wallow Counties; Wasco County (north of Maupin); Washington County; Yamhill County (north half)

LINE CONSTRUCTION:
Area 1: All Counties Except Malheur County
Group 1: Cable Splicer, Leadman Pole Sprayer
Group 2: Lineman, Pole Sprayer, Heavy Line equipment Man, Certified Lineman Welder
Group 3: Tree Trimmer
Group 4: Line Equipment Man
Group 5: Head Groundman, Powderman, Jackhammer Man
Group 6: Head Groundman (Clipper)
Group 7: Groundman

ZONE DEFINITIONS - LINE CONSTRUCTION ONLY

Zone 1 - 0 to 3 miles radius from the geographical center of Seattle, Tacoma, Portland, Medford.
Zone 2 - 3 to 20 miles radius from Seattle, Tacoma, Portland, Medford; and 0 to 20 miles radius from the Cities listed below

ZONE DEFINITIONS - LINE CONSTRUCTION (Area 1 only) Cont'd

Zone 3 - 20 to 35 miles radius from all Cities
Zone 4 - 35 to 50 miles radius from all Cities
Zone 5 - More than 50 miles radius from all Cities

BASE POINTS

Washington	Oregon	Idaho
Bellingham	Astoria	Coeur D'Alene
Ellensburg	Baker	Kellogg
Ephrata	Burns	Lewiston
Everett	Bend	Oro Fino
Kennewick	Corvallis	Sandpoint
Longview	Eugene	
Olympia	Klamath Falls	
Spokane	Lakeview	
Walla Walla	Pendleton	
Wenatchee	Salem	
Wilbur	Roseburg	
Yakima	The Dalles	
	Umtilla	

ZONE DESCRIPTIONS FOR CARPENTERS, LABORERS, POWER EQUIPMENT OPERATORS AND TRUCK DRIVERS

CITIES

Albany	Grants Pass	Oregon City
Astoria	Hermiston	Newport
Baker	Hood River	Ontario
Bend	Klamath Falls	Pendleton
Bingen	La Grande	Portland
Brookings	Lakeview	Port Orford
Burns	Longview	Reedsport
Coos Bay	Madras	Roseburg
Corvallis	Medford	Salem
Eugene	McMinnville	The Dalles
Goldendale	Vancouver	Tillamook

Zone 1 - All jobs or projects located within 30 miles of the respective City Hall
Zone 2 - More than 30 miles but less than 40 miles from the respective City Hall
Zone 3 - More than 40 miles but less than 50 miles from the respective City Hall
Zone 4 - More than 50 miles but less than 80 miles from the respective City Hall
Zone 5 - More than 80 miles from the respective City Hall

LABORERS

Group 1: Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Car and Truck Loaders; Carpenter Tender; Change-house Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert hand labor; Curing concrete; Demplition, wrecking, and moving laborers; Driller Tenders; Dumpers, road oiling crew; Dumpmen (for grading crew); Elevator Feeders; Guard Rail, Median Rail, Reference Post, Right-of-way Marker); Fine Graders; Form Strippers (not swinging stages); General Laborers; Leverman or Aggregate Spreader (Flaherty and Loading Spotters and similar types); Material Yard Man (including electrical); Powderman Tender; Pittsburgh Chipper Operator of similar types; Ribbon Setters (including Steel Forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpile; Timber Faller and Bucker (hand labor); Tool-room Man (at job site); Tunnel Bullgang (above ground); Weighthman, Crusher (aggregate when used); Railroad Track Laborers

Group 2: Applicator (including Pot Tender for same), applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary Power Spreader and similar types; Clean-up Nozzleman; Green Cutter (concrete, rock, etc.); Concrete Power Buggyman; Crusher Feeder; Demolition and wrecking charred materials; Grade Checker; Granite Nozzleman Tender; Gunite or Pot Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine; Jackhammer; Chipping Guns; Paving Breakers; Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Sand Blasting (wet); Stake-setter; Tunnel - Muckers, Brakemen, Concrete Crew, Bull Gang (underground)

Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators, Air Tracks, Cat Drills, Wagon Drills, Rubber-mounted Drills, and other similar types; Concrete Saw Operator; Gunite Nozzleman; High Scalers, Strippers and Drillers (covers work in Swinging Stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down, or sloping and stripping); Laser Beam (pipe laying)(applicable when employee assigned to move, set up, align Laser Beam); Manhole Builder; Powdermen; Power Saw Operators (bucking and falling); Pumpcrete Nozzlemen; Sand Blasting (dry); Sewer Pipe Layers; Sewer Timberman; Track Liners, Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks; Tugger Operator; Tunnel - Chuck Tenders, Nippers, and Timbermen; Vibrator (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - applicable when employee assigned to move, set up, align Laser Beam; Tunnel Miners; Tunnel Powderman

Group 5: Landscaping or Planting Laborer; fence builders

POWER EQUIPMENT OPERATORS

Group 1: Oiler, including Plant, Crane, Crusher, Guardrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deckhand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakeman; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler - Driver, 25 ton capacity or over; Crane Fireman (all equipment except floating); A-Frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Tender; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrail Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Tender; Welder's Tender; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Aspahlt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator (any power), under 1,250 cu. ft. total capacity; Conveyor Operator; Mixer Box Operator (C.T.B., Dry Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (riding type); Wire Mat or Brooming Machine; Ross Carrier Operator (on job site); Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamper; Bell Boy, phones, etc; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite Work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Service Oiler (Greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Locomotive, under 40 tons; Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Pactor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power driven Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulva-mixer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. flywheel and under; Trenching Machine, maximum digging capacity 3 ft. depth

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginnis Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 2½ cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Beltcrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck, double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, wheel type 3/8 cu. yds. and under with or without Front End attachments 2½ cu. yds. and under (Ford, John Deer, Case type); Elevating Grader, Tractor towed requiring Operator or Grader; Pot Rammer; Ballast Regulator; Ballast Tamper, Multiple-purpose; Track Liner; Tie Spacer; Shuttle Car; Locomotive, 40 tons and over

Group 8: Diesel-electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum; Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzley Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yds.; Loader, Front End and Overhead, 2½ cu. yds. and under 4 cu. yds.; Hammer Operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (Bit Grinder); H.D. Mechanic and Welder; Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. flywheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable Plow (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Combination H.D. Mechanic - Welder, with dispatcher and/or when required to do both; Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type); Driller - Percussion, Diamond, Core, Cable, Rotary and similar type

Group 11: Mixer Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel; Dragline; Clamshell, Hoe, etc., under 1 cu. yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Banding Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine; Single Scraper, with Push-pull attachments, self-loader; Paddle Wheel, auger type; Blade mounted Spreaders, Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electronic, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 40 tons; Piledriver Operator; Floating Clamshell, etc., under 3 cu .yds.; Floating Crane (Derrick Barge), less than 30 ton; Elevating Grader, operated by Tractor Operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator, Locomotive Crane, Gantry and Overhead

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, auger type, finish and/or 2 or more units

Group 15: Rock Hound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (Derrick Barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu. yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley, over 80 ton and including 150 ton; Floating Crane (Derrick Barge), 80 ton, but less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane, 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in conjunction with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane, 250 ton and over; Remote controlled earth moving equipment; Underwater equipment, remote or otherwise

TRUCK DRIVERS

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: 6 cu. yds. and under; Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame or Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

Group 3: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and Wet or Dry Mix Trucks: 5 cu. yds. and under; Tireman Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers or doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Stadddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters or similar equipment, all sizes; Transit Mix and Wet or Dry Trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 20 cu. yds.; Transit Mix and Wet or Dry Mix Truck, over 7 cu. yds. and including 9 cu. yds.; Truck Mechanic - Welder - Body Repairman; Water Wagons (rated capacity) -5,000 to 7,000 gallons

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains of combinations thereof: over 20 cu. yds. and including 30 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity) over 7,000 gallons to 10,000 gallons

TRUCK DRIVERS (Cont'd)

Group 8: Dump Trucks, side, end and bottom cumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: Over 40 cu. yds. and including 50 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trians or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

Drivers and Tenders (handling Sacked cement - add $0.15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR, 5.5 (a)(1)(ii))

WELDERS; RIGGERS: Rate for craft to which welding and rigging are incidental.

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Friday
June 28, 1985

Federal Register

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 2, 14, 15, 19, 28, 30, 35, 36, 43, 44, and 52

Federal Acquisition Regulations; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 14, 15, 19, 28, 30, 35, 36, 43, 44, and 52

[Federal Acquisition Circular 84-8]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-8 amends the Federal Acquisition Regulation (FAR) with respect to the following: Civilian Agency Acquisition Council Membership; Prompt Payment Discounts in Evaluation of Offers; Use of Standard Form 1442 for Construction Contracts Under SBA's "8(a)" Program; Miller Act Changes; Undue Restriction of "Adequate Price Competition"; Government Property and Title; Prescriptions for Clauses to be Used in Contracts for Architect-Engineer Services; Contractor Initiated Purchase Order Modifications; Definition of Industrial Facilities; Evidence of Payment to Surety; and Minor Editorial Changes.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

Public Comments

Public comments have not been solicited with respect to the revisions in FAC 84-8 since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Dated: June 24, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-8]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-8 is effective July 1, 1985.

Mary Ann Gilleece,

Deputy Under Secretary (Acquisition Management).

Dwight Ink,

Acting Administrator.

June 21, 1985.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-8 amends the Federal Acquisition Regulation (FAR) as specified below. The following is a summary of the amendments:

Item I—Civilian Agency Acquisition Council Membership

FAR 1.201-1 is revised to substitute the Department of State for the Department of Housing and Urban Development in the listing of members of the Civilian Agency Acquisition Council.

Item II—Prompt Payment Discounts in Evaluation of Offers

FAR 14.407-3 is revised to include a cross reference to the prescriptive language that governs the use of the clause at 52.232-8, Discounts for Prompt Payment. FAR 15.608 is revised to make it clear that the policy expressed in FAR 14.407-3 is applicable to negotiated acquisitions. The contract clause at FAR 52.232-8 is revised to express the policy that is stated in FAR 14.407-3.

Item III—Use of Standard Form 1442 for Construction Contracts Under SBA's "8(a)" Program

FAR 19.809-1 is revised to require the use of Standard Form (SF) 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), to award construction contracts under the authority of section 8(a) of the Small Business Act. The FAR presently requires use of SF 26, Award/Contract, for the award of all section 8(a) contracts. However, the format of SF 26 was designed for supply-type contracts utilizing the Uniform Contract Format concept. This feature renders the SF 26 inappropriate for the award of section 8(a) construction contracts.

Item IV—Miller Act Changes

FAR 28.106-6 is revised to reflect the requirement of Public Law 98-269 that transferred the responsibility for furnishing certified copies of Miller Act payment bonds from the Comptroller General to the "department secretary or agency head of the contracting agency."

Item V— Undue Restriction of "Adequate Price Competition"

FAR 30.301 is revised to correct an incorrect reference that has been interpreted to unduly restrict the intended meaning of "adequate price competition" as it relates to Cost Accounting Standards.

Item VI—Government Property and Title

FAR 35.014, 52.245-2, 52.245-5, 52.245-11, and 52.245-15 are revised to (a) adjust the dollar threshold (from $1,000 to $5,000) for contractor retention of title to Government property acquired under research contracts with nonprofit higher education institutions and nonprofit organizations, (b) include additional language ("and other tangible personal property"), (c) eliminate repetitive prescriptive language, and (d) reflect a change in the U.S. Code references.

Item VII—Prescriptions for Clauses to be Used in Contracts for Architect-Engineer Services

FAR 36.609.1, 36.609-2, and 36-609-3 are revised to specify that the clauses at FAR 52.236-22, 52.236-23, and 52.236-24 are to be inserted only in fixed-price architect-engineer contracts.

Item VIII—Contractor Initiated Purchase Order Modifications

FAR 43.301 is revised to allow agencies the option of using Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, for purchase order modifications. This change eliminates the conflicting requirements in FAR 13.503(b) and FAR 43.301 on the use of SF 30.

Item IX—Definition of Industrial Facilities

FAR 44.101, 44.201-2, and 52.244-2 are revised to eliminate the implication that the term "industrial facilities" has a meaning other than that of the term "facilities" as defined in FAR 45.301.

Item X—Evidence of Payment to Surety

FAR 52.232-5 is revised to place the responsibility for furnishing evidence of full payment to a surety in the contractor, rather than in the Government.

Item XI—Editorial

Part 2 is revised to designate the text of Subpart 2.1 as section 2.101 and to designate the text of Subpart 2.2 as section 2.201; citations in the contract clauses at 52.244-1 and 52.244-2, referring to limitations on the use of cost-reimbursement contracts, are corrected; and minor editorial

corrections are made with respect to the contract clause at 52.233–1, and the contract clause at 52.246–2 and its alternates I and II.

Therefore, 48 CFR Chapter 1 is amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 2, 14, 15, 19, 28, 30, 35, 36, 43, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

2. Section 1.201–1 is amended by removing in paragraph (b)(1) the words "Housing and Urban Development" and inserting alphabetically following the word "Labor" the word "State".

PART 2—DEFINITIONS OF WORDS AND TERMS

2.1 [Amended]

3. Subpart 2.1 is amended by designating the text following the subpart heading as section 2.101 Definitions.

2.2 [Amended]

4. Subpart 2.2 is amended by designating the text following the subpart heading as section 2.201 Contract clause.

PART 14—SEALED BIDDING

5. Section 14.407–3 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

14.407–3 Prompt payment discounts.

* * * * *

(b) See 32.111(c)(1), which prescribes the contract clause at 52.232–8, Discounts for Prompt Payment.

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.608 is amended by adding paragraph (c) as follows:

15.608 Proposal evaluation.

* * * * *

(c) The requirements of 14.407–3, Prompt payment discounts, are applicable to negotiated acquisitions.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. Section 19.809–1 is amended by revising the second sentence in paragraph (a) to read as follows:

19.809–1 General.

(a) * * * The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case Standard Form 1442 shall be used as required in 36.701(b). * * *

* * * * *

PART 28—BONDS AND INSURANCE

8. Section 28.106–6 is amended by adding paragraph (c) to read as follows:

28.106–6 Furnishing information.

* * * * *

(c) When a payment bond has been provided for a contract, the head of the agency or designee shall furnish a certified copy of the bond and the contract for which it was given to any person who makes a request therefor and who furnishes an affidavit that the requestor has supplied labor or materials for such work and payment therefor has not been made or that the requestor is being sued on such bond. The person who makes the request shall be required to pay such costs of preparation as determined by the head of the agency or designee to be reasonable and appropriate (see 40 U.S.C. 270(c)).

PART 30—COST ACCOUNTING STANDARDS

30.301 [Amended]

9. Section 30.301 is amended by removing in paragraph (b)(8) the reference "(see 15.804–3(c))" and inserting in its place the reference "(see 15.804–3(b))".

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.014 [Amended]

10. Section 35.014 is amended by removing in paragraph (b) the reference "41 U.S.C. 506," and inserting in its place the reference "31 U.S.C. 6306"; by redesignating paragraph (e) as paragraph (c) and removing the reference "41 U.S.C. 506" and inserting in its place the reference "31 U.S.C. 6306"; by redesignating paragraph (c) as paragraph (d); and by redesignating paragraph (d) as paragraph (e) and removing the reference "paragraph (c)" and inserting in its place the reference "paragraph (d)".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

11. Section 36.609–1 is amended by revising the introductory text of paragraph (c) to read as follows:

36.609–1 Design within funding limitations.

* * * * *

(c) The contracting officer shall insert the clause at 52.236–22, Design Within Funding Limitations, in fixed-price architect-engineer contracts except when * * *

12. Section 36.609–2 is amended by revising paragraph (b) to read as follows:

36.609–2 Redesign responsibility for design errors or deficiencies.

* * * * *

(b) The contracting officer shall insert the clause at 52.236–23, Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

13. Section 36.609–3 is revised to read as follows:

36.609–3 Work oversight in architect-engineer contracts.

The contracting officer shall insert the clause at 52.236–24, Work Oversight in Architect-Engineer Contracts, in fixed-price architect-engineer contracts.

PART 43—CONTRACT MODIFICATIONS

14. Section 43.301 is amended by revising pragraph (a)(2) to read as follows:

43.301 Use of forms.

(a) * * *

(2) The SF 30 may be used for (i) modifications that change the price of contracts for the acquisition of petroleum as a result of economic price adjustment, (ii) termination notices, and (iii) purchase order modifications as specified in 13.503.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

15. Section 44.101 is amended by alphabetically adding the definition of "Facilities" to read as follows:

44.101 Definitions.

* * * * *

"Facilities" (see 45.301).

* * * * *

44.201–2 [Amended]

16. Section 44.201–2 is amended by removing in paragraph (a)(1) the word "industrial".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.230-6 [Amended]

17. Section 52.230-6 is amended by removing in the introductory text the reference "30.302-2(d)" and inserting in its place the reference "30.303-2(d)".

52.232-5 [Amended]

18. Section 52.232-5 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUL 1985)"; by removing in paragraph (e) of the clause the word "furnishing" and inserting in its place the words "the Contractor has furnished"; and by removing both derivation lines following "(End of clause)".

19. Section 52.232-8 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUL 1985)"; by adding a paragraph to the clause and designating it as paragraph (a); by revising the existing clause text and redesignating it as paragraph (b); and by removing both derivation lines following "(End of clause)" as follows:

52.232-8 Discounts for Prompt Payment.

* * * * *

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date a proper invoice or voucher is received in the office specified by the Government, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which a wire transfer was made.

(End of clause)

52.232-10 [Amended]

20. Section 52.232-10 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUL 1985)"; by removing in paragraph (c) of the clause the parenthetical phrase "(Appendix A of the contract)"; and by removing the derivation line following "(End of clause)".

52.233-1 [Amended]

21. Section 52.233-1 is amended by removing in the introductory text the reference "33.014" and inserting in its place the reference "33.214"; and by inserting a colon following the word "clause" and removing the remainder of the paragraph.

52.236-22 [Amended]

22. Section 52.236-22 is amended by inserting a colon after the word "clause" the first time it appears in the introductory text and removing the remainder of the paragraph.

52.236-23 [Amended]

23. Section 52.236-23 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the paragraph.

52.236-24 [Amended]

24. Section 52.236-24 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the paragraph.

52.244-2 [Amended]

25. Section 52.244-2 is amended by inserting a colon after the word "clause" in the introductory text and removing the remainder of the paragraph; by removing in the title of the clause the reference "(APR 1984)" and inserting in its place the reference "(JUL 1985)"; by removing in paragraph (a)(4) of the clause the word "industrial"; by removing in paragraph (g) of the clause the reference "subsection 16.301-4" and inserting in its place the reference "paragraph 15.903(d)"; and by inserting a comma in paragraph (i)(1) of the clause, following the reference "52.216-17".

26. Section 52.245-2 is amended by inserting a colon following the word "clause" in the introductory text and removing the remainder of the paragraph; by revising the introductory text of *Alternate I;* by removing in *Alternate II* the date "(APR 1984)" and inserting in its place the date "(JUL 1985)"; by revising the introductory text of *Alternate II;* by inserting in the first sentence of paragraph (c)(4) of *Alternate II,* following the word "equipment", the words "(and other tangible personal property)"; by removing the figure "$1,000" wherever it appears in paragraph (c)(4) of *Alternate II,* and inserting in its place the figure "$5,000"; and by removing the four derivation lines following the end of paragraph (g)(10) of *Alternate II* as follows:

52.245-2 Government Property (Fixed-Price Contracts).

* * * * *

Alternate I (APR 1984). As prescribed in 45.106(b)(2), substitute the following paragraph (g) for paragraph (g) of the basic clause:

* * * * *

Alternate II (JUL 1985). As prescribed in 45.106(b)(3), substitute the following paragraphs (c) and (g) for paragraphs (c) and (g) of the basic clause:

* * * * *

27. Section 52.245-5 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the paragraph; by removing in *Alternate I* the date "(APR 1984)" and inserting in its place the date "(JUL 1985)"; by revising the introductory text of *Alternate I;* by inserting in the first sentence of paragraph (c)(4) of *Alternate I,* following the word "equipment", the words "(and other tangible personal property)"; by removing the figure "$1,000" wherever it appears in paragraph (c)(4) of *Alternate I,* and inserting in its place the figure "$5,000"; and by removing both derivation lines at the end of paragraph (c)(5) of *Alternate I,* as follows:

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

* * * * *

Alternate I (JUL 1985). As prescribed in 45.302-6(e)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

28. Section 52.245-11 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by revising the introductory text of *Alternate I;* by revising the first sentence in paragraph (c)(1) of Alternate I; and by removing the derivation line at the end of paragraph (c)(6) of *Alternate I* as follows:

52.245-11 Government Property (Facilities Use).

* * * * *

Alternate I (July 1985). As prescribed in 45.302-6(e)(2), substitute the following paragraph (c) of the basic clause:

(c) *Title.* (1) Title to equipment (and other tangible personal property) having a unit acquisition cost of less than $5,000, purchased with funds available for research, shall vest

in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor received the Contracting Officer's approval before acquiring the equipment.
* * *

* * * * *

29. Section 52.245–15 is amended by revising the introductory text of the clause; by removing in the title of the clause the date "(April 1984)" and inserting in its place the date "(July 1985)"; by removing in paragraph (a) of the clause the reference "Public Law 95–224 (41 U.S.C. 506)," and inserting in its place the reference "Public Law 97–258 (31 U.S.C. 6306),"; and by removing the derivation line following "(End of clause)".

52.245–15 Transfer of Title to the Facilities.

As prescribed in 45.302–7(d), insert the following clause:

* * * * *

52.246–2 [Amended]

30. Section 52.246–2 is amended by inserting a colon in the first sentence of the introductory text following the word "clause" and removing the remainder of the paragraph; by removing in the last sentence of (l)(2) of the clause the phrase "right to contract" and inserting in its place the phrase "right by contract"; by removing in the clause, in *Alternate I* and in *Alternate II,* the date "(April 1984)" and inserting in each place the date "(July 1985)"; by removing in paragraph (l) of the clause, in paragraph (1) of *Alternate I* and in paragraph (l) of *Alternate II,* the reference "paragraph (f)" and inserting in each place the reference "paragraph (k)"; and by removing the derivation lines following the last paragraph of the clause, of *Alternate I* and of *Alternate II.*

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Friday
June 28, 1985

Part IV

General Services Administration

41 CFR Parts 201-22 and 201-45

Establishing Integrated Records Management Provisions for the Federal Information Resources Management Regulation (FIRMR)

41 CFR Chapter 101

Removal of Records Management Provisions From the Federal Property Management Regulations

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-22 and 201-45

[FIRMR Amdt. 3]

Establishing Integrated Records Management Provisions for the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule.

SUMMARY: (a) This regulation codifies, cancels, and supersedes FIRMR Temporary Regulation 12 (50 FR 14220, April 11, 1985) which established FIRMR Parts 201-22, Records Management Programs, and 201-45, Management of Records. The material in this amendment was the subject of a **Federal Register** notice of proposed rulemaking on February 19, 1985 (50 FR 6970, February 19, 1985), and a direct request for comments was sent to all Federal agencies on February 14, 1985. This regulation reflects the reconciliation of comments received in response to those requests.

(b) This regulation addresses the division of responsibilities between the National Archives and Records Administration (NARA) and GSA under Pub. L. 98-497. It also provides guidelines on the economic and effective management of mail, files, directives, forms, reports, micrographics, copy, correspondence, and records equipment and supplies. The former section on ADP records management was deleted to eliminate duplication and to foster an integrated approach to records management without regard to record medium. Regulations governing records disposition and adequacy of documentation are not included in this amendment. NARA is responsible for those areas under Pub. L. 98-497, effective April 1, 1985.

EFFECTIVE DATE: This regulation is effective June 28, 1985.

FOR FURTHER INFORMATION CONTACT: David R. Mullins, Policy Branch (KMPP), telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (a) Pub. L. 98-497, the National Archives and Records Administration Act of 1984, was signed on October 19, 1984. Under the Act, the National Archives Records Service (NARS) became an independent agency known as the National Archives and Records Administration (NARA), effective April 1, 1985. As a result, responsibility for the administration of the provisions contained in FPMR Part 101-11 was divided between GSA and NARA. FIRMR Temporary Regulation 12 reflected that division of responsibilities and incorporated into the FIRMR those provisions of FPMR Part 101-11 which promote economic and effective records management. NARA is establishing a regulation in 36 CFR Chapter XII that will include the FPMR provisions that address records disposition and adequacy of documentation.

(b) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of, the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society.

(c) Derivation Tables for Individual Parts.

DERIVATION TABLE FOR PART 201-22

FIRMR sections	FPMR sources
201-22.000	101-11.000.
201-22.001	101-11.101.
201-22.001-1	101-11.101-1.
201-22.001-2	101-11.101-2.
201-22.001-3	None.
201-22.001-4	101-11.101-4
	101-11.103-1,
	101-11.104,
	101-11.209-2,
	101-11.501.
201-22.002	101-11.102.
201-22.002-1	101-11.102-1.
201-22.002-2	101-11.102-2.
201-22.002-3	101-11.102-3.
201-22.002-4	101-11.102-4.
201-22.002-5	101-11.102-6.
201-22.003	101-11.103.
201-22.003-1	101-11.103-2.
201-22.003-2	101-11.103-3.
201-22.003-3	101-11.103-4.

DERIVATION TABLE FOR PART 201-45

FIRMR sections	FPMR sources
201-45.100	101-11.200.
201-45.101	101-11.201.
201-45.101-1	101-11.201-1.
201-45.102	101-11.206.
201-45.102-1	101-11.206-1.
201-45.102-2	101-11.206-3.
201-45.102-3	101-11.206-4.
201-45.103	101-11.207.
201-45.103-1	101-11.207-1.
201-45.103-2	101-11.207-3.
201-45.103-3	101-11.207-4.
201-45.104	101-11.208.
201-45.104-1	None.
201-45.104-2	None.
201-45.104-3	101-11.208-1.
201-45.104-4	101-11.208-3,
	101-11.208-4.
201-45.104-5	None.
201-45.105	101-11.209.
201-45.105-1	101-11.209-1.
201-45.105-2	Reserved.
201-45.105-3	101-11.209-4.
201-45.105-4	101-11.209-5.
201-45.105-5	101-11.209-6.
201-45.106	101-11.302.
201-45.106-1	101-11.302-1.
201-45.106-2	101-11.302-2.
201-45.106-3	101-11.302-4.

DERIVATION TABLE FOR PART 201-45—Continued

FIRMR sections	FPMR sources
201-45.106-4	101-11.302-5.
201-45.107	101-11.304.
201-45.107-1	101-11.304-1.
201-45.107-2	101-11.304-3.
201-45.107-3	101-11.304-4.
201-45.108	101-11.305.
201-45.108-1	101-11.305-1.
201-45.108-2	101-11.305-3,
	101-11.305-4.
201-45.106-3	None.
201-45.109	101-11.5.
201-45.109-1	101-11.500.
201-45.109-2	101-11.503.
201-45.109-3	101-11.504.
201-45.109-4	101-11.505.
201-45.110	101-11.306.
201-45.110-1	101-11.306-1.
201-45.110-2	101-11.306-3,
	101-11.306-4
201-45.2	Reserved.
201-45.3	Reserved.
201-45.400	None.
201-45.401	101-11.603.
201-45.401-1	101-11.603-1.
201-45.401-2	101-11.603-3.
201-45.401-3	101-11.603-4.
201-45.401-4	101-11.603-5.
201-45.401-5	101-11.603-6.
201-45.401-6	101-11.603-7.
201-45.401-7	101-11.603-8.
201-45.401-8	101-11.603-9.
201-45.401-9	101-11.603-10.
	101-11.603-11,
	101-11.603-12,
	101-11.603-13,
	101-11.603-14.
201-45.401-10	101-11.603-15.
201-45.500	101-11.800.
201-45.500-1	101-11.800-1.
201-45.501	101-11.801.
201-45.502	101-11.803.
201-45.503	101-11.804.
201-45.504	101-11.805.
201-45.504-1	101-11.805-1,
	101-11.805-2.
201-45.504-2	101-11.895-1,
	101-11.805-2.
201-45.505	101-11.806-8.
201-45.505-1	None.
201-45.506	101-11.806-7.
201-45.507	101-11.806-6.
201-45.508	None.
201-45.509	101-11.806-1.
201-45.510	101-11.806-1.
201-45.510-1	101-11.806-1.
201-45.510-2	101-11.806-1.
201-45.510-3	None.
201-45.511	101-11.808.
201-45.512	101-11.806-3.
201-45.513	None.
201-45.514	101-11.807.
201-45.600	101-11.1100.
201-45.601	101-11.1101.
201-45.602	101-11.1100-1.
201-45.603	101-11.1103.
201-45.604	101-11.1104,
	101-11.1105-1.
201-45.605	101-11.1105-3.
201-45.606	101-11.1106-3.
201-45.607	101-11.1106-2.
201-45.608	101-11.1105-2.
201-45.609	101-11.1107.
201-45.609-1	101-11.1107-1.
201-45.609-2	101-11.1107-2.
201-45.609-3	101-11.1107-5.
201-45.610	None.
201-45.610-1	101-11.1107-6,
	101-45.1107-7.
201-45.610-2	101-11.1107-8.
201-45.611	101-11.1108.
201-45.7	Reserved.
201-45.800	101-11.1000.
201-45.801	101-11.1001.
201-45.802	101-11.1002.
201-45.803	101-11.1003,
	101-11.1004.
201-45.804	101-11.1005.

(d) Distribution Tables.

In the following tables the designation, "NARA," means that the cited FPMR material is the responsibility of the National Archives and Records Administration under Pub. L. 98-497.

DISTRIBUTION TABLE FOR PART 201-22

FPMR sources	FIRMR sections
101-11.000	201-22.000.
101-11.101	201-22.001.
101-11.101-1	201-22.001-1.
101-11.101-2	201-22.001-2.
101-11.101-3	201-22.001-3.
101-11.101-4	201-22.001-4.
101-11.101-5	201-22.003-1.
101-11.102	201-22.002.
101-11.102-1	201-22.002-1.
101-11.102-2	201-22.002-2.
101-11.102-3	201-22.002-3.
101-11.102-4	201-22.002-4.
101-11.102-5	NARA.
101-11.102-6	201-22.002-5.
101-11.103	201-22.003.
101-11.103-1	201-22.001-4.
101-11.103-2	201-22.003-1.
101-11.103-3	201-22.003-2.
101-11.103-4	201-22.003-3.
101-11.104	201-22.001-4.

DISTRIBUTION TABLE FOR PART 201-45

FPMR sources	FIRMR sections
101-11.200	201-45.100.
101-11.201	201-45.101.
101-11.201-1	201-45.101-1.
101-11.202	NARA.
101-11.202-1	NARA.
101-11.202-2	NARA.
101-11.203	NARA.
101-11.203-1	NARA.
101-11.203-2	NARA.
101-11.204	Deleted.
101-11.205	Deleted.
101-11.206	201-45.102.
101-11.206-1	201-45.102-1.
101-11.206-2	201-2.001.
101-11.206-3	201-45.102-2.
101-11.206-4	201-45.102-3.
101-11.207	201-45.103.
101-11.207-1	201-45.103-1.
101-11.207-2	201-2.001.
101-11.207-3	201-45.103-2.
101-11.207-4	201-45.103-3.
101-11.208	201-45.104.
101-11.208-1	201-45.104-3.
101-11.208-2	201-2.001.
101-11.208-3	201-45.104-4.
101-11.208-4	201-45.104-4.
101-11.209	201-45.105.
101-11.209-1	201-45.105-1.
101-11.209-2	201-22.001-4.
101-11.209-3	201-2.001.
101-11.209-4	201-45.105-3.
101-11.209-5	201-45.105-4.
101-11.209-6	201-45.105-5.
101-11.210	Deleted.
101-11.301	Deleted.
101-11.302	201-45.106.
101-11.302-1	201-45.106-1.
101-11.302-2	201-45.106-2.
101-11.302-3	201-2.001.
101-11.302-4	201-22.106-3.
101-11.302-5	201-45.106-4.
101-11.303	None.
101-11.304	201-45.107.
101-11.304-1	201-45.107-1.
101-11.304-2	201-2.001.
101-11.304-3	201-45.107-2.
101-11.304-4	201-45.107-3.
101-11.305	201-45.108.
101-11.305-1	201-45.108-1.
101-11.305-2	201-2.001.
101-11.305-3	201-45.108-2.
101-11.305-4	201-45.108-2.
101-11.306	201-45.110.
101-11.306-1	201-45.110-1.
101-11.306-2	201-2.001.
101-11.306-3	201-45.110-2.
101-11.306-4	201-45.110-2.

DISTRIBUTION TABLE FOR PART 201-45—Continued

FPMR sources	FIRMR sections
101-11.320	NARA.
101-11.321	NARA.
101-11.322	NARA.
101-11.323	NARA.
101-11.324	NARA.
101-11.325	NARA.
101-11.326	NARA.
101-11.327	NARA.
101-11.328	NARA.
101-11.329	NARA.
101-11.401	NARA.
101-11.402	NARA.
101-11.403	NARA.
101-11.404	NARA.
101-11.405	NARA.
101-11.406	NARA.
101-11.407	NARA.
101-11.408	NARA.
101-11.409	NARA.
101-11.410	NARA.
101-11.411	NARA.
101-11.412	NARA.
101-11.500	201-45.109-1.
101-11.501	201-22.001-4.
101-11.502	201-2.001.
101-11.503	201-45.109-2.
101-11.504	201-45.109-3.
101-11.505	201-45.109-4.
101-11.506	NARA.
101-11.507	NARA.
101-11.508	NARA.
101-11.509	NARA.
101-11.510	NARA.
101-11.601	Deleted.
101-11.602	Deleted.
101-11.603	201-45.401.
101-11.603-1	201-45.401-1.
101-11.603-2	201-2.001.
101-11.603-3	201-45.401-2.
101-11.603-4	201-45.401-3.
101-11.603-5	201-45.401-4.
101-11.603-6	201-45.401-5.
101-11.603-7	201-45.401-6.
101-11.603-8	201-45.401-7.
101-11.603-9	201-45.401-8.
101-11.603-10	201-45.401-9.
101-11.603-11	201-45.401-9.
101-11.603-12	201-45.401-9.
101-11.603-13	201-45.401-9.
101-11.603-14	201-45.401-9.
101-11.603-15	201-45.401-10.
101-11.701	NARA.
101-11.701-1	NARA.
101-11.701-2	NARA.
101-11.701-3	NARA.
101-11.701-4	NARA.
101-11.701-5	NARA.
101-11.701-6	NARA.
101-11.800	201-45.500.
101-11.800-1	201-45.500-1.
101-11.801	201-45.501.
101-11.802	201-2.001.
101-11.803	201-45.502.
101-11.804	201-45.503.
101-11.805	201-45.504.
101-11.805-1	201-45.504-1, 201-45.504-2.
101-11.805-2	201-45.504-1, 201-45.504-2.
101-11.806	Deleted.
101-11.806-1	201-45.509, 201-45.510, 201-45.510-1, 201-45.510-2.
101-11.806-2	Deleted.
101-11.806-3	201-45.512.
101-11.806-4	Deleted.
101-11.806-5	Deleted.
101-11.806-6	201-45.507.
101-11.806-7	201-45.506.
101-11.806-8	201-45.505.
101-11.807	201-45.514.
101-11.808	201-45.511.
101-11.9	Deleted.
101-11.1000	201-45.600.
101-11.1001	201-45.601.
101-11.1002	201-45.602.
101-11.1003	201-45.603.
101-11.1004	201-45.603.
101-11.1005	201-45.604.

DISTRIBUTION TABLE FOR PART 201-45—Continued

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101-11.1100	201-45.600.
101-11.1100-1	201-45.602.
101-11.1101	201-45.601.
101-11.1102	201-2.001.
101-11.1102-1	201-2.001.
101-11.1102-2	201-2.001.
101-11.1102-3	201-2.001.
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101-11.1102-7	201-2.001.
101-11.1103	201-45.603.
101-11.1104	201-45.604.
101-11.1105	Deleted.
101-11.1105-1	201-45.604.
101-11.1105-2	201-45.608.
101-11.1105-3	201-45.605.
101-11.1106	Deleted.
101-11.1106-1	Deleted.
101-11.1106-2	201-45.607.
101-11.1106-3	201-45.606.
101-11.1107	201-45.609.
101-11.1107-1	201-45.609-1.
101-11.1107-2	201-45.609-2.
101-11.1107-3	Deleted.
101-11.1107-4	Deleted.
101-11.1107-5	201-45.609-3.
101-11.1107-6	201-45.610-1.
101-11.1107-7	201-45.610-1.
101-11.1107-8	201-45.610-2.
101-11.1107-9	Deleted.
101-11.1108	201-45.611.
101-11.1109	Deleted.
101-11.12	To be rescinded (see 41 CFR 101-6.10).
101-11.13	NARA.
101-11.4900	Deleted.
101-11.4901	NARA.
101-11.4902	NARA.
101-11.4903	NARA.
101-11.4904	NARA.
101-11.4905	NARA.
101-11.4906	NARA.
101-11.4907	NARA.
101-11.4908	NARA.
101-11.4909	NARA.
101-11.4910	NARA.
101-11.4911	None.
101-11.4912	Deleted.
101-11.4913	Deleted.
101-11.4914	Deleted.
101-11.4915	Deleted.
101-11.4916	Deleted.
101-11.4917	Deleted.
101-11.4918	Deleted.
101-11.4919	Deleted.
101-11.4920	Deleted.
101-11.4921	NARA.
101-11.4922	Deleted.
101-11.4930-248	Deleted.
101-11.4930-248-A	Deleted.
101-11.4930-249	Deleted.
101-11.4930-249-A	Deleted.
101-11.4930-250	Deleted.
101-11.4930-282	NARA.
101-11.4931	NARA.
101-11.4932	NARA.

List of Subjects

41 CFR Part 201-2

Government procurement, Government property management, Government records management.

41 CFR Part 201-22

Government records management.

CFR Part 201-45

Government records management.

Chapter 201 of Title 41 is amended as set forth below:

PART 201-2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for Part 201-2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201-2.001 [Amended]

2. Section 201-2.001 is amended by adding (alphabetically) definitions to read as follows:

* * * * *

"Computer output microform (COM) "—see "Microform terms."

* * * * *

"Continuation sheet"—see "Stationery terms."

"Copy terms" include—

(a) "Copier" means a machine that creates paper copies directly without requiring the creation of an intermediate master or plate for each original.

(b) "Copy" means a duplicate of a document previously created.

(c) "Copying" means the making of copies whether by copier or duplicator.

(d) "Copying equipment" means either copiers or duplicators.

(e) "Duplicator" means a machine that produces paper copies through the use of an intermediate master.

"Correspondence" means letters, form letters, telegrams, memoranda, endorsements, summary sheets, postal cards, memo routing slips, and other written communications.

* * * * *

"Directive terms include—

(a) "Directive" means a written communication that initiates or governs action, conduct, or procedure. Directives are often issued as circulars, notices, regulations, orders, and handbooks, and include materials usually issued to multiple addressees in multiple copies for insertion in policy, administrative, or operations manuals. News releases, program announcements, catalogs, price lists, training materials, and correspondence are not included.

(b) "Directives management" means the effective and efficient development and control of directives and their distribution, maintenance, and use.

(c) "External directive" means officially prescribed guidance such as rules, notices, and regulations issued to a primary audience outside the originating agency.

(d) "Internal directive" means officially prescribed intra-agency policy or procedure, delegation of authority, or assignment of responsibility.

"Directives Management"—see "Directive terms."

* * * * *

"Exception"—see "Form terms."

* * * * *

"External directive"—see "Directive terms."

"External reporting requirement"—see "Report terms."

"Facility"—see "Microform terms."

* * * * *

"File" means an arrangement of records. The term is used to denote papers, photographs, photographic copies, maps, machine-readable information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or machine-readable media, or on shelves, and occupying office or storage space.

* * * * *

"Flat envelope"—see "Stationery terms."

"Form terms" include—

(a) "Form" means a fixed arrangement of captioned spaces designed for entering and extracting prescribed information, including ADP systems forms. (See definition of non-form item.) Examples of ADP systems forms are:

(1) Paper forms designed to collect data for computer input; and

(2) Form layouts that are:

(i) Preprinted on continuous-feed computer paper;

(ii) Contained on overlays used to generate formatted computer outputs; or

(iii) Programed by a Federal agency and printed by a computer.

(b) "Format" means a guide, table, sample, or exhibit that illustrates a predetermined arrangement or layout for presenting data.

(c) "Exception" means GSA approval for an agency to change the content, format or printing specifications of a Standard or Optional form. (Exceptions are not deviations.) Content exceptions apply to Standard forms only, while format and printing exceptions apply to both Standard and Optional forms.

(1) Content exceptions are changes to the data elements of a form (i.e., additions, deletions, or revisions).

(2) Format exceptions are changes made by rearranging the data elements or spacing of entries on a form without change to the data elements.

(3) Printing exceptions are changes in the printing specifications of a form (e.g., changes to paper, including size, and the establishment of sets and marginally-punched constructions) that result in no changes in content or format.

(d) "Non-form item" means a printed product without spaces for entering information. Such items (instruction sheets and bulletins, pamphlets, notices, contract clause sheets, placards, certain tags and labels, pattern letters, guide letters, and form letters, etc.) may be assigned form numbers and controlled through the forms management program for referencing, printing, stocking, and distributing, but are excluded from statistical reporting of forms, and are identified as non-form or other items.

(e) "Optional form" means a form developed by a Federal agency for use in two or more agencies and approved by GSA for nonmandatory Governmentwide use.

(f) "Overprinting" means the printing of pertinent identical entries (e.g., agency name and address, accounting codes and organization codes) in a captioned area on a Standard or Optional form. Overprints are not exceptions.

(g) "Promulgating agency" means any Federal agency that develops a Standard form as defined in this § 201-2.001 and prescribes the mandatory Governmentwide use of that form in a regulation.

(h) "Public-use report form" means a form that is used to gather information from the public or from State or local governments.

(i) "Report form" means a special category of form that is designed for collecting identical information from persons or organizations either inside or outside the collecting agency.

(j) "Sponsoring agency" means any Federal agency that develops an Optional form as defined in this § 201-2.001.

(k) "Standard form" means a form prescribed by a Federal agency, pursuant to its authority, and approved by GSA for mandatory Governmentwide use.

"Format"—see "Form terms."

* * * * *

"Internal directive"—see "Directive terms."

* * * * *

"Letterhead"—see "Stationery terms."

"Lettersize envelopes"—see "Stationery terms."

* * * * *

"Mail" means letters, telecommunications, memoranda, post cards, documents, packages, publications, and other communications received for distribution or dispatch.

* * * * *

"Manifold carbon tissue set"—see "Stationery terms."

* * * * *

"Microfilm"—see "Microform terms."

"Microform terms" include—

(a) "Computer Output Microform (COM)" means microforms containing

data produced by a recorder from computer generated signals.

(b) "Facility" means an area set aside for equipment and operations required in the production or reproduction of microforms either for internal use or for the use of other organizational elements of the Federal Government.

(c) "Microfilm" means (1) Raw (unexposed and unprocessed) film with characteristics that make it suitable for use in micrographics;

(2) The process of recording microimages of film; and

(3) A fine grain, high resolution photographic film containing an image greatly reduced in size from the original.

(d) "Microform" means a term used for any form containing microimages.

(e) "Micrographics" means the science and technology of document and information microfilming and associated microform systems.

(f) "Microimage" means a unit of information, such as a page of text or a drawing, that has been made too small to be read without magnification.

(g) "Micrographics system" means a configuration of equipment and procedures for the production, reproduction, maintenance, storage, retrieval, display, or use of microforms. A micrographics system may involve one or more, but not necessarily all, of the functions listed above.

"Micrographics system"—see "Microform terms."

"Micrographics"—see "Microform terms."

"Microimage"—see "Microform terms."

* * * * *

"Non-form items"—see "Form terms."

* * * * *

"Operating document"—see "Report terms."

"Optional form"—see "Form terms."

"Overprinting"—see "Form terms."

* * * * *

"Public-use report form"—see "Form terms."

* * * * *

"Records, as used in Parts 201–22 and 201–45," means all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical forms or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included. (44 U.S.C. 3301).

"Records equipment and supplies," means file cabinets, shelf files, mail handling equipment, visible files, mechanized files, file guides, folders, jackets, wallets, microforms, magnetic tape, magnetic disks, and all similar items used in the creation and maintenance of records and in mail handling. It does not include general purpose ADPE or telecommunications equipment.

"Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations (44 U.S.C. 2901(2)).

* * * * *

"Report terms" include—

(a) "External reporting requirement" means a reporting requirement placed upon the public or a State or local government.

(b) "Interagency report" means a reporting requirement imposed by an agency on one or more other agencies. Operating documents are excluded.

(c) "Interagency reports coordinator" means the official appointed by the agency senior official designated under the Paperwork Reduction Act of 1980 to —

(1) serve as the liaison between agency offices and components, other agencies, and GSA on interagency reporting matters;

(2) clear and evaluate each request for a new, revised, or extended interagency report before signing and submitting Standard Form 360, Request for Clearance of an Interagency Reporting Requirement;

(3) coordinate the agency response to requests from other agencies for cost estimates of new or revised interagency reports; and

(4) maintain the official agency records on interagency reports.

(d) "Internal reporting requirement" means any requirement that involves reports prepared and used solely within a department or agency covered by Title 44, United States Code.

(e) "Operating document" means a completed form or other document used to facilitate, accomplish, or provide a description or record of a transaction, function, or event. The information in an operating document may provide data (or input) for a report, but that is not its primary purpose. Examples are application forms, purchase orders, bills of lading, personnel actions, inspection or audit reports, and reports that involve direct command and control of military forces or cryptological activities related to national security.

(f) "Reporting" means the process by which data or information for a report is collected, organized, transmitted, and retained.

(g) "Report" means data or information which is transmitted for use in determining policy; planning, controlling, and evaluating operations and performance; making administrative decisions or preparing other reports. The data or information may be in narrative, statistical, graphic, or other form and may be on paper, magnetic tape, or other media.

* * * * *

"Sponsoring agency"—see "Form terms."

"Standard form"—see "Form terms."

* * * * *

"Stationery terms" include—

(a) "Continuation sheet" means the second or succeeding page of a letter.

(b) "Flat envelope," also called "oversize" envelope, means a rectangular envelope that exceeds one or more of the maximum dimensions for lettersize envelopes, but does not exceed 15 inches in length, or 12 inches in height, or .75 inches in thickness.

(c) "Letterhead" means paper, showing agency identification, used for official correspondence. Identification includes name, acronym, logo, seal, code, and/or address affixed by printing, engraving, embossing, typing, stamping, or other labeling.

(d) " Lettersize envelope" means a rectangular envelope with minimum dimensions of 5 inches in length, 3.5 inches in height, and .007 inch thickness and maximum dimensions of 11.5 inches in length, 6.125 inches in height, and .25 inch in thickness.

(e) "Manifold carbon tissue set" means a tissue sheet attached to a one-time carbon sheet and is commonly called "tissue."

(f) "Stationery" means paper products used in correspondence, such as letterhead, continuation sheets, manifold carbon tissue sets, carbon

paper, carbonless paper, memoranda, post cards, and envelopes.

* * * * *

1. Part 201-22 is added to read as follows:

PART 201-22—RECORDS MANAGEMENT PROGRAMS

Sec.
201-22-000 Scope and objectives of part.
201-22-001 General provisions.
201-22-001-1 Authority.
201-22-001-2 Applicability.
201-22-001-3 Responsibility for records management programs.
201-22-001-4 GSA responsibilities.
201-22-002 Agency responsibilities.
201-22-002- Authority.
201-22-002-2 Program content.
201-22-002-3 Creation of records.
201-22-002-4 Maintenance and use of records.
201-22-002-5 Liaison offices.
201-22-003 Evalution of agency programs.
201-22-003-1 Evaluation by GSA.
201-22-003-2 Agency internal evaluation.
201-22-003-3 Agency evaluation review and followup procedures.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201-22.000 Scope and objectives of part.

(a) This part prescribes policies for the economical and effective management of Federal agencies' records to facilitate and support agency operations.

(b) This part addresses records creation, maintenance, and use, and is intended to help agencies achieve the information resources management goals of the Paperwork Reduction Act of 1980 to:

(1) Reduce the paperwork burden the Federal Government imposes on the public and on State and local governments;

(2) Reduce the cost to executive agencies of collecting, managing, and disseminating information;

(3) Maximize the usefulness of information collected by executive agencies;

(4) Make Federal information policies and practices uniform; and

(5) Ensure that the collection, maintenance, use, and dissemination of information by the Federal Government is consistent with applicable laws and executive orders relating to privacy, release of information, and security classification.

§ 201-22.001 General provisions.

§ 201-22.001-1 Authority.

The regulations in this part are pursuant to the authority contained in 44 U.S.C. 2904.

§ 201-22.001-2 Applicability.

The regulations in this part apply to all Federal agencies as defined in § 201-2.001.

§ 201-22.001-3 Responsibility for records management programs.

Public Law 98-497 (effective April 1, 1985) amends the records management statutes to divide records management responsibilities between the Administrator of General Services and the Archivist of the United States as head of the National Archives and Records Administration (NARA). Under the Act, the Administrator of General Services remains responsible for promoting economy and effectiveness in records management. The Archivist is responsible for ensuring proper records disposition and adequacy of documentation. GSA regulations are in this Part 201-22 and in Part 201-45. NARA regulations are in 36 CFR Chapter XII. Agency heads are responsible for records programs which must comply with regulations promulgated by both NARA and GSA.

§ 201-22.001-4 GSA responsibilities.

(a) Section 2904 of Title 44, United States Code, requires the Administrator of General Services to provide guidance and assistance to Federal agencies to ensure economical and effective records management by agencies. In providing such guidance and assistance, the Administrator shall have the responsibility to:

(1) Promote economy and efficiency in the selection and use of space, staff, equipment, and supplies for records management;

(2) Promulgate standards, procedures, and guidelines with respect to records management and records management studies;

(3) Conduct research with respect to the improvement of records management practices and programs;

(4) Collect and disseminate information on training programs, technological developments, and other activities relating to records management;

(5) Establish such interagency committees and boards as necessary to provide an exchange of information among Federal agencies with respect to records management;

(6) Direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;

(7) Conduct records management studies and designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;

(8) Conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies; and

(9) Report to the Congress and to the Director of the Office of Management and Budget each year, and at such time or times as the Administrator may deem desirable, on the results of the foregoing activities, including evaluations of responses by Federal agencies to any recommendations resulting from studies or inspections conducted by the Administrator, and to the extent practicable, estimates of costs to the Government resulting from the failure of agencies to implement such recommendations.

(b) Section 3513 of Title 44 of the United States Code (the Paperwork Reduction Act of 1980, Pub. L. 96-511) requires the Administrator of General Services to assist the Director of the Office of Management and Budget in selectively reviewing at least once every 3 years, the information management activities of each executive agency.

§ 201-22.002 Agency responsibilities.

§ 201-22.002-1 Authority.

Section 3102 of Title 44 of the United States Code requires the head of each Federal agency to establish and maintain an active, continuing program for the economical and efficient management of agency records.

§ 201-22.002-2 Program content.

Agency programs shall, among other things, provide for:

(a) Effective controls over the creation, maintenance, and use of all agency records;

(b) Cooperation with GSA in developing and applying standards, procedures, and techniques designed to improve the management of records and ensure the maintenance and security of records; and

(c) Compliance with the provisions of Title 44 of the United States Code and with the GSA and NARA regulations issued thereunder.

§ 201-22.002-3 Creation of records.

Adequate records management controls over the creation of agency records shall be instituted to ensure that agency functions are adequately and properly documented; that operational recordkeeping is kept to a minimum; and that the accumulation of unnecessary records is prevented. Effective techniques to be applied in this area include the application of systems for the control of correspondence, forms,

directives, and reports; the minimizing of duplicate records, and the disposal without filing of transitory material that has no value for record purposes.

§ 201-22.002-4 Maintenance and use of records.

Provision shall be made for the continued analysis and improvement of such matters as mail handling and routing, record classification and indexing systems, the use of filing equipment and supplies, the reproduction and transportation of records, and work production standards relating thereto, to ensure that records are maintained economically and efficiently and in such a manner that their maximum usefulness is attained.

§ 201-22.002-5 Liaison offices.

An office or offices within each Federal agency shall be assigned specific responsibility for the development of the records management program. The office to which the major responsibility is assigned shall be reported to the General Services Administration (KL), Washington, DC 20405.

§ 201-22.003 Evaluation of agency programs.

§ 201-22.003-1 Evaluation by GSA.

Agency programs for controlling the creation, maintenance, and use of records will be inspected periodically by GSA (see also § 201-22.001-4(b)). Such inspections will be conducted in accordance with the provisions of 5 U.S.C. 552a. The objectives of these inspections are to:

(a) Determine agency compliance with the regulations set forth in this Part 201-22 and Part 201-45; and

(b) Evaluate the effectiveness of agency records management programs and practices.

§ 201-22.003-2 Agency internal evaluation.

Each agency should periodically inspect the records management programs within the agency, with the frequency and depth permitted by the agency's resources. These inspections should have objectives similar to those listed in § 201-22.003-1, and should be designed to complement the inspections performed by GSA. Guides for agency self-inspection (listed in Appendix C of the looseleaf edition of the FIRMR) are available from GSA (KL), Washington, DC 20405

§ 201-22.003-3 Agency evaluation review and followup procedures.

(a) A Federal agency has a maximum of 60 calendar days after receipt of the draft evaluation report to comment on its factual content.

(b) A Federal agency shall submit an action plan to the Assistant Administrator for Information Resources Management, GSA, implementing the recommendations in an evaluation report not later than 90 calendar days after the date of transmittal of the final report to the agency. The agency action plan shall include:

(1) Specific action(s) the agency plans to take on each evaluation report recommendation. If an agency does not plan to implement a recommendation, the rationale for not acting shall be documented in the action plan; and

(2) Proposed month and year for completing each planned action.

(c) A Federal agency shall submit a progress report every 6 months to the Assistant Administrator for Information Resources Management, GSA, until the agency action plan is implemented. Interagency report control number 0153-GSA-AR has been assigned to this report in accordance with Subpart 201-45.6.

(d) GSA will:

(1) Analyze the adequacy of the agency action plan to implement recommendations contained in the evaluation report;

(2) Provide comments to the agency on the plan within 60 calendar days after the date of the transmittal of the plan; and

(3) Notify an agency when progress reports are no longer required.

1. Part 201-45 is added to read as follows:

PART 201-45—MANAGEMENT OF RECORDS

Sec.

201-45.000 Scope of part.

Subpart 201-45.1—Creation, Maintenance, and Use of Records

201-45.100 Scope of subpart.
201-45.101 General provisions.
201-45.101-1 Agency action.
201-45.102 Correspondence management.
201-45.102-1 Objectives.
201-45.102-2 Agency responsibilities.
201-45.102-3 Agency implementation.
201-45.102-3 Agency implementation.
201-45.103 Reports management.
201-45.103-1 Objectives.
201-45.103-2 Agency responsibilities.
201-45.103-3 Agency implementation.
201-45.104 Forms management.
201-45.104-1 Scope of section.
201-45.104-2 Relationship to other directives.
201-45.104-3 Objectives.
201-45.104-4 Agency responsibilities.
201-45.104-5 GSA assistance.
201-45.105 Directives management
201-45.105-1 Scope of section.
201-45.105-2 [Reserved]
201-45.105-3 Objectives.
201-45.105-4 Agency responsibilities.
201-45.105-5 Additional information.
201-45.106 Copy management.
201-45.106-1 Scope of section.
201-45.106-2 Authority.
201-45.106-3 Agency responsibilities.
201-45.106-4 GSA responsibilities.
201-45.107 Mail management.
201-45.107-1 Objectives.
201-45.107-2 Agency responsibilities.
201-45.107-3 Agency implementation.
201-45.108 Files management.
201-45.108-1 Objectives.
201-45.108-2 Agency responsibilities.
201-45.108-3 GSA responsibilities.
201-45.109 Micrographics management.
201-45.109-1 Scope of section.
201-45.109-2 Agency responsibilities.
201-45.109-3 GSA responsibilities.
201-45.109-4 Micrographics systems analysis.
201-45.110 Records equipment and supplies management.
201-45.110-1 Objectives.
201-45.110-2 Agency responsibilities.

Subpart 201-45.2—[Reserved]

Subpart 201-45.3—[Reserved]

Subpart 201-45.4—Stationery and Supplies

201-45.400 Scope of subpart.
201-45.401 Stationery standards.
201-45.401-1 General provisions.
201-45.401-2 Standard stationery specifications.
201-45.401-3 Procurement and stocking.
201-45.401-4 Printing of letterhead stationery.
201-45.401-5 Preparing and using letterhead stationery.
201-45.401-6 Manifold (tissue) sheets.
201-45.401-7 Envelopes.
201-45.401-8 Envelopes and post cards.
201-45.401-9 Miscellaneous forms.
201-45.401-10 Deviations.

Subpart 201-45.5—Standard and Optional Forms Management Program

201-45.500 Scope of subpart.
201-45.500-1 Objectives.
201-45.501 Authority.
201-45.502 Agency responsibilities.
201-45.503 GSA responsibilities.
201-45.504 Approval, disapproval, and cancellation procedures.
201-45.504-1 Approval and disapproval of Standard and Optional forms.
201-45.504-2 Cancellation of Standard and Optional forms.
201-45.505 Interagency Committee on Medical Records (ICMR) responsibilities.
201-45.505-1 Clearance of medical Standard forms.
201-45.506 Standard and Optional forms coordination with interagency reporting approved by GSA.
201-45.507 Standard and Optional forms used for collections of information from the public or State or local governments.
201-45.508 Reporting requirements.
201-45.509 Overprinting of Standard and Optional forms.
201-45.510 Exceptions to Standard and Optional forms.

201-45.510-1 Policy.
201-45.510-2 Clearance procedures for exceptions.
201-45.510-3 Review of exceptions.
201-45.511 Program review.
201-45.512 Employee suggestions.
201-45.513 Obtaining forms.
201-45.514 Procurement of stocks of Standard and Optional forms.

Subpart 201-45.6—Interagency Reports Management Program

201-45.600 Scope of subpart.
201-45.601 Authority.
201-45.602 Objectives.
201-45.603 Agency responsibilities.
201-45.604 Establishing or revising interagency reporting requirements.
201-45.605 Extending interagency reporting requirements.
201-45.606 Justifying interagency reporting requirements.
201-45.607 Cost estimates.
201-45.608 Discontinuing interagency reporting requirements.
201-45.609 Special provisions.
201-45.609-1 Exemptions.
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201-45.609-3 Classified reporting requirements.
201-45.610 Coordination with other clearance authorities.
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201-45.610-2 Interagency reporting coordination with Standard and Optional forms approved by GSA.
201-45.611 Obtaining forms.

Subpart 201-45.7—[Reserved]

Subpart 201-45.8—Technical Assistance

201-45.800 Scope of subpart.
201-45.801 Services available.
201-45.802 Technical advice and assistance on records management programs.
201-45.803 Technical assistance involving studies and surveys.
201-45.804 Request for service.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201-45.000 Scope of part.

This part prescribes and promulgates standards, procedures, and techniques for managing Federal records in order to facilitate and support agency operations.

Subpart 201-45.1—Creation, Maintenance, and Use of Records

§ 201-45.100 Scope of subpart.

Chapters 29 and 31 of title 44, United States Code, give the Administrator of General Services and the heads of Federal agencies responsibility for the development and implementation of standards and programs for the management of Federal records. Such programs must encompass all types of records (whether paper, microforms, magnetic disks and tape, or other media) at all levels of organization, headquarters and field.

§ 201-45.101 General provisions.

§ 201-45.101-1 Agency action.

(a) The head of each Federal agency, in meeting the requirements of 44 U.S.C. 3102, shall observe the responsibilities and standards set forth in this Subpart 201-45.1 and regulations issued by the National Archives and Records Administration (NARA) in 36 CFR Ch. XII. These responsibilities and standards are basic to the Governmentwide management of records; however, the application of the program responsibilities by individual agencies may be influenced by factors such as agency size, organization, mission, and recordkeeping activity.

(b) Each Federal agency shall:

(1) Assign to an office(s) of the agency the responsibility for the development and implementation of agencywide programs for the management of correspondence, reports, forms, directives, copy, mail, files, micrographics, and records equipment and supplies. When organization arrangement, size, or complexity requires, actual control may be established at bureau, service, or office level. Programs at these control points will operate within the framework of the overall agency plan;

(2) Issue a directives) establishing program objectives, responsibilities, and authorities. A copy of each directive issued (and subsequent amendments or supplements) should be readily available for inspection by the Office of Information Resources Management, GSA; and

(3) Ensure that cost-effective records system are established. To the maximum extent practicable create paper records no larger that 8½ x 11 inches. Limiting paper records to no larger than this size will help eliminate the need for legal-size files, file folders, copiers, and copy paper, and for oversize envelopes. It may also help save the space currently wasted by using legal-size filing equipment to store mainly lettersize or smaller records.

§ 201-45.102 Correspondence Management.

§ 201-45.102-1 Objectives.

The objectives of correspondence management are to limit correspondence to essential requirements, to improve the quality of necessary correspondence, and to provide for its creation in an economical and efficient manner.

§ 201-45.102-2 Agency responsibilities.

(a) Each Federal agency shall have an approprite program for the management of agency correspondence (§ 201-45.101-1). The program shall:

(1) Prescribe the types of correspondence to be used in official agency communications;

(2) Establish and implement agency standards concerning the number and kind of copies required and their distribution and purpose;

(3) Implement the correspondence standards set forth in the U.S. Government Correspondence Manual and in pertinent GSA information resources management handbooks, (see Appendix C of the looseleaf edition of the FIRMR) with such modifications as may be necessary for specialized agency practices;

(4) Implement the Governmentwide standards issued by GSA for the procurement and use of letterheads, manifold paper, memorandum forms, and envelopes; and

(5) Review, on a continuing basis, agency correspondence practices and procedures to find opportunities for improvement and simplification.

(b) Standards, guides, and instructions developed for the agency correspondence management program are to be in published form, designed for easy reference and revision. They should be readily available to those who write, review, sign, type, and file correspondence.

§ 201-45.102-3 Agency implementation.

The following actions are basic to a correspondence management program.

(a) Prepare only necessary correspondence and essential copies.

(b) Use form letters to the maximum extent possible and use guide letters and paragraphs when practical following the standards, guides, and principles set forth in the GSA information resources management handbook, Form and Guide Letters (see Appendix C of the looseleaf edition of the FIRMR).

(c) Originate letters that are carefully planned, easily read and understood, and responsive to the needs of the recipient by applying the standards, guides, and principles set forth in the GSA information resources management handbook, Plain Letters (see Appendix C of the looseleaf edition of the FIRMR).

(d) Prepare correspondence that is consistent in style and format, neat and attractive in appearance, and editorially correct by applying the standards, guides, and principles set forth in the U.S. Government Correspondence Manual (see Appendix C of the looseleaf edition of the FIRMR).

(e) Establish realistic time limits for replying to White House, Congressional, and public correspondence. Limit letters of a purely acknowledgement nature to

cases in which a considerable time may be needed for a substantive reply.

(f) Develop and install procedures that expedite and limit correspondence clearance, reviews, and signing.

(g) Provide for periodic spotchecks of agency correspondence to determine compliance with standards.

§ 201-45.103 Reports management.

§ 201-45.103-1 Objectives.

The objectives of reports management are to ensure (a) that agency management officials are provided with the exact information needed in the right place, at the right time, and in the format most useful to them for informed decision-making, (b) that both the output (report) of agency systems or procedures as well as the reporting systems themselves are well designed, and (c) that interagency reports management (Subpart 201-45.6) and public reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 and OMB regulations in 5 CFR Part 1320 are well managed.

§ 201-45.103-2 Agency responsibilities.

(a) Each Federal agency shall have an appropriate program for the management of its internal reporting requirements (§ 201-45.101-1). The program shall:

(1) Establish and implement standards and procedures for identifying information needed for planning, decision-making, controlling, and evaluating;

(2) Establish and implement standards and procedures for the design of reports used in management information systems;

(3) Establish and implement standards and procedures for initiating, identifying, reviewing, approving, preparing, and distributing internal reporting requirements;

(4) Provide essential management information concerning the number and types of reports in use and, for reports which require a significant amount of staff time and other resources, the estimated costs of development, operation, and use (§ 201-45.103-1(c)); and

(5) Provide for the periodic review of approved reports for need, adequacy, design, and economy of preparation and use.

(6) Ensure that all applicable laws and statutes (e.g., Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), Federal Information Processing Standards (FIPS) (40 U.S.C. 759(f); 15 CFR Part 6)) and regulations issued by NARA (36 CFR Ch. XII) are considered in the development of internal reporting requirements.

(b) Standards, guides, and instructions developed for the reports management program shall be published and designed for easy reference and revision.

(c) Approval, modification, or disapproval of internal agency reporting requirements shall be based on an objective cost effectiveness evaluation in accordance with costing guidelines issued by GSA, unless reporting is exempted in accordance with § 201-45.103-2(d). Cost estimates of internal reporting requirements shall cover the same reporting costs defined for interagency reports and be based on the same costing alternatives specified for interagency reports (§ 201-45.607).

(d) The following external reporting requirements are exempted from the provisions of this subpart (however, internal agency reporting requirements that may be developed by an agency in order to respond to an exempted external reporting requirement are subject to the provisions of this subpart):

(1) Legislative branch requirements in statutes or congressional committee requests;

(2) Judicial branch requirements in court orders or other judicial determinations;

(3) Presidential requirements in Presidential directives; and

(4) OMB budgetary, program review and coordination, and legislative clearance requirements.

§ 201-45.103-3 Agency implementation.

The following actions are basic to a reports management program:

(a) Establish and maintain an inventory of internal and external recurring reports;

(b) Develop the kinds of reporting systems that best serve management;

(c) Analyze all reports inventoried and all reports submitted for approval to determine that:

(1) The information is adequate, necessary, meaningful, and useful,

(2) The information is obtained from the best available source and in the simplest manner,

(3) The reporting frequency is consistent with the time the information is actually needed, and

(4) The estimated cost of gathering the information does not exceed its management value;

(d) Require that each request for a new or revised report explains how the report will be used; and

(e) Require that each recurring report is supported by a directive containing instructions for preparation and submission.

§ 201-45.104 Forms management.

§ 201-45.104-1 Scope of section.

Section 201-45.104 provides policies and guidelines for managing, administering, and implementing Federal agency forms management programs.

§ 201-45.104-2 Relationship to other directives.

(a) Subpart 201-45.5 sets forth the scope, objectives, goals, and procedures required to manage and operate the Standard and Optional Forms Program.

(b) Part 201-8 contains guidance regarding Federal Information Processing Standards applicable to forms management, particularly regarding the use of data standards applicable to the interchange of machine-processable data between and among agencies. (See § 201-8.1307-1.)

§ 201-45.104-3 Objectives.

Each Federal agency's forms management program shall:

(a) Eliminate unnecessary forms by justifying the need for existing and proposed forms;

(b) Reduce systems' operating costs and increase systems' efficiency by developing forms that are easy to fill-in, read, transmit, process, and retrieve;

(c) Reduce reproduction costs and improve productivity by appropriately designing and printing forms; and

(d) Periodically evaluate agency forms for continuing effectiveness and improvement.

§ 201-45.104-4 Agency responsibilities.

Each Federal agency shall establish and maintain a forms management program for those forms with an annual use of 100 copies or more as part of a continuing records management effort and shall assign responsibility to a specific official or office that will:

(a) Develop program objectives; define responsibilities and authorities; issue directives; and establish procedures for submitting, reviewing, approving, and identifying agency forms, including ADP systems forms;

(b) Use forms analysis and design standards described in pertinent GSA information resources management handbooks (see Appendix C of the looseleaf edition of the FIRMR);

(c) Train persons who analyze, design, coordinate, and manage forms;

(d) Review the forms management program regularly to determine the adequacy of the system and its effectiveness in meeting agency needs;

(e) Ensure compliance with agency forms management policies and procedures;

(f) Review all requests for new forms and all reprints or revisions of existing paper forms to ensure that:

(1) All forms efficiently collect data necessary to the agency's mission;

(2) Forms meet all requirements of applicable statutes, standards, and regulations;

(3) Each form is supported by a directive setting forth instructions for preparing, submitting, and using the form (not applicable to self-explanatory forms used by a single organizational element such as an office, division, or region; for temporary and test forms the instructions should be issued but do not need to be in the agency directives system);

(4) Paper forms are designed for economical printing, stocking, and distributing;

(5) An adequate supply of paper forms is procured; and

(6) Forms used to gather information from the public or State or local governments display the OMB control number and expiration date in the upper right hand corner of the form as required by 5 CFR 1320.7(f)(1).

(g) Review at least annually the most frequently used forms and those forms that create a significant burden for preparation for continued need and possible improvement;

(h) Assign a title, a form number, an edition date, and a department/agency/bureau identification to each form;

(i) Classify and group all forms by function and subject to aid in systems analysis, cross-referencing, and combining or eliminating forms;

(j) Maintain a historical case file for each controlled form, including information on each form's purpose, use, disposition, development, clearance, and (if appropriate) publication;

(k) Compile and maintain developmental and operational costs for public-use and interagency report forms using the format and instructions contained in Standard Form 335, Summary Worksheet for Estimating Forms Costs (as described in FIRMR Bulletin 18);

(l) Use the costing format and instructions contained in Standard Form 335 when the agency chooses to compile cost data on its internal forms;

(m) Maintain a list of current forms the agency uses;

(n) Encourage testing of forms and procedures to collect information economically and efficiently; and

(o) Promote forms management concepts, benefits, and training within the agency.

§ 201-45.104-5 GSA assistance.

GSA will guide and assist Federal agencies in creating, maintaining, and using records, including forms. The Office of Information Resources Management, GSA, provides standards, guidelines, and training materials regarding forms management for all Federal agencies. Specific advice and assistance may be obtained by contacting the General Services Administration (KL), Washington, DC 20405.

§ 201-45.105 Directives management.

§ 201-45.105-1 Scope of section.

Section 201-45.105 provides Federal agencies with standards and guidelines for establishing and managing effective directives systems. Agency implementation of this § 201-45.105 should be commensurate with the agency size, complexity, expected duration, etc.

§ 201-45.105-2 [Reserved]

§ 201-45.105-3 Objectives.

The objectives of directives management are to provide agency managers with the means to effectively and efficiently convey written instructions to users and to document agency policies and procedures.

§ 201-45.105-4 Agency responsibilities.

Each Federal agency, to provide for effective, continuing directives management, shall:

(a) Assign to all agency managers the responsibility for preparing and maintaining directives needed to carry out their assigned responsibilities;

(b) Assign overall responsibility for planning, organizing, and controlling the directives management program to an office at the department or agency level, and delegate directives management functions, as needed, to lower organizational levels;

(c) Issue a directive(s) that states the purpose, responsibilities, authorities, policies, standards, and procedures of the agency's directives program;

(d) Organize agency directives systemtically so that they are readily available to users by:

(1) Developing an integrated directives system that includes all agency policies and procedures,

(2) Classifying directives by subject so that all directives on any subject can be readily identified,

(3) Maintaining current indexes of existing directives and other finding aids, as necessary, so users may easily locate the directives they need,

(4) Establishing distinctive formats for directives so recipients can recognize them as authoritative agency instructions,

(5) Differentiating between permanent and temporary directives and ensuring that temporary directives carry expiration dates, and

(6) Maintaining directives in a form, such as looseleaf binders, where obsolete or revised materials may be easily removed or inserted;

(e) Ensure that directives are clearly written by:

(1) Establishing and implementing writing standards for directives, and

(2) Identifying the audience for each directive, and writing so that the intended readers can easily understand it;

(f) Ensure that directives are useful by:

(1) Providing users with only necessary information,

(2) Keeping directives current by issuing changes as needed, and

(3) Providing for the issuance of supplemental directives to permit overall agency direction to be adapted to local conditions by field and other organizational components, provided that supplemental directives are consistent with the intent of the originals;

(g) Review each proposed directive to ensure that it is necessary, accurate, complete, and understandable;

(h) Coordinate and clear each proposed directive to avoid issuing conflicting policies or procedures;

(i) Establish and publish effective and efficient procedures for the timely reproduction and distribution of directives;

(j) Furnish copies of directives only to those who need them by:

(1) Requiring originators to identify those with a "need to know" or a "need to act" for each new directive for the purpose of developing accurate distribution lists,

(2) Annually reviewing and updating distribution lists for directives, and

(3) Periodically distributing checklists of current directives so users can determine whether they have received relevant directives;

(k) Require originators to review each directive for need and currentness at least biennially, and require originators to certify whether to continue, revise, or cancel each directive;

(l) Conduct training, or provide written guidance, as follows:

(1) For managers, on the importance of using the directives system to provide written instructions for accomplishing the agency's objectives,

(2) For directives originators, on the writing style and proper format for directives, and

(3) For users, on how to use the directives system; and

(m) Evaluate the effectiveness and cost of the directives system, as follows:

(1) Maintain essential management information on the operation of directives systems. Examples of this information are data on the cost and time required to prepare, clear, and distribute directives; and annual workload data on the number of pages of directives issued, revised, and canceled. This information may be collected on a sampling basis;

(2) Annually review high-cost or high-volume directives activities to find opportunities for improvement;

(3) Evaluate annually the operating performance of the directives system. For example, select a sample of agency directives to find out if the intended recipients (i) received the directive, (ii) received it before its effective date, (iii) needed it, and (iv) understood it and acted correctly; and

(4) Evaluate the application of technologies, such as automatic data processing (including word processing), micrographics, photocomposition, and facsimile transmission, as means of improving the efficiency and effectiveness of the directives system.

§ 201-45.105-5 Additional information.

For more details on managing a directives system, refer to GSA's information resources management handbook, Communicating Policy and Procedures (see Appendix C of the looseleaf edition of the FIRMR). For instructions on preparing external directives for publication in the **Federal Register**, consult the "Document Drafting Handbook," available from the U.S. Government Printing Office.

§ 201-45.106 Copy management.

§ 201-45.106-1 Scope of section.

Section 201-45.106 sets forth the copy management responsibilities of the General Services Administration and other Federal agencies. It provides guidance to Federal agencies on managing copying practices and copying equipment. It does not apply to the reproduction of micrographic, photographic, or machine-readable records or to associated equipment.

§ 201-45.106-2 Authority.

As required by Chapter 29 of Title 44, United States Code, the Administrator of General Services shall provide guidance and assistance to Federal agencies regarding the reproduction of records and the selection and use of equipment and supplies associated with the copying of records. This regulation does not relieve Federal agencies of their responsibilities under chapters 1 through 19 of title 44 U.S.C.

§ 201-45.106-3 Agency responsibilities.

To ensure good copying practices and proper equipment management, each agency shall:

(a) *Determine availability of common centralized services.* Before agencies consider purchase or rental of copying equipment, they shall first determine the availability of common centralized services, such as GSA print plant and copy centers, to ensure that the required copying capability cannot be met economically and efficiently through the use of centralized services (see also FPMR Subpart 101-5.2, Centralized Field Duplicating Services).

(b) *Match equipment to copying needs.* (1) Whenever acquisition of copying equipment is planned, agencies shall determine the users' copying requirements. The following kinds of information are needed:

(i) Average number of copies needed per month;

(ii) Physical characteristics of materials routinely copied (e.g., copy size, individual sheet or bound volumes, etc.);

(iii) Average number of pages per document;

(iv) Average number of copies per page;

(v) How the copies are used; and

(vi) How quickly they are needed.

(2) Each piece of copying equipment shall be used according to its operating characteristics and limitations. Equipment that is overused is likely to fail and be unavailable for use, and equipment that is used at levels significantly below its rated capacity is not economical.

(3) When deciding on the types of equipment to be acquired, agencies shall consider both direct and indirect costs of copying. Direct costs include such items as the lease or purchase price of equipment, the cost of maintenance and supplies, and the salaries of full-time equipment operators. Indirect costs include such items as overhead and the amount of time consumed by personnel in seeking and obtaining copying services. Copying service contracts, ranging from the provision and maintenance of equipment and supplies to complete copying services, are offered by private companies. An agency shall decide to contract for copying services if contracting is more economical than using its own resources. (See Office of Management and Budget Circular A-76 for guidance on acquiring commercial products and services.)

(c) *Maintain records.* To determine the proper use and most cost-effective and economical placement of equipment, agencies shall establish inventory records for each machine. Records shall include the following information:

(1) Equipment brand, model number or name, and serial number;

(2) Type of procurement (lease, purchase, or lease-with-option-to-purchase) and installation date;

(3) Essential provisions of the lease plan or, if owned, the purchase price and essential elements of the maintenance plan, if any;

(4) Number of copies produced by month;

(5) Equipment characteristics, such as production speed, significant accessories or special features, and special electrical requirements;

(6) A record of repairs and maintenance; and

(7) Information on the operating environment, such as machine location, organizations served, and whether access to the machine is unrestricted, restricted to a full-time operator, or otherwise limited.

(d) *Review equipment requests.* Requests for equipment shall be reviewed by offices with authority to ensure economical procurement and placement of equipment. Reviews shall include:

(1) Study of the current copying needs of the requesting office;

(2) Consideration of projected copying needs of the requesting office;

(3) Analysis of the present use of equipment by the requesting office;

(4) Consideration as to whether the requesting office should share existing equipment, acquire its own, upgrade existing equipment, or use some combination of these alternatives;

(5) A determination of whether alternate reproduction methods are practical;

(6) A cost/benefit analysis of any feasible equipment alternatives, including a determination of whether purchase or lease would be more economical (see FPMR Subpart 101-25.5, Guidelines for Making Purchase or Lease Determinations); and

(7) Study to determine the best location for the equipment.

(e) *Review supply procurement policy.* Agencies shall review at least annually, procurement methods and sources for supplies, such as paper, toner, ink, and duplicating masters. Options, such as blanket purchase agreements, bulk purchasing, and procurement under

General Services Administration contracts, may offer lower costs.

(f) *Review copy management efforts.* Agencies shall conduct periodic reviews to determine whether improvements are necessary. Practices shall be audited to determine whether they can be improved. Records shall be reviewed to identify areas of potential improvements in equipment management.

§ 201-45.106-4 GSA responsibilities.

To assist Federal agencies in planning, developing, and evaluating copy management programs, GSA will:

(a) Provide guidelines on developing and maintaining a copy management program. These will consist of handbooks and guides for evaluating agency programs (see Appendix C of the looseleaf edition of the FIRMR);

(b) Provide advice and assistance in carrying out copy management studies and in program management; and

(c) Periodically review agency programs to determine what improvements can be made.

§ 201-45.107 Mail management.

§ 201-45.107-1 Objectives.

The objective of mail management is to proivide rapid handling and accurate delivery of mail throughout the agency at minimum cost. To do this, processing steps are kept to a necessary minimum; sound principles of work flow are applied; modern equipment, supplies, and devices are used; and, in general, operations are kept as simple as possible, so as to increase efficiency.

§ 201-45.107-2 Agency responsibilities.

(a) Each Federal agency shall have an appropriate program for the management of agency mail to:

(1) Establish and implement standards and procedures for the receipt, delivery, collection, and dispatch of mail;

(2) Implement the mail management standards set forth in the GSA information resources management handbook, Managing the Mail (see Appendix C of the looseleaf edition of the FIRMR);

(3) Provide essential management information concerning the volume and types of mail processed and time requirements for internal delivery and mailing; and

(4) Review, on a continuing basis, agency mail practices and procedures to find opportunities for improvement and simplification.

(b) Standards, guides, and instructions developed for the agency mail management program shall be in published form, designed for easy reference and revision. They should be readily available to those concerned with mail and messenger operations. In addition, pertinent information for users of mail and messenger services should be given the widest possible dissemination.

§ 201-45.107-3 Agency implementation.

The following actions are basic to a mail management program:

(a) Deliver mail to the action office within shortest possible time after receipt (Objective should be 4- to 6-hour delivery.);

(b) Limit mail followup control to security mail or mail important because of its source or content;

(c) Use the U.S. Postal Service (USPS) when:

(1) Required by law, or

(2) USPS rates are equal to or less than rates for the same service furnished by other vendors;

(d) Provide central control with established schedules for messenger services; and

(e) Dispatch mail at the cheapest rate consistent with the need for service.

(f) Review and purge mailing lists annually to eliminate improper addresses, duplicate addresses, and the names of those no longer desiring to receive materials and, where possible, to effect postage and other savings by consolidated mailing to a single address.

(g) Design and print, to the fullest extent practicable, mailable single piece publications with a self-mailer format and mail by th emost economical service consistent with need and postal regulations.

§ 201-45.108 Files management.

§ 201-45.108-1 Objectives.

The objectives of files management are to cost effectively organize agency files so that needed records can be found rapidly, to ensure that records are complete, to facilitate the selection and retention of permanent records, and to accomplish the prompt dispostion of noncurrent records in accordance with NARA-approved disposition schedules.

§ 201-45.108-2 Agency responsibilities.

Each Federal agency shall have an appropriate program for the management of agency files. Specifically, each agency shall:

(a) Establish and implement standards and procedures for classifying, indexing, and filing records as set forth in joint GSA–NARA handbooks (see Appendix C);

(b) Formally specify official file locations;

(c) Standardize reference service procedures for finding, chargeout, and refiling of agency records;

(d) Standardize, to the extent possible, the equipment and supplies used in filing and reference service operations by using standard items stocked by GSA's Office of Federal Supply and Services;

(e) Make available to all employees published standards, guides, and instructions designed for easy reference and revision; and

(f) Review the program periodically to determine the adequacy of the filing system and its effectiveness in providing records requested.

§ 201-45.108-3 GSA responsibilities.

GSA is responsible for furnishing guidance on filing systems to agencies. Filing systems include classification and filing schemes, file locations, filing procedures, file retrieval procedures, chargeout procedures, and refiling procedures for records on paper, microfilm, and electronic media. Such filing system guidance will be compatible with regulations issued by the National Archives and Records Administration (36 CFR Ch. XII).

§ 201-45.109 Micrographics management.

§ 201-45.109-1 Scope of section.

This section provides standards and guidelines for using micrographics technology in the creation, use, storage, and retrieval of Federal records. Additional guidance on the use of micrographics is available in GSA information resources management handbooks, Micrographics System Analysis and Computer Output Microfilm (see Appendix C of the looseleaf edition of the FIRMR), and in NARA regulations (36 CFR Ch. XII).

§ 201-45.109-2 Agency responsibilities.

Each agency shall:

(a) Issue internal regulations and procedures for the submission, review, and approval or disapproval of proposed micrographics systems and applications:

(b) Issue procedures for evaluating the continued efficiency and effectiveness of micrographics systems and applications;

(c) Review ongoing micrographics systems periodically for conformance to established policies, procedures, and standards;

(d) Develop and maintain complete and accurate inventories of micrographics production and reproduction equipment within the agency; e.g., cameras, processors, duplicators, and COM recorders, for the purpose of resource management. The inventories shall, as a minimum, include: type of equipment, name of

manufacturer, model and serial number, date of acquisition, location, and purchase or rental status;

(e) Disseminate publications containing micrographics standards and guidelines and other current information concerning the advantages and limitations of micrographics systems to managers and operating officials involved in the development or operation of micrographics systems; and

(f) Assign responsibility for the review and approval of all micrographics systems. The responsible office or official shall establish procedures for the review and approval of ongoing and proposed systems and application requests to ensure that they are complete and contain the information shown in § 201–45.109–4.

§ 201–45.109–3 GSA responsibilities.

GSA shall:

(a) Disseminate to agencies the standards and criteria necessary for developing, evaluating, and operating micrographics systems.

This includes:

(1) Information to acquaint potential users with micrographics technology and its various applications;

(2) Methods and procedures for conducting feasibility studies;

(3) Criteria for estimating cost and guidelines for comparing existing and proposed systems with alternative approaches;

(4) Standards for microforms and formats, and guidelines for selecting appropriate micrographics systems for specific types of applications; and

(5) Standards and guidelines for evaluating the continuing efficiency and effectiveness of micrographics systems;

(b) Analyze Governmentwide practices through research projects and inspections to determine areas in which the application of micrographics will improve efficiency and effectiveness in the creation and use of documents and information;

(c) Conduct periodic inspections of agencies' micrographics programs as part of the GSA program evaluation prescribed in § 201–22.003, Agency program evaluation; and

(d) Coordinate with the Government Printing Office (GPO) on matters involving micropublishing; with the National Bureau of Standards (NBS) on Federal Information Processing Standards concerning micrographics; and with the National Archives and Records Administration (NARA) on micrographics systems for permanent records.

§ 201–45.109–4 Micrographics systems analysis.

(a) A systems analysis including a cost/benefit analysis shall be conducted by the agency prior to the decision to establish a micrographics system. The cost/benefit analysis shall include a comparative cost analysis in accordance with Office of Management and Budget (OMB) Circular A–76, if it meets those guidelines.

(b) The systems analysis shall contain the following items:

(1) An examination of the current operating system to evaluate the need for the documents or information and the use to which they are put;

(2) A consideration of the alternatives to micrographics including such measures as:

(i) Revising records control schedules to provide for the disposition of paper records by disposal, by transfer of inactive paper records to the Federal records centers, or by offer of permanently valuable paper records to the National Archives and Records Administration (NARA) (36 CFR Chapter XII); and

(ii) Improving current retrieval and distribution procedures using paper records;

(3) A consideration of all feasible alternative methods of creating the microform records, such as:

(i) Acquisition of new equipment,

(ii) Lease-purchase of equipment already installed,

(iii) Sharing micrographics production equipment already in the agency,

(iv) Using the micrographics facility of another agency,

(v) Contracting for NARA reimbursable micrographics services,

(vi) Contracting with a non-Government commercial services firm, and

(vii) Other alternatives identified in the analysis;

(4) An analysis of the workload and staffing requirements to ensure sufficient trained personnel to operate and maintain the micrographics system;

(5) An examination of the information needs of the user when determining reduction ratio, format, quality control procedures, viewing equipment, and user training;

(6) A review to ensure compatibility of microforms used within the agency and those used to transmit information to other agencies and the public;

(7) A determination of the availability and cost of specialized space requirements; i.e., temperature and humidity control or plumbing; and

(8) A review to ensure adherence to NARA standards for the photographic and micrographics production and reproduction of records.

(c) The chosen alternative shall be the most cost effective and efficient system unless overriding intangible benefits necessitate an alternate decision.

(d) Procurement of COM equipment is subject to those FIRMR provisions governing ADP. (See particularly Subparts 201–24, 201–30, and 201–32.)

§ 201–45.110 Records equipment and supplies management.

§ 201–45.110–1 Objectives.

The objectives of a record equipment and supplies management program are to ensure that Federal agencies obtain equipment and supplies that are necessary and suitable to agency records operations, and that such equipment and supplies are available and are used properly.

§ 201–45.110–2 Agency responsibilities

Each Federal agency shall have a program to manage agency records equipment and supplies to:

(a) Standardize records equipment and supplies;

(b) Review requests for the acquisition of records equipment and supplies for need and standardization;

(c) Acquire standard equipment and supplies available from the Office of Federal Supply and Services; General Services Administration;

(d) Review new developments in the field of records equipment and supplies; and

(e) Review currently owned and rented equipment to determine that it is needed, properly used and maintained, and updated as required.

Subpart 201–45.2—[Reserved]

Subpart 201–45.3—[Reserved]

Subpart 201–45.4—Stationery and supplies

§ 201–45.400 Scope of subpart.

This subpart sets forth standards for stationery and related Standard and Optional forms.

§ 201–45.401 Stationery standards.

§ 201–45.401–1 General provisions.

Section 201–45.401 prescribes mandatory standards for selection and use of blank and printed stationery paper, including the format designs of formal letters and informal letters (memoranda). Also prescribed are formal standards for the Optional Form 10, U.S. Government Memorandum; Optional Form 41, Routing and Transmittal Slip; Optional Form 27,

United States Government 2-Way Memo; Standard Form 63, Memorandum of Call; and Standard Form 65, U.S. Government Messenger Envelope.

§ 201.45.401-2 Standard stationery specifications.

Government stationery standard specifications are set forth in the "Table of Standard Specifications" as follows:

TABLE OF STANDARD SPECIFICATIONS

Item	Color		Size		Paper quality shall not exceed		
					Substance		
	Paper	Printing	Inches (width × length)	Millimeters [1] (width × length)	Grade [2]	Pounds [3]	Grams [4] (g/m²)
STATIONERY							
Letterhead stationery designed for window envelopes	White	One color	8.5×11 8.5×7.3 8.5×5.5	216×279 216×185 216×140	50 percent rag or 25 percent rag	16 20	60 75
Continuation sheets	Match agency letterhead	None	8.5×11	216×279	50 percent rag or 25 percent rag	16 20	60 75
Manifold (tissue) letterhead	White	Match agency letterhead	8.5×11	216×279	25 percent rag	9	34
Manifold (tissue)	Yellow and white [5]	None					
Memorandum stationery designed for window envelopes	White	Match agency letterhead	8.5×11 8.5×7.3 8.5×5.5	216×279 216×185 216×140	CW (writing) or 25 percent rag	20 16	75 60
Continuation sheets	Match memo stationery	None	8.5×11	216×279	CW (writing) or 25 percent rag	20 16	75 60
Manifold (tissue)	Yellow and white [5]	None	8.5×11	216×279	25 percent rag	9	34
	White	Match agency letterhead color and style	([6])	([6])	Determined by the Office of Federal Supply and Services	24	90
Envelopes	Brown	Black ink in agency letterhead style or green ink in agency style when diamond borders are used	([6])	([6])	Kraft	28	105
United States Government memorandum (OF 10)	White	Black	8.5×11 8.5×5.5	216×279 216×140	CW (writing)	20	75
Memorandum of call [SF 63 (pads)].	([7])	([7])	4×5.2	102×132	([7])	([7])	([7])
U.S. Government Messenger Envelope:							
(SF 65A)	Brown	Dark brown	4.25×9.5	108×241	Kraft	24	90
(SF 65B)	Brown	Dark brown	9.75×12	248×305	Kraft	24	90
(SF 65C)	Brown	Dark brown	12×16	305×406	Kraft	24	90
Routing and Transmittal Slip (OF 41).	([7])	([7])	8×5.25	203×133	([7])	([7])	([7])
United States Government 2-Way Memo (OF 27).	White/Yellow/Pink	Black	8.5×11	216×279	Chemical transfer	9	32

[1] Sizes rounded to whole millimeter.
[2] CW=Chemical Wood.
[3] Weight per 500, 17"×22" sheets.
[4] Weight, per sheet, per square meter.
[5] Other colors may be used but paper quality shall not exceed 25 percent rag, 9 lbs (34 grams per square meter).
[6] Use smallest possible.
[7] At discretion of GPO.

§ 201-45.401-3 Procurement and stocking.

Agencies shall;

(a) Procure stationery through normal supply channels;

(b) Procure Standard and Optional forms, prescribed in §201-45.401-9, from the Office of Federal Supply and Services, General Services Administration;

(c) Establish procedures to ensure that stationery inventories are economically maintained at levels consistent with need;

(d) Maintain economical levels and distribute stationery to avoid unneeded storage costs; stock loss due to deterioration; and obsolescence due to geographical, organizational, name, and design changes. Generally, agencies should limit stationery stock levels to a 1 year's supply;

(e) Limit stationery styles and sizes to the minimum needed to ensure efficient and effective program operations;

(f) Not change stationery designs without written justification, approved by the head of the agency, or if so delegated, the senior official for information resources management, documenting improved program operations; and

(g) Ensure that all reasonable, orderly, and economical means are used to deplete obsolete stationery; and

(h) Not procure printed stationery having any:

(1) Embossing,

(2) Telephone numbers,

(3) Advertising by or for any private individual or commercial activity,

(4) Illustrations, except for the official agency logo in the letterhead or return address, or

(5) Personal names, except those memorialized on buildings or in institutions.

§ 201-45.401-4 Printing of letterhead stationery.

Agencies may design letterhead stationery subject to the following conditions:

(a) The design provides for economical printing and efficient letter preparation;

(b) Requirements of § 201-45.401-2, are followed;

(c) The letterhead design is across the 8.5-inch top edge, supports the economical use of labor and materials, and does not prevent the proper use of window envelopes;

(d) Readily available type fonts, for which there is no additional charge, are used;

(e) The letterhead of agencies with a unique 5-digit ZIP Code is limited to the agency's full name and return address (city, State, and ZIP Code). For example:

Public Service Agency
Washington, DC 00000

The head of the agency or, if so delegated, the senior official for information resources management may

grant written exceptions only to major bureaus, offices, and services, provided the cost to print, distribute, stock, and use additional letterhead is less expensive than the clerical cost to type titles, etc.;

(f) The letterhead of agencies having more than one location where mail is received directly from USPS, or having offices that require other address block data to aid in return mail delivery, may also contain the street address of other identifying address, in addition to the items listed in paragraph (e) of this section; for example:

Public Service Agency
Region 00
Anytown, OK ZIP Code.

Public Service Agency
Service Building, Room 000
Anytown, MO ZIP Code;

(g) No other printing occurs below the letterhead, except as required in this section and except for non-letterhead printing of form letters;

(h) The head of the agency or, if so delegated, the senior official for information resources management determines that Optional Form 10 will not adequately serve an agency's needs for informal letterhead;

(i) End-of-text marks, fold marks, and marks to align the address block in a window envelope are to be preprinted on all letterhead stationery, but the head of the agency, or, if so delegated, the senior official for information resources management may grant a written exception to preprinted marks on formal letterhead; and

(j) In the left margin, below agency designed informal letterhead (memorandum), are printed, in this order and flush with the left typing margin: Date, Reply to Attention of (or From), Subject, and To. For additional information, see the U.S. Government Correspondence Manual, Part 1, Chapter 1.

§ 201-45.401-5 Preparing and using letterhead stationery.

Agencies shall ensure that formal letterhead and informal letterhead (memorandum) stationery is prepared by the most economical use of labor and materials, including the style, format and other efficient steps prescribed in the U.S. Government Correspondence Manual (see § 201-45.102-2(a)(3)). Informal letterhead (memorandum) shall be the principal letterhead used in written, intra- and interagency correspondence.

§ 201-45.401-6 Manifold (tissue) sheets.

Agencies shall create copies only when need has been determined and shall use tissues to make them. A substitute for tissue sheets is permitted, provided (a) equal or better copy quality is maintained and (b) labor and material costs to produce the substitution are no greater than those for tissue preparation (see § 201-45.401-2). Agencies shall use yellow tissues for official file copies if the record copy is to be filed in paper form. White tissues shall be used for all other purposes, unless color will aid in processing, identification, or disposition. Letterhead tissues may only be used for formal letters to addresses outside the originating agency who specifically request letterhead copies.

§ 201-45.401-7 Envelopes.

Agencies shall ensure that:

(a) Except for self-mailers, no printing is done on the inside of envelopes;

(b) Envelopes are sent using the most economical service consistent with delivery needs;

(c) The material-plus-postage cost of "flat" envelopes, made from material other than that specified in § 201-45.401-2, is more economical for mailing than the material-plus-postage cost of kraft envelopes;

(d) Envelopes and post cards that will be processed by USPS meet mailing requirements and are eligible for the most economical mail service; and

(e) Use of lettersize window envelopes is specifically prescribed in written agency policy requiring maximum possible use, except for mailing material that:

(1) Involves national security,

(2) Is highly confidential to the agency or the addressee,

(3) Is uneconomical to mail in window envelopes, or

(4) Is sent to high level officials in Government or the private sector.

§ 201-45.401-8 Envelopes and post cards.

(a) Agencies shall ensure that printed items on envelopes and post cards are arranged and located according to USPS specifications. Printed envelopes and post cards shall contain the agency's full name and return address, the penalty statement and the "official business" designation, as required by 39 U.S.C. 3202. When an agency pays the return postage, agency-supplied return envelopes and post cards must bear either prepaid postage or "Business Reply."

(b) Except for USPS-required items, no other printed, stamped, or affixed marking or design shall be placed on envelopes or on the front of post cards unless it has been determined in each instance that use of a given marking or design will either:

(1) Reduce the agency's costs;

(2) Expedite mail delivery or handling;

(3) Aid in the delivery of services to the public; or

(4) Promote a program or activity having major national impact. The use of each marking or design shall be approved in writing by the head of the agency. The approval authority may only be delegated to the senior official for information resources management.

§ 201-45.401-9 Miscellaneous forms.

The following forms are illustrated in Appendix E of the looseleaf edition of the FIRMR.

(a) Optional Form 10, U.S. Government Memorandum.

This form is designed to aid informal, intra-agency or interagency correspondence preparation and is designed for use with window envelopes. (See the U.S. Government Correspondence Manual.) Standard spaces are provided for the date, addressee, subject matter, and sender. It may be overprinted with the agency's name and address at the top. It is intended for use by agencies whose needs are met by a single format and whose identification and data requirements, if any, do not justify agency-designed letterhead.

(b) Optional Form 27, United States Government 2-Way Memo.

This form is a 3-part carbonless set for informal communications. The message and reply are placed on the same page in brief informal language. It can be sent and returned in a window envelope, if an envelope is necessary.

(c) Optional Form 41, Routing and Transmittal Slip.

This form is designed to transmit brief informal messages and/or documents and not for use as a record of approvals, concurrences, disposals, clearances, or similar actions. Spaces are provided for routing, addressee initials, and the date.

(d) Standard Form 63, Memorandum of Call.

This form is designed to record telephone numbers, messages, or visits for personnel who are not available at the time of the call or visit. SF 63 is the only authorized memorandum of call, and agencies may not procure another type.

(e) Standard Form 65, U.S. Government Messenger Envelope.

This form is designed as a reusable envelope and is available in three sizes as SF 65-A (preferred), SF 65-B, and SF 65-C (see § 201-45.401-2). It is designed to transmit correspondence and other matter between agencies if not used as the outer cover for mail tendered to USPS. Any agency component may use SF 65 internally if it is processed only by agency messengers. Consecutively

arranged spaces are provided on the front and back of the envelope for the name or title of the addressee, organization, and mail stop number. SF 65 is the only authorized messenger envelope, and agencies may not procure another type. SF 65 may not be used to transmit unenveloped materials covered by the Privacy Act.

§ 201-45.401-10 Deviations.

Agencies seeking a deviation from any provision of this Subpart 201-45.4 shall submit a written request in accordance with Subpart 201-1.4. Requests should include a statement of justification, pertinent specifications, and, if appropriate, scaled sample designs.

Subpart 201-45.5—Standard and Optional Forms Management Program

§ 201-45.500 Scope of subpart.

This subpart sets forth procedures for Federal agencies to follow in obtaining both the approval and cancellation of Governmentwide Standard and Optional forms. It also provides agencies' responsibilities for developing, promulgating, sponsoring, and managing Governmentwide forms through the Standard and Optional Forms Management Program. This subpart supplements § 201-45.104, Forms management.

§ 201-45.500-1 Objectives.

The objectives of the Standard and Optional Forms Management Program are to provide for:

(a) Simplified Governmentwide procedures;

(b) Cost-effective practices and procedures for creating, stocking, distributing, and using Standard and Optional forms;

(c) The creation of Standard and Optional forms based on a valid need and in compliance with applicable laws and regulations, including the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Federal Information Processing Standards (40 U.S.C. 759) implemented by GSA (41 CFR 201-8.1);

(d) The reduction of unnecessary forms;

(e) Close coordination of the program with the other information resources management activities within an agency; and

(f) Improved office productivity through the application of appropriate design, construction, and reproduction standards and guidelines.

§ 201-45.501 Authority.

The Standard and Optional Forms Management Program was developed and operated by the Office of Management and Budget (OMB) consistent with the authorities prescribed by the Budget and Accounting Act of 1921. GSA assumed responsibility for the program on May 29, 1967, through agreement with OMB.

§ 201-45.502 Agency responsibilities.

Each agency shall:

(a) Establish and issue internal procedures for the clearance and use of Standard and Optional forms;

(b) Designate an agency-level Standard and Optional forms liaison representative and alternate, and notify GSA in writing of such designees' names, titles, mailing addresses, and telephone numbers (Changes in designations shall be submitted to GSA within 30 calendar days after a new designation is made. All communications concerning designees shall be addressed to the General Services Administration (KLSO), Washington, DC 20405.);

(c) Ensure that new and revised Standard and Optional forms developed increase systems efficiency and do not duplicate forms already available under the Standard and Optional Forms Management Program;

(d) Develop new and revised Standard and Optional forms in accordance with the provisions of this subpart; the agency's mission, responsibilities, and regulatory authority; applicable laws and regulations (see § 201-45.500-1(c)); and GSA forms analysis and design guidelines;

(e) Coordinate the development, revision, or cancellation of Standard and Optional forms with user agencies;

(f) Prepare a supporting statement for each Standard and Optional form developed, revised, or canceled and for each request for exception to an existing Standard or Optional form. The supporting statement shall include an assessment of the effect on the process which the form supports and the anticipated increase or decrease in the cost of that process;

(g) Obtain GSA approval for each new, revised, and canceled Standard and Optional form as prescribed in § 201-45.504;

(h) Reply to GSA written information requests in a timely manner and review printing proofs within 15 workdays;

(i) Review existing Standard and Optional forms which the agency has promulgated, sponsored, or received an exception to determine and implement possible forms improvement, consolidation, and cancellation, at least annually;

(j) Maintain records documenting all agency Standard and Optional forms actions;

(k) Submit such information as may be requested by GSA in order to manage the program;

(l) Compile and maintain developmental and operational costs using Standard Form 335, Summary Worksheet for Estimating Form Costs, for all Standard and Optional forms developed or revised by the agency and that are also used for collections of information from the public or State or local governments or are interagency report forms (see § 201-45.104-4(k));

(m) Assist GSA in developing (i.e., collecting information and designing and testing) new Standard and Optional forms;

(n) Make available for local reproduction those promulgated or sponsored Standard and Optional forms with an anticipated or actual annual use of 5,000 or fewer. (Full size illustrations of these forms must be included in the prescribing regulation or form announcement, or must otherwise be made available to users, and must be clearly annotated, "AUTHORIZED FOR LOCAL REPRODUCTION".);

(o) Standardize exception requests at the highest organizational level possible; and

(p) Print and stock those exceptions approved for individual agency use. (See FPMR § 101-26.302.)

§ 201-45.503 GSA responsibilities.

GSA shall:

(a) promote the simplification of Governmentwide procedures and improve office productivity through the development of new and revised Standard and Optional forms;

(b) Analyze and approve or disapprove all requests for new or revised Standard and Optional forms and exceptions to the use of Standard and Optional forms;

(c) Maintain and distribute to all agencies a current list of approved Standard and Optional forms and agency liaison representatives;

(d) Coordinate with the Office of Management and Budget (OMB) on the approval of new and/or revised Standard and Optional forms that are within OMB's clearance jurisdiction;

(e) Promulgate or sponsor new Standard or Optional forms when a need is demonstrated and when it is in the best interest of the Government;

(f) Ensure that all proposed Standard and Optional forms are in conformance with applicable laws and regulations (see § 201-45.500-1(c));

(g) Issue information on current Standard and Optional forms clearance actions;

(h) Coordinate the printing of Standard and Optional forms with the U.S. Government Printing Office;

(i) Develop and issue updates to the Standard and Optional Forms Facsimile Handbook;

(j) Maintain records documenting activities of the Standard and Optional Forms Management Program;

(k) Conduct use-audits of Standard and Optional forms; and

(l) Collect information and issue reports on the Standard and Optional Forms Management Program.

§ 201-45.504 Approval, disapproval, and cancellation procedures.

§ 201-45.504-1 Approval and disapproval of Standard and Optional forms.

The promulgating or sponsoring agencies and GSA have specific responsibilities in the process for forms approval.

(a) Each promulgating or sponsoring agency shall:

(1) Request approval for new and revised Standard and Optional forms by submitting to the General Services Administration (KLSO), Washington, D.C. 20405 three copies of each of the following: (i) A Standard Form 152, Request for Clearance, Procurement, or Cancellation of Standard and Optional Forms, (ii) a supporting statement (see § 201-45.502(f)), (iii) the draft form, (iv) a list of the names, titles, and organizations of persons with whom the form was coordinated and a summary of any major problems on which agreement could not be reached, (v) a list of potential user agencies and their projected annual usage, and (vi) a draft announcement of the issuance of the form for inclusion in the appropriate directive or regulatory system and/or the **Federal Register**;

(2) Ensure that draft announcements include implementing instructions that address the following information: (i) Purpose, (ii) form title, (iii) form number, (iv) a sample or reduced facsimile of the form, if possible, (v) preparation instructions, (vi) obligation for use (i.e., mandatory or optional), (vii) frequency of use, (viii) number of copies required, (ix) guidance on use and disposition of present stocks, and (x) supply source;

(3) Ensure that the following appear on all approved new and revised Standard and Optional forms: (i) the Standard or Optional form number assigned by GSA, (ii) the edition date, (iii) the name of the promulgating or sponsoring agency, (iv) a citation of the agency regulation that requires mandatory use of the form (for Standard forms only), (v) the OMB approval number and expiration date as applicable (see § 201-45.507), and (vi) the interagency report control number, as appropriate (Normally the form number and edition date will be located on the first page of the form in the lower right corner; and the OMB number must appear in the upper right corner of the form.);

(4) Announce the issuance of approved new or revised Standard or Optional forms by publishing a change in the appropriate directive or regulatory system and/or a notice in the **Federal Register**.

(5) Include in the announcement: (i) implementing instructions, (ii) approximate availability date, if known, (iii) the interagency report control number, if the form is used as an interagency report, and (iv) the OMB approval number, if the form is used to collect information from the public or State or local governments;

(6) Submit a copy of the change to the directive and/or the **Federal Register** notice to the General Services Administration (KLSO), Washington, DC 20405; and

(7) Announce that new or revised forms with an anticipated or actual annual use of 5,000 or less are available for local reproduction by user agencies (see § 201-45.502(n));

(b) GSA shall:

(1) Analyze agency requests to approve new and revised forms to: (i) Verify that the form fulfills a need, (ii) ensure that approval will not result in duplicate forms, (iii) assess the impact on users, and (iv) ensure that the form follows GSA forms design and cost-effectiveness standards and guidelines;

(2) For approved requests: (i) assign an edition date and, if required, a form number, (ii) notify the requesting agency of the decision on the returned Standard Form 152, and (iii) enter the approved form in the Standard and Optional Forms Inventory (Edition dates, once assigned by GSA, shall not be changed by an agency.); and

(3) For requests that are disapproved, notify the requesting agency of the decision on the returned Standard Form 152.

§ 201-45.504-2 Cancellation of Standard and Optional forms.

The promulgating or sponsoring agencies and GSA have specific responsibilities in the process for forms cancellation.

(a) When a promulgating or sponsoring agency believes a Standard or Optional form is no longer needed, the agency shall:

(1) Request cancellation of the form by submitting to GSA a Standard Form 152, a supporting statement (see § 201-45.502(f)), and a draft of the proposed cancellation notice; and

(2) Notify the using agencies of the cancellation, when approved by GSA, by publishing a cancellation notice in the appropriate directive or regulatory system and/or in the **Federal Register**. A copy of each notice must be submitted to the General Services Administration (KLSO), Washington, DC 20405.

(b) When a promulgating or sponsoring agency submits a request for cancellation to GSA, GSA shall:

(1) Analyze the request to: (i) Verify that the form is no longer necessary, (ii) ensure that cancellation will not result in the proliferation of replacement forms, (iii) assess the impact on users, and (iv) ensure that disposition of existing stock is cost-effective; and

(2) Approve or disapprove the request and notify the promulgating or sponsoring agency of the decision on the returned Standard Form 152.

§ 201-45.505 Interagency Committee on Medical Records (ICMR) responsibilities.

The Interagency Committee on Medical Records (ICMR) is responsible for reviewing all health care related Standard forms to ensure quality, uniformity, and adequacy of health care records of the Federal government. The ICMR is responsible for developing new and revised medical Standard forms and requesting cancellation of and exceptions to existing medical Standard forms. GSA is responsible for promulgating and approving medical Standard forms.

§ 201-45.505-1 Clearance of medical Standard forms.

The ICMR chairperson shall initiate, sign, and submit requests for the approval of medical Standard forms to: General Services Administration (ATRAR), Washington, DC 20405. ATRAR will forward the request to GSA/OIRM for processing in accordance with § 201-45.504-1.

§ 201-45.506 Standard and Optional forms coordination with interagency reporting approved by GSA.

As provided in Subpart 201-45.6, GSA is responsible for approving interagency reporting requirements. When an agency develops or revises a Standard or Optional form in conjunction with an interagency reporting requirement, the agency shall submit to GSA a Standard Form 360, Request for Clearance of an Interagency Reporting Requirement, in addition to other clearance requirements prescribed by this subpart.

§ 201-45.507 Standard and Optional forms used for collections of information from the public or State or local governments.

(a) Under 5 CFR Part 1320, Standard and Optional forms that also require approval by OMB (44 U.S.C. 3501–3513) because they are to be used to collect information from the public or State or local governments, or are the basis of general purpose statistics, shall be submitted by the promulgating or sponsoring agency to OMB through GSA. Agencies shall submit a Standard Form 83, Request for OMB Review and necessary attachments, in addition to other clearance requirements prescribed by this subpart when developing, revising, canceling or requesting exception to a Standard or Optional form requiring OMB clearance.

(b) Requests for extension of OMB clearance of Standard and Optional forms will be initiated by the promulgating or sponsoring agency and will be sent to OMB through GSA using Standard Form 83, in addition to the Standard Form 152 and accompanying documentation. If the request results in no changes to the affected form, Standard Form 152 and the accompanying documentation may be omitted.

§ 201-45.508 Reporting requirements.

Sixty workdays before the close of each fiscal year, agencies shall submit a summary of the Standard and Optional forms used for collections of information covered by 5 CFR Part 1320 to the General Services Administration (KLSO), Washington, DC 20405. Instructions for preparing the report are on GSA Form 3515, Annual Report of Standard and Optional Forms Used for Collections of Information Covered by 5 CFR Part 1320. Include in the report the actual number of forms used plus the estimated number for the remainder of the current fiscal year. This report is assigned Interagency Report Control Number 0309–GSA–AN. Separate reports shall be submitted for each department or comparable independent organizational unit.

§ 201-45.509 Overprinting of Standard and Optional forms.

Overprinting of Standard and Optional forms is at each agency's discretion but should be limited to quantities that are cost-effective. Overprinting of forms is ordered through the General Services Administration (WFSI), Washington, DC 20407.

§ 201-45.510 Exceptions to Standard and Optional forms.

§ 201-45.510-1 Policy.

(a) Exceptions to Standard and Optional forms shall be requested only when an agency can demonstrate that the difference in the content, format, and/or printing specifications of the form is cost-effective.

(b) Reproduction and stocking of approved exceptions is the responsibility of the requesting agency (see FPMR § 101–26.302).

(c) Content and format exceptions become void when the affected Standard or Optional form is revised or canceled by the promulgating agency, or when the exception is altered.

(d) Printing exceptions become void when the affected Standard or Optional form is canceled, when a usable construction that meets user needs is stocked by GSA's Office of Federal Supply and Services, or when the form is revised unless the agency certifies in writing that there is a continued need for the printing exception. This certification of continued need must be received by GSA (KLSO) within 60 workdays of the revision of the Standard or Optional form. GSA will notify agencies with printing exceptions of the need for certification.

§ 201-45.510-2 Clearance procedures for exceptions.

(a) Agencies shall submit exception requests to GSA, including three copies of the proposed form, Standard Form 152, the supporting statement, and if appropriate, the printing requisition. The supporting statement shall explain the reasons for the request including conclusive evidence that the Standard or Optional form can not be used as prescribed in the existing format or construction or is not economical; the proposed alteration(s) or change(s); the resultant cost benefits; and shall include an estimate of the number of forms expected to be used in one year.

(b) Exceptions shall be reviewed by GSA to limit unnecessary variations of the form, assess the need for additional standardized constructions, and economy of application; and shall be sent to the promulgating agency for a signed recommendation of approval or disapproval. When the clearance action is returned, GSA will analyze both the exception request and the promulgator's recommendation. GSA will notify the requesting agency of its decision to approve, modify, or disapprove the request.

(c) Approved exceptions must bear the following on the first page, below or near the form number element: (1) "Department (abbreviation)—Major component (abbreviation) Exception to (form number) approved by GSA/OIRM (Month and Year)", and (2) when appropriate, citation of the internal directive.

(d) When an exception is approved, GSA (KLSO) will forward a copy of the approval and the printing requisition, if included in the request package, to GSA (WFSI), for processing. The approved exception notifies WFSI to deduct the order quantity from their standard form stock level because the agency will no longer use the form as stocked.

§ 201-45.510-3 Review of exceptions.

(a) GSA shall periodically review and analyze exceptions to specific forms and recommend form content, format, and printing changes to the promulgating agency.

(b) The promulgating agency shall implement the recommended changes through revision of the Standard or Optional form or provide GSA with acceptable reason(s) for non-implementation, within 60 workdays.

§ 201-45.511 Program review.

Periodically GSA shall review agency implementation of the Standard and Optional Forms Management Program in order to assess the effectiveness of the program and the agency's conformity to this Subpart 201–45.5.

§ 201-45.512 Employee suggestions.

In accordance with Federal Personnel Manual Chapter 451, employee suggestions that propose changes in the format, content, construction, or use of a Standard or Optional form shall be sent from the suggester (through the suggestion program) to the promulgating or sponsoring agency for evaluation. New and revised Standard and Optional forms created as a result of employee suggestions shall be processed in accordance with procedures provided in § 201–45.504–1 of this subpart.

§ 201-45.513 Obtaining forms.

Supplies of Standard Form 152 may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office that provides support for the requesting activity.

§ 201-45.514 Procurement of stocks of Standard and Optional forms.

General procedures for procuring stocks of Standard and Optional forms are in FPMR § 101–26.302, Standard and Optional forms.

Subpart 201-45.6—Interagency Reports Management Program

§ 201-45.600 Scope of subpart.

This subpart states procedures for agencies of follow in seeking approval of interagency reports.

§ 201-45.601 Authority.

The provisions of this subpart implement 44 U.S.C. Chapters 29 and 31, recognizing OMB functions under 44 U.S.C. 3504(e) and OMB implementation under 5 CFR 1320.16.

§ 201-45.602 Objectives.

The purpose of this program is to ensure that interagency reports are based on need, are cost-effective, and comply with laws and regulations; e.g., Freedom of Information Act (5 U.S.C. 552); the Privacy Act of 1974 (5 U.S.C. 552a); and Federal Information Processing Standards (40 U.S.C. 759(f) implemented by GSA (Part 201-8).

§ 201-45.603 Agency responsibilities.

Each agency shall:

(a) Issue internal procedures for submitting, reviewing, and approving or disapproving interagency reports;

(b) Appoint officials to serve as interagency report coordinator and alternate;

(c) Submit the names, titles, locations, and telephone numbers of the interagency reports coordinator and alternate to the General Services Administration (KLSO), Washington, DC 20405. (Any change in the person appointed must be sent to GSA within 30 calendar days);

(d) Develop new and revised interagency reporting requirements under this subpart;

(e) Obtain GSA approval for each new, revised, or extended interagency reporting as soon as possible;

(f) Review the GSA Inventory of Approved Interagency Reports to decide if a proposed report can be met by an existing report;

(g) Review existing interagency reports for possible improvements when submitting requests to extend clearances;

(h) Provide responding agencies the opportunity to comment on each proposed new or revised interagency reporting requirement;

(i) Obtain GSA approval to collect test information from other Federal agencies to do a pilot test of the system if the estimated cost for a new or substantially revised report exceeds $500,000;

(j) Reply within 30 calendar days to other agencies' written requests for estimates of the cost of responding to existing or proposed interagency reports;

(k) Repond to approved interagency reports as specified in instructions; and

(l) Refrain from responding to interagency reporting requirements not approved by GSA and inform GSA of the requirements.

§ 201-45.604 Establishing or revising interagency reporting requirements.

(a) The requiring agency shall consult with GSA (KLSO) on proposed new or revised interagency reporting requirements before submitting Standard Form 360, Request for Clearance of an Interagency Reporting Requirement. Following the discussion with GSA, the agency shall justify the need for the report and estimate the reporting costs, under §§ 201-45.606 and 201-45.607. The agency shall then send to GSA (KLSO) an original and one copy of Standard Form 360 with supporting documents through the agency's interagency reports coordinator. Upon receipt of the Standard Form 360, GSA will review the proposal for demonstrated need, cost effectiveness, systems design, and coordination with other clearance authorities, and will ensure that the report does not duplicate existing interagency reports.

(b) If GSA approves the report, it will assign an interagency report control number and an expiration date, return the Standard Form 360 to the agency's interagency reports coordinator, and enter the report in the GSA Inventory of Approved Interagency Reports.

(c) The requiring agency shall notify responding agencies of approved reports by directive or by correspondence. The directive publishing the requirement shall include the following information: (1) Purpose; (2) report title; (3) whether it is mandatory or voluntary; (4) interagency report control number; (5) report format; (6) preparation instructions; (7) responding agencies; (8) frequency of use; (9) number of copies; (10) mailing address; (11) due date; (12) name and telephone number of contact person; and (13) for mandatory reports, whether it requires a negative response.

(d) If a form is needed to collect data, the agency shall place the interagency report control number in the upper right corner of the form.

(e) When GSA rejects an agency's request for a report, GSA will advise the agency, in writing of the reasons for the rejection.

§ 201-45.605 Extending interagency reporting requirements.

GSA will notify the promulgating agencies 90 calendar days in advance of the expiration date of a requirement. Agencies shall submit requests for extensions for new and revised reports at least 60 calendar days before the expiration date. (See § 201-45.604.)

§ 201-45.606 Justifying interagency reporting requirements.

A justification statement, signed by the official who requested the reporting requirement, shall be attached to Standard Form 360. The justification shall:

(a) State why the report is needed and how it will be used;

(b) Describe the benefits (in dollar value if possible) expected from the information and assess the probability that the benefits will be achieved;

(c) Describe how the program will be affected if the information is not obtained;

(d) Identify any responding agencies that took part in designing, testing, and estimating the cost of the proposed report;

(e) Identify the agencies that agree or do not agree with the proposed report and summarize the reasons why;

(f) Explain how the reporting costs shown on the Standard Form 360 were derived (see § 201-45.607); and

(g) Describe other reporting plans considered, including: (1) Frequency of reporting, (2) use of exception reporting, (3) use of sampling techniques, (4) selection of respondents, (5) obligation of respondents to comply, (6) amount of detail, (7) format of report, and (8) method of transmission.

§ 201-45.607 Cost estimates.

GSA needs cost estimates to decide if the expected value of the information is worth the cost of obtaining it. Agencies shall use the following cost alternative(s) to identify the method(s) used to prepare the reporting cost estimate. Criteria for these costing alternatives are contained in the GSA information resources management handbook, Reports Management (see Appendix C of the looseleaf edition of the FIRMR). Supporting documentation and worksheets for all cost estimates must be available for GSA review. GSA review may include the appropriateness of the agency costing alternative selection.

Alternatives	Characteristics
Pilot testing (estimate based on actual costs collected)	High cost reporting; full scale mechanized systems; data banks; large number of data elements; new data collection system; respondent cost may be needed for budget purposes.

Alternatives	Characteristics
Factoring (estimate based on actual costs previously collected for a comparable report).	Medium to low cost reporting; revision of a previously costed report; high degree of experience with comparable reports made by the same (one or a limited number) responding agencies; cost easy to compare with actual cost for a similar report.
Sampling (estimate based on a representative selection of responding agencies).	Low to high cost reporting; large number of respondents; new reports.
Technical estimates (estimate based on experience)	Low cost reporting; more detailed costing waived by GSA; one-time reports; limited number of respondents.

§ 201-45.608 Discontinuing interagency reporting requirements.

If an interagency report is no longer needed, the agency shall notify GSA and responding agencies by directive or correspondence. GSA will discontinue the requirement on the expiration date unless it receives a request for an extension under § 201-45.605.

§ 201-45.609 Special provisions.

§ 201-45.609-1 Exemptions.

(a) The following interagency reports requirements are exempted from Subpart 201-45.6: (1) Legislative branch reports, (2) Office of Management and Budget (OMB) and other Executive Office of the President reports, and (3) judicial branch reports required by court order or decree. However, interagency reports required by Federal agencies to respond to exempted requirements are subject to clearance under this subpart.

(b) Questions concerning the applicability of these exemptions shall be directed to the General Services Administration (KLSO), Washington, DC 20405.

§ 201-45.609-2 Deviations.

An agency seeking a deviation from the requirements to justify and prepare a cost-estimate of a report under §§ 201-45.606 and 201-45.607 shall send a written explanation of the need for the report and the deviation to the General Services Administration (KMPP), Washington, DC 20405 in accordance with Subpart 201-1.4. Deviation requests must include a summary cost estimate in item 9 of Standard Form 360.

§ 201.45.609-3 Classified reporting requirements.

Interagency reporting requirements for security classified information are exempt from this subpart. However, interagency reporting requirements for non-security classified information are not exempt from this subpart, even if such information is later given a security classification by the requesting agency.

§ 201-45.610 Coordination with other clearance authorities.

§ 201-45.610-1 Interagency/public reporting requirements.

Interagency reporting requirements that collect information from the public or from State or local governments as well as from Federal agencies require approval by OMB under 5 CFR Part 1320. Agencies shall submit these interagency reporting requirements to OMB and GSA at the same time for clearance.

§ 201-45.610-2 Interagency reporting coordination with Standard and Optional forms approved by GSA.

As stated in Subpart 201-45.5, GSA is responsible for approving Standard and Optional forms. Therefore, when an agency plans to use a new or revised Standard or Optional form for a proposed interagency report, the agency shall also submit Standard form 152, Request for Clearance, Procurement, For Cancellation of Standard and Optional Forms.

§ 201-45.611 Obtaining forms.

The forms required by this subpart may be obtained by submitting a FEDSTRIP/MILSTRIP requisition to the GSA regional office that provides support for the requesting office.

Subpart 201-45.7—[Reserved]

Subpart 201-45.8—Technical Assistance

§ 201-45.800 Scope of subpart.

This subpart contains information and procedures pertaining to the furnishing of technical assistance services to Federal agencies by the General Services Administration (GSA).

§ 201-45.801 Services available.

The following services are available to Federal agencies from GSA:

(a) Technical advice and assistance on agency records management programs and activities as described in this Part 201-45; and

(b) Information management and other systems studies.

§ 201-45.802 Technical advice and assistance on records management programs.

GSA provides technical advice and guidance to Federal agencies in the conduct of their records management activities. This includes assistance in the development of records management programs concerned with the creation, maintenance, and use of agency records. Advice and guidance will be consistent with NARA regulations concerning records disposition and adequacy of documentation (36 CFR Ch. XII).

§ 201-45.803 Technical assistance involving studies and surveys.

(a) Upon request, GSA will conduct studies and surveys for Federal agencies involving any one or a combination of the records management areas described in this Part 201-45. These studies and surveys are normally on a reimbursable basis.

(b) An information management study is a systematic and detailed cost/benefit analysis which identifies and defines systems requirements and automation requirements for effective, efficient, and economical management and operation, and the alternative methods to satisfy these requirements; and recommends the optimum implementation methods and procedures for management approval. The study covers all management and operating processes, whether or not ADP equipment is involved.

§ 201-45.804 Request for services

(a) Agencies desiring any of the reimbursable services from GSA provided for in this Subpart 201-45.8 should contact the General Services Administration (KFM), Washington, DC 20405.

(b) Technical advice and assistance may also be obtained by contacting the General Services Administration (KL), Washington, DC 20405.

Appendix A—[Amended]

1. Appendix A to Chapter 201 is amended by removing Temp. Reg. 12.

Dated: June 19, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-15583 Filed 6-27-85; 8:45 am]

BILLING CODE 6820-25-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Amdt. B-62]

Removal From Chapter 101 of Subchapter B, Archives and Records

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule.

SUMMARY: This regulation removes records management provisions from the Federal Property Management Regulations (FPMR). The purpose is to remove regulatory provisions that have been superseded by the Federal Information Resources Management Regulation (FIRMR) (41 CFR Chapter 201) and National Archives and Records Administration (NARA) regulations in 36 CFR Chapter XII.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: David R. Mullins, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) Governmentwide regulations regarding Federal management, acquisition, and use of information resources were integrated into a new regulation, the FIRMR, effective April 1, 1984 (49 FR 20994, May 17, 1984). Temporary Regulation 12, effective April 1, 1985 (50 FR 14220, April 11, 1985) included the publication of many of the policies and procedures that were originally published in FPMR Part 101-11 in the new integrated structure. These provisions are the responsibility of GSA under Pub. L. 98-497. The remaining policies and procedures originally published in FPMR Part 101-11 and all of FPMR Part 101-13 (which are the responsibility of NARA under Pub. L. 98-497) are included in 36 CFR Chapter XII. Subchapter B provisions (Parts 101-11 and 101-13 and Appendix to Subchapter B) are no longer effective.

(2) As listed in Appendix C of the FIRMR looseleaf edition, certain FPMR B series information and guidance (non-regulatory) bulletins continue to be current. This regulation action does not affect the status of FPMR B series bulletins.

(3) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Subchapter B

Government information resources activities, Government records management.

SUBCHAPTER B—[REMOVED AND RESERVED]

Pursuant to Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), 41 CFR Chapter 101 is amended by removing and reserving Subchapter B—Archives and Records.

Dated: June 21, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-15582 Filed 6-27-85; 8:45 am]

BILLING CODE 6820-25-M

federal register

Friday
June 28, 1985

Part V

National Archives and Records Administration

36 CFR Part 1220 et al.

Establishment of NARA Regulations Relating to Records Management; Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222, 1224, 1228, 1230, 1232, 1234, and 1238

Establishment of NARA Regulations Relating to Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This regulation establishes Government-wide records management regulations relating to records creation, maintenance and use, adequate documentation of agencies' programs, and proper disposition to ensure the preservation of permanent records and their eventual transfer to NARA. These regulations replace and supersede regulations contained in the Federal Property Management Regulation. The regulations reflect the division of records management responsibilities between GSA and NARA in accordance with Pub. L. 98-497, the National Archives and Records Administration Act of 1984.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Allard, telephone 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: Pub. L. 98-497, which became effective April 1, 1985, established the National Archives and Records Administration (NARA) as an independent agency in the executive branch, and transferred the National Archives and Records Service of the General Services Administration to the agency.

The Act also provided that NARA would have records management authorities relating to adequacy of documentation and disposition of records, and GSA would retain responsibility for promoting economy and efficiency in records management. NARA is publishing its records management regulations in 36 CFR Chapter XII, Subchapter B, which was established at 50 FR 15722, April 19, 1985. GSA is publishing its regulations in the Federal Information Resources Management Regulation (FIRMR) located in 41 CFR Chapter 201.

NARA published a notice of proposed rulemaking in the **Federal Register** on May 22, 1985 (50 FR 21218, May 22, 1985) to establish NARA policies and procedures for agency records management programs relating to records creation, maintenance and use, adequate documentation of agency programs, and the proper disposition of the records. No comments were received. Minor editorial corrections have been made in this final rule. This rule makes one additional change to Part 1228 that was not included in the proposed rule. Section 1228.152 has been amended to modify criteria for accepting agency records in records centers to allow storage in Federal records centers of records not eligible for immediate disposal whenever the transportation costs are not in excess of the resulting savings. Previously, records were not accepted if they were eligible for disposal within 3 years.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Parts 1220, 1222, 1224, 1228, 1230, 1234, 1238

Archives and records.

For the reasons set forth above, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

The following distribution table reflects the old regulations in 41 CFR Part 101-11 and the new rewritten regulations in 36 CFR Chapter XII.

DISTRIBUTION TABLE

FPMR sections	NARA sections
PART 101-11	
101-11.000	1220.1.
Subpart 101-11.1	Part 1220.
101-11.101	Subpart A.
101-11.101-1	1220.10.
101-11.101-2	1220.12.
101-11.101-3	1220.14.
101-11.101-4	1220.16.
101-11.101-5	1220.18.
101-11.102	Subpart B.
101-11.102-1	1220.30.
101-11.102-2	1220.32.
101-11.102-3	1220.34.
101-11.102-5	1220.36.
101-11.102-6	1220.38.
101-11.103	Subpart C.
101-11.103-2	1220.50.
101-11.103-3	1220.52.
101-11.103-4	1220.54.
101-11.104	1220.56.
Subpart 101-11.2	Part 1222.
101-11.202-1	1222.10.
101-11.202-2	1222.20.
Subpart 101-11.5	Part 1230.
101-11.500	1230.1.
101-11.501	1230.2.
101-11.502	1230.4.
101-11.506	Subpart A.
101-11.506-1	1230.10.
101-11.506-2	1230.12.
101-11.506-3	1230.14.
101-11.507	Subpart B.
101-11.507-1	1230.20.
101-11.507-2	1230.22.
101-11.508	1230.24.
101-11.509	1230.26.
101-11.510	Subpart C.
101-11.510-1	1230.50.
101-11.510-3	1230.52.
Subpart 101-11.10	Part 1238.
101-11.1000	1238.1.
101-11.1005	1238.2.
Subpart 101-11-13	Part 1232.
101-11.1300	1232.1.
101-11.1302	1232.2.
101-11.1303	1232.4.
101-11.1304	1232.6.

1. Parts 1220, 1222, and 1224 are added to read as follows:

SUBCHAPTER B—RECORDS MANAGEMENT

PART 1220—FEDERAL RECORDS; GENERAL

Sec.

1220.1 Scope of subchapter.
1220.2 Responsibilty for records management programs.

Subpart A—General Provisions

1220.10 Authority.
1220.12 Applicability.
1220.14 General definitions.
1220.16 Reports to the Congress and the Director of the Office of Management and Budget.
1220.18 Inspection of records subject to the Privacy Act of 1974.

Subpart B—Agency Records Management Programs

1220.30 Authority.
1220.32 Program content.
1220.34 Creation of records.
1220.36 Maintenance and use of records.
1220.38 Disposition of records.
1220.40 Liaison offices.

Subpart C—Agency Program Evaluation

1220.50 Evaluation by NARA.
1220.52 Agency evaluation review and followup procedures.
1220.54 Agency internal evaluations.
1220.56 Interagency program evaluations and studies.

Authority: 44 U.S.C. 2104(a) and Chapter 29.

§ 1220.1 Scope of subchapter.

Subchapter B prescribes policies for Federal agencies' records management programs relating to records creation and maintenance, adequate documentation, and proper records disposition.

§ 1220.2 Responsibility for records management programs.

Public Law 98-497 amended the records management statutes to divide records management responsibilities between the National Archives and Records Administration (NARA) and the General Services Administration (GSA). Under the Act, NARA is responsible for adequacy of documentation and records disposition and GSA is responsible for economy and efficiency in records management. NARA regulations are codified in this Subchapter. GSA records management regulations are

codified in 41 CFR Parts 201-2, 201-22, and 201-45. Federal agency records management programs must be in compliance with regulations promulgated by both NARA and GSA.

Subpart A—General Provisions

§ 1220.10 Authority.

The regulations in this part are issued under the provisions of the National Archives and Records Administration Act of 1984 (Pub. L. 98-497, 44 U.S.C. 101 note).

§ 1220.12 Applicability.

The regulations in Subchapter B apply to all Federal agencies as defined in § 1220.14.

§ 1220.14 General definitions.

As used in Subchapter B—

"Disposition" means the action taken with regard to records following their appraisal by NARA. 44 U.S.C. 2901(5) defines "records disposition" as any activity with respect to:

(a) disposal of temporary records no longer necessary for the conduct of business by destruction or donation;

(b) transfer of records to Federal agency storage facilities or records centers;

(c) transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(d) transfer of records from one Federal agency to any other Federal agency.

"Executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation.

"Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, Senate, the House of Repersentatives, and the Architect of the Capitol and any activities under his direction). (44 U.S.C. 2901(14)).

"File" means an arrangement of records. The term is used to denote papers, photographs, photographic copies, maps, machine-readable information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or machine-readable media, or on shelves, and occupying office or storage space.

"Records" means all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them. Library and museum material made or acquire and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included. (44 U.S.C. 3301).

"Records management," as used in Subchapter B, means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

"Records maintenance and use," as used in Subchapter B, means any activity involving location of records of a Federal agency or the storage, retrieval, and handling of records kept at office file locations by or for a Federal agency.

"Series" means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, have a particular physical form, or because of some other relationship arising out of their creation, receipt, or use.

§ 1220.16 Reports to the Congress and the Director of the Office of Management and Budget.

Under 44 U.S.C. 2904(c)(8), the Archivist of the United States is required to report to Congress and the Office of Management and Budget annually on the results of records management activities, including evaluations of responses by Federal agencies to any recommendations resulting from studies or inspections conducted by NARA.

§ 1220.18 Inspection of records subject to the Privacy Act of 1974.

In accordance with 44 U.S.C. 2906, when NARA inspects an agency record which is contained in a system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), the records shall be maintained by the Archivist or his designee as a record contained in a system of records or considered to be a record contained in a system of records for the purposes of subsections (b), (c), and (i) of section 552a of title 5.

Subpart B—Agency Records Management Programs

§ 1220.30 Authority.

Section 3101 of Title 44 of the United States Code requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

§ 1220.32 Program content.

Agency programs shall, among other things, provide for:

(a) Cooperation with NARA in developing and applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for permanent preservation, and facilitate the segregation and disposal of temporary records.

(b) Compliance with sections 2101-2117, 2501-2507, 2901-2909, 3101-3107, and 3301-3314 of title 44 of the United States Code and with NARA regulations issued in Title 36 of the Code of Federal Regulations.

§ 1220.34 Creation of records.

Adequate records management controls over the creation of Federal agency records shall be instituted to ensure that agency functions are adequately and properly documented. Federal agencies shall also comply with GSA regulations on creation of records found in 41 CFR 201-22.002-3.

§ 1220.36 Maintenance and use of records.

Adequate records management controls over the maintenance and use of records shall be instituted to ensure that permanent records can be located when needed and that they are preserved for eventual transfer to the National Archives to the United States. Agencies shall also be in compliance with GSA regulations on the maintenance and use of records found in 41 CFR Part 201-45.

§ 1220.38 Disposition of records.

Provision shall be made to ensure that permanent records are preserved but that records no longer of current use to an agency are promptly disposed of or retired. Effective techniques for the accomplishment of these ends are the development of records disposition schedules; the transfer of records to records centers and the National Archives of the United States; the conversion of the information to other media; and the disposal of valueless records. Disposition of any records requires the approval of the Archivist of the United States (see Part 1228 of this Chapter).

§ 1220.40 Liaison offices.

An office or offices within each Federal agency shall be assigned responsibility for the development of the records management program required by this part. The office to which responsibility assigned shall be reported to the Office of Records Administration, National Archives (NIA), Washington, DC 20408. The name, title, and telephone number of the official or officials authorized by the head of the agency to approve records disposition schedules and transfers of records to the custody of the National Archives shall also be submitted to the Office of Records Administration.

Subpart C—Agency Program Evaluation

§ 1220.50 Evaluation by NARA.

In accordance with Chapter 29 of Title 44, United States Code, NARA will periodically evaluate agency records management programs for adequate and proper documentation of the agency's organization, functions, and activities; for the selective retention and proper maintenance of permanent records; and for the prompt disposal of records of temporary value in accordance with approved disposition schedules and disposal requests. The objectives of these inspections are to:

(a) Determine agency compliance with the regulations in Subchapter B.

(b) Evaluate the effectiveness of agency records management programs and practices relating to adequacy of documentation, maintenance and use, and records disposition.

§ 1220.52 Agency evaluation review and followup procedures.

(a) A Federal agency has a maximum of 60 calendar days to comment on the factual content of a NARA draft evaluation report.

(b) A Federal agency shall submit an action plan to the Archivist of the United States implementing the recommendations in an evaluation report not later than 90 calendar days after the date of transmittal of the final report to the agency head. The agency action plan shall include:

(1) Specific action(s) the agency plans to take on each evaluation report recommendation. If an agency does not plan to implement a recommendation, the rationale for not acting shall be documented in the action plan; and

(2) Proposed month and year for completing each planned action.

(c) A Federal agency shall submit a progress report on implementation of the action plan every 6 months to the Office of Records Administration until the agency action plan is implemented. Interagency report control number 0153–NAR–AR has been assigned to this report in accordance with 41 CFR Subpart 201–45.6.

(d) NARA will:

(1) Analyze the adequacy of the agency action plan to implement recommendations contained in the evaluation report;

(2) Provide comments to the agency on the plan within 60 calendar days;

(3) Assist the agency in implementing recommendations; and

(4) Notify an agency when progress reports are no longer required.

§ 1220.54 Agency internal evaluation.

Each agency should periodically evaluate its records management programs relating to adequacy of documentation, maintenance and use, and records disposition. These evaluations should determine compliance with NARA regulations in Subchapter B and assess the effectiveness of the agency's programs. Criteria for agency self-evaluations are available from the Office of Records Administration (NIA).

§ 1220.56 Interagency program evaluations and studies.

Section 2904 of title 44, United States Code, authorizes the Archivist of the United States to conduct inspections or surveys of records and records management programs and practices within and between Federal agencies.

PART 1222—CREATION OF RECORDS; ADEQUACY OF DOCUMENTATION

Sec.

1222.10 Authority.
1222.20 Documentation standards.

Authority: 44 U.S.C. 2904 and 3101.

§ 1222.10 Authority.

(a) Section 2904 of title 44, United States Code, vests in the Archivist of the United States responsibility for developing and issuing standards to improve the management of records.

(b) Section 3101 of title 44, United States Code, requires that the head of each Federal agency "shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities."

§ 1222.20 Documentation standards.

To ensure that adequate and proper records are made and preserved in the Federal Government, the following documentation standards shall apply in each Federal agency:

(a) The record of the transaction of public business by any Federal official or employee is to be complete to the extent required to facilitate action by the incumbents and their successors in office; to make possible a proper scrutiny by the Congress, other duly authorized agencies of the Government, and other persons properly and directly concerned, of the manner in which public business has been discharged; and to protect the financial, legal, and other rights of the Government and of persons affected by the Government's actions.

(b) With particular regard to the formulation and execution of basic Government policy, Federal officials are responsible for incorporating in the records of their agencies all essential information on their major actions. Significant decisions and commitments reached orally (person to person, by telephone, or in conference) should be documented and included in the record. Minutes should be taken at important board, committee, and staff meetings, and these, together with a copy of the agenda and all documents considered at or resulting from such meetings, should be made part of the record.

(c) The programs, policies, and procedures of Federal agencies shall be adequately documented in appropriate directives. A record copy of each such directive (including those superseded) shall be maintained as a part of the official files.

(d) Papers of a private or nonofficial character which pertain only to an individual's personal affairs that are kept in the office of a Federal official shall be clearly designated by him or her as nonofficial and shall at all times be filed separately from the official records of the office. In cases where matters requiring the transaction of official

business are received in private personal correspondence, the portion of such correspondence that pertains to official business shall be extracted and made a part of the official files.

PART 1224—FILES MANAGEMENT

Sec.
1224.1 Purpose.
1224.2 Agency program requirements.

Authority: 44 U.S.C. 2904 and 3101.

§ 1224.1 Purpose.

To ensure the availability of and preservation of adequate and proper documentation of Government activities, each Federal agency shall organize its files so that complete records are maintained, records can be found when needed, the identification and retention of records of permanent value are facilitated, and the disposition of temporary records is accomplished promptly.

§ 1224.2 Agency program requirements.

(a) Each Federal agency shall establish an appropriate program for the management of its files. Agencies should also consult 41 CFR 201–45.204 for GSA files management regulations in developing their programs, each Federal agency, in providing for effective controls over the creation of records and the management of agency files, shall:

(1) Establish and implement standards and procedures for classifying, indexing, and filing records as set forth in GSA and NARA handbooks;

(2) Formally specify official file locations and prohibit the maintenance of files at unofficial locations;

(3) Standardize reference service procedures to facilitate the finding, chargeout, and refiling of agency records;

(4) Make available to all agency employees published standards, guides, and instructions designed for easy reference and revision;

(5) Review its records management program periodically to determine the adequacy of its filing program. Audit a representative sample of the files for duplication, misclassification, or misfiles.

PART 1228—DISPOSITION OF FEDERAL RECORDS—[AMENDED]

2. In Part 128, remove the words "Records Disposition Division" wherever they appear and insert the words "Records Appraisal and Disposition Division (NIR)" in their place, and remove the reference "§ 1228.2" wherever it appears and insert the reference "§ 1220.14".

§ 1228.2 [Redesignated as § 1220.14]

3. Section 1228.2 is redesignated into § 1220.14 and the definitions arranged in alphabetical sequence and the definitions of "National Archives" and "permanent record" are revised and the definition of "temporary records" is amended by removing the words "(nonarchival)" and "archival" from the first sentence as follows:

* * * * *

§ 1220.14 [Amended]

* * * * *

"National Archives of the United States" means those official records which have been determined by the Archivist of the United State to have sufficient historical or other value to warrant their continued preservation by the Federal Government and which have been accepted by the Archivist of the United States for deposit in his custody. (44 U.S.C. 2901 (11))

"Permanent record" means any record that has been determined by NARA to have sufficient value to warrant its preservation by the National Archives and Records Administration. Such a determination may take the form of:

(a) An approved offer to transfer records to the National Archives and Records Administration (§ 1228.34);

(b) A series of records designated "permanent" in an agency records schedule approved by NARA after May 14, 1973 (§ 1228.20).

4. Section 1228.12 is revised to read as follows:

§ 1228.12 Basic elements of disposition programs.

The primary steps in the development of a records disposition program are given below. Details of each element are contained in the NARA Records Management Handbook, Disposition of Federal Records (NSN 7610–01–055–8704).

(a) Inventory all records in the custody of the agency.

(b) Formulate specific disposition instructions for each series of records, including retention periods for temporary records, transfer periods for permanent records, and instructions for the retirement of records to Federal records centers when applicable.

(c) Assemble the disposition instruction for each series of records into a comprehensive agency records disposition schedule.

(d) Obtain approval of the records disposition schedule from NARA.

(e) Apply the approved records disposition schedule to all records of the agency.

5. Section 1228.20 is revised to read as follows:

§ 1228.20 Comprehensive agency records disposition schedules.

(a) *General.* Agency records schedules approved by the Archivist of the United States specify the proper disposition for all agency records. Recurring series of records of continuing value will be scheduled for retention and eventual transfer to the custody of the National Archives, and recurring series of all other records will be scheduled for destruction after a specific period of time based on administrative, fiscal, and legal values. Formulation and application of these schedules is mandatory (44 U.S.C. 3303 and 3303a). Agencies shall forward 20 copies of all formally published schedules to the National Archives (NIR), Washington, DC 20408.

(b) *Formulation of comprehensive schedules.* Each Federal agency shall prepare a comprehensive records schedule for all records in its custody. New Federal agencies shall complete comprehensive schedules within 2 years of their establishment. All schedules must follow the guidelines provided below:

(1) Schedules shall identify and describe clearly each series of records and shall contain disposition instructions that can be readily applied. Schedules must be prepared so that each office will have standing instructions detailing the destruction, transfer, or retention of records. Upon request by NARA, records recommended for retention longer than 10 years solely for administrative purposes must be justified in accordance with the procedures in § 1228.72.

(2) Each schedule item describing a series of permanent records shall include an arrangement statement, an estimate of the volume of records accumulated annually, as well as the total volume to date.

(3) Only new or revised records series or disposition instructions, or deviations from the General Records Schedules (see § 1228.22) require NARA approval. If any items on a proposed schedule have been previously scheduled, the procedures contained in § 1228.70 must be followed.

(4) All schedules shall take into account the filing system so that destruction or transfer can be handled in blocks.

(5) The disposition of nonrecord materials should be controlled by instructions in the comprehensive schedule. Nonrecord materials, such as extra copies of documents preserved solely for reference and stocks of processed documents shall be maintained separately from official

agency files to aid in records disposition.

(6) Schedules shall be reviewed and, if necessary, updated annually. Agencies shall schedule the records of new programs within 1 year of their implementation.

(c) *Provisions of comprehensive schedules.* Records schedules shall provide for:

(1) The destruction of records that have served their statutory, fiscal, or administrative uses and no longer have sufficient value to justify further retention. Procedures for obtaining disposal authorizations are prescribed in § 1228.62;

(2) The removal to a Federal records center (or to an agency records center approved under Subpart J) of records not eligible for immediate destruction or other disposition which are no longer needed in office space and equipment. These records are maintained by the records center until they are eligible for further disposition action;

(3) The retention of the minimum volume of current records in office space and equipment consistent with efficient operations; and

(4) The identification of records of continuing value in accordance with Subpart C, and the establishment of cutoff periods after which such records are offered to the National Archives and Records Administration.

(d) *Certification.* The signature of the authorized agency representative on the Standard Form 115, Request for Records Disposition Authority, shall constitute certification that the records recommended for disposal do not or will not have sufficient administrative, legal, or fiscal value to the agency to warrant retention beyond the expiration of the specified period and that records described as having continuing value will be offered to the National Archives of the United States upon expiration of the stated period.

(e) *Disapproval of requests for disposition authority.* Requests for records disposition authority may be returned to the agency if the SF 115 is improperly prepared. The agency shall make the necessary corrections and resubmit the form to the National Archives and Records Administration (NIR). The disposition request for any item may be disapproved and the agency notified in writing if after appraisal of the records NARA determines that the proposed disposition is not consistent with the value of the records.

(f) *Withdrawn items.* Agencies may request that items listed on SF 115 be withdrawn in order to aid in the processing (appraisal) of the remaining items on the schedule.

(1) If, during the course of the appraisal process, NARA determines that records series described by an item(s) on the proposed schedule do not exist or are not arranged as stated on the schedule, NARA may request the agency to withdraw the item(s) from consideration, if the agency is unable to offer sufficient clarification.

(2) If NARA and the agency cannot readily agree on the retention period for an item(s), the item(s) may be withdrawn at the request of NARA or the agency. In these cases, the agency will submit an SF 115 with a revised proposal for disposition within 6 months of the date of approval of the original SF 115.

(g) *Applicability.* (1) Records described by items marked "disposition not approved" or withdrawn may not be destroyed until a specific disposition has been approved by NARA.

(2) Disposition authorities for items on approved SF 115s that specify an organizational component of the agency as the creator or custodian of the records may be applied to the same records after internal reorganization, but only if the nature, content, and functional importance of the records remains exactly the same. Authority approved for items described in a functional format may be applied to any organizational component within the agency that is responsible for the relevant function.

(3) Disposition authorizations approved for one agency may not be applied by another. Agencies that acquire records from another agency and/or continue creating the same series of records previously created by another agency through interagency reorganization must submit an SF 115 to NARA for disposition authorization for the records within one year of the reorganization.

(h) *Application of comprehensive schedules.* The head of each Federal agency shall direct the application of records schedules to ensure maximum economy of space, equipment, and personnel. Three copies of each directive or other issuance affecting an agency's records disposition program at the bureau or higher organization level shall be sent to the National Archives and Records Administration (NIR).

6. Section 1228.60 is revised to read as follows:

§ 1228.60 Authority.

No records of the Government shall be destroyed or otherwise alienated from the Government except in accordance with procedures described in this Part 1228 (44 U.S.C. 3314).

7. Section 1228.62 is revised to read as follows:

§ 1228.62 Request for authorization to dispose of temporary records.

Requests for authorization to dispose of records shall be initiated by Federal agencies by submitting Standard Form 115, Request for Records Disposition Authority, to the National Archives and Records Administration. A SF 115 is used for submitting a schedule (§ 1228.20) or a list (§ 1228.24). Authority contained in an approved disposal list is limited to records already in existence which no longer accumulate. A schedule is a continuing authorization and should be used in all instance where the types of records described in the request continue to accumulate.

§ 1228.72 [Amended]

8. Section 1228.72 is amended by revising the second sentence of paragraph (b) to read: "These extensions of retention periods will be granted for records which are required to conduct Government operations because of special circumstances which alter the normal administrative, legal, or fiscal value of the records."

§ 1228.74 [Amended]

9. Section 1228.74 is amended by removing the words "44 U.S.C. 3314" in paragraph (a) and inserting the words "44. U.S.C. 3302" in their place.

10. Section 1228.124 is amended by revising paragraph (f) to read:

§ 1228.124 Agency request.

* * * * *

(f) A justification for the transfer.

11. Section 1228.152 is amended by revising paragraph (a)(2) to read as follows and by removing the word "disposal" whenever it appears in paragraph (e) and inserting the word "disposition" in its place:

§ 1228.152 Procedures for transfers to Federal records centers.

* * * * *

(a) * * *

(1) * * *

(2) The records are not authorized for immediate disposal and transportation costs are not in excess of the resulting savings.

* * * * *

§ 1228.158 [Removed]

12. Section 1228.158 is removed.

13. Section 1228.188 is revised to read as follows:

§ 1228.188 Machine-readable records.

(a) *Magnetic tape.* Computer magnetic tape is a fragile medium, highly susceptible to the generation of error by improper care and handling. To ensure that permanently valuable information stored on magnetic tape is preserved, Federal agencies should schedule files for disposition as soon as possible after the tapes are written. When NARA has determined that a file is worthy of preservation, the agency should transfer the file to the National Archives as soon as it beomes inactive or whenever the agency cannot provide proper care and handling of the tapes (see Part 1234 of this chapter) to guarantee the preservation of the information they contain. The tapes to be transferred to the National Archives shall be on one-half inch 7 or 9 track tape reels, written in ASCII or EBCDIC, with all extraneous control characters removed from the data (except record length indicators for variable length records, or marks designating a datum, word, field, block, or file), blocked no higher than 30,000 bytes per block, at 800, 1600, or 6250 bpi. The tapes on which the data are recorded shall be new or recertified tapes (see Part 1234 of this chapter) which have been passed over a type cleaner before writing and shall be rewound under controlled tension.

(b) *Other magnetic media.* When a machine-readable file that has been designated for preservation by NARA is maintained on a direct access storage device, the file shall be written on new or recertified one-half inch 7 or 9 track tapes, written in ASCII or EBCDIC, with all extraneous control characters removed from the data (except record length indicators for variable length records, or marks designating a datum, word, field, block, or file), blocked no higher than 30,000 bytes per block, at 800, 1600, or 6250 bpi. This copy shall be transferred to the National Archives.

(c) *Documentation.* Documentation adequate for servicing and interpreting machine-readable records that have been designated for preservation by NARA shall be transferred with them. This documentation shall include, but not necessarily be limited to completed Standard Form 277, Computer Magnetic Tape File Properties, or its equivalent. Where it has been necessary to strip data of extraneous control characters (see paragraphs (a) and (b) of this section), the codebook specifications defining the data elements and their values must match the new format of the data. Guidelines for determining adequate documentation may be obtained from the Office of Records Administration (mailing address: National Archives (NI), Washington, DC 20408).

14. Section 1228.198 is amended by removing in paragraph (b) the words "Regional Archives" and by revising paragraph (a) to read:

§ 1228.198 Use of records transferred to the National Archives.

(a) In accordance with 44 U.S.C. 2108, restrictions lawfully imposed on the use of transferred records will be observed and enforced by NARA to the extent that they do not violate 5 U.S.C. 552. Statutory and other restrictions on transferred records remain in force until the records have been in existence for 30 years, unless the Archivist of the United States, after consulting with the head of the transferring agency, determines that the restrictions shall remain in force for a longer period of time for specific bodies of records. The regulations in Subchapters B and C of this title, insofar as they relate to the use of records in the National Archives or in a Federal records center, apply to official use of the records by Federal agencies as well as to the public.

* * * * *

15. Parts 1230, 1232, 1234, and 1238 are added to read as follows:

PART 1230—MICROGRAPHICS

Sec.

1230.1 Scope of part.
1230.2 Authority.
1230.4 Definitions.

Subpart A—Standards for Creation of Microform Records

1230.10 Authorization.
1230.12 Preparation.
1230.14 Microfilming.

Subpart B—Standards for the Maintenance, Use, and Disposition of Microform Records

1230.20 Storage.
1230.22 Inspection.
1230.24 Use of microform records.
1230.26 Dispostion of microform records.

Subpart C—Centralized Micrographic Services

1230.50 Services available.
1230.52 Fees for services.

Authority: 44 U.S.C. 2907, 3302 and 3312.

§ 1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, retrieval, preservation, and disposition of Federal records. Agencies should also consult 41 CFR Subpart 201-45.1 for GSA requirements relating to micrographic records management programs.

§ 1230.2 Authority.

As provided in 44 U.S.C. Chapters 29 and 33, the Archivist of the United States is authorized to establish standards for the photographic and micrographic production and reproduction of records by Federal agencies with a view to disposal of the original records; to establish uniform standards within the Government for the storage, use, and disposition of processed microfilm records; and to establish, maintain, and operate centralized microfilming services for Federal agencies.

§ 1230.4 Definitions.

For the purpose of this part, the folllowing definitions shall apply:

Archival microfilm. Silver halide microfilm meeting the requirements of Federal Standard No. 125D, Film, Photographic and Film, Photographic Processed (for permanent records use); American National Standards Institute (ANSI) Standard PH1.25-1984 Safety Photographic Film, Specification for; PH1.28-1984 Photographic Film for Archival Records, Silver Gelatin Type on Cellulose Ester Base, Specifications for; PH1.41-1984 Photographic Film for Archival Records, Silver Gelatin Type on Polyester Base, Specifications for; when tested by ANSI Standard PH4.8-1984, Methylene Blue Method for Measuring Thiosulfate and Silver Densitometric Method for Measuring Residual Chemicals in Films, Plates, and Papers; and stored in accordance with ANSI Stardard PH1.43-1983, Storage of Processed Safety Photographic Film, Practices for.

Computer Output Microfilm (COM). Microfilm containing data produced by a recorder from computer generated signals.

Facility. As area set aside for equipment and operations required in the production or reproduction of microforms either for internal use or for the use of other organizational elements of the Federal Government.

Microfilm. (a) Raw (unexposed and unprocessed) film with characteristics that make it suitable for use in micrographics;

(b) The process of recording microimages on film; and

(c) A fine-grain, high-resolution photographic film containing an image greatly reduced in size from the original.

Microform. A term used for any form containing microimages.

Microimage. A unit of information, such as a page of text or a drawing, that has been made too small to be read without magnification.

Permanent record. Any record (see definition in 44 U.S.C. 3301) that has been determined by the Archivist of the United States to have sufficient

historical or other value to warrant its continued preservation by the Government.

Unscheduled records. Any record that has not been appraised by NARA, i.e., a record that has neither been approved for disposal nor designated as permanent by the Archivist of the United States.

Subpart A—Standards for Creation of Microform Records

§ 1230.10 Authorization.

(a) Agencies proposing to microfilm permanent records or unscheduled records shall submit Standard Form (SF) 115, Request for Records Disposition Authority, in accordance with Part 1228 of this chapter. The SF 115 shall provide for the disposition of original records and microforms.

(1) Agencies proposing microfilming methods and procedures meeting the standards in § 1230.14 shall include on the SF 115 the following certification: "This certifies that the records described on this form will be microfilmed in accordance with the standards set forth in 36 CFR Part 1230."

(2) Agencies having proposed microfilming methods and procedures that do not meet the standards in § 1230.14 shall include on the SF 115 a description of the system and standards proposed for use.

(b) The approved retention period for temporary records shall be applied to microform copies of those records; the original records shall be destroyed upon verification of the microfilm, unless legal requirements preclude early destruction of the originals. NARA approval is not required prior to implementation of this provision.

(c) Agencies proposing to retain and store the silver original microforms of permanent records after disposal of the original records shall include on the SF 115 a statement that storage conditions shall adhere to the standards of § 1230.20. Such agencies shall also indicate when the first inspection of microfilm required by § 1230.22 will be conducted.

§ 1230.12 Preparation.

(a) The integrity of the original records authorized for disposal shall be maintained by ensuring that the original microforms are adequate substitutes for the original records and serve the purpose for which such records were created or maintained. Copies shall be complete and contain all record information shown on the originals.

(b) The records shall be arranged, identified, and indexed so that any individual document or component of the records can be located. At a minimum, the records shall include information identifying the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; and the inclusive dates, names, or other data identifying the records to be included on a unit of film.

§ 1230.14 Microfilming.

(a) *Film stock standards.* The film stock used to make microforms of permanent records for the purpose of disposal of the original shall conform to Federal Standard No. 125D and be on safety-base permanent record film as specified in ANSI PH1.25–1984, Safety Photographic Film, Specifications for; PH1.28–1984, Photographic Film for Archival Records, Silver Gelatin Type on Polyester Base, Specifications for; and tested according to PH1.29–1971, Curl of Photographic Film, Methods for Determining the; and PH1.31–1973, Brittleness of Photographic Film, Method of Determining the. Procedures for testing are covered in Federal Standard No. 170B, Film Photographic, Black and White, Classification and Testing Methods, which cites ANSI standards. To ensure protection for permanent records, agencies using microfilm systems which do not produce silver halide originals meeting these standards shall submit with the SF 115 required by § 1230.10 a schedule for the production of silver duplicates meeting the standards.

(b) *Index placement.* All indexes, registers, or other finding aids, if microfilmed, shall be placed in the first frames at the beginning of a roll of film or in the last frames of a microfiche or microfilm jacket. Computer-generated microforms shall have the indexes following the data on a roll of film or in the last frames of a microfiche or microfilm jacket. Other index locations may be used only if dictated by special system constraints.

(c) *Original permanent microfilm records.* Systems that produce original permanent records on microfilm with no paper original; e.g., COM, shall be designed so that they produce microfilm which meets the standards of this section.

(d) *Microfilm processing.* (1) Microforms of permanent records where the original will be disposed of shall be processed so that the residual thiosulfate ion concentration will not exceed 0.007 grams per meter in a clear area. Agencies or services that conduct tests for Federal agencies shall meet this requirement by performing the methylene blue test specified in ANSI PH4.8–1984.

(2) If the processing is to be of the reversal type, it shall be full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash.

(e) *Quality standards.* (1) The method for determining minimum resolution on microforms of source documents shall conform to the Quality Index Method for determining resolution and anticipated losses when duplicating as described in the Association for Information and Image Management (AIIM) Recommended Practice MS104.

(i) For permanent records, a Quality Index of five is required at the third generation level.

(ii) For nonpermanent records, a Quality Index of five is required at the level of the specific number of generations used in the system.

(iii) Resolution tests shall be performed using the NBS 1010a Microcopy Resolution Test Chart or equal and the patterns will be read following the instructions provided with the chart.

(iv) The character used to determine the height used in the Quality Index formula shall be the smallest character used to display record information.

(2) The background photographic densities on microforms shall be appropriate to the type of documents being filmed. Recommended background densities are as follows:

Classification	Description of documents	Background density
Group 1	High-quality printed books, periodicals, and dense typing.	1.1–1.3
Group 2	Fine-line originals, letters typed with a worn ribbon, pencil writing with a soft lead, and documents with small printing.	1.0–1.1
Group 3	Pencil drawings, faded printing, graph paper with pale, fine colored lines, and very small printing such as footnotes.	.90–1.0
Group 4	Very weak pencil manuscripts and drawings, and poorly printed, faint documents.	.80–.90
Group 5	COM	1.2–1.5

The procedure for density measurement is described in AIIM Recommended Practice MS104–1972.

(3) Computer Output Microforms shall meet the AIIM Standard MSI–1971, Quality Standards for Computer Output Microfilm.

(f) *Microforms and formats.* (1) The following formats are mandatory standards for microforms produced by or for Federal agencies:

(i) The formats described in ANSI Standard MS14–1978, Specifications for 16 and 35mm Microfilms in Roll Form, shall be used for microfilming source documents on 16mm roll film. A

reduction ratio of 24:1 shall be used whenever document size permits.

(ii) The formats described in ANSI Standard MS14–1978, Specifications for 16 and 35mm Microfilms in Roll Film, shall be used for microfilming source documents on 35mm roll film. When microfilming on 35mm film for aperture card applications, format 2 prescribed in MIL–STD 399A, Military Standard Microform Formats, shall be mandatory.

(iii) Format 3 prescribed in MIL–STD 399A shall be used for aperture cards.

(iv) For microfilming source documents on microfiche, the formats prescribed in MIL–STD 399A and the standards and specifications referenced therein shall be used where appropriate for the size of documents being filmed.

(v) Mandatory Federal COM format standards are contained in Federal Information Processing Standards (FIPS) Publication Number 54.

(2) The outside dimensions for microfilm jackets shall be 148.00+0.00–1.00mm×105.00+0.00–0.75mm.

(g) *Microfilm duplicating.* The production of more than 250 duplicates from an original microform, i.e., one roll of microfilm 100 feet in length or one microfiche, requires the approval of the Joint Committee on Printing, as set forth in the Government Printing and Binding Regulations. Administrative records and accounting reports are exempted from this requirement.

Subpart B—Standards for the Maintenance, Use and Disposition of Microform Records

§ 1230.20 Storage.

Nonpermanent microform records can be safely maintained under the same conditions as most paper records. The following standards as specified in ANSI PH1.43–1983 are required for storing permanent record microforms:

(a) *Roll form.* Microforms stored in roll form shall be wound on cores or reels made of noncorroding materials such as nonferrous metals or inert plastics. Other metals may be used provided that they are coated with a corrosion-resistant finish. Plastics and coated metals that may exude fumes during storage shall not be used for confining film on reels or cores. If paper bands are used, the paper shall meet the specifications of ANSI PH1.53–1984.

(b) *Storage containers.* Storage containers for microforms shall be made of inert materials such as metal or plastic. Containers made of paper products should be avoided unless the conditions prescribed in ANSI Standard PH1.53–1984 are met. The containers shall be closed to protect the microforms from environmental impurities and improper humidities.

(c) *Storage rooms.* Storage rooms or vaults for archival microforms shall be fire-resistant and must not be used for other purposes such as office space, working areas, or storage of other materials. The National Fire Protection Association (NFPA) publication NFPA 232, Protection of Records, provides further guidance. Protection from damage by water shall be accomplished by storing permanent record microforms above reasonably anticipated flood stages.

(d) *Environmental conditions required.* (1) The relative humidity of the storage room or vault shall range from 20 to 40 percent with an optimum of 30 percent. Rapid and wide-ranging humidity changes will be avoided and shall not exceed a 5 percent change in a 24-hour period.

(2) Temperature shall not exceed 70 °F. Rapid and wide-ranging temperature changes shall be avoided and shall not exceed a 5 percent change in a 24-hour period. A storage temperature of 35 °F, or below should be used for color film.

(3) Solid particles, which may abrade film or react with the image, shall be removed by mechanical filters from air supplied to housings or rooms used for archival storage. The mechanical filters are preferably of dry media type having an arrestance or cleaning efficiency of not less than 85 percent as determined by the stain test described in ASHRAE Standard 52–68 (11).

(4) Gaseous impurities such as peroxides, oxidizing agents, sulphur dioxide, hydrogen sulfide, and others which cause deterioration of microforms shall be removed from the air by suitable washers or absorbers. Archival microforms shall not be stored in the same room with nonsilver gelatin films. They also shall not be stored in another room using the same ventilation system because gases given off by the other films may damage or destroy the images on the silver archival films.

§ 1230.22 Inspection.

(a) Master films of permanent record microforms and records microfilmed to dispose of the original record shall be inspected every 2 years during their scheduled life. The inspection shall be made using a 1 percent randomly selected sample in the following categories: 70 percent—microforms not previously tested, 20 percent—microforms tested in the last inspection, and 10 percent—control group. The control group shall represent samples of microforms from the oldest microforms filmed through the most current. The results of the inspection shall be reported to the Office of Records Administration, National Archives (NI), Washington, DC 20408, 30 days after the inspection is completed. Reports shall include (1) the quantity of microform records on hand; i.e., number of rolls and number of microfiche; (2) the quantity of microforms inspected; (3) the condition of the microforms; (4) any defects discovered; and (5) corrective action taken.

(b) The elements of the inspection shall consist of (1) an inspection for aging blemishes following the guidelines in the National Bureau of Standards Handbook 96, Inspection of Processed Photographic Record Films for Aging Blemishes; (2) a rereading of resolution targets; (3) a remeasurement of density; and (4) a certification of the environmental conditions under which the microforms are stored, as shown in § 1230.10.

(c) *An inspection log shall be maintained.* Information to be contained in the log shall include (1) a complete description of all records tested (title; number or identifier for each unit of film; and inclusive dates, names, or other data identifying the records on the unit of film); (2) the record category; i.e., newly tested, previously tested, or control group; (3) the date of inspection; (4) the elements of inspection; (5) the defects uncovered; and (6) the corrective action taken. In addition, the log shall contain the results of all archival film tests required by § 1230.14.

(d) An agency having in its custody a master microform that is deteriorating, as shown by the inspection, shall prepare a silver duplicate to replace the deteriorating master.

(e) Agencies are responsible for the inspection of agency microfilm records transferred to Federal records centers.

§ 1230.24 Use of microform records.

(a) The master microform shall not be used for reference purposes. Duplicates shall be used for reference and for further duplication on a recurring basis or for large-scale duplication, as for distribution of records on microform. Agency procedures shall ensure that master microforms remain clean and undamaged during the duplication process.

(b) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.26 Disposition of microform records.

The disposition of microform records shall be carried out in the same manner prescribed for other types of records in Part 1228 of this chapter with the following additional requirements:

(a) The silver halide original (or a silver halide duplicate microform record created in accordance with § 1230.14), plus one copy (silver, diazo, or vesicular), for permanent records, of each record microfilmed by an agency, shall be verified for completeness and accuracy. The microforms may be transferred to an approved agency records center, the National Archives, or to a Federal records center, at the time that the records are to be retired in accordance with the approved records control schedule.

(b) The microforms shall be accompanied by information identifying the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; the inclusive dates, names, or other data identifying the records to be included on a unit of film; and a certification by an agency official that the microforms were produced in the normal course of agency operations and that care has been taken to ensure that the microforms are a complete and accurate copy of the original.

Subpart C—Centralized Micrographic Services

§ 1230.50 Services available.

NARA provides reimbursable microfilming services at many of its Federal records centers, including the preparation, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services should contact the Office of Federal Records Centers, National Archives (NC), Washington, DC 20408, or the director of the Federal records center serving the agency's records (see § 1228.150 of this chapter).

§ 1230.52 Fees for services.

The fees for microfilming services will be announced in NARA bulletins. For microfilming services not listed, contact the office shown in § 1230.50.

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

Sec.

1232.1 Scope of part.
1232.2 Objectives.
1232.4 Agency program responsibilities.
1232.6 Centralized audiovisual services.

Authority: 44 U.S.C. 2904 and 3101.

§ 1232.1 Scope of part.

This part prescribes policies and procedures for managing audiovisual records to ensure adequate and proper documentation and appropriate disposition of audiovisual records.

§ 1232.2 Objectives.

The objectives of audiovisual records management are to achieve the effective creation, maintenance, use, and disposition of audiovisual and related records to be created and maintained; establishing standards for maintenance and disposition of audiovisual and related records; establishing standards for the physical security and preservation of audiovisual records; and reviewing audiovisual recordkeeping practices on a continuing basis to improve procedures.

§ 1232.4 Agency program responsibilities.

(a) Each Federal agency, in providing for effective controls over the creation, maintenance, use and disposition of records, shall establish an appropriate program for the management of audiovisual records. This audiovisual records management program shall:

(1) Prescribe the types of records to be created and maintained so that audiovisual operations and their products are properly documented (guidelines describing the appropriate types of records are found in §1228.184 of this chapter);

(2) Issue standards for the maintenance and disposition of audiovisual and related records;

(3) Issue standards for the physical security and preservation of audiovisual records;

(4) Review agency audiovisual recordkeeping and exploit opportunities for improvement.

(b) Each agency should establish agency standards for its audiovisual operations and issue appropriate instructions. These standards should include:

(1) Identifying the various generations of audiovisual records through classification and labeling;

(2) Filing, controlling, and scheduling audiovisual and related records;

(3) Preserving the physical integrity of audiovisual records through proper use and storage conditions; and

(4) Establishing contract specifications for contractor-produced audiovisual records which protect the Government's legal title and control over all audiovisual media and related documentation.

§ 1232.6 Centralized audiovisual services.

(a) *National Audiovisual Center.* The National Audiovisual Center (NAC) serves as a central information source to the general public and Federal agencies concerning the availability of audiovisual products produced by or for the Government. NAC rents and sells Federal audiovisual productions to the public and Federal agencies. NAC compiles and publishes Government-wide catalogs and uses other information dissemination techniques to inform the public about audiovisual products available for sale and rent. NAC develops criteria, establishes appropriate terminology, and recommends Government-wide practices for the cataloging and indexing of audiovisual productions, and maintains a data bank containing information on Federal audiovisual productions.

(b) *Agency requirements.* Agencies must check commercial and Government sources before authorizing audiovisual productions or procurements.

(1) *Subject search.* Prior to authorizing any type of audiovisual production, all agencies will attempt to determine if existing productions are available to satisfy their needs. Agencies should use the resources of NAC to determine what Federal productions exist by requesting subject searches. Standard Form 282, Mandatory Title Check, may be used for this purpose. Agencies should also review commercial media collections, either through catalogs or computer-based resources. If there are no existing or commercial productions available, the agency may produce, within existing budget limitations, additional productions to support program responsibilities.

(2) *Federal Audiovisual Production Report* (SF 202). (i) Standard Form 202, Federal Audiovisual Production Report, shall be prepared for all productions by each agency when production is authorized, except as noted in OMB Circular A-114. Interagency report control number 0151-NAR-XX has been assigned to this report in accordance with 41 CFR Part 201-45. Prior to production, pre-production sections of the report, with information about materials planned or in process shall be completed and sent to NAC. Upon completion of an audiovisual production, the post-production sections of the SF 202 shall be completed and forwarded to NAC. This information will become part of the Center's data base. Information from the data base will be provided to other Federal agencies and the public.

(ii) The Department of Defense will compile its own production data using DOD Form 1955, DOD Audiovisual Production Report. Information about

these productions will be made available to NAC through the Defense Audiovisual Information System (DAVIS).

(3) *Annual Audiovisual Report.* Agencies shall file Standard Form 203, Annual Audiovisual Report, detailing all audiovisual activity each fiscal year. The report is due December 31 each year for the previous fiscal year, and shall be forwarded to the National Audiovisual Center, National Archives and Records Administration, 8700 Edgeworth Drive, Capitol Heights, MD 20743-3701). All audiovisual productions, including productions excluded from other reporting requirements of OMB Circular A-114, shall be reported on the SF 203. Interagency report control number 0152-NAR-AN has been assigned to this report in accordance with 41 CFR Part 201-45. The report is used to acquire data on Federal audiovisual activities, including overhead for in-house expenses. This information, when compiled, will be made available, upon request, to all agencies and to the public. Copies of SF 203 may be obtained from NAC. Agencies shall ensure, through management control and cost accounting systems, the accuracy and consistency of audiovisual production budget data provided to OMB and the SF 203 data furnished to NAC.

(4) *Evaluation.* Agency management should perform appropriate evaluation of audiovisual productions and include evaluation in audiovisual management control systems to ensure goals and objectives of the productions were met.

(i) Each agency shall develop an evaluation program to assess the value and effectiveness of its audiovisual productions.

(ii) The complexity and cost of evaluations should be commensurate to the cost and program impact of the audiovisual production being evaluated. Evaluation methods may range from a simple tally sheet to record sample responses to a more complex survey with interviews and testing forms.

(5) *Liaison.* Each agency shall forward the name, mailing address, and telephone number of the office which is assigned responsibility for management oversight of the agency's audiovisual activities to the Office of Federal Procurement Policy (OFPP), with an information copy to NAC (mailing address: National Audiovisual Center, National Archives and Records Administration, 8700 Edgeworth Drive, Capitol Heights, MD 20743-3701). These designated offices shall serve as the main point of contact for OFPP and NAC in all matters relating to Governmentwide audiovisual policies.

(6) *Stock footage.* Agencies, except the Department of Defense, shall offer to the Special Archives Division (NNS), NARA, motion picture out-takes, trims, and other unedited motion picture footage (with stock footage value) accumulated in the production of audiovisual products. The footage will be made available to other Federal agencies and the public through services provided by the Special Archives Division (mailing address: National Archives (NNS), Washington, DC 20408).

PART 1234—ADP RECORDS MANAGEMENT

Sec.

1234.1 Scope of part.
1234.2 Program requirements.
1234.4 Care, handling, and storage of magnetic computer tapes and portable disk packs.

Authority: 44 U.S.C. 2904 and 3101.

§ 1234.1 Scope of part.

This part establishes requirements for agency records management programs for ADP records and standards for the care and handling of magnetic media to ensure the proper creation, maintenance, use and disposition of permanent ADP records and ADP records which have not been scheduled for disposition. Additional guidance about the care and handling of magnetic media should be requested from the Office of Records Administration, National Archives (NIA), Washington, DC 20408.

§ 1234.2 Program requirements.

Each Federal agency shall establish an appropriate program for the management of ADP records to include:

(a) Identifying the records to be used and maintained to document the ADP operation;

(b) Specifying the types of machine readable records created, together with the necessary classification, labeling, recording, and filing standards;

(c) Maintenance standards for the records used in ADP records management;

(d) Preserving machine-readable records through the use of proper media, storage facilities, and maintenance techniques;

(e) Following NARA and GSA guidance on the care and handling of diskettes (floppy disks);

(f) Scheduling the disposition of machine-readable records and the records used in ADP records management; and

(g) Issuing forms and formats for recording machine programs (instructions), functional and operational flow charts, record layouts, record coding structure (code books), printout plans, and basic machine run instructions (run books).

§ 1234.4 Care, handling, and storage of magnetic computer tapes and disk packs.

Magnetic computer media needs special handling to prevent the loss of information. The following standards should be observed in centralized computer rooms as well as decentralized computer support activities.

(a) Test and certify media no more than 6 months before using them to record information designated for permanent retention.

(b) When writing tapes, verify them as error free.

(c) Annually read a 3-percent statistical sample of all reels of tape to identify any loss of data and to discover its causes. If errors are detected, attempt to eliminate them and the causes of the errors. Replace tapes with 10 or more errors and, when possible, restore lost data.

(d) Ensure that information is not lost because of changing technology or deteriorating magnetic media by updating magnetic media to provide compatibility with the agency's hardware and software.

(e) Label magnetic media externally to include the name of the organizational unit responsible for the data; file title(s); dates of creation and coverage; the recording density; type of internal labels, if applicable; data set name(s), if applicable; volume serial number; number of tracks; character code/software dependency; record length; block size; and reel sequence number, if the file is part of a multi-reel set.

(f) Separate magnetic media containing permanent records from those containing temporary records.

(g) Maintain adequate and up-to-date technical documentation with the file. Minimum documentation is a narrative description of the file(s); physical file characteristics; recording mode information, including the coding structure (code books); recording system information; and a record layout. The record layout should break down the file by fields. Each field will have a name, size, starting position, and a description of the form of the data (alphabetic, zoned decimal, packed decimal, or numeric).

(h) Keep a duplicate copy of the data at an off-site location for security backup.

(i) Maintain the operating, storage, and test areas for computer magnetic.

media at the following recommended temperatures and relative humidities:

Constant Temperature—60° to 72 °F.
Constant Relative Humidity—40% to 50%

(j) Allow only authorized personnel to enter storage libraries and computer rooms. Prohibit smoking, eating, and drinking in computer rooms, storage libraries, and rehabilitation areas, and keep them as clean as possible.

(k) Transfer the original or a duplicate copy of the file to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in § 1228.188. Transfer may take place at an earlier date if convenient for both the agency and the National Archives.

PART 1238—PROGRAM ASSISTANCE

Sec.
1238.1 Scope of part.
1238.2 Requests for assistance.

Authority: 44 U.S.C. 2904 and 3101.

§ 1238.1 Scope of part.

The National Archives and Records Administration publishes handbooks, conducts workshops and other training sessions, and furnishes information and guidance to Federal agencies about the creation of records, their maintenance and use, and their disposition.

§ 1238.2 Requests for assistance.

Agencies desiring information or assistance related to any of the areas covered by Subchapter B should contact the Agency Services Division, Office of Records Administration, National Archives (NIA), Washington, DC 20408. Agency field organizations may contact the director of the Federal records center serving the field organization's records (see § 1228.150).

Dated: June 24, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–15628 Filed 6–27–85; 8:45 am]
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Friday
June 28, 1985

Federal Register

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Act; Hearing on Proposed Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. F&V AO-1]

Honey Research, Promotion, and Consumer Information Act; Hearing on Proposed Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed Honey Research, Promotion, and Consumer Information Order (hereinafter referred to as the "Order"). The proposed order represents an attempt by many in the domestic honey industry to expand markets by their own means. The proposal was submitted by the American Beekeeping Federation, Inc. The proposed order would provide for a nationally coordinated research and promotion program financed by an assessment on domestic and imported honey and imported honey products. The text of the proposal to be considered is set forth below.

DATES: The hearing sessions are scheduled as follows:

1. July 16, 1985, 9:00 a.m.;
2. July 30, 1985, 9:00 a.m.

Any session may be continued beyond one day if necessary.

ADDRESSES:.

1. The July 16, 1985 hearing will be held at USDA South Building, Jefferson Auditorium, 14 and Independence Avenue SW., Washington, DC.
2. The July 30, 1985 hearing will be held at the Federal Building, Federal Courthouse, Room C-202, 1921 Stout Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This 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.

The hearing is called pursuant to the provisions of the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98-590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601-4612), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate an order (7 CFR Part 1200).

This proposal has been widely discussed within the industry for several years. Because late summer and autumn are busy periods for the honey industry, the proponents requested that the hearings be held as soon as practicable to allow interested persons an opportunity to participate in the hearings. A pre-notice press release was issued nationwide on May 29, 1985, allowing interested persons until June 17, 1985, to comment on the proposed order. Six comments strongly in favor of the proposal were received in response to the pre-notice. One commentor submitted several observations; one of which could not be implemented because it was contrary to the enabling law.

Copies of this notice are being mailed to all State Governors and State apiarists and all known State associations, producer-packers, handlers, and importers, and a press release will be made available nationwide to news media.

The public hearing is being held for the purpose of: (a) Receiving evidence concerning economic and marketing conditions which relate to the proposal and to any appropriate modification of it; (b) determining the degree of need for an order to implement a nationally coordinated honey research, promotion, and consumer information program; (c) determining the economic and social impact of the proposed order on segments of industry and public affected by such an order; and (d) determining whether provisions specified in the proposed order or some other provisions appropriate to the terms and conditions of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 *et seq.*) will tend to effectuate the declared policy of the Act.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Fruit and Vegetable Division, Agricultural Marketing Service

Procedural matters are not subject to the above prohibition and may be discussed at any time. The proposed order, set forth below, has not received the approval of the Secretary of Agriculture.

List of Subjects in 7 CFR Part 1240

Honey, Agriculture research, Market development, and Consumer information.

PART 1240—[AMENDED]

1. The authority citation for 7 CFR Part 1240 reads as follows:

Authority: Pub. L. 98-590; 98th Congress; 7 U.S.C. 4601-4612.

2. The provisions of the order proposed by the American Beekeeping Federation, Inc. read as follows:

Part 1240—Honey Research, Promotion, and Consumer Information Order

Sec.

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1240.3 Person.
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1240.5 Honey products.
1240.6 Producer.
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1240.8 Handler.
1240.9 Producer-packer.
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1240.12 Research.
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Honey Board

1240.30 Establishment and membership.
1240.31 Term of office.
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Research, Promotion, and Consumer Education

1240.39 Research, promotion, and consumer education.

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1240.40 Budget and expenses.
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1240.43 Producer, importer and state assessment plan refund.
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1240.62 Suspension or termination.
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1240.64 Effect of termination or amendment.
1240.65 Personal liability.
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1240.67 Patents, copyrights, inventions, and publications.

Definitions

Section 1240.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

Section 1240.2 Act.

"Act" means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590) and any amendments thereto.

Section 1240.3 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

Section 1240.4 Honey.

"Honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

Section 1240.5 Honey products.

"Honey products" means products wherein honey is a principal ingredient.

Section 1240.6 Producer.

"Producer" means any person who produces honey in any state for sale in commerce.

Section 1240.7 Handle.

"Handle" means to process, package, sell, transport, purchase or in any other way to place honey or honey products or cause them to be placed in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transport of unprocessed honey by the producer to a handler or transport by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

Section 1240.8 Handler.

"Handler" means any person who handles honey.

Section 1240.9 Producer-packer.

"Producer-packer" means any person who is both a producer and handler of honey.

Section 1240.10 Importer.

"Importer" means any person who imports honey or honey products into the United States as principal, agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States.

Section 1240.11 Promotion.

"Promotion" means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

Section 1240.12 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

Section 1240.13 Consumer education.

"Consumer education" means the act of providing information to the public on the usage and care of honey and honey products.

Section 1240.14 Marketing.

"Marketing" means the sale or other disposition in commerce of honey or honey products.

Section 1240.15 Committee.

"Committee" or the "National Honey Nominations Committee" means the committee established pursuant to § 1240.32 herein.

Section 1240.16 State association.

"State association" or "association" means that organization of beekeepers in a State, which is generally recognized as representing the beekeepers of that State.

Section 1240.17 Honey Board.

"Honey Board" or the "Board" means the administrative body established pursuant to § 1240.30 herein.

Section 1240.18 State.

"State" means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 1240.19 Fiscal period and marketing year.

"Fiscal period" and "marketing year" means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

Section 1240.20 Plans and projects.

"Plans" and "projects" mean those research, promotion, and consumer education plans, studies, or projects established pursuant to § 1240.38 herein.

Section 1240.21 Part and Subpart.

"Part" means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

Honey Board

Section 1240.30 Establishment and membership.

A Honey Board (hereinafter called the "Board") is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers, two members and two alternates shall be honey handlers, two members and two alternates shall be honey importers, one member and one alternate shall be an officer or employee of a honey marketing cooperative, and one member and one alternate shall be selected to represent the general public. This Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee pursuant to § 1240.32 herein.

Section 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: One-third of such members and alternates shall serve for one-year terms; one-third shall serve for two-year terms; and the remaining one-third shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms; provided, that those members and alternates serving the initial term of one year may serve two additional

consecutive terms. The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on March 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

Section 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) *Establishment of National Honey Nominations Committee.* (1) There is hereby established a National Honey Nominations Committee, hereinafter called the "Committee", which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42(a) herein to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey-producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for three-year terms as follows: One-third of such members shall serve one-year terms; one-third shall serve for two-year terms; and one-third shall serve for three-year terms. No member shall serve more than two consecutive three-year terms: *Provided,* That those members serving the initial terms of one year are eligible to serve one additional consecutive term. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses approved by the Board and incurred in performing their duties as members of the Committee. Such expenses shall be paid from funds collected by the Board pursuant to § 1240.41.

(b) *Nominations to the Board.* (1) The Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary.

(i) The Committee shall meet annually to make such nominations, except after the first annual meeting, at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(ii) A majority of the Committee shall constitute a quorum for voting at an annual meetings. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(iii) At least 50 per centum of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(iv) For the purpose of nominating the initial producers to the Board, the Secretary shall establish seven regions on the basis of the production of honey. Every five years, the Board shall review the areas of the then current regions. In making such review, they shall give consideration to: (A) The average quantity of honey produced during the most recent three years; (B) shifts and trends in quantities of honey produced; (C) the equitable relationship of Board membership and districts; and (D) other relevant factors. As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of regions.

Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least thirty days prior to such date.

(v) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

One producer member and one alternate producer member from each of the seven regions established by the Secretary;

Two handler members and two alternate handler members from recommendations made by industry organizations representing handler interests;

Two importer members and two alternate importer members from recommendations made by industry organizations representing importer interests; and

One member and one alternate who are officers or employees of honey marketing cooperatives.

For subsequent years, the Committee shall submit its nominations to the Secretary one month before new Board terms begin.

Section 1240.35 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant and such member's alternate shall automatically replace said member.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) To fill any vacancies, occasioned by the death, removal, resignation, or disqualification, except as provided in paragraph (a) of this section, of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member shall be nominated and appointed in the manner specified in §§ 1240.30, and § 1240.32, except that replacement of a Board member, or alternate, with an unexpired term of less than six months shall not be required.

Section 1240.36 Procedure.

(a) A majority of the members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication; provided, that each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board Minutes.

Section 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61 herein:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

Section 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for his/her approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of the costs thereof with funds collected pursuant to this part;

(e) To maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(f) To periodically prepare and make public and to make available to producers and importers, reports of activities carried out and at least once each fiscal period to make public an accounting of funds received and expended;

(g) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary.

(h) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(i) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(j) To appoint and convene, from time to time, working committees drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

(k) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and carrying out of projects or activities to effectuate the declared purpose of the Act.

Research, Promotion, and Consumer Education

Section 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of research and development projects to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end of that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided,* That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41 herein.

Expenses and Assessments

Section 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to incur such expenses for research, promotion, and consumer education and such other expenses for the administration, maintenance, and functioning of the Board and the Committee as are approved by the Secretary. The funds to cover such expenses shall be paid from assessments received pursuant to § 1240.41 herein and other funds available to the Board, including donations.

(c) The Board shall reimburse the Department from assessments for reasonable administrative costs incurred by the Department with respect to this subpart after its promulgation. The Department shall also be reimbursed for expenses reasonably incurred for the conduct of referenda.

Section 1240.41 Assessments.

(a) The funds to cover the Board's expenses and expenses incurred in the performance of the Board's duties and prerogatives under the Act and this part shall be acquired by an assessment levied on producers and importers. Except as provided in (f) of this section, these funds shall be collected from handlers, importers, and producer-packers.

(b) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey the first year after this Order is approved in referendum. After the first year, the Board may request the Secretary to increase the assessment rate not more than $0.005 per pound of honey per year: *Provided,* That the

assessment never exceeds $0.04 per pound of honey per year. After the first year, the Board may request the Secretary to decrease the assessment rate by any amount it sees fit.

(c) The first handler of honey shall pay assessments to the Board on all honey handled. Except as provided in § 1240.42 and in (d), (e), and (f) below, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. Such first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(d) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into the States.

(e) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(f) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan and that the amount of such assessment shall be forwarded to the Board. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.

(g) Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(h) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due date established by the Board under (g) of this section.

(i) There shall also be imposed on any handler, importer, or producer-packer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(j) The Board is hereby authorized to accept advance payment of funds by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(k) The Board is hereby authorized to borrow money for the payment of expenses.

Section 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year shall be exempt from the assessment.

(b) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating that their production, handling or importation of honey shall not exceed 6,000 pounds for the year for which the exemption is claimed.

(c) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

Section 1240.43 Producer, importer and state assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this subpart shall have the right to demand and receive from the Board a refund of such an assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought: *Provided,* That the amount of refunds during any time period made to each importer, as a percentage of total assessments collected from such importers shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any such demand shall be made by such producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Any such refunds made in accordance with this section shall be made by the Board in June and December of each year.

(b) Any appropriate State authority operating pursuant to a state assessment plan satisfying the conditions of (1) of this subsection may obtain a refund of assessments collected by the Board on honey or honey products produced in that State except as provided in (2) of this subsection.

(1) Refunds shall be paid only if the Secretary certifies that the State assessment plan:

(i) is comparable to the program established by the Act and this part; and

(ii) was in existence and in actual operation on January 1, 1985.

(2) Refunds shall in no event exceed the amount collected by the Board on honey or honey products produced in requesting state, and the amount of any refund shall be limited to the assessment levied as of January 1, 1985, by the State under the state plan on honey or honey products produced in that state.

Section 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve to be established: *Provided,* That the funds in the reserve shall not exceed one fiscal period's budget. Such reserve funds may be used to defray any expenses authorized under this part.

Reports, Books, and Records

Section 1240.50 Reports.

Each handler, importer, and producer-packer who may be subject to this subpart shall be required to report to the employees of the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to the following:

(a) Handler and producer-packer reports may include total quantity of honey acquired during reporting period; total quantity handled during period; amount of honey acquired from each producer, giving name and address of such producer, including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption; assessments collected or collectable during period; quantity of honey processed for sale from producer-packers own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) Importer reports may include total quantity of honey imported during reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

Section 1240.51 Books and records.

Each handler, importer, and producer-packer shall maintain and during normal business hours make available for inspection by employees of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall

be maintained two years beyond the fiscal period of their applicability.

Section 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit: (a) The issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted by violating this subpart, together with a statement of the particular provisions of the Order violated by such person; or

(c) The name and address of those receiving refunds.

Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

Miscellaneous

Section 1240.60 Influencing governmental action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

Section 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for his/her approval.

Section 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provisions thereof.

(b) Five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation, termination, or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 per centum or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

Section 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board upon designation by the Secretary.

Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1240.38 hereof; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

Section 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of any person, with respect to any such violation.

Section 1240.65 Personal liability.

No member, alternate member, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

Section 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

Section 1240.67 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States government as

represented by the Board. Funds gathered by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

Copies of this Notice of Hearing may be obtained from Frank M. Grasberger, Fruit and Vegetable Division, Room 2523–S, U.S. Department of Agriculture, Washington, D.C. 20250.

Signed at Washington, D.C. on June 25, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–15654 Filed 6–26–85; 9:51 am]

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Federal Register

Friday
June 28, 1985

Part VII

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the Student Assistance General Provisions to eliminate the requirement that students provide documentation from the Selective Service System to verify their registration status and to simplify procedures for collecting the Statement of Registration Status.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. However, it should be noted that these regulations are effective for certification and award procedures, as well as disbursements of student aid under title IV of the Higher Education Act of 1965, for the award year beginning on July 1, 1985, and subsequent award years. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kerrigan or Mike High, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW. [Regional Office Building 3, Room 4318], Washington, DC 20202. Telephone number: (202) 472-4300.

SUPPLEMENTARY INFORMATION: The Secretary issued a Notice of Proposed Rulemaking for the Student Assistance General Provisions in the **Federal Register** on December 12, 1984, 48 FR 48499. The comments are now being reviewed, and final regulations for most of the Student Assistance General Provisions will be published later this year. Unless current regulations are changed, institutions will be required to verify that title IV aid recipients who claim to be registered with Selective Service are in fact registered. The Secretary considers this unnecessary and is now amending chiefly those portions of the Student Assistance General Provisions that concern the Selective Service registration compliance requirement. The regulations also make minor changes to the currently-required Statement of Educational Purpose for the use of title IV aid.

Summary of Major Issues

The Secretary amends the Student Assistance General Provisions to incorporate, with certain changes, the three modifications proposed in the Preamble to the Notice of Proposed Rulemaking for the Student Assistance General Provisions in the **Federal Register** on December 12, 1984, 48 FR 48499. In addition, the Secretary renames the Statement of Registration Compliance as the Statement of Registration Status to more accurately reflect its use.

In the first modification, the Secretary eliminates the documentation requirement contained in § 668.26 of the Student Assistance General Provisions regulations published in the **Federal Register** on April 11, 1983, 48 FR 15582-15583. The Secretary has concluded, on the basis of a study conducted in August of 1984, that title IV aid recipients are substantially in compliance with the Selective Service registration requirement at this time. Thus, the requirement in (current) § 668.26 that a student who certifies that he is registered with Selective Service must furnish documentation to verify that statement is currently unnecessary. This decision received unanimous support in the comments received on this issue.

However, the Secretary plans to repeat the study of registration compliance each award year to ensure that student compliance remains at a satisfactory level. The verification requirement will be reinstituted if, on the basis of these studies, the Secretary and the Director of the Selective Service System determine that student compliance is no longer satisfactory. In addition, it should be noted that the Secretary will refer the names of students who are identified through these studies as possibly being in violation of the Selective Service statute to the Department of Justice for further investigation and possible prosecution.

Second, the Secretary now modifies the requirement that all students must sign the Statement of Registration Status to permit an institution the option of not requiring a student to sign that Statement if the institution determines that the student is exempt from registration (for example, if the student is female or out of the age range for registration). Before it waives the Statement of Registration Status the institution must make a reasonable determination on the basis of available information that the student is not required to be registered. For instance, it would not be permissible for an institution to waive the Statement of Registration Status for a student who was in the age range for registration solely on the basis of an ambiguous first name (such as "Terry") or initials for the first name (such as "J.E. Smith"). The financial aid officer must determine that the student is not required to register on the basis of information that clearly shows the student to be exempt from registration, such as institutional documents showing the student to be female or out of the age range for registration. It would also be possible for the aid officer to make such a determination based on his or her observation of the student's physical appearance. In either case, the aid officer must make a positive determination that the student is not required to register, and must reasonably resolve any ambiguity created by information that would contradict this conclusion. By comparison, if the institution requires the Statement of Registration Status from the student, the institution may rely on the student's certification that he or she is not required to register, provided that the institution does not have information that directly contradicts the student's certification.

An institution will be liable for any aid provided to a student who is required to be registered, but is not registered, in the following circumstances: (1) The institution waives the Statement of Registration Status for a student even though the information available to the institution does not clearly show that the student was not required to register; (2) the institution waives the Statement of Registration Status when the institution has information that the student is required to register; or (3) the institution accepts a false Statement of Registration Status from a student when the institution has information that conflicts with that Statement. An example of a potential institutional liability has already been given for the first case, where the institution waives the Statement of Registration Status solely on the basis of a student's first name, if that name is one used by both males and females. In the second and third cases, the institution may have conflicting information, for instance, in its admissions records, that would show the student to be male, even though the records in the financial aid office show the student to be female. If this discrepancy is not reasonably resolved, and the institution pays the title IV aid to a student who is required to register but who has not registered, the institution is liable for that payment. The aid officer also may have information of a non-documentary nature that contradicts the Statement of Registration Status, or other documents in the aid office. This information may derive from observation of personal appearance or from public statements

made by the student. For example, if a student who had made public statements that he would refuse to register presents a Statement certifying that he is registered, the aid officer must verify that Statement.

Third, the Secretary now modifies the requirement that a student file a Statement of Registration Status each award year to permit an institution the option of collecting the Statement once from that student when he or she first receives title IV, HEA program funds at the institution. However, if the student's status under registration law has changed since the previous Statement was filed, the institution must obtain a new Statement reflecting the correct registration status for an award year subsequent to the award year in which the previous Statement was filed. The most common example of such a change in registration status is that of a male student who files a Statement before reaching the age of 18, but who becomes subject to the Selective Service registration requirement when he becomes 18. The institution is not required to obtain a new Statement of Registration Status within the same award year that the previous Statement was filed, but must obtain a new Statement for any subsequent award year.

Summary of the Comments and Responses

Section 668.32 Statement of Educational Purpose.

Comment: Several commenters questioned whether lenders should be required to obtain Statements of Educational Purpose prior to disbursing a Guaranteed Student Loan (GSL) or a PLUS Loan.

Response: No change has been made. Lenders are required to obtain Statements of Educational Purpose prior to disbursing a Guaranteed Student Loan (GSL) or a PLUS Loan. This is not a new requirement. Section 484 of the Higher Education Act of 1965, as amended, specifies that, for the GSL and PLUS Programs, the borrower must submit a Statement of Educational Purpose to the lender prior to making a disbursement. This requirement originally was contained in the GSL regulations, and has now been included in the General Provisions to consolidate the information concerning the Statement of Educational Purpose.

Comment: Two commenters stated that the regulations did not make it clear that the Statement of Educational Purpose must be collected once for each award year in which a student receives title IV aid. Both commenters asked if this represented a change in policy, in light of the proposed modification that would allow the Statement of Registration Status to be filed once during the course of study (assuming the student's registration status did not change).

Response: A change has been made. The language in the Notice of Proposed Rulemaking is similar to the language in the current regulations with regard to the requirement that a student must submit a Statement of Educational Purpose before receiving title IV aid. The Secretary considers the submission of the Statement of Educational Purpose for each award year an important instrument for reinforcing the student's awareness of his or her responsibility to use title IV student aid solely for educational expenses. However, the Secretary agrees that there may be confusion over the differing requirements for the Statement of Educational Purpose (filed each award year) and the Statement of Registration Status (filed once for the course of study, unless the student's registration status changes, or each award year, at the institution's option) for the 1985–86 award year. Therefore, the Secretary has specified that the Statement of Educational Purpose must be filed for each award year. In the interest of clarity, the Secretary has also added language specifying, in the same terms used with regard to the Statement of Registration Status, the institutional responsibility for collecting the Statement of Educational Purpose.

Comment: One commenter asked if it would be necessary for the student to file a Statement of Educational Purpose more than once, when the student is enrolled in a six-month training program that extended over two award years.

Response: A change has been made. The Secretary agrees that it is not necessary for the student to file more than one Statement of Educational Purpose for a course of study that is one academic year or less in length, and is completed within a 12-month period.

Section 668.33 Statement of Registration Status.

Comment: On commenter objected to the possibility of waiving the Statement of Registration Status on the grounds that it would require more work for her institution to identify the students who do not need to file a Statement than to collect the Statement from all students.

Response: No change has been made. The modifications to the requirement that a student file a Statement of Registration Status give institutions the option to waive the requirement in certain instances. However, an institution may require the compliance statement from all title IV recipients, if it so chooses.

Comment: One commenter suggested that the institution should be required to pay a student who had not filed a Statement of Registration Status, if the institution has the information necessary to determine that the student was not required to register, or if the student had previously filed a Statement at that institution.

Response: No change has been made. The Secretary believes that to require the institution to determine the aid applicant's registration status would place undue administrative burden on many institutions, and would require the institution to assume the risk of, and liability for, some errors made in determining the student's registration status. For these reasons, the Secretary has chosen to make optional any waiver of the Statement of Registration Status requirement under § 668.33.

Comment: One commenter expressed concern that an institution that chose not to require a Statement of Registration Status based on records showing the student to be exempt from registration would be held liable for the title IV funds disbursed if the student had misreported the information to the institution.

Response: No change has been made. Unless it has conflicting information that the student is subject to the registration requirement, the institution may waive the Statement of Registration Status in reliance on information furnished by the student which shows clearly that the student is exempt from Selective Service registration. If the student presents false information regarding his age or sex to the institution, the institution would not be held responsible.

Comment: One commenter suggested that there should be no liability when an institution fails to obtain a Statement of Registration Status from a student who is required to register, but who is not registered, if the student subsequently does register with the Selective Service System.

Response: No change has been made. The Statute provides that a person who is to be denied aid because he is required to register but has failed to do so will be given a grace period in which to register and qualify for that aid. Therefore, consistent with that intention to encourage prompt, albeit late, registration, the regulations provide that if the student who had failed to register subsequently registers while enrolled and otherwise eligible for payment during the same award year in which he applied for title IV funds, he would

qualify for that aid. An institution which had, on inadequate information, waived the Statement for such a student is not required to repay funds for which the student later qualified within the award year. However, if the student registered with Selective Service after completing his attendance at the institution for the award year, or after otherwise becoming ineligible for payment, the individual would not qualify for that aid, and the institution which waived the Statement on the basis of inadequate information would be liable.

Comment: Several commenters were of the opinion that the requirement for a Statement of Registration Status should be deleted altogether.

Response: No change has been made. The statute provides for those students who are required to register with the Selective Service System to file a statement of compliance with that requirement in order to receive title IV aid.

Section 668.34 Model Statement of Educational Purpose and Registration Status.

Comment: Several commenters suggested that the model statement be modified to include a number of additional reasons why a student would not be required to register. The following additional reasons were proposed: (1) The student is unable to register due to being hospitalized, incarcerated, or institutionalized; and (2) the student is a commissioned officer of the Public Health Service on active duty as described in section 6(a)(2) of the Military Selective Service Act.

Response: No change has been made. Because space is limited on the Student Aid Report and other financial aid forms which are used to collect the Statement of Registration Status, the Secretary has chosen not to refer in the model Statement to certain small groups of students who are not required to register and are exempt from the requirement of filing the Statement. The two categories of students who were exempt under the April 11, 1983 regulations were students enrolled in officer procurement programs at four specific institutions, and those students who were unable to present themselves for registration for reasons beyond their control, such as being hospitalized, incarcerated, or institutionalized. The Secretary agrees that a third group, commissioned officers of the Public Health Service on active duty, should be added to these two groups. These categories include relatively few students, and their inclusion in the model Statement would expand it unnecessarily. Therefore, the Secretary has decided to list in the model Statement only the more commonly applicable reasons for not being required to register.

Comment: One commenter pointed out that the notice that "members of the Reserves and the National Guard are not considered on active duty" might be misconstrued, because in some cases members of the Reserves or the National Guard are on active duty.

Response: No change has been made. The model Statement of Registration Status has been modified to clarify that members of the Reserves and the National Guard are exempt from registration requirements only while on active duty. This change will also be made on the statement printed on the 1986–87 Student Aid Reports.

Comment: One commenter suggested that the Secretary add to the Statement of Registration Status a request that the student notify the financial aid office of any change in the student's registration status, to assist those institutions which choose not to require the student to sign the Statement of Registration Status for each award year. Another commenter suggested that the wording of the Statement be changed to specify that it applied to the entire course of study, not just to the award year.

Response: No change has been made. These changes would only be applicable at institutions which have chosen not to require an additional Statement for each award year. However, it would certainly be acceptable for an institution which has adopted this policy to add a notice to its version of the Statement or any other student consumer information alerting the student of the need to complete a new Statement of Registration Status if the student's registration status changes.

Comment: One commenter proposed that, as an alternative to the present system, under which the school collects the Statement of Registration Status, the Statement could be printed on the "common form" need analysis applications used by both the Multiple Data Entry processors (American College Testing, College Scholarship Service, and the Pennsylvania Higher Education Assistance Agency) and the Federal processing system. Under this alternative, the responsibility of collecting the Statement of Registration Status (and, therefore, of rejecting any applicant who did not file a completed Statement or Registration Status) would be placed on the MDE and Federal processors. This would be necessary because in many cases the institution only receives the processing system's output document (such as the Student Aid Report or the Family Financial Statement). Without a copy of the original application that the student sent to the application processing system, the institution would have no way of knowing if the student had accurately completed the Statement on the application and was eligible for title IV aid.

Response: No change has been made. The Secretary believes that the alternative of requiring the student to complete a statement on the "common form" application is neither feasible nor desirable. The statute only applies to applicants for title IV aid; such a procedure would prevent many students applying for non-title IV Aid as well as title IV aid who did not complete the Statement of Registration Status from using the "common form" need analysis application. Further, the MDE and Federal processing systems would not be able to waive the requirement for the Statement of Registration Status for many categories of students who are exempt from registration, because the application does not collect information that would indicate the student's status as a female, member of the Armed Services, or permanent resident of the Trust Territories.

Section 668.35 (Proposed rule) Verification of registration compliance for academic years beginning on or after July 1, 1985.

Comment: The commenters were unanimous in recommending that the verification requirement be deleted because it imposes an unncecessary administrative burden.

Response: A change has been made. This requirement has been deleted from the final regulations, and § 668.35 in the final regulation includes the substance of § 668.36 of the proposed rule. The Secretary recognizes that verification of registration would be a significant administrative burden to institutions. Further, the Secretary finds that a verification effort is not necessary at this time, based on the recent survey demonstrating widespread student compliance with the registration requirement. However, the Secretary plans to survey annually student compliance and may reinstate the verification requirement if future surveys show a change in this pattern.

Comment: One commenter suggested that institutions be given the authority to verify the student's registration status at the institution's discretion.

Response: No change has been made. The Secretary believes that specific language is not needed for such verification, because an institution is already required under current § 668.16(f) [proposed § 668.14(f)] to

withhold payment or certification for title IV aid until any conflict in information is resolved.

Section 668.36 (Proposed rule); § 668.35 (Final rule) Notification and administrative review.

Comment: One commenter suggested that if the verification requirement in § 668.35 of the proposed rule is deleted, those provisions of the regulations describing the student's opportunity for a hearing should also be eliminated, because the hearings are only intented as a means for a student to demonstrate registration compliance in the absence of documentation from the Selective Service.

Response: No change has been made. Verification is no longer required for all students who are required to be registered. However, an institution must still resolve any questions regarding the applicant's registration status in any case where the institution has conflicting information regarding that status. In addition, an institution which requires the Statement only from males in the applicable age range must resolve questions posed by either conflicting information or ambiguous information.

Both categories of institutions may encounter students who have publicly announced their refusal to register, yet indicate on the Statement that they have registered. The institution cannot accept such claims at face value, and can reasonably require that these students produce proof that they have registered. There may be instances, therefore, in which students required to prove registration will be unable to document that claim, and will be denied aid for failing to verify that claim.

Current regulations assured students an opportunity for a hearing by the Department if they were to be denied aid because they had failed to verify, or document, their claim to be registered. Although the requirement that students prove that they have registered has been considerably narrowed in scope under these rules, the possibility for such denials still remains, and therefore the Secretary retains in these rules the provisions granting such students a hearing by the Department.

Executive Order 12291

These final 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.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedures, Colleges and universities, Consumer protection, Education, Loan programs—education, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: June 25, 1985.

William J. Bennett,

Secretary of Education.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 668 is revised to read as follows:

Authority: Sections 435, 481, 485, 487 and 1201 of the Higher Education Act of 1965, as amended; 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141; 50 U.S.C. App. 462, unless otherwise noted.

2. In § 668.14, paragraph (e)(7) is removed and paragraphs (a)(2), (e)(5), and (e)(6) are revised to read as follows:

§ 668.14 Financial aid transcript.

(a) * * *

(2) *Limited exception to the general rule.* If the institution does not receive the student's transcript, or a written notice pursuant to paragraph (d) of this section that the transcript will not be forthcoming, in a timely manner, it may disburse title IV funds for not more than one payment period.

* * * * *

(e) * * *

(5) Whether the student is in default on—

(i) A National Direct Student Loan made by the institution; or

(ii) A Guaranteed Student Loan or a PLUS Loan that the student received for attendance at the institution if the institution is aware of the default status; and

(6) Whether the student owes a refund on—

(i) A Pell or Supplemental Grant for attendance at the institution; or

(ii) A State Student Incentive Grant received for attendance at the institution, if the institution is aware that the student owes the refund.

(20 U.S.C. 1091, 1094; 50 U.S.C. App. 462)

Subpart C—[Redesignated as Subpart D]

§§ 668.31-668.36 [Redesignated as 668.41-668.46]

3. Subpart C is redesignated as Subpart D, and §§ 668.31–668.36 are redesignated as §§ 668.41–668.46, respectively.

4. The internal cross references in former §§ 668.31–668.36 are changed as follows: In former § 668.31, "§ 668.35" is changed to "§ 668.45;" "§ 668.34" is changed to "§ 668.44." In former § 668.33, "§ 668.34" is changed to "§ 668.44;" "§ 668.35" is changed to "§ 668.45." In former § 668.36, "§ 668.34" is changed to "§ 668.44;" "§ 668.35" is changed to "§ 668.45."

§§ 668.23-668.28 [Removed]

5. Sections 668.23–668.28 are revoked and removed.

6. A new Subpart C consisting of §§ 668.31 through 668.36 is added to read as follows:

Subpart C—Statement of Educational Purpose and Selective Service Registration Status

Sec.

668.31 Scope.
668.32 Statement of Educational Purpose.
668.33 Statement of Registration Status.
668.34 Model Statement of Educational Purpose and Registration Status.
668.35 Notification and administrative review.
668.36 Record retention requirements.

Subpart C—Statement of Educational Purpose and Selective Service Registration Status

§ 668.31 Scope.

This subpart establishes rules by which an otherwise eligible student files a Statement of Educational Purpose and a Statement of Registration Status in order to receive assistance under any title IV, HEA program.

(20 U.S.C. 1091 and 50 U.S.C. App. 462)

§ 668.32 Statement of Educational Purpose.

(a) Before receiving any funds under any title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution or, under the Guaranteed Student Loan or PLUS Program, with the lender. In this statement, the student shall certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment.

(b) Except as provided in paragraph (c) of this section, the student shall file the Statement of Educational Purpose once for each award year, or, under the Campus-Based programs, either once for each award year or once for each 12-month period for which a determination of need is made.

(c) A student is only required to file the Statement of Educational Purpose once for his or her course of study if—

(1) The course of study is one academic year or less in length; and

(2) The student is to complete the course of study within a 12-month period.

(d) Until a student who is applying for title IV, HEA program assistance under the Pell Grant, Campus-Based, or State Student Incentive Grant programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction—

(1) Disburse funds to the student under any title IV, HEA program; or

(2) Certify the institutional portion of the Pell Grant Request for Payment (ED Form 304).

(20 U.S.C. 1091)

§ 668.33 Statement of Registration Status.

(a)(1) Except as provided in paragraph (b) or (c) of this section, until a student who is applying for title IV, HEA program assistance, or under the PLUS Program, who will benefit from the loan, files a Statement of Registration Status with the institution, an institution may not, for any period of instruction—

(i) Disburse funds to the student under any title IV, HEA program;

(ii) Certify the institutional portion of the application under the Guaranteed Student Loan or PLUS Program; or

(iii) Certify the institutional portion of the Pell Grant Request for Payment (ED Form 304).

(2) In the Statement of Registration Status the student shall certify either that he is registered with Selective Service or that, for a specified reason, he or she is not required to be registered.

(b) An institution may waive the requirement that a student file a Statement of Registration Status if the institution determines, based on clear and unambiguous evidence, that the student is not required to be registered with Selective Service.

(c) The requirement set forth in paragraph (a) of this section does not apply to students who are—

(1) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(i) The Citadel, Charleston, South Carolina;

(ii) North Georgia College, Dahlonega, Georgia;

(iii) Norwich University, Northfield, Vermont; or

(iv) Virginia Military Institute, Lexington, Virginia;

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who are on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(3) Unable to present themselves for registration for reasons beyond their control, such as being hospitalized, incarcerated, or institutionalized.

(d) Except as provided in paragraph (e) of this section, a student required under paragraph (a) of this section to file a Statement of Registration Status shall do so once for each award year. If the student's status under registration law changes during the award year after he has completed the Statement of Registration Status, the student is not required to file a new statement for that award year.

(e) An institution may waive the requirement that a student file a Statement of Registration Status once for each award year, if—

(1) The institution already has on file a Statement of Registration Status for that student; and

(2) The student's status under registration law has not changed since the institution received the most recently filed Statement of Registration Status.

(f) An institution which waives the requirement that a student file the Statement of Registration Status is liable for any title IV aid provided to a student who was required to register, but who was not registered, if—

(1) The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

(2)(i) The institution had conflicting information about whether the student was required to register, and

(ii) Its determination that the student was not required to register was not reasonable in the light of all available information.

(g) An institution which accepts a Statement of Registration Status from a student is liable for any title IV aid provided to a student who was required to register, but who was not registered, if the institution—

(1) Has information that conflicts with the student's Statement; and

(2) Its acceptance of the student's representation on the Statement regarding his status was not reasonable in light of all the available information.

(50 U.S.C. App. 462)

§ 668.34 Model Statement of Educational Purpose and Registration Status.

The Secretary considers the following statement as satisfying the requirements of §§ 668.32 and 668.33(a) and the notification requirement of § 668.35(a):

STATEMENT OF EDUCATIONAL PURPOSE

I certify that I will use any money I receive under a federally assisted loan, grant, or work study program only for expenses related to my study at (Name of Institution).

STATEMENT OF REGISTRATION STATUS

—— I certify that I am not required to be registered with Selective Service, because

—— I am a female.

—— I am in the armed services on active duty. (Note: Does not apply to members of the Reserves and National Guard who are not on active duty.)

—— I have not reached my 18th birthday.

—— I was born before 1960.

—— I am a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

—— I certify that I am registered with Selective Service.

Signature: _____

Date: _____

Notice: To receive Title IV financial aid, you must complete the Statement of Educational Purpose, and you must be registered with Selective Service if required to register. If you purposely give false information on this form, you may be subject to fine or imprisonment or both.

(20 U.S.C. 1091 and 50 U.S.C. App. 462)

§ 668.35 Notification and administrative review.

(a)(1) *General notice.* An institution shall provide general written notice to any student seeking aid under any title IV, HEA program that in order to receive this aid, a student must register with Selective Service, if required to do so under registration law.

(2) *Specific notice.* Before denying aid to any student under any title IV, HEA program who is required by law to register with the Selective Service, but fails to do so, or who fails to file the Statement of Registration Status in accordance with § 668.33, the institution shall inform that student in writing that he or she will be denied title IV, HEA program assistance.

(b)(1) A student notified under paragraph (a)(2) of this section who has not registered although required to do so may establish his eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by registering with Selective Service and filing a Statement of Registration Status before the end of that award year.

(2) A student notified under paragraph (a)(2) of this section who fails to file a Statement of Registration Status but has registered with the Selective Service or is not required to register with the Selective Service may establish his or her eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by filing a Statement of Registration Status within 30 days of the receipt of the notice or the end of the same award year, whichever is later.

(c) *Administrative review.* (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has complied with that requirement may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(d) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(e) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(50 U.S.C. App. 462)

§ 668.36 Record retention requirements.

An institution shall include in each student's record in accordance with the record retention provisions in each of the title IV, HEA program regulations—

(a) The signed Statement of Educational Purpose;

(b) The signed Statement of Registration Status, if required; and

(c) Any documents used to verify the student's registration status.

(20 U.S.C. 1091 and 50 U.S.C. App. 462)

[FR Doc. 85-15601 Filed 6-27-85; 8:45 am]
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federal register

Friday
June 28, 1985

Part VIII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 249

Off-Reservation Treaty Fishing, Fraser River Convention; Sockeye and Pink Salmon Fishery; Interim Rule and Request for Comments

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 249

Off-Reservation Treaty Fishing, Fraser River Convention; Sockeye and Pink Salmon Fishery

June 26, 1985.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim rule and request for comments.

SUMMARY: These regulations implement the 1985 treaty Indian fishing schedule for Fraser River sockeye and pink salmon in Indian treaty fishing areas covered under the treaty between the Government of the United States of America and the Government of Canada concerning Pacific salmon, signed at Ottawa, Canada, January 28, 1985, as implemented by the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.*

DATES: Effective: June 28, 1985. Comments are due by July 28, 1985.

ADDRESS: Written comments should be mailed to Robert D. Ringo, Fishery Biologist, Department of the Interior, Bureau of Indian Affairs, Portland Area Office, Branch of Fisheries, Post Office Box 3785, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This interim rule is published in exercise of rule-making authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1451 *et seq.*, 25 U.S.C. §§ 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of off-reservation fishing rights secured by the Treaty of Point Elliott, 12 Stat. 927 (1859); Treaty with the Makah, 12 Stat. 939 (1859); and Treaty of Point No. Point, 12 Stat. 933 (1859), as affirmed in *Washington* v. *Fishing Vessel Association,* 443 U.S. 658 (1979). Such treaty Indian fisheries include a fishery on Fraser River sockeye and pink salmon which is subject to the Pacific Salmon Treaty with Canada, which supersedes the 1930 Convention between the United States and Canada for the protection, preservation and extension of the sockeye and pink salmon fisheries of the Fraser River system. Under the Convention the International Pacific Salmon Fisheries Commission (IPSFC) was authorized to propose regulations to govern the sockeye and pink salmon fishery. The 1985 season will be a period of transition from IPSFC regulations to Fraser River Panel Regulations under the Pacific Salmon Treaty. The IPSFC will regulate the 1985 season, but will do so pursuant to the terms of Chapter 4, Annex IV of the new treaty.

On May 10, 1985, the IPSFC forwarded regulations to the Governments of Canada and the United States for approval of sections applicable to each country. The United States, acting through this Department, is promulgating these regulations to provide for the exercise of Indian fishing rights secured by United States treaties. The IPSFC assumes control over United States Treaty Waters on June 23, 1985. These regulations are necessary to implement domestic law of the United States to provide treaty Indian tribes the full opportunity to harvest one-half of the United States' share of sockeye and pink salmon in United States Pacific Salmon Treaty Waters in a manner consistent with the United States' obligations to Canada under the Treaty. The regulations are promulgated by the Department of the Interior to apply only to Indians exercising fishing rights secured to them by treaties with the United States. The all-citizen fisheries are regulated by 50 CFR Part 371, published by the Department of Commerce, National Marine Fisheries Service.

The United States has an obligation to Canada under the Treaty to: assure the proper spawning escapement of sockeye and pink salmon into the Fraser River; to assure the appropriate allocation of the catch between Canadian and United States fishermen fishing in Treaty Waters; and to take into account the management requirements of other stocks in the area. The United States also has treaty obligations to certain Northwest Indian tribes to assure that such tribes have the full opportunity to harvest one-half of the United States share of fish that pass through tribal usual and accustomed fishing areas. As in the 1984 Fraser River Convention fishery, regulation of the treaty Indian fishery in 1985 will be consistent with fulfilling these obligations.

The fishing season provisions of § 249.17 have been revised in order to reflect yearly changes in run timing and abundance that affect achievement of spawning escapement goals and division of catch between the two countries and requirements of other stocks in the area. Provisions of § 249.20 are again being amended to exempt treaty Indians fishing in State Area 7B from the prohibitions of that section when such fishing is conducted pursuant to tribal regulations authorizing a chinook salmon fishery restricted to seven (7) inch or greater mesh size.

With uncertainties in forecasting run timing and run size of some stocks in the area, regulations will probably be subject to frequent change by emergency order. Notice of the basis for emergency and anticipated changes will be immediately transmitted to the treaty tribes through the Northwest Indian Fisheries Commission in order that the treaty tribes can amend tribal fishing regulations in response to the emergency.

The United States' action and these regulations implement the regulatory system which the United States has used since 1977 to meet its obligations both to Canada and the United States treaty Indians. The Supreme Court approved this regulatory system in *Washington* v. *Fishing Vessel Association,* 443 U.S. 658 (1979). This year, as in previous years, the affected treaty tribes will regulate their fisheries concurrently and in a manner consistent with the regulations of the Department. Subsequent to the 1985 season it is contemplated that the treaty tribes will regulate their fisheries consistent with Fraser River Panel regulations as provided in Chapter 4, Annex IV of the Pacific Salmon Treaty.

In order to allow the affected tribes to exercise their treaty fishing rights in a timely manner, these regulations are issued on an emergency basis and are subject to frequent modification in-season to accommodate changes in run timing and run abundance that can affect achievement of spawning escapement goals and division of catch between the two countries. Given the time constraints, court imposed requirements, and international obligations under the Treaty, the Department finds there is good cause to make these regulations effective immediately; they will expire on October 14, 1985.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this interim rule to the location identified in the Address section of this preamble. Comments must be received on or before the date specified in the Date section of this preamble.

The Bureau of Indian Affairs has determined that this is not a major rule

within the terms of Executive Order 12291. It will not have a major effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. Furthermore, because of these factors it does not have a significant economic effect on a substantial number of small entities within the terms of the Regulatory Flexibility Act.

An environmental assessment has been completed and it has been concluded that the implementation of the treaty Indian fishery by these regulations is not a major Federal action which would significantly affect the environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Robert D. Ringo, Fishery Biologist, Branch of Fisheries, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, telephone number (503) 231-2326.

List of Subjects in 25 CFR Part 249

Fisheries, Fishing, Great Lakes, Indians, Reporting and recordkeeping requirements.

PART 249—OFF-RESERVATION TREATY FISHING

Certain sections and paragraphs of 25 CFR Part 249, Subpart B, are revised to read as follows:

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

1. The authority citation for Part 256 continues to read as follows:

Authority: 25 U.S.C. 2, 9; 5 U.S.C. 301; 43 U.S.C. 1451 *et seq.*; 25 CFR 256.

2. Section 249.17 is revised to read as follows:

§ 249.17 Fishing seasons.

(a) No treaty Indian shall fish for sockeye or pink salmon in United States Treaty Waters (State Areas 4B, 5 and 6C) from Sunday, June 23, 1985 to Saturday, June 29, 1985; Friday July 5, 1985 to Tuesday, July 16, 1985; and from Sunday, August 11, 1985 to Saturday August 17, 1985, all dates inclusive.

(b) No treaty Indian shall fish for sockeye or pink salmon in United States Treaty Waters (State Areas 7 and 7A) from Sunday, June 23, 1985 to Saturday, July 6, 1985; Wednesday, July 10, 1985 to Saturday, July 20, 1985; Friday, August 9, 1985 to Saturday, August 17, 1985; and from Saturday, September 14, 1985 to Saturday, September 28, 1985, all dates inclusive.

(c) No treaty Indian shall fish for sockeye or pink salmon in United States Treaty Waters in State Areas 4B, 5 and 6C except with lawful gear from:

(1) 12:00 p.m. Sunday, June 30, 1985 to 12:00 p.m. Saturday, July 20, 1985.

(2) 12:00 p.m. Wednesday, July 17 1985 to 12:00 p.m. Saturday, July 20, 1985.

(3) 12:00 p.m. Sunday, July 21, 1985 to 12:00 p.m. Saturday, July 27, 1985.

(4) 12:00 p.m. Sunday, July 28, 1985 to 12:00 p.m. Saturday, August 3, 1985.

(5) 12:00 p.m. Sunday, August 4, 1985 to 12:00 p.m. Saturday, August 10, 1985.

(6) 12:00 p.m. Sunday, August 18, 1985 to 12:00 p.m. Saturday, September 14, 1985 (a continuous fishery), after which the IPSFC is scheduled to relinquish control on Sunday, September 15, 1985.

(7) 12:00 p.m. Sunday, June, 30, 1985 to 12:00 p.m. Wednesday, July 3, 1985, if necessary, to allow for a ceremonial fishery for the Makah Tribe conducted on salmon with a maximum catch composition of 100 sockeye, while following procedures and limitations of previous years as specified under Emergency Order provision 249.18.

(d) No treaty Indian shall fish for sockeye or pink salmon in United States Treaty Waters in State Area 7 and 7A except with lawful gear from:

(1) 6:00 p.m. Saturday, July 6, 1985 to 6:00 p.m. Sunday, July 7, 1985 and from 6:00 p.m. Monday, July 8, 1985 to 9:00 p.m. Tuesday, July 9, 1985.

(2) 6:00 p.m. Sunday, July 21, 1985 to 9:00 p.m. Friday, July 26, 1985.

(3) 5:00 a.m. Sunday, July 28, 1985 to 9:00 a.m. Friday, August 2, 1985.

(4) 6:00 p.m. Sunday, August 4, 1985 to 9:00 p.m. Thursday, August 8, 1985.

(5) 5:00 a.m. Sunday, August 18, 1985 to 9:00 p.m. Friday, September 13, 1985 (a continuous fishery), after which the IPSFC is scheduled to relinquish control on Sunday, September 29, 1985.

(e) State Area 6: Closed (1) Fishing will be closed for sockeye or pink salmon from Sunday, June 23, 1985 to Saturday, July 20, 1985, both dates inclusive. Thereafter, fishing will be the same as for Area 7 and 7A. The IPSFC is scheduled to relinquish control on Sunday, September 15, 1985.

(f) State Area 6A: (1) Fishing will be closed for sockeye or pink salmon from Sunday, June 23, 1985 to Saturday, September 14, 1985, both dates inclusive. Thereafter, the IPSFC is scheduled to relinquish control on Sunday, September 15, 1986.

(g) State Area 7B: (1) Fishing for sockeye or pink salmon will be the same as for Areas 7 and 7A through Friday, July 20, 1985. Fishing is closed north of a line from Point Francis to Post Point from Sunday, June 23, 1985 to July 13, 1985 both dates inclusive. The IPSFC is scheduled to relinquish control on Saturday, July 21, 1985.

(h) State Area 7D: (1) Fishing will be closed for sockeye or pink salmon from Sunday, June 23, through Friday, July 20, 1985. The IPSFC is scheduled to relinquish control on Saturday, July 21, 1985.

(i) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in United States Treaty Waters lying westerly and northerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at Active Pass from Sunday, August 25, 1985 to Saturday, August 31, 1985.

(j) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in United States Treaty Waters lying westerly and northerly of a straight line drawn down from the low water range marker in Boundary Bay on the International Boundary across the east tip of Point Roberts to the east Point Light on Saturna Island from Sunday, September 1, 1985 to Saturday, September 28, 1985, after which the IPSFC is scheduled to relinquish control on Sunday, September 29, 1985.

(k) The foregoing regulations shall not apply to the following United States Treaty Waters:

(1) High seas United States Treaty Waters westerly of the Bonilla-Tattosh line.

(2) State Areas 6B, 6D and 7C.

(3) Preserves previously established by the Director of Washington Department of Fisheries for the protection and preservation of other species of food fish.

3. Section 249.20 is revised to read as follows:

§ 249.20 Unlawful possession.

No treaty Indian shall posses sockeye or pink salmon on board a fishing vessel which is engaged in a fishery for other species in United States Treaty Waters where these regulations apply, during the times Treaty Waters are closed to sockeye and pink salmon fishing by the regulations in this subpart, except that this prohibition will not apply after Saturday, July 6, 1985 to any treaty Indian fishing pursuant to treaty tribes fishing regulation authorizing a chinook salmon fishery in State Area 7B, when such fishery is restricted to a seven (7) inch or greater mesh size.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-15796 Filed 6-27-85; 12:08 pm]

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