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Tuesday
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Selected Subjects

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 420

[Docket No. 1838S]

Grain Sorghum Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the end of the insurance period and the cancellation and termination dates in certain counties; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 17, 1984.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes 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 August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; 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. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must, by contract, be on file by December 17, 1984, good cause is shown for making this rule effective immediately.

On Wednesday, November 7, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 44480, revising and reissuing the Grain Sorghum Corp Insurance Regulations (7 CFR Part 420), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitute a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; Under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; Under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language, that although a pilot IYC program is required, a broad IYC program mandatory in nature is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more farmers to consider crop insurance as a risk transfer program then ever before.

Other than minor changes in language and format, the principal changes in the grain sorghum policy are:

1. *Section 1.a.*—Add failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore

reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.* —Remove the provisions for the transfer of insurance experience and for premimum computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will not be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made the replanting will be deducted and applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 7.d.*—Change the end of the insurance period to September 30 in the following Texas Counties:

Atascosa	Kinney
Bandera	Maverick
Bexar	Medina
Edwards	Real
Frio	Uvalde
Karnes	Val Verde
Kendall	Wilson
Kerr	Zavala

This change was made because most of the crop is harvested before September.

6. *Section 9.d.*—Effective for the 1986 and succeeding crop years allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

7. *Section 9.*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indeminity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

8. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

9. *Section 15.e.*—Change cancellation and termination dates from March 31 to February 15 in the following south Texas counties:

Atascosa	Kinney
Bandera	Maverick
Bexar	Medina
Edwards	Real
Frio	Uvalde
Karnes	Val Verde
Kendall	Wilson
Kerr	Zavala

This change is proposed because most of the grain sorghum in these counties is planted in March and these dates must precede planting to avoid adverse selection.

10. *Section 17.g.*—Add a definition for the term "Loss Ratio" to clarify its use in Section 5.

11. In addition to the policy changes FCIC also eliminates the codification of Appendix A. Federal crop insurance for grain sorghum has been expanded into almost all counties in which grain soghum is produced. The FCIC service offices will be able to advise a producer if grain sorghum insurance is offered in any county.

List of Subjects in 7 CFR Part 420

Crop insurance, Grain sorghum.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Grain Sorghum Crop Insurance Regulations (7 CFR Part 420), effective for the 1985 and succeeding crop years, to read as follows:

PART 420—GRAIN SORGHUM CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 420.1 Availability of grain sorghum crop insurance.

Insurance shall be offered under the provisions of this subpart on grain sorghum in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 420.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for grain sorghum which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 420.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 420) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 420.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 420.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the grain sorghum insurance contract, whenever.

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of

failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§ 420.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the grain sorghum crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 420.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the grain sorghum crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a grain sorghum contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop year is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Grain Sorghum Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Grain Sorghum—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good grain sorghum farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be grain sorghum which is initially planted to a combine-type hybrid grain sorghum for harvest as grain, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grain sorghum planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured grain sorghum at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to grain sorghum, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(5) Of volunteer grain sorghum;

(6) Planted to a forage sorghum or initially thick-planted for silage or fodder;

(7) Of a second grain sorghum crop following a grain sorghum crop harvested in the same crop year;

(8) Planted to a type or variety of grain sorghum not established as adapted to the area or excluded by the actuarial table; or

(9) Planted with a crop other than grain sorghum.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good grain sorghum irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good grain sorghum irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Unless otherwise provided in the actuarial table, insurance will not attach on nonirrigated acreage unless it is initially planted in rows far enough apart to permit cultivation. If such acreage is destroyed and replanted to any grain-producing type grain sorghum or in any planted pattern, the acreage will be considered insured acreage and not as acreage put to another use.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share and practice.

You must report on our form:

a. All the acreage of grain sorghum in the county in which you have a share;

b. The practice; and

c. Your share at the time planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grain sorghum planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the grain sorghum policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the grain sorghum is planted and ends at the earliest of:

(a) Total destruction of the grain sorghum;

(b) Combining, threshing or removal from the field;

(c) Final adjustment of a loss; or

(d) The following dates immediately after planting:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas and all Texas Counties lying south thereof.....September 30;

(2) All other Texas counties and all other states.....December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant grain sorghum damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the grain sorghum on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the grain sorghum and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested grain sorghum (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the grain sorghum on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the grain sorghum on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the grain sorghum which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grain sorghum on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of grain sorghum on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain sorghum to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature grain sorghum production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Which, due to insurable causes, contains more than 18.0 percent moisture or has a test weight of less than 51 pounds per bushel or, as determined by a licensed grain grader in accordance with the Official United States Grain Standards, contains more than 15 percent kernel damage, will be adjusted by:

(i) Dividing the value per bushel of such grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of such grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is adjusted or the day such grain sorghum was sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of grain sorghum becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested grain sorghum may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the grain sorghum is damaged by hail or fire, appriasals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured grain sorghum replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date determined to be reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 7 bushels multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual preminum determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

i. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the grain sorghum is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer you right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all grain sorghum produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set off are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date (December 17 for the 1985 crop year) for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any written notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of grain sorghum crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding grain sorghum insurance in the county.

b. "County" means the county shown on the application and any additional land

located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the grain sorghum is normally grown and will be designated by the calendar year in which the grain sorghum is normally harvested.

d. "Harvest" means the completion of combining or threshing of grain sorghum on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss Ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Replanting" means performing the cultural practices necessary to replant insured acreage to grain sorghum.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the grain sorghum or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of grain sorghum in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grain sorghum on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 10, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved December 13, 1984.

Merritt W. Sprague,

Manager.

[FR Doc. 84-32862 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 421

[Docket No. 1839S]

Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1985 and succeeding crop years to change the policy for insuring cotton by: (1) Adding failure of the irrigation water supply from an unavoidable cause after planting as a cause of loss; (2) amending the premium adjustment table; (3) defining the insured's responsibility for reporting production records; (4) changing the end of insurance period, cancellation, and termination dates in Texas; and (5) deleting Appendix A. The intended effect this rule is to comply with Departmental Regulation 1512-1, with regard to review of regulations for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 17, 1984.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes 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 August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 1291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more ; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; 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. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 7, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 44476 revising and reissuing the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Since policy changes must, by contract, be on file by December 17, 1984, good cause of shown for making this rule effective immediately.

Other than minor changes in language and format, the principal changes contained in the policy for insuring cotton are:

1. *Section 1.a.*—Add the failure of irrigation water supply due to unavoidable cause as an insurable cause of loss. This was added to clarify intent since it appears as an implied cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Changes in the Premium Adjustment Table Include: (a) Assuming the number of loss years does not increase, premium adjustment factors will decrease as additional years of records are obtained; and (b) only

actual production records will be used to determine the premium adjustment factor. Assigned yields will not be considered as production records.

3. *Section 7*—Change the end of the insurance period from January 31 to September 30 in the following Texas Counties:

Atascosa	Kinney
Bandera	Maverick
Bexar	Medina
Edwards	Real
Frio	Uvalde
Karnes	Val Verde
Kendall	Wilson
Kerr	Zavala

This change was made because most of the crop is harvested before September.

4. *Section 15.d.*—Change cancellation and termination dates from March 31 to February 15 in the following south Texas Counties:

Atascosa	Kinney
Bandera	Maverick
Bexar	Medina
Edwards	Real
Frio	Uvalde
Karnes	Val Verde
Kendall	Wilson
Kerr	Zavala

This change is proposed because most of the cotton in these counties is planted in March and these dates must precede planting to avoid adverse selection.

In addition to the policy changes, FCIC also eliminates the codification of Appendix A. Federal crop insurance for cotton has been expanded into almost all counties where cotton is produced. FCIC service offices will be able to advise a producer if cotton insurance is offered in a county.

List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 CFR Part 421), the Federal Crop Insurance Corporation revises and reissues the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1985 and succeeding crop years, to read as follows:

PART 421—COTTON CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 421.1 Availability of cotton crop insurance.

Insurance shall be offered under the provisions of this subpart on cotton in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 421.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for cotton which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 421.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 421) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 421.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 421.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the cotton insurance contract, whenever:

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§ 421.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the cotton crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 421.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the cotton crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse

conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a cotton contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Cotton Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cotton—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting,

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good cotton farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be American Upland lint cotton which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be cotton planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions, unless other methods are required by the actuarial table.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured cotton at the time of planting.

d. We do not insure any acreage:

(1) Which is not irrigated and from which a hay crop was harvested or on which a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of the mandatory acreage limitations established by any program administered by the United States Department of Agriculture;

(3) Which is new ground acreage;

(4) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(5) Which is irrigated and an irrigated practice is not provided for by the actuarial table, unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(6) Which is destroyed, it is practical to replant to cotton, and such acreage is not replanted;

(7) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(8) Planted to a type or variety of cotton not established as adapted to the area or excluded by the actuarial table; or

(9) Which you have elected to exclude, (the exclusion must be by unit, in writing, on our form, and made before the closing date for submitting applications unless the unit to be excluded is acquired after the closing date, then the exclusion may be filed up to 15 days after the acquisition of the unit but not later than the acreage reporting date (see section 3)).

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good cotton irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good cotton irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, practice, and production.

You must report on our form:

a. All the acreage of cotton in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The most recent year's production on insurable acreage on each unit. You must designate separately any acreage that is not insurable. You must report if you do not have a share in any cotton planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantees in the actuarial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First Stage—From planting until 50 days after the final planting date or until the shedding of the first blooms, whichever occurs first (we may limit the liability to the first stage if the cotton was damaged during this period to the extent that farmers generally would not further care for the cotton); or

(2) Second Stage—all insured cotton after the first stage.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

Premium Adjustment Table

Number of loss years[1]	Number of continuous years of actual records[2]					
	5	6	7	8	9	10
Percentage Adjustment Factor For Current Crop Year						
0	80	75	70	65	60	55
1	100	95	90	85	80	80
2	115	115	110	110	100	100
3	135	130	125	120	115	110
4	165	150	140	130	125	115
5	200	180	165	150	135	130
6		200	180	165	150	135
7			200	180	165	150
8				200	180	165
9					200	180

Premium Adjustment Table—Continued

Number of loss years [1]	Number of continuous years of actual records [2]					
	5	6	7	8	9	10
10						200

[1] A "Loss Year" is defined as a year in which the actual yield is below the production guarantee for the unit.

[2] The number of years of actual records must be the most recent and continuous years excluding any year in which no crop was planted. For each unit with less than five years of actual records the premium adjustment percentage is 100. The premium adjustment table will be applicable only when 5 or more years of actual records are available and will be expanded until 10 years of records are reached. Thereafter, the records for the most recent 10 years excluding the current year will be used.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the cotton is planted and ends at the earliest of:

a. Total destruction of the cotton;

b. Removal of the cotton from the field;

c. Final adjustment of a loss; or

d. The date immediately after planting as follows:

(1) Arizona, California, New Mexico, Oklahoma and all Texas counties except those listed in (2)..... January 31;

(2) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas and all Texas Counties south thereof.....September 30;

(3) All other states.....December 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the cotton on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the cotton and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of unharvested cotton (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the cotton on the unit;

(b) Harvest of the unit; or

(c) The calender date for the end of the insurance period (see section 7d).

b. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the cotton which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the cotton on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of cotton on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count will be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation "A") at the applicable spot market is less than 75 percent of price quotation "B". Price quotation "B" will be that day's spot market price quotation at the same market for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted will be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation "A" and dividing the result by 75 percent of price quotation "B".

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(b) Not less than the applicable guarantee for any acreage which is abandoned or put another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) above and which does not qualify for the second stage guarantee will be counted except as provided in (d) below; and

(d) The entire appraisal for uninsured causes.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of cotton becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) The cotton stalks may not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the second stage guarantee may be made on acreage where the stalks have been destroyed without our consent.

(5) The amount of production of any unharvested cotton may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you have elected to exclude hail and fire as insured causes of loss and the cotton is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgement. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are any entity other than an individual and such entity is dissolved after the cotton is planted for any crop year, an indemnity will be paid to the person(s) we detemine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period,

and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsiblities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all cotton produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture will be the date both such other payment and set off are approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria and Jackson Counties, Texas and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Loisiana; Mississippi; Nevada; North Carolina; South Carolina and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas Counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton and Matagorda Counties Texas.	Mar. 31.
All other Texas counties and all other states.....	Apr. 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisons of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 (December 17 for crop year 1985) preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of cotton crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding cotton insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Cotton" means only American Upland Cotton.

d. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

e. "Crop year" means the period within which the cotton is normally grown and will be designated by the calendar year in which the cotton is normally harvested.

f. "Final Notice of Loss" means the date you give "Final Notice" as shown on the FCI-74, Claim for Indemnity.

g. "Harvest" means the removal of the seed cotton from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Mature cotton" means cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

k. "New ground acreage" means any acreage which has not been planted to a crop in any one of the previous three crop years, except that acreage in tame hay or rotation pasture during the previous crop year will not be considered new ground acreage.

l. "Person" means an individual, partnership , association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such approved office as may be selected by you or designated by us.

n. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

o. "Spot market" means a market so designated by the Secretary of Agriculture by Regulation (7 CFR Part 27.93) pursuant to 26 U.S.C. 4862.

p. "Tenant" means a person who rents land from another person for a share of the cotton or a share of the proceeds therefrom.

q. "Unit" means all insurable acreage of cotton in the county in which you have an insured share of the date of planning for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconsititution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

Errors in reporting units may be corrected by us when adjusting a loss.

r. "Yield" means (1) the actual yield as reported to ASCS or (2) the yield as established by ASCS or by us.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 11, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: December 13, 1984.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-32864 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 424

[Docket No. 1834S]

Rice Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Rice Crop Insurance Regulations (7 CFR Part 424), effective for the 1985 and succeeding crop years by (1) adding as a cause of loss the failure of irrigation water supply; (2) clarifying the producers reporting requirements; (3) changing the Premium Adjustment Table to provide for a decrease in adjustment factors as additional years of records are obtained and using only actual production records to determine such factors; (4) adding a replanting payment provision consistent with other policies; (5) changing the moisture content requirement to 12.0 to conform with current market practices; and (6) eliminating Appendix A.

The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 17, 1984.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes 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 August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; 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. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, November 7, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 44485 to revise and reissue the Rice Crop Insurance Regulations (7 CFR Part 424), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule, but no comments were received.

Since policy changes must, by contract, be on file by December 17, 1984, good cause is shown for making this rule effective immediately.

Other than minor changes in language and format, the principal changes contained in the rice policy are:

1. *Section 1.a.*—Add failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This was added to clarify intent since it appears as an implied cause of loss in Section 1.b.(6).

2. *Section 3.d.*—Clarify production reporting requirements. This change was made to assure that insureds were aware it is their responsibility to report production for the most recent year. Because guarantees are based on a producer's actual production history (APH), this information is necessary to determine the guarantee.

3. *Section 5.a.*—Changes in the Premium Adjustment Table include:

(a) Assuming the number of loss years does not increase, premium adjustment factors will decrease as additional years of records are obtained; and

(b) only actual production records will be used to determine the premium adjustment factor. Assigned yields will not be considered as production records.

4. *Section 8.a.(1)(a), 8.b., and 9.f.* are added to provide replanting provisions consistent with other crop insurance policies and to provide a maximum amount for that purpose.

5. *Section 9.e.(1)*—Change moisture content from 14.0 percent to 12.0 percent to conform with marketing practice since rice is commonly bought and sold on the basis of 12.0 percent moisture.

6. In addition to the policy changes FCIC also eliminates the codification of Appendix A. Federal crop insurance for rice has been expanded into almost all counties where rice is produced. FCIC service offices will be able to advise a producer if rice insurance is offered in a county.

List of Subjects in 7 CFR Part 424

Crop insurance, Rice.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Rice Crop Insurance Regulations (7 CFR Part 424), effective for the 1985 and

succeeding crop years, to read as follows:

PART 424—RICE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 424.1 Availability of rice crop insurance.

Insurance shall be offered under the provisions of this subpart on rice in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 424.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for rice which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 424.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 424) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 424.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 424.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the rice insurance contract, whenever (a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§ 424.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the rice crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 424.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the rice crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extend date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a rice contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Rice Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Rice—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions (excluding drought);

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We do not insure against any loss of production due to:

(1) Application of saline water;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(3) The failure to follow recognized good rice farming practices;

(4) The impoundment of water by any governmental, public or private dam or reservoir project;

(5) Any cause not specified in section 1a as an insured loss;

(6) The failure to carry out a good irrigation practice, except failure of the water supply after planting due to an unavoidable cause; or

(7) The breakdown of irrigation equipment or facilities.

2. Crop, acreage, and share insured.

a. The crop insured will be rice which is planted for harvest as grain, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be rice planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured rice at the time of planting.

d. We do not insure any acreage:

(1) On which rice was destroyed to comply with any other United States Department of Agriculture or state programs;

(2) Which does not meet the rotation requirements designated by the actuarial table;

(3) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is not irrigated;

(5) Which is destroyed, it is practical to replant to rice, and such acreage was not replanted;

(6) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(7) Of volunteer rice;

(8) Planted to a type or variety of rice not established as adapted to the area or excluded by the actuarial table;

(9) Which you have elected to exclude (the exclusion must be by unit, in writing on our form and made before the closing date for submitting applications unless the unit to be excluded is acquired after the closing date, then an exclusion may be filed for 15 days after the acquisition of the unit but no later than the acreage reporting date (see Section 3)); or

(10) Planted with a crop other than rice.

e. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of rice in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The most recent year's production on insurable acreage on each unit.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any rice planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE

Number of loss years[1]	Number of continuous years of actual records[2]					
	5	6	7	8	9	10
Percentage Adjustment Factor For Current Crop Year						
0	80	75	70	65	60	55
1	100	95	90	85	80	80
2	115	115	110	110	100	100
3	135	130	125	120	115	110
4	165	150	140	130	125	115
5	200	180	165	150	135	130
6	.....	200	180	165	150	135
7	.....	.....	200	180	165	150
8	.....	.....	.....	200	180	165
9	.....	.....	.....	.....	200	180
10	.....	.....	.....	.....	.....	200

[1] A. "Loss Year" is defined as a year in which the actual yield is below the production guarantee for the unit.

[2] The number of years of actual records must be the most recent and continuous years excluding any year in which no crop was planted. For each unit with less than five years of actual records the premium adjustment percentage is 100. The premium adjustment table will be applicable only when 5 or more years of actual records are available and will be expanded until 10 years of records are reached. Thereafter the most recent 10 years of records will be used.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the rice is planted and ends at the earliest of:

a. Total destruction of the rice;

b. Combining, threshing or removal from the field;

c. Final adjustment of a loss; or

d. October 31 of the calendar year in which rice is normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant rice damaged due to any insured cause.(To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the rice on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the rice and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested rice (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the rice on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the rice on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the rice which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the rice on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of rice on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rice to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production including any production from a second rice crop harvested in the same crop year.

(1) Mature rough rice production which otherwise is not eligible for quality adjustment will be reduced in volume by .12 percent for each .1 percentage point of moisture in excess of 12.0 percent; or

(2) Mature rough rice production which, due to insurable causes:

(a) Has a total milling yield (heads, second heads, screening and brewers) of less than 68 pounds per hundredweight;

(b) The whole kernel weight is less than 55 pounds per hundredweight for medium and short grain varieties;

(c) The whole kernel weight is less than 48 pounds per hundredweight for long grain varieties;

(d) Contains more than 4.0 percent chalky kernels in long grain varieties;

(e) Contains more than 6.0 percent chalky kernels in medium of short grain varieties;

(f) Contains more than 3.0 percent chalky kernels in other types; or

(g) Contains more than 2.5 percent red rice will have the production adjusted by:

(i) Dividing the value per pound of such rice, by the price per pound of U.S. No. 3 rough rice; and

(ii) Multiplying the result by the number of pounds of such rice.

(The applicable price for No. 3 rough rice will be the nearest milling center price on the earlier of the day the loss is adjusted or the day the rice was sold).

(3) Any mature production from volunteer rice growing in the rice will be counted as rice on a weight basis.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good rice farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of rice becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested rice may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you have elected to exclude hail and fire as insured causes of loss and the rice is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured rice replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 400 pounds multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

i. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the rice is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all rice produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or

before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, Dimmit counties Texas and all Texas counties south thereof.	Feb. 15.
Missouri	Apr. 15.
Florida	Mar. 15.
All other Texas counties and states	Mar. 31.

If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

e. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with a April 15 cancellation date and November 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of rice crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practice, insurable and uninsurable acreage, and related information regarding rice insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but not physically located in the county.

d. "Crop year" means the period within which the rice is normally grown and will be designated by the calendar year in which the rice is normally harvested.

e. "Harvest" means the completion of combining or threshing of rice on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Mill Center" means any location in which two or more mills are engaged in milling rough rice.

i. "Person" means an indvidual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to rice.

k. "Second crop rice" means regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the rice or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of rice in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

o. "Yield" means the actual yield reported by you to ASCS or the yield established by ASCS or us.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinatins required by the policy will be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 10, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: December 13, 1984.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-32886 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 425

[Docket No. 1835S]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; (5) changing the cancellation and termination dates in Somerville County, Texas; and (6) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 17, 1984.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes 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 August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; 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. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must, by contract, be on file by December 17, 1984, good cause is shown for making this rule effective immediately.

On Wednesday, November 7, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 44490, revising and reissuing the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitutes a "mandatory IYC" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot Individual Yield Coverage (IYC) program. FCIC rejects that contention.

The APH and IYC programs are quite different although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; Under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; Under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language that, although a pilot IYC program is required, a broad IYC or APH program, mandatory in nature, is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more farmers to consider crop insurance as a risk transfer program than ever before.

Other than minor changes in language and format, the principal changes in the peanut policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied in Section 2.e.(2).

2. *Section 3.e.*—Move the provision requiring production history for insurable acreage on each unit to Section 15.c.

3. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

4. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

5. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made it will be deducted and applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premium in all cases.

6. *Section 9.d.*—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

7. *Section 9.*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

8. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

9. *Section 15.e.*—Add Somervell County to the list of Texas counties with an April 15 cancellation and termination date.

10. *Section 17.c.*—Change the definition for the term "County" to agree with the changed unit definition.

11. *Section 17.i.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

12. *Section 17.n.*—Change the definition of the term "Unit" to conform to a single ASCS farm serial number. No further division will be allowed. This change will reduce the problem of transferring production from one unit to another.

13. In addition to the policy changes FCIC also eliminates the codification of Appendix A. Federal crop insurance for peanuts has been expanded into almost all peanut counties. The FCIC service offices will be able to advise a producer

if peanut insurance is offered in any county.

List of Subjects in 7 CFR Part 425

Crop insurance, Peanuts.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1985 and succeeding crop years, to read as follows:

PART 425—PEANUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 425.1 Availability of peanut crop insurance.

Insurance shall be offered under the provisions of this subpart on peanuts in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 425.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed.

(a) The Manager will establish premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed for peanuts which will be shown on the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 425.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 425.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 425.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the peanut insurance contract, whenever,

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§ 425.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract will cover the peanut crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 425.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the peanut crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a peanut contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Peanut Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Peanut—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted

Application and "we," "us" "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(7).

b. We will not insure against may loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good peanut farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss

2. Crop, acreage, and share insured.

a. The crop insured will be peanuts planted for the purpose of digging, maturing, and marketing as farmers' stock peanuts, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peanuts planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured peanuts at the time of planting.

d. We do not insure any acreage:

(1) Not planted to a type of peanuts designated as insurable by the actuarial table;

(2) On which the peanuts were destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as non-irrigated by reporting it as insurable under section 3;

(5) Which is destroyed, it is practical to replant to peanuts; and such acreage is not replanted;

(6) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction; or

(7) Planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good peanut irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good peanut irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, poundage quota, and practice.

You must report on our form:

a. All the acreage of peanuts in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The effective poundage marketing quota, if any, applicable to the unit for the current crop year as provided under ASCS Peanut Marketing Quota Regulations.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peanuts planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. The production guarantee per acre will be reduced by the lesser of 250 pounds or 20 percent for any unharvested acreage.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee for the unit (insured acreage times the applicable production guarantee), which may consist of quota and non-quota (additional) peanuts, times the applicable price election, times the premium rate, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the peanut policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the peanuts are planted and ends at the earliest of:

a. Total destruction of the peanuts;

b. Threshing or removal from the field;

c. Final adjustment of a loss; or

d. The following dates immediately after planting:

(1) Duval and La Salle Counties, Texas..... November 30;
(2) New Mexico, Oklahoma and all other Texas counties.....December 31;
(3) All other states..... November 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant peanuts damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before threshing, the peanuts on any unit are damaged and you decide not to further care for or thresh any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peanuts and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested peanuts (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the peanuts on the unit;

(c) The completion of harvest or otherwise disposing of the peanuts on the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the peanuts on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the peanuts which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peanuts on the unit;

(2) Completion of harvest or otherwise disposing of the peanuts on the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peanuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peanuts to be counted (see section 9f);

(3) Multiplying the remainder applicable to quota and/or non-quota (additional) production by the applicable price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due or the acreage reported by you is less than the actual acreage determined, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to count will be identified as quota and/or non-quota (additional) production by:

(1) Counting all threshed and appraised production less than or equal to the unit's effective poundage quota as quota production unless the peanuts grade Segregation II or III and their inclusion as quota peanuts is waived by the producer; and

(2) Counting any threshed and appraised production in excess of the unit's effective poundage quota as non-quota (additional) production.

f. The total production to be counted for a unit will include all threshed and appraised production.

(1) Threshed production will be the net weight in pounds shown on the United States Department of Agriculture "Inspection Certificate and Sales Memorandum".

(2) Mature peanut production which is damaged, due to insurable causes, will be adjusted by:

(a) Dividing the value per pound for the insured type of peanuts by the applicable average price per pound; and

(b) Multiplying the result by the number of pounds of such production.

(3) To enable us to determine the net weight and quality of production of any peanuts for which a United States Department of Agriculture "Inspection Certificate and Sales Memorandum" has not been issued, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them. If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded, the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the net weight and quality of such peanuts.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good peanut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised and threshed production in excess of the lesser of 250 pounds or 20 percent of the production guarantee on all other unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of peanuts becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested peanuts may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you have elected to exclude hail and fire as insured causes of loss and the peanuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured peanuts replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the lesser of 250 pounds or 20 percent of the production guarantee multiplied by the applicable price election (the quota price up to and including the unit's effective quota and the non-quota price of any additional peanuts), multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peanuts are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peanuts produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Dual and La Salle Counties, Texas	Feb. 15.
New Mexico; Oklahoma; Brown, Baylor Callahan, Collingsworth, Commanche, Dallam, Eastland, Erath, Gaines, Garza, Hood, Jones, Montague, Motley, Palo Pinto, Parker, Somervell and Stonewall Counties, Texas and Virginia.	Apr. 15.
All other Texas counties and all other states	Mar. 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with a April 15 cancellation date and by November 30 preceding the cancellation date (December 17 for the 1985 crop year) for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of peanut crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding peanut insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the peanuts are normally grown and will be designated by the calendar year in which the peanuts are normally harvested.

e. "Effective Poundage Marketing Quota" means the farm marketing quota as established and recorded by ASCS.

f. "Harvest" means the completion of digging of peanuts on any acreage for the purpose of combining or threshing, from which acreage, at least the lesser of 250 pounds or 20 percent of the production guarantee per acre shown in the actuarial table is dug.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to the same crop.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the peanuts or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of peanuts in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

o. "Value per pound" means the "value per pound including loose shell kernels" as shown on the United States Department of Agriculture "Inspection Certificate and Sales Memorandum," except for Segregation II, III and non-quota (additional) peanuts for which the value per pound will be determined by us.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

§ 425.8 Price election agreement for non-quota peanuts.

(a) Notwithstanding the provisions of § 425.7 of this part, an insured producer may, upon submission and approval of a

Contract Price Election Agreement Option form approved by the Corporation, elect as the price at which indemnities will be computed for all non-quota peanuts, the price stipulated on such agreement option form for the current crop year: *Provided,* That (1) all non-quota peanuts are contracted as provided under regulations established by the Secretary of Agriculture, (2) the contract(s) is dated on or before the date planting begins, and shows the pounds contracted and the applicable contract price(s), and (3) the pounds contracted equal or exceed the pounds of guarantee of non-quota peanuts for the insured's share on all units.

(b) If the pounds of non-quota peanuts contracted is less than the non-quota guarantee, the price at which indemnities will be computed will be the price for non-quota peanuts elected by the insured from the actuarial table.

(c) When non-quota peanuts are contracted at different prices, the contract price applicable shall be the weighted average of the individual contract prices.

(d) The Contract Price Election Agreement Option shall be applicable for the current crop year. A new option must be submitted for each subsequent crop year.

Done in Washington, D.C., on December 10, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: December 13, 1984.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-32863 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 432

[Docket No. 1836S]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) adding a provision for grain deferent silage in certain areas; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 17, 1984.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes 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 August 1, 1989.

Merrit W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; 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. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must, by contract, be on file by December 17, 1984, good cause is shown for making this rule effective immediately.

On Wednesday, November 7, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 44495, revising and reissuing the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitutes a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language, that, although a pilot IYC program is required, a broad IYC or APH program, mandatory in nature is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

If the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling.

It is FCIC's contention that if anything, APH will encourage more farmers to consider crop insurance as a risk transfer program than ever before.

Other than minor changes in language and format, the principal changes contained in the corn policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply due to an unavoidable cause" as an insurable

cause of loss. This cause of loss was added to clarify intent since it appears as an implied cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.c. and d.*—Remove the provisions for the transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the premium adjustment table eliminates the requirement for these sections.

4. *Section 6.*—Add a provision for set off from replanting payments. Normally, replanting payments will be paid directly to the insured. However, in cases when the billing date for a crop has passed when the insured is paid for replanting the provisions will be set off.

5. *Section 7.*—Change the date for the end of the insurance period from December 10 to September 30 in the following Texas Counties:

Atascosa	Kinney
Bandera	Maverick
Bexar	Medina
Edwards	Real
Frio	Uvalde
Karnes	Val Verde
Kendall	Wilson
Kerr	Zavala

This change was made because most of the crop in these counties is harvested before September.

6. *Section 7.*—Change the date for the end of the insurance period in 14 western Washington counties from September 30 to October 31. These are "silage only" counties and the date change was made to reflect the normal silage harvesting period for the area.

7. *Section 9.e.*—Change effective for the 1986 crop year to allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

8. *Section 9.*—Delete the requirement that a replanting payment be considered as an indemnity. The result of this change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the liability for the covered loss which may be less than the total liability.

9. *Section 9.f.(3).*—Change to allow reduction of production to count for grain deficient silage in counties for which the actuarial table shows only a silage guarantee. FCIC has received numerous requests for this change indicating that the amount of grain is critical to the quality of the silage. In many cases, producers raising corn for silage are using shorter maturity seed with an increase in the amount of grain produced by the time silage is harvested. FCIC's present corn policy allows for the reduction of production to count for grain deficient silage in counties with both grain and silage guarantee. This change allows for the same reduction in counties with a silage only guarantee.

10. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished on or before the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control.

11. *Section 15.e.*—Change cancellation and termination dates from March 31 to February 15 in the following south Texas counties:

Atascosa	Kinney
Bandera	Maverick
Bexar	Medina
Edwards	Real
Frio	Uvalde
Karnes	Val Verde
Kendall	Wilson
Kerr	Zavala

Most of the corn in these counties is planted in March, and these dates must precede planting to avoid adverse selectivity.

12. *Section 17.g.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

In addition to the policy changes, FCIC also eliminates the codification of Appendix A. Federal crop insurance for corn has been expanded into almost all counties in which corn is produced. FCIC service offices will be able to advise a producer if corn insurance is offered in a county.

List of Subjects in 7 CFR Part 432

Crop insurance, Corn.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1985 and succeeding crop years, to read as follows:

PART 432—CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 432.1 Availability of corn crop insurance.

Insurance shall be offered under the provisions of this subpart on corn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 432.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for corn which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 432.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 432) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been

assigned OMB Nos. 0563–0003 and 0563–0007.

§ 432.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 432.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the corn insurance contract, whenever.

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds: (1) That an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§ 432.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 432.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Corn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Corn—Crop Insurance Policy

(This is a continous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded or limited by the actuarial table or section 9f(9).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good corn farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be field corn ("corn") which is planted for harvest as grain or silage; which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured corn at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to corn, and such acreage was not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(5) Of volunteer corn;

(6) Planted to a type or variety of corn not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with another crop except sorghum (grain or forage-type) when the sorghum is not more than 20 percent of the stand.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good corn irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good corn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered

as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes will not be insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any corn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the corn is planted and ends at the earliest of:

a. Total destruction of the corn;

b. Harvest;

c. Final adjustment of a loss;

d. The date immediately following planting as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas and all Texas Counties south thereof..... September 30;

(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington:..... October 31;

(3) All other counties where our actuarial table shows:

(a) Only a silage guarantee; or

(b) Both a grain and a silage guarantee on any acreage of corn harvested for silage:..... September 30; or

(4) All other counties:..... December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant corn damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of unharvested corn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the corn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the corn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the corn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will no pay any indemnity unless you:

(1) Establish the total production of corn and/or silage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Substracting the dollar amount obtained by mulitplying the total production to be counted (see section 9f) by the price election; and

(4) Multiplying this result by your share.

d. If a unit contains acreage to which both a grain and silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted will be determined separately for each portion and then added together to determine the total amount for the unit.

e. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

f. The total production to be counted for a unit will include all harvested and appraised production.

(1) When the actuarial table shows only a grain guarantee, all production and appraisals will be determined in bushels. When the actuarial table shows only a silage guarantee, all production and appraisals will be in tons. When the actuarial table shows both a grain and silage guarantee, the production and appraisals will be determined in bushels for any unharvested acreage and in bushels or tons for any harvested acreage.

depending upon whether the acreage is harvested for grain or silage.

(2) Mature grain production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Which, due to insurable causes, has moisture over 40 percent: or kernel damage more than 15 percent as determined by a licensed grain grader; or test weight below 40 pounds per bushel, will be adjusted by:

(i) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn; and

(ii) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the earlier of the day the loss is adjusted or the day such corn was sold. The quality adjustment will not reduce the harvested production more than 75 percent so that at least 25 percent of harvested production will count.

(3) If the actuarial table shows both a grain and silage guarantee or only a silage guarantee and the corn is harvested as silage, and if a grain appraisal is made concurrently with a silage appraisal and the grain appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each one-tenth of a bushel below 4.5 bushels. There will be no reduction allowed for harvested silage production if a representative sample (at least 10 feet wide and the entire length of the field) for each 25 acres of corn harvested for silage is not left until appraised by us.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered as production unless such acreage is:

(a) Not put to another use before harvest of corn becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If the actuarial table shows a silage guarantee or both a grain and silage guarantee and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production by the the factor designated by the actuarial table to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(8) If the actuarial table shows only a silage guarantee, we may convert bushels of grain to tons of silage, and increase all production harvested after the normal silage harvesting period by the factor designated by the actuarial table to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(9) When you have elected to exclude hail and fire as insured causes of loss and the corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(10) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured corn replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, except that:

(a) If the actuarial table shows only a grain guarantee or both a grain and silage guarantee, the payment will not exceed 8 bushels multiplied by the price election multiplied by your share; or

(b) If the actuarial table shows only a silage guarantee, the payment will not exceed 1 ton multiplied by the price election multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claims.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the corn is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all corn produced on each unit, including separate records showing the same information for production from any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial office may assign a yield for that year. The assigned yield will not exceed the ten year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set-off are approved.

e. The cancellation and termination dates are:

State and County	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas and all Texas Counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date (December 17 for the 1985 crop year) for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your services office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the corn is normally grown and shall be designated by the calendar year in which the corn is normally harvested.

d. "Harvest" means completion of combining, picking or cutting the corn for the purpose of livestock feed.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Replanting" means performing the cultural practices necessary to replant insured acreage to corn.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

l. "Tenant" means a person who rents land from another person for a share of the corn or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of corn in the country on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the corn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 10, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved: December 13, 1984.

Merritt W. Sprague,

Manager.

[FR Doc. 84-32865 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 608]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 21-27, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges during this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: December 21, 1984.

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

SUPPLEMENTARY INFORMATION:

Findings

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

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and

designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation of and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1984–85. The marketing policy was recommended by the committee following discussion at a public meeting on September 25, 1984. The committee met again publicly on December 11, 1984, at Redlands, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy 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 policy of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and its effective date.

List of Subjects in 7 CFR Part 907

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

PART 907—[AMENDED]

1. § 907.908 is added as follows:

§ 907.908 Navel Orange Regulation 608.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 21, 1984, through December 27, 1984, are established as follows:

(a) *District 1:* 700,000 cartons;

(b) *District 2:* Unlimited cartons;

(c) *District 3:* Unlimited cartons;

(d) *District 4:* Unlimited cartons.

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

Dated: December 13, 1984.

Thomas R. Clark,

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

[FR Doc. 84-32842 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 984

Walnuts Grown in California; Free and Reserve Percentages for the 1984–85 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes free and reserve percentages of 76 percent and 24 percent, respectively, for California walnuts certified as merchantable during the 1984–85 marketing year. That year began August 1, 1984. This rule is designed to allocate this season's supplies between domestic and export markets so as to make ample supplies available for domestic needs and all of the excess merchantable walnuts available for export. The percentages are authorized by the Federal marketing order for walnuts grown in California.

EFFECTIVE DATES: August 1, 1984 through July 31, 1985.

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 final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The relevant provisions of the order require that the free and reserve percentages established for a particular marketing year shall apply to all walnuts certified as merchantable from the beginning of that year. The 1984–85 marketing year began August 1, 1984.

Notice of this action was published in the November 6, 1984, issue of the **Federal Register** (49 FR 44299), and interested persons were afforded an opportunity to submit written comments. No comments were received.

The authority to establish free and reserve percentages is pursuant to § 984.49 of the marketing agreement and Order No. 984, both as amended (7 CFR Part 984), regulating the handling of walnuts grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action was unanimously recommended by the Walnut Marketing Board, hereinafter referred to as the "Board," which works with USDA in administering the order.

Pursuant to § 984.48 of the order, the Board based its recommendation for free and reserve percentages of 76 percent and 24 percent, respectively, on estimates of supply and combined inshell and shelled domestic trade demand for the current marketing year. Estimated trade demand was adjusted to account for supplies of certified walnuts carried in from the 1983–84 marketing year and for supplies deemed desirable to be carried out on July 31, 1985, for early season domestic use next marketing year until the 1985 crop is available for market.

The estimated 1984 production is in excess of the 1984–85 marketing year domestic needs. While this action is designed to tailor the supply to domestic demand, it would still ensure the availability of ample supplies of walnuts for domestic markets during that year and promote maximum usage.

Supplies in excess of domestic needs would be available chiefly for export. Handlers may also obtain reserve disposition credit for disposing of substandard walnuts in oil, feed, or other outlets the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts.

The Board used the estimates given in the table below in making its recommendation for the 1984–85 marketing year. Weight figures for inshell walnuts are converted to their equivalent shelled kernel weights.

	Inshell weight (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
Supply:			
1. Orchard-run production	450,000		
2. Less: Miscellaneous farm use	2,000		
3. Commercial production	448,000	40	179,200
4. Plus: Uncertified carryin inshell	482	45	217

	Inshell weight (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
Uncertified carryin shelled			30,521
5. Total merchantable supply			209,938
6. Plus: Substandard creditable for reserve			8,000
7. Total supply subject to regulation			217,938
Demand:			
8. Inshell demand	65,000		
9. Plus: Desirable carryout	15,000		
10. Less: Certified carryin	6,542		
11. Adjust inshell demand	73,458	45	33,056
12. Shelled demand			120,000
13. Plus: Desirable carryout			35,000
14. Less: Certified carryin			23,356
15. Adjust shelled demand			131,644
16. Total demand (Item 11 + 15)			164,700
Marketing percentages:			
17. Free Percentage (item 16 ÷ item 7 × 100) 76% (75.6% rounded up by the Board			
18. Reserve percentage (100% − item 17) 24% (24.4% rounded down by the Board)			

List of Subjects in 7 CFR Part 984

Marketing agreements and orders, Walnuts, California.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Board, and other available information, it is further found that establishment of the free and reserve percentages under the order, as hereinafter set forth, will tend to effectuate the declared policy of the act.

PART 984—[AMENDED]

Therefore, § 984.230 is added to 7 CFR Part 984 as follows: (This section will not appear in the code of Federal Regulations).

§ 984.230 Free and reserve percentages for California walnuts during the 1984–85 marketing year.

The free and reserve percentages for California walnuts during the marketing year beginning August 1, 1984, shall be 76 percent and 24 percent, respectively.

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

Dated: December 13, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 84-693]

Forms AC, PS and OC

Dated: December 6, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rules; republication.

SUMMARY: The Federal Home Loan Board ("Board") is republishing Forms AC, PS, and OC for inclusion in the Code of Federal Regulations. The Forms were inadvertently deleted in Board Resolution No. 82-311, dated April 28, 1982.

EFFECTIVE DATE: September 1, 1983.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, telephone (202) 377-6457.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board ("Board") is republishing the Forms AC, PS, and OC ("Forms") for inclusion in the Code of Federal Regulations. The Form AC is the form for applications for conversion to the stock form by mutual savings and loan institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions"). The Forms PS and OC set forth the disclosure requirements for proxy statements and offering circulars in conversions. In addition, Item 7 of the Form PS provides the Board's rules for responding to the description of business portion of certain filings that must be made by insured institutions under the Securities Exchange Act, *See* 12 CFR 563d.802 (1984).

Although the Forms have traditionally appeared in the Code of Federal Regulations, at the end of 12 CFR Part 563b, they were inadvertently deleted in Board Resolution No. 82-311, dated April 28, 1982, 47 FR 19672, 19682 (May 7, 1982). Because of their importance to the conversion program and the disclosure requirements under the Exchange Act, it is appropriate for the Forms to appear in the Code of Federal Regulations where they also can be amended by publication in the **Federal Register.** As reprinted herein, the Forms contain amendments made in Board Resolutions No. 83-91, 48 FR 8429, 8431 (March 1, 1983), 83-149, 48 FR 15591, 15605-06 (Apr. 12, 1983), and 83-348, 48 FR 31614, 31620 (July 11, 1983). In addition, certain typographical errors have been corrected.

The Board has determined that observance of the notice and comment procedures of 5 U.S.C. 552(b) and 12 CFR 508.11 and the delay of effective date provided pursuant to 5 U.S.C. 552(d) and 12 CFR 508.14 are unnecessary and contrary to the public interest for this republication. Save for minor technical corrections, the document contains provisions that have been adopted previously pursuant to notice and comment or exceptions to that procedure.

List of Subjects in 12 CFR Part 563b

Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Amend Part 563b by adding a new Subpart E, as follows:

Subpart E—Forms

Sec.

Authority: Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726, and 1730; sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended, 15 U.S.C. 78 c, l, m, n, and 2; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1942–48 Comp.).

Subpart E—Forms

§ 563b.100 Form AC—Application for Conversion.

Form AC

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Insurance Corporation

1700 G Street, NW., Washington, D.C. 20552

Application for Conversion

_____

(Exact name of Applicant as specified in charter)

_____

(Street address of applicant)

_____

(City, State and Zip Code)

Date of Application—— _____

General Instructions

A. Rules as to Use of Form AC

Form AC shall be used by any insured institution seeking Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation approval of conversion from the mutual to the stock form of organization pursuant to Part 563b of the Rules and Regulations for Insurance Accounts.

B. Application of Rules and Regulations

Attention is directed to Insurance Regulation § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in Insurance Regulation § 563b.2 also should be noted.

Item 1. Form of Application

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 563b of the Rules and Regulations for Insurance of Accounts of the Federal Savings and Loan Insurance Corporation.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Federal Home Loan Bank Board or the Federal Saving and Loan Insurance Corporation, they will be conducted by, or as approved by, the Board or the Corporation at the expense of the applicant; and applicant will pay the costs thereof as computed by the Board or the Corporation.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(e)(4) of the Rules and Regulations for Insurance of Accounts, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section, (1) that each such person has read this application; (2) that in the opinion of each such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion that this application complies to the best of his knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations for Insurance of Accounts and forms thereunder; and (3) that each such person holds such informed opinion.

Attest:

Applicant _____

By _____

(Duly Authorized Representative)

_____

(Principal Executive Officer)

_____

(Principal Financial Officer)

_____

(Principal Accounting Officer)

_____

(Director)

_____

(Director)

_____

(Director)

_____

(Director)

_____

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Corporation's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. Sequence and Timing of the Plan

Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State authorities. Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or direct community marketing of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

Item 6. Record Dates

If the applicant's plan of conversion contains an eligibility record date substantially earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date.

Indicate the circumstances that will require the use of a supplemental eligibility record date.

Item 7. Expenses Incident to the Conversion

Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal	_____
Postage and Mailing	_____
Printing	_____
Escrow or Agent Fees	_____
Underwriting Fees	_____
Appraisal Fees	_____
Transfer Agent Fees	_____
Auditing and Accounting	_____
Proxy Solicitation Fees	_____
Advertising	_____
Other Expenses	_____
Total	_____

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers; if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the applicant has any category of expense exceeding $10,000 which is not specified in this Item, such expense shall be itemized rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the applicant, the information required in this Item shall be provided with respect to the cost of such solicitation.

Item 8. Indemnification

State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director or officer of the applicant will be insured or indemnified in any manner against any liability which he may incur in his capacity as such.

Item 9. Federally Chartered Stock Associations-Charter S Association

State whether the converting Federal association is applying to amend its charter and bylaws to read in the form of the charter and bylaws of a Charter S association.

Exhibits

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors

Set forth a certified copy or copies of a resolution or resolutions of the board of directors (1) adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Savings and Loan Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. Copies of Documents, Contracts and Agreements

Furnish the following documents, contracts and agreements:

(a) Proposed certificates for capital stock and any other securities to be issued;

(b) Proposed order forms with respect to the subscription rights;

(c) Proposed charter and bylaws of the applicant to take effect upon conversion including, if applicable, the optional charter provision provided for in § 563b.3(i)(7);

(d) Any proposed stock option plan and form of stock option agreement;

(e) Any proposed management employment contracts;

(f) Any contract described in response to Item 6 of Form PS;

(g) Contracts or agreements with paid solicitors described in response to Item 3(b) of Form PS;

(h) Any material loan agreements relating to borrowing by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Corporation;

(i) Any appraisal agreement or proposed agreement, underwriting contracts or agreements among underwriters;

(j) Any charter amendment filed for the purpose of converting a Federal mutual association to a Federal stock association;

(k) Any proposed contracts or agreements among members of a group regarding the purchase of unsubscribed shares pursuant to § 563b.3(d)(3);

(l) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion that they are acting independently;

(m) Any documents referred to in the answer to Item 8;

(n) Any trustee agreements or indentures;

(o) Any agreements for the making of markets or the listing on exchanges of the stock of the converted insured institution.

Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of association members to consider the plan of conversion, except for documents which by their nature cannot be practically expected until a later time required by subdivisions (i) and (k) in which case they shall be furnished in substantially final form.

Exhibit 3. Opinion of Counsel

Furnish an opinion of counsel for the applicant regarding each of the following matters:

(a) The legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities;

(b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan;

(c) The legal sufficiency of the applicant's bylaws;

(d) The type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted insured institution;

(e) A certification that the proposed Charter S and bylaws conform to Part 552 of this Subchapter or if not a statement to that effect.

Matters listed in subdivisions (b), (c) and (d) of this Exhibit only apply to an applicant which is converting to a State-chartered stock association.

Exhibit 4. Federal and State Tax Opinions and Ruling

(a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to the various account holders who receive nontransferable subscription rights to purchase capital stock.

Instruction. The Corporation recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Corporation may require that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Corporation may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the applicant's tax advisor or, if applicable, a ruling from the appropriate state taxing authority to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be chartered upon conversion. Such opinion should relate to the applicant and to eligible account holders.

Exhibit 5. Valuation Materials

Furnish any materials required to be filed by § 563b.7 regarding the valuation to the applicant's capital stock. An applicant is not required to file such materials if the offering of capital stock will not commence before the meeting of association members to vote on the plan of conversion.

Exhibit 6. Notice to Members

Furnish the notices to the applicant's members required by § 563b.4 (a) and (b).

Exhibit 7. Other Materials

(a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(j), furnish the statement required for each such omission by § 563b.8(j)(2).

(b) Furnish all consents required to be filed by § 563b.8 (p) and (q).

(c) If applicable, furnish the statement required by Item 5 of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) Furnish any powers of attorney employed pursuant to § 563b.8(e)(3).

(e) Furnish the cross reference sheet referred to in § 563b.8(g).

(f) If the applicant wishes to request a waiver of compliance in accordance with § 563b.1(c), furnish the materials required by § 563b.1(c)(2).

§ 563b.101 Form PS—Proxy Statements.

Form PS

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Insurance Corporation

1700 G Street, NW., Washington, D.C. 20552

Proxy Statement

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Proxy Statement Form

Index to Items

Information Required in Conversion Proxy Statement

Notes

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

2. The proxy statement shall include such information which the General Counsel or the Director of the Division of Securities and Corporate Analysis of the Office of General Counsel by interpretative release or otherwise had deemed necessary to comply with items of this Form PS.

Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement, and the full address, ZIP code and telephone number of the applicant.

Item 2. Revocability of Proxy

State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof,

and will not be used for any other meeting. (See also § 563b.5(d)(3)).

Item 3. Persons Making the Solicitation

(a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to Items 5 through 16, but must include such information as to make such solicitations comply with § 563b.5(g)(1).

Item 4. Voting Rights and Vote Required for Approval

(a) Describe briefly the voting rights of each class of association members, state the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled.

(b) As part of the description give the date of record for association members entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

Item 5. Directors and executive officers

(a) Furnish the information regarding directors and executive officers and certain relationships and related transactions required to be disclosed in a registration or proxy statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Items 401 and 404 of Regulation S–K, 17 CFR 229.401 and 404, and Item 6 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations shall refer to the applicant and the word "Commission" shall refer to the Federal Home Loan Bank Board.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. Management remuneration

Furnish the information regarding management remuneration required to be disclosed in a registration or proxy statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 402 of Regulation S–K, 17 CFR 229.402, and Item 7 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "Commission" in those regulations shall refer to the applicant and to the Federal Home Loan Bank Board, respectively.

Item 7. Business of the applicant

(a) *Narrative description of business.* (1) Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) Describe the business conducted and intended to be conducted by the applicant and its subsidiaries. This should include a description of the general development of the business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the institution as a result of any material acquisitions.

(b) *Selected financial data.* Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(1) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(2) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions. 1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total net worth; and total number of customer service facilities indicating the number which provide full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which are required to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 33 ("SFAS 33") may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the applicant in the summary and in these instructions shall mean the applicant and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by Item 14, applicants should update the selected financial data for the interim period to reflect any material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) Discuss applicant's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in paragraphs (A), (B), and (C) of this subsection with respect to liquidity, capital resources, and results of operations and also should provide all other information which the applicant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combination should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(A) *Liquidity.* Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(B) *Committed resources.* (i) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(C) *Results of operations.* (i) Describe any unusual or infrequent events of transactions

or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(ii) Describe any known trends or uncertainties which have had, or which the applicant reasonably expects will have a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(iii) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(iv) For the three most recent fiscal years of the applicant, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(v) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in scheduled items.

Instructions. 1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7(c) need only include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(A) of this Item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the applicant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined by § 523.10 of the Regulations for the Federal Home Loan Bank System.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe-habor rule for projections, § 563d. 3b–6 of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), under the circumstances specified in that section.

7. Applicants which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If the statement is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted by an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made.

8. Applicants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 in encouraged, all that is required is a brief textual presentation of management's views. No specific numercial financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by Item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (A) and (B) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(A) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the applicant.

(B) *Material changes in results of operations.* Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor rule for projections, § 563d.3b–6 of the Insurance Regulations, under the circumstances specified in that section.

(d) *Lending activities.* (1) Briefly describe the applicable Federal and state restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also briefly describe the applicant's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by Item 14(b).

(2) As to the lending area of the applicant, describe briefly (A) the lending area restrictions, if any, applicable to the applicant, (B) the areas in which the applicant normally lends, and (C) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings and loan associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by Item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(A) Average yield during the period on: (i) Loan portfolio, (ii) investment portfolio, (iii) other interest-earning assets, and (iv) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(B) Average rate paid during the period on: (i) Deposits, (ii) borrowings and Federal Home Loan Bank advances, (iii) other interest-bearing liabilities, (iv) all interest-bearing liabilities ((i), (ii), and (iii)). Average rate paid should be computed on no greater than a monthly basis.

(C) Weighted-average yield at end of the latest required period, for the items in (A) and (B) above.

(D) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets should be determined on an interval no more frequent than monthly.

(E) For each of the periods required by Item 14(b), set forth in tabular form: (i) The dollar amount of change in interest income and (ii) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in (A) and (B) above) into amounts attributable to (i) changes in volume [change in volume multiplied by old rate], (ii) changes in rates [change in rate multiplied by old volume], and (iii) changes in rate-volume [change in rate multiplied by the change in volume]. The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

(5) For each of the periods required by Item 14(b), present the following:

(A) Return on assets (net income divided by average total assets).

(B) Return on equity (net income divided by average equity).

(C) Equity-to-assets ratio (average equity divided by average total assets).

Instructions. Applicants should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the latest fiscal year reported on, present separately the amounts of loans in each category required by balance sheet Item 7(b) which are due: (A) In each of the three years following the balance sheet, (B) after three through five years, (C) after five through ten years, (D) after ten through fifteen years, and (E) after fifteen years. In addition, present separately the total amount of all such loans due after one year which (A) have predetermined interest rates and (B) have floating or adjustable interest rates.

Instructions. 1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the applicant's "rollover policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

(7) Describe briefly the regulatory classifications of scheduled items and the applicant's customary procedures regarding delinquent loans. As to the end of each of the periods covered by the statements of operation required by Item 14(b)(1) and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories (slow loans, real estate owned, loans to facilitate, and others) of scheduled items and the ratio of such scheduled items to specified assets and to total assets. Where real estate owned is a significant portion of scheduled items, include a brief description of the major properties included therein and a statement as to the applicant's probable loss, if any, upon disposition of such properties.

(e) *Savings activities.* (1) State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that, in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption "14" along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for

which the average balance outstanding during the period was less than 30 percent of stockholders equity at the end of the period.

(f) *Federal regulation.* Describe briefly, to the extent not otherwise covered by other items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Corporation, and Federal regulatory net-worth requirements, the results of failure to meet those requirements, and the applicant's net-worth position in relation to those requirements. Also describe the annual insurance premium payment and prepayment requirements.

(g) *Federal Home Loan Bank System.* (1) Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include

(i) Limitations on borrowings,

(ii) Recent loan policies of the applicant's Federal Home Loan Bank and current interest rates, and

(iii) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(2) Describe briefly applicable liquidity requirements under section 5A of the Federal Home Loan Bank Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(h) *State savings and loan association law.* If the applicant is converting to a State-chartered stock association, describe briefly applicable provisions of State law which have a material effect on the business of the applicant.

(i) *Federal and state taxation.* Describe briefly the Federal income tax laws applicable to the applicant including

(1) Permissible bad debt reserves,

(2) The applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under Item 14 (a),

(3) Future increases in the effective income tax rate,

(4) The date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service, and

(5) The tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion. Also describe briefly the State taxation of the applicant.

(j) *Competition.* Describe the material sources of competition for savings and loan associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

Instruction. In answering Item 7(j) give to the extent known the association savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(k) *Office and other material properties.* (1) Furnish the location of the applicant's home office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 14(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the applicant, including location, net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(l) *Employees.* State the number of persons employed full time by the applicant including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(m) *Service corporations.* Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(n) *Legal proceedings.* Furnish the information regarding legal proceedings required to be disclosed in a registration statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 103 of Regulation S–K, 17 CFR 229.103. Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the applicant.

(o) *Additional information.* The Corporation may upon the request of applicant, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Corporation may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

Item 8. *Description of the Plan of Conversion*

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The Federal Home Loan Bank Board has given approval to the plan of conversion, subject to its approval by association members and the satisfaction of certain other conditions. However, such Board approval does not constitute a recommendation or endorsement of the plan by the Board.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual institution to a stock institution including the following information:

(1) State that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Corporation;

(2) State whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights they will have;

(3) State the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the applicant, including the conditions under which such account will be paid, the interest of eligible account holders and supplemental eligible account holders in such account and the formula by which such account will be adjusted;

(4) State that the rights and obligations of borrowers from the applicant will not be changed in any manner;

(5) State that capital stock to be sold by the applicant will not be insured by the Corporation;

(6) State than none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses incident thereto; and

(7) State briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the subscription rights of members, furnish the following information:

(1) The formula to be used for determining the subscription rights of account holders to purchase shares pursuant to § 563b.3(c) (2), (4), and (5);

(2) Any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock, including the purchase priorities, limitation on total purchases, the total number of shares which may be purchased, and the formula for the allocation;

(3) The allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and

(4) The use and time of the order forms with respect to the exercise of subscription rights.

(e)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion;

(2) State that the offering price will be the pro forma market value of such shares as determined by the institution's management and the underwriter, as the case may be; and

(3) State that all of the shares are required to be sold.

(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss (1) the earnings per share of the capital stock to be sold on a *pro forma* basis as of the most recent year-end and interim period required by Item 14(b); and (2) the book value per share on a *pro forma* basis

as of the most recent year-end and interim period required by Item 14(a).

Instructions: 1. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock and then after giving effect to such proceeds, with all assumptions used clearly stated.

2. In computing *pro forma* earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets [Item 7(d)(4)(A)(iv)] and (ii) average rate paid on deposits [Item 7(d)(4)(B)(i)].

3. If significant changes in interest rates occur during the periods presented, the Corporation will consider permitting alternative computations proposed by an applicant that are properly supported.

4. An appropriate statement should be included which explains that the *pro forma* data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the applicant after its conversion.

(g) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state

(1) That a maximum subscription price will be set forth in the offering circular used for offering of subscription rights;

(2) That the actual subscription price will be the public offering price;

(3) That the actual subscription price will not exceed the maximum subscription price shown on the order form; and

(4) That any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(h) Furnish the following information:

(1) Describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future;

(2) Describe briefly the tax effect of the conversion both to the applicant and to the various classes of account holders receiving nontransferable subscription rights to purchase capital stock in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request if the summary proxy statement provided for by § 563b.3(d)(14) is being used) and should be consulted for further information.

(i)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting institution. If such is the case provide the information to the extent known required by Item 6 of Form OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all officers, directors and their associates as a group without naming them.

(2) As to each officer and director named in Item 5(a), name him, state his position, and the number of shares proposed to be purchased by him.

(3) As to any officer, director or associate thereof who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him, state his position, and the number of shares proposed to be purchased by him.

(4) With respect to the information required by (1), (2) and (3) above, indicate separately the number of shares proposed to be purchased in each offering category.

Instructions. With respect to the information requested as to associates of officers and directors, such information is required only to the extent known. In a case where such confirmation is not obtainable, only the number of shares which the associate is given subscription rights to purchase need be disclosed.

Item 9. Description of capital stock.

(a) Furnish the information regarding capital stock of the applicant required to be disclosed in a registration statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 202 of Regulation S–K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the applicant.

(b) A undertaking should be included in the proxy statement that the applicant where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the capital stock of the applicant.

(c) Outline briefly the trading market that is expected to exist for the capital stock following the conversion including the estimated number of market members and stockholders, and the anticipated success of the applicant in listing the stock.

Instructions. Any discussion of the listing of the applicant's stock should include the basic requirement that must be met for such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant. Captions below may be modified as appropriate.

	(A) Capitalization as of most recent balance sheet date	(B) Pro forma adjustments as a result of conversion	(C) Pro forma capitalization, after giving effect to the conversion
Deposits			
FHL Bank Advances			
Other Borrowings			
Capital Stock			
Preferred Stock			
Paid-in Capital			
Retained Earnings:			
Restricted			
Unrestricted			
Total			

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

3. With respect to Column A, the applicant should use the most recent balance sheet date required by Item 14.

Item 11. Use of New Capital

State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used and the approximate amount intended for each such purpose.

Instruction. Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include expanded second market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New charter, bylaws, or other documents

Describe briefly any material differences between the provisions of the existing charter, bylaws, and any similar documents of the applicant and those which will take effect after conversion.

Instruction. This Item requires only a brief summary of the provisions which are pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

Item 13. Other Matters

State that the applicant will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended.

and that it will not deregister such stock for a period of three years. It should be noted that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 14. Financial Statements

Notes.—1. The following instructions specify the consolidated balance sheets, the consolidated statements of income, changes in financial position, and stockholders' equity required to be included in the proxy statement. Subpart A of Part 563c governs the certification, form, and content of such financial statements, including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently.

(a) *Consolidated balance sheets.* (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of Board approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days of such approval. This interim balance sheet need not be audited.

(b) *Consolidated statements of income and changes in financial position.* (1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be furnished. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) *Financial statements of business acquired or to be acquired.* There shall be furnished the information required by 17 CFR 210.3–05, 210.11–01 to –03 regarding business acquired or to be acquired.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.* There shall be furnished the information required by 17 CFR 210.3–09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

(f) *Filing of other statements in certain cases.* The Corporation may, upon the request of the applicant, and where consistent with the protection of account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Corporation may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection or account holders and others.

Item 15. Consents of Experts and Reports

(a) The proxy statement shall briefly describe all consents of experts filed pursuant to § 563b.3(p).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

Instruction. The instruction on Item 12 shall apply to paragraph (a) of this Item.

Item 16. Attachments

There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as approved by the Corporation unless the following procedure is observed. The association may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests within a specified period a postage-paid postcard or other written communication.

§ 563b.102 Form OC—Offering Circulars.

Form OC

[Facing Sheet]

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Insurance Corporation

1700 G Street, NW., Washington, D.C. 20552

Offering Circular

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Offering Circular Form

Item 1. Information Required by and Use of Form OC

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

Instructions. 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering circular for the public offering through an Underwriter or the direct community marketing by the converting insured institution of the unsubscribed shares, unless otherwise indicated.

2. The offering circular shall include such information which the General Counsel or Director of the Securities Division of the Office of General Counsel, by interpretive release or otherwise, has deemed necessary to comply with this Form OC.

3. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

Item 2. Additional Current Information Required

Each offering circular shall, as of its respective dates of issuance, include, to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any other proposals considered at the meeting of members.

(b) Information with respect to any recent material developments in the business or affairs of the applicant.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to eligible account holders, voting members and others, the price at which the shares were sold, and the number of unsubscribed shares.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular. In addition, a subscription offering circular shall contain any more recent financial statements which, at the time of commencement of the subscription offering, it can be determined will be required to be included in an offering circular to be used in the Direct Community Offering or Public Offering pursuant to this paragraph (f).

Item 3. Statement Required in Offering Circulars

There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in bold-face Roman type at least as large as

ten-point modern type and at least two points leaded:

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL HOME LOAN BANK BOARD OR THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION NOR HAS SUCH BOARD OR CORPORATION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. Preliminary Offering Circular

The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular," the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular.

"This offering circular has been filed with the Federal Savings and Loan Insurance Corporation, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is declared effective by the Federal Savings and Loan Insurance Corporation. The offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

Item 5. Information with Respect to Exercise of Subscription Rights

Any offering circular which is required to be delivered to subscribers shall describe all material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Information with Respect to Public Offering or Direct Community Marketing

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for any public offering, such information shall be given in substantially the tabular form set forth below. In any other case, the information may be given in narrative form. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share	$———	$———	$———
Total	$———	$———	$———

(b) An offering circular for a public offering or direct community marketing, where the plan of conversion does not contain the optional provision permitted by § 563b.3(d)(12), may omit the description relating to the exercise of subscription rights required by Item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12). Each offering circular shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12)

(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which its exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the applicant in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs," need not be described. If a "best efforts" arrangement is used, describe any standby commitments for shares not sold.

(f) If any shares are to be sold by the converting insured institution through a direct community marketing, indicate the timing of the offering, the geographical area where the offering will be made, the method to be employed to market the shares, including the frequency and nature of communications or contracts with potential purchasers, any preferences that will be given any such geographical area or class of potential purchasers, and the limitations on purchases by potential purchasers.

By the Federal Home Loan Bank Board.

Norman H. Raiden,

General Counsel.

[FR Doc. 84-32370 Filed 12-17-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71, 91, 103, and 105

[Docket No. 23708, SFAR 45-1]

Special Federal Aviation Regulation; Airport Radar Service Areas

Correction

In FR Doc. 84-31390 beginning on page 47176 in the issue of Friday, November 30, 1984, make the following correction:

On page 47177, first column, paragraph 2(a), ninth line, "077°" should have read "207°".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 84-ASO-21]

Designation of Transition Area, Lake City, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Lake City, South Carolina, transition area to accommodate instrument flight rule (IFR) operations at Cliff J. Evans Airport. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Evans nondirectional radio beacon (NDB) has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Walter H. Wulff, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION: .

History

On Tuesday, October 23, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Lake City, South Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Cliff J. Evans Airport (49 FR 42575). The operating status of the Cliff J. Evans Airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Lake City, South Carolina, transition area to accommodate IFR aeronautical operations in the vicinity of the Cliff J. Evans Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Lake City, South Carolina, transition area is designated under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) as follows:

Lake City, SC—[New]

The airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cliff J. Evans Airport [lat. 33°51'14" N., long. 79°46'08" W.); within three miles each side of the 192° bearing from the Evans RBN (lat. 33°51'21" N., long. 79°45'58" W.) extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN; excluding that portion which coincides with the Kingstree, South Carolina, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69)

Issued in East Point, Georgia, on December 6, 1984.

W.J. McGill,

Acting Director, Southern Region.

[FR Doc. 84–32885 Filed 12–17–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 84–39]

Customs Regulations Amendment Relating to the Customs Field Organization; Bridgeport, CT

AGENCY: Customs Service, Treasury.

ACTION: Final rule; change of effective date.

SUMMARY: This document changes from September 30, 1984, to October 30, 1984, the effective date of a document which amended the Customs Regulations relating to the field organization of the Customs Service. Because of the language of Pub. L. 98–573, the Trade & Tariff Act of 1984, the effective date of T.D. 84–39 must be changed to October 30, 1984, the date the President signed Pub. L. 98–573. This is the new effective date of changing the status of the Bridgeport, Connecticut, Customs district by placing it under the Boston, Massachusetts, Customs district. T.D. 84–39 was published in the **Federal Register** on Friday, February 10, 1984 (49 FR 5092; FR Doc. 84–3707). The original effective date of the document was suspended from June 1, 1984, to September 30, 1984, by a document published on June 8, 1984 (49 FR 23832; FR Doc. 84–15306).

EFFECTIVE DATE: December 18, 1984.

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

The amendments to 19 CFR 101 published in the **Federal Register** on Friday, February 10, 1984 (49 FR 5092; FR Doc. 84–3707) are suspended until October 30, 1984.

Dated: December 12, 1984.

Robert P. Schaffer,

Assistant Commissioner (Commercial Operations).

[FR Doc. 84–32888 Filed 12–17–84; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 84N–0339]

Antibiotic Drugs; Erythromycin-Benzoyl Peroxide Topical Gel

Correction

In FR Doc. 84–31674, beginning on page 47485, in the issue of Wednesday, December 5, 1984, make the following correction.

On page 47486, in § 452.510d(b)(2), tenth line of the second column, "milliters" should have read "milligrams".

BILLING CODE 1505–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Acepromazine Maleate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Laboratories, providing for safe and effective oral use of a 5-milligram acepromazine maleate tablet for tranquilizing dogs and cats.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, filed supplemental NADA 32–702 providing for oral use of 5-milligram acepromazine maleate tablets in

addition to their currently approved 10- and 25-milligram tablets for tranquilizing dogs and cats. The supplement is approved and the regulations are amended to reflect the approval.

The supplement does not otherwise affect the approved use of the product. Under the Center for Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this approval has been treated as a Category II supplemental NADA which does not require reevaluation of the safety and effectiveness data in the parent application.

Approval of this supplement is an administrative action that does not require new safety and effectiveness data. Therefore, a freedom of information summary is not required.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.23 by revising paragraph (a), and the introductory text of paragraphs (b) and (c) to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.23 Acepromazine maleate tablets.

(a) *Sponsors.* See drug labeler codes in § 510.600(c) of this chapter for identification of sponsors as follows:

(1) For No. 000856, use of 5-, 10-, or 25-milligram tablets as in paragraph (b) of this section.

(2) For No. 013983, use of 10- or 25-milligram tablets as in paragraph (c) of this section.

(b) *Conditions of use.* It is used in dogs and cats as follows:

* * * * *

(c) *Conditions of use.* It is used in dogs as follows:

* * * * *

Effective date. December 17, 1984.

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

Dated: December 10, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-32817 Filed 12-17-84; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Payment of Premiums and Employer Liability for Single Employer Plan Terminations; Rules Pertaining to Withdrawals From and Terminations of Plans to Which More Than One Employer Contributes Other Than Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public of a change in the rate at which interest will accrue on late premium payments and employer liability underpayments and overpayments beginning January 1, 1985. The interest rate, which is established by the Internal Revenue Service in accordance with the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 and the Internal Revenue Code is reviewed semiannually, and the Internal Revenue Service has determined that the interest rate for the six-month period beginning January 1, 1985 should be increased. This amendment is needed to notify pension plan administrators of the specific interest rate.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202-254-6476 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title IV of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. 1001 *et seq.*, (the "Act") provides for a bifurcated pension plan insurance program administered by the Pension Benefit Guaranty Corporation ("the PBGC"). The insurance program covers two types of pension plans, *i.e.*, single-employer plans and multiemployer plans, and has two basic sources from which funds are obtained to pay guaranteed benefits.

For single-employer plans, funds are obtained from premiums paid by on-going plans, together with amounts collected as employer liability. Employer liability, which is imposed under section 4062 of the Act on sponsors of terminating single-employer plans, is the amount by which the value of the terminated plan's guaranteed benefits exceeds plan assets at the date of plan termination, but not more than 30% of the employer's net worth. Thus, guaranteed benefits in terminating single-employer plans are funded from premiums in the single-employer fund, if the assets of the plan plus amounts collectible as employer liability are insufficient to fund guaranteed benefits.

For multiemployer plans, funds to provide for the payment of guaranteed benefits, should a multiemployer plan terminate with assets insufficient to fund those benefits, are obtained solely from premiums paid by on-going multiemployer plans. The employer liability provisions in section 4062 do not apply to multiemployer plans.

Section 2610.3 of 29 CFR sets forth due dates for premium payments by both single-employer plans and multiemployer plans, and § 2610.7 provides for late payment interest charges. Section 2622.7 of 29 CFR sets forth the due date for payment of the employer liability imposed by section 4062 and provides for interest on underpayments and overpayments.

Under section 4007 of the Act and 29 CFR 2610.7 and 2622.7, the interest rate charged or paid by the PBGC is the rate established under section 6601(a) of the Internal Revenue Code ("Code"). Section 6601(a) provides for interest at an annual rate established under section 6621. As amended by the Tax Equity and Fiscal Responsibility Act of 1982, 96 Stat. 324, Pub. L. 97-248 ("TEFRA"), Code section 6621 provides that the interest rate is to be adjusted semiannually by October 15 and April 15 of each year and is to be based on the average prime interest rate for the six-month period ending on September 30 and March 31, respectively. An adjusted interest rate is effective January 1 or July 1 of the succeeding year, as applicable.

On October 15, 1984, in compliance with TEFRA, the Internal Revenue Service ("IRS") announced that the interest rate, which has been 11 percent since July 1, 1983, will increase to 13 percent beginning January 1, 1985 (IR-84-105).

Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth the increased rate for the period beginning January 1, 1985. The 13 percent interest rate will be in effect for

at least the six-month period ending June 30, 1985, and will continue in effect after that time if the IRS, in its next semiannual review, determines that no change is necessary. However, if the IRS determines, in its next review or subsequent semiannual reviews, that the interest rate should change, the Appendices will be revised accordingly.

Because this amendment simply sets forth the interest rate for the succeeding period of time, general notice of proposed rulemaking in not required. See 5 U.S.C. 553(b). Moreover, the PBGC has determined that it would be impractical and contrary to the public interest to delay the effective date of the regulation because the new interest rate is effective by law on January 1, 1985. Accordingly, the PBGC finds that good cause exists for issuing this regulation in final form without notice and opportunity for public comment and for making it effective before the 30-day period set forth in 5 U.S.C. 553.

The PBGC also has determined that this rule is not a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, Parts 2610 and 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—[AMENDED]

1. The authority citation for Part 2610 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4006, and 4007, Pub. L. 93–406, 88 Stat. 829, 1004, 1010, and 1013, as amended by secs. 403(1), 105, 402(a)(3), and 403(b), Pub. L. 96–364, 94 Stat. 1208, 1302, 1264, 1298, and 1300 (29 U.S.C. 1302(b)(3), 1306, and 1307).

2. Appendix A to Part 2610 is revised to read as follows:

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
* * * * *		
July 1, 1983	Dec. 31, 1984	11
Jan. 1, 1985		13

PART 2622—[AMENDED]

3. The Authority citation for Part 2622 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4062, 4063, 4064, 4067, and 4068, Pub. L. 93–406, 88 Stat. 829, 1004, 1029, 1030, 1031, and 1032, as amended by secs. 403(1), 403(g), 403(h), and 403(i), Pub. L. 96–364, 94 Stat. 1208, 1302, and 1301 (29 U.S.C. 1302(b)(3), 1362, 1363, 1364, 1367, and 1368).

4. Appendix A to Part 2622 is revised to read as follows:

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From—	Through—	Interest rate (percent)
* * * *		
July 1, 1983	Dec. 31, 1984	11
July 1, 1985		13

Effective date: This regulation is effective on January 1, 1985.

Roderick J. O'Neil,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–32882 Filed 12–17–84; 8:45 am]

BILLING CODE 7708–01–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 301

Agency Rules of Procedure

AGENCY: Copyright Royalty Tribunal.

ACTION: Amendment.

SUMMARY: On November 17, 1978, the Tribunal published its Agency Rules of Procedure (43 FR 53719). This notice changes the office hours of the Tribunal.

EFFECTIVE DATE: December 16, 1984.

FOR FURTHER INFORMATION CONTACT: Marianne M. Hall, Chairman, Copyright Royalty Tribunal, (202) 653–5175.

List of Subjects in 37 CFR Part 301

Administrative Practice and Procedures.

PART 301—[AMENDED]

Therefore, 37 CFR Part 301 is amended by revising § 301.2 to read as follows:

§ 301.2 Address for information

The official address of the Copyright Royalty Tribunal is 1111 20th Street NW, Suite 450, Washington, D.C. 20036. Office hours are Monday through Friday, 9:00 a.m. to 5:00 p.m., excluding legal holidays.

Dated: December 13, 1984.

Marianne Mele Hall,

Chairman.

[FR Doc. 84–32763 Filed 12–17–84; 8:45 am]

BILLING CODE 1410–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3F2874/R721; FRL–2722–3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oryzalin

Correction

In FR Doc. 84–30547, beginning on page 45854, in the issue of Wednesday, November 21, 1984, make the following corrections.

1. On page 45854, third column, twenty-fourth and twenty-fifth lines from the bottom insert "10" before $^{-2}$, and

2. On page 45855, first column, fourth line, "$66X^{-7}$" should read "6×10^{-7}".

BILLING CODE 1505–01–M

40 CFR Part 271

[SW–1–FRL–2738–7]

New Hampshire; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Application of New Hampshire for Final Authorization.

SUMMARY: New Hampshire has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New Hampshire's application and has reached a final determination that New Hampshire's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program in lieu of the Federal program.

DATE: Final Authorization for New Hampshire, for purposes of judicial review, shall be effective at 1:00 p.m. Eastern Time on January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Susan L. Hanamoto, EPA Region I, State Waste Programs Branch, JFK Federal Building, Room 1903, Boston, Massachusetts, 02203, Telephone: (617) 223–1924.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization a State's program must: (1) Be "equivalent" to the Federal program; (2) be consistent with the Federal program and other State programs; and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On June 28, 1984, New Hampshire submitted a complete application to obtain final authorization to administer the RCRA program. Following detailed review of the complete application and the development of a Capability Assessment evaluating past State program performance and present resource capacity for future program implementation, EPA published a tentative decision announcing its intent to grant New Hampshire final authorization on October 1, 1984.

Along with the tentative determination EPA announced the availability of the application in the State, EPA Region I, and EPA Headquarters for public comment and the date of a public hearing on the application if significant interest was expressed. EPA did not hold a public hearing since no public interest was expressed. By the end of the comment period EPA received no letters relative to New Hampshire's final authorization.

Decision

I conclude that New Hampshire's application for final authorization meets all the statutory and regulatory requirements established by RCRA. New Hampshire continues to demonstrate a committee to hazardous waste program implementation as documented in the Capability Assessment developed for tentative decision. Accordingly, New Hampshire is granted final authorization to operate its hazardous waste program. This means that New Hampshire now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program. New Hampshire also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and take enforcement actions under Section 3008, 3012 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provision of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of New Hampshire's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entites. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 2006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6929, 6974(b).

Dated: November 30, 1984.

Michael R. Deland,

Regional Administrator.

[FR Doc. 84-32846 Filed 12-17-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 40675-4075]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Final rule, technical amendment.

SUMMARY: NOAA issues this final rule implementing technical amendments to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). This technical amendment reinserts sections pertaining to the New England Area surf clam quota and the New England Area effort restriction because emergency regulations which amended these sections will expire on December 28, 1984. The intended effect is to reinstate the original implementing regulations to the FMP.

EFFECTIVE DATE: 0001 hours Eastern Standard Time, December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, ext. 273.

SUPPLEMENTARY INFORMATION: An emergency interim rule (49 FR 27156, July 2, 1984) amended the FMP by increasing the optimum yield range for the New England Area surf clam fishery, and modified the control measures used in this area to prevent the fishery from exceeding the annual quota. The emergency regulation was extended (49 FR 37598, September 25, 1984) by the Secretary of Commerce for an additional 90 days, through December 27, 1984.

Amendment 4, presently being prepared by the New England Fishery Management Council, was to implement management measures for the New England Area surf clam fishery similar to those implemented by the emergency rule. This was to occur prior to the expiration of the emergency regulations. However, the amendment process was delayed pending the collection of information to determine the extent of surf clam beds on Georges Bank and the amendment 4 management measures will not be implemented prior to the emergency rule expiration date. NOAA therefore issues this final rule unchanged from the FMP implementing regulations found at 47 FR 4270, January 29, 1982.

Amendment 5 embodies a mechanism to allow an adjustment of the minimum surf clam size within a range of 4¾ to 5½ inches. Its purpose is to reduce the rate of discards presently experienced in the surf clam fishery. This amendment has been received for Secretarial review. If approved it will be implemented in the Spring of 1985. To address the existing discard problem, an emergency regulation (49 FR 40580, October 17, 1984) was published which reduced the minimum size to 5¼ inches. The effective period of this emergency regulation ends on January 12, 1984. However, because the emergency regulation implementing amendment 4 ceases to be effective on December 27, 1984, the minimum surf clam size as applied to the New England Area also terminates on this date.

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: December 11, 1984.

Carmen J. Blondin,

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

PART 652—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 652 is amended as follows:

1. The authority citation for Part 652 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 652.7, paragraphs (a)(2), (a)(3), and (i) are revised to read as follows:

§ 652.7 Prohibitions.

(a) * * *

(2) In closed areas as specified in these regulations; or

(3) On days of the week in which fishing for these species is not authorized.

* * * * *

(i) No person in the Mid-Atlantic Area may have in his possession surf clams taken in violation of the size limit prescribed in § 652.25.

* * * * *

3. In § 652.21, paragraph (b) is revised to read as follows:

§ 652.21 Catch quotas.

* * * * *

(b) *Surf Clams: New England Area.* The amount of surf clams which may be caught in the New England Area by fishing vessels subject to these regulations will be specified annually between 25,000 and 100,000 bushels, using the procedures and criteria set forth in § 652.21(a).

* * * * *

4. In § 652.22, paragraphs (b), (d), and (e) are revised to read as follows:

§ 655.22 Effort restrictions.

* * * * *

(b) *Surf Clams—New England Area.* (1) *Allowable fishing time.* Fishing for surf clams will be allowed seven days per week.

(2) *Revisions.* When 50 percent of the quota of surf clams established under § 652.21(b) for the New England Area has been caught, the Regional Director will, on review of available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Secretary may reduce the number of days per week, or establish authorized periods, during which fishing for surf clams is permitted.

* * * * *

(d) *Closures.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period will be exceeded, the Secretary will publish a notice in the **Federal Register** stating the determination and stating a date and time for closure of the fishery.

(e) *Notices.* The Secretary will publish a notice in the **Federal Register** of any change in allowable fishing times. The Regional Director will send notice of any closure or any change in allowable fishing times to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

* * * * *

[FR Doc. 84-32877 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 244
Tuesday, December 18, 1984

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 435

[Docket No. 1449S]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: *Comment Date:* Written comments, data, and opinions on this proposed rule must be submitted not later than January 17, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes 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 August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; 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. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the tobacco policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

5. *Section 17.d.*—Change the definition for the term "County" to be consistent with other marketing quota crop policies.

6. *Section 17.k.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

7. *Section 17.s.*—Change the definition of the term "Unit" to conform to a single ASCS farm serial number. No further division will be allowed. This change will reduce the problem of transferring production from one unit to another.

8. In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. All FCIC services offices in the United States will be able to advise a producer if tobacco insurance is offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 435

Crop insurance, Tobacco (Quota Plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1985 and succeeding crop years, to read as follows:

PART 435—TOBACCO (QUOTA PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 435.1 Availability of quota plan tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tabacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 435.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 435.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 435) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 435.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 435.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corportion for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 435.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 435.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Quota Plan) Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Quota Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9d(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement or wrongdoing of you, any member of your household, your tenants or employees;
(2) The failure to follow recognized good tobacco farming practices;
(3) The impoundment of water by any governmental, public or private dam or reservoir project; or
(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, insured poundage quota, and share insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage, and for which a premium rate is provided by the actuarial table.

b. The acreage insured for each crop year will be an insurable type of tobacco planted on insurable acreage and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;
(3) Which is destroyed, it is practical to replant to tobacco, and such acreage was not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree to coverage reduction on our form;
(5) Planted to tobacco of a discount variety under provisions of the tobacco price support program;
(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;
(7) Designated as uninsurable by the actuarial table; or
(8) Planted for experimental purposes.

e. The insured poundage quota for each crop year will be the effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations for the crop year plus any additional poundage you intend to produce on the unit that crop year, as reported by you or as determined by us, whichever we elect.

However:

(1) The insured poundage quota may not include any amount which would be subject to a marketing quota penalty under ASCS Tobacco Marketing Quota Regulations;

(2) The poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit when such poundage reduction is clearly specified by you in filing the acreage and quota report;

(3) The insured poundage quota will never exceed the pounds obtained by multiplying the insured acres by the applicable farm yield per acre; and

(4) Unless otherwise provided by the actuarial table, for any crop year in which tobacco poundage marketing quota regulations are not in effect, the insured poundage quota will be the pounds obtained by multipying the applicable farm yield per acre times the lower of the reported or insured acreage on the unit.

f. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as failure of the water supply from an unavoidable cause.

Insurance will not attach on an irrigated basis to acreage otherwise insurable on such basis unless it is designated as irrigated at the time the acreage is reported.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and poundage quota.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. Your share at the time of planting; and

c. The effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations plus any additional poundage you intend to produce on the unit in that crop year. Such poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit provided such poundage reduction is clearly specified in filing the acreage and quota report. The quota so reported must not be subject to change by you.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The coverage levels are contained in the actuarial table.

b. The amount of insurance for a unit will be the dollar amount determined by multiplying the insured poundage quota for the unit by the percentage guarantee for the applicable coverage level established by the actuarial table and multiplying this product by the current year's support price for type 31 tobacco (rounded to the nearest cent) less six cents per pound for warehouse charges.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance for the unit times the premium rate, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;
(2) The premium reduction will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;
(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and
(5) Participation must be continous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;
b. Weighing-in at the tobacco warehouse;
c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);
d. Final adjustment of a loss; or
e. February 28, immediately following the normal harvest period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginnng of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Noticed must be given immediately if any tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given in sufficient time to allow us to inspect the cured tobacco prior to its sale or other disposition.

(6) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit:

(b) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us befoe you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Subtracting from the amount of insurance for the unit, the value of the total production of tobacco to be counted (see section 9d); and

(2) Multiplying the remainder by your share.

d. The value of the total production to be counted for a unit will include the value of all harvested and appraised production.

(1) Production to count will include:

(a) The gross returns (less six cents per pound for warehouse charges) from tobacco sold on the warehouse floor;

(b) The fair market value of the tobacco sold other than on the warehouse floor;

(c) The fair market value of the tobacco harvested and not sold;

(d) The fair market value of any unharvested tobacco as if such tobacco were harvested and cured; and

(e) The current year's support price per pound (less six cents per pound for warehouse charges) for appraisals made by us for poor farming practices or uninsured causes of loss. (If a price support program is not in effect, such appraised production will be valued at the market price for the current crop year.)

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of and, if the best offer you receive for any such tobacco is considered by us to be inadequate, to obtain additional offers on your behalf.

(3) The value of appraised production to be counted will include:

(a) The value of unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the average amount of insurance per insured acre for the unit for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than 35 percent of the average amount of insurance per insured acre for the unit for all other unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(6) If you have elected to exclude hail and fire as insured causes of loss and tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

e. You must not abandon any acreage to us.

f. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

g. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

h. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

i. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You many assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and

may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the cliam; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set off are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissovle the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of quota tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Carryover tobacco" means any tobacco on hand from the previous year's production.

d. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

e. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

f. "Effective poundage marketing quota" means the farm marketing quota as established and recorded by ASCS.

g. "Farm yield" means the yield per acre used by ASCS in establishing the basic farm marketing poundage quota for the tobacco farm, unless we have established a yield for the farm in the actuarial table.

h. "Harvest" means the completion of cutting of tobacco on any acreage from which acreage at least 20 percent of the amount of tobacco in pounds per acre (obtained by multiplying the applicable insured poundage quota for the unit by the applicable percentage of guarantee shown in the actuarial table for such acreage and dividing this result by the insured acreage in the unit) is cut.

i. "Insurable acreage" means that acreage planted to an insurable type of tobacco excluding any acreage designated as noninsurable by the actuarial table.

j. "Insured" means the person who submitted the application accepted by us.

k. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

l. "Market Price" for a crop year means the average auction price for the applicable type (less six cents per pound for warehouse charges) in the belt or area. The market price will be designated by the actuarial table.

m. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

n. "Planting" means transplanting the tobacco plant from the bed to the field.

o. "Rounded" means rounding up for ½ and above and rounding down from less than ½.

p. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

q. "Support price per pound" means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. For any crop year in which a price support for the insured type is not in effect, the market price for that crop year will be used.

r. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

s. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstruction was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by.

Merritt W. Sprague,

Manager.

Dated: December 13, 1984.

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Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A22]

Milk in the Chicago Regional Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that a proposal to require minimum shipments to pool distributing plants from pool reserve supply plants through February 1985 not be adopted. This recommendation is based on the record established at a public hearing held October 18 and 19 in Arlington Heights, Illinois. The hearing was requested by three cooperative associations that

supply milk to the Chicago Regional market.

DATE: Comments are due on or before January 2, 1985.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. No changes to the order are contemplated.

Prior document in this proceeding:

Notice of Hearing: Issued October 11, 1984; published October 15, 1984 (49 FR 40183).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 14th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The issues in this proceeding were considered at a public hearing held at Arlington Heights, Illinois, on October 18 and 19, pursuant to a notice of hearing issued October 11, 1984, (49 FR 40183).

The material issues on the record of hearing relate to:

1. Temporary shipping requirements for reserve supply plants.

2. Whether emergency marketing conditions exist in the Chicago Regional marketing area that warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Temporary shipping requirements for reserve supply plants.* The order should not be amended to require that reserve supply plants make minimum shipments of milk to pool distributing plants through February 1985. The order now provides that each reserve supply plant must ship to a pool distributing plant one tank truck load (at least 47,000 pounds) of milk anytime during the months of September through December in order to be a pool plant for the month of December. Otherwise, no shipments are required under the order unless the market administrator issues a "call." If a call is issued, reserve supply plants then would have to ship milk to distributing plants to comply with the call, or give up status as a pool plant. Order amendments providing for pool reserve supply plants and the related "call" provisions became effective September 1, 1984.

The order also provides that a handler may elect to pool a supply plant by shipping a specified percentage of the plant's milk receipts to distributing plants each month. In September, the first month that these new provisions were in operation, handlers pooled 104 plants as pool reserve supply plants and only 14 plants as regular supply plants.

The dairy farmer cooperative associations proposed that the Chicago Regional order be amended to require minimum shipments by reserve supply plants. As proposed, handlers that operate reserve supply plants would have to ship to pool distributing plants five percent of each such reserve supply plants' receipts of Grade A milk, or four tanker loads (minimum of 47,000 pounds each) of milk, whichever was greater, each month through February 1985. Under the cooperatives' proposal, a handler could form a unit comprised of reserve supply plants owned and operated by the handler. Also, the Director of the Dairy Division would be given authority to raise or lower the temporary shipping requirements by up to five percentage points to obtain needed shipments of milk or to avoid unnecessary shipments.

Proponents' Presentation

The proposal to require a minimum shipment from reserve supply plants was submitted by Associated Milk Producers, Inc. (AMPI), Consolidated Badger Cooperative, and Wisconsin Dairies Cooperative. Seven other cooperatives added their support to the proposal. The seven supporting cooperatives are Alto Cooperative Creamery; Lake to Lake, Divison of Land O'Lakes, Inc.; Outagamie Producers Cooperative; Manitowoc Milk Producers Cooperative; Mid-West Dairymen's Company; Milwaukee Cooperative Milk Producers; and Golden Guernsey Dairy Cooperative. All ten cooperatives are members of the central Milk Producers Cooperative (CMPC), a group consisting of 14 cooperatives who collectively price milk that they sell to handlers and were jointly represented. Alto, Lake to Lake, Outagamie and Wisconsin Dairies, collectively known as Chicagoland Dairy Sales, Inc., were additionally represented by a second spokesman. Manitowoc, Mid-West Dairymen's and Milwaukee Milk Producers, which together comprise The Lakeshore Federated Dairy Cooperative, also were additionally represented by a second spokesman.

The proposal also was supported by representatives from Dean Foods Company and Hawthorn-Mellody, Inc.

The 12 handlers in total account for 48 of the 144 pool plants on the Chicago Regional milk order, with 33 percent of the order's reserve supply plants, 43 percent of the supply plants, and 31 percent of the distributing plants. The CMPC cooperatives represent 81 percent of the order's producers.

The following paragraphs summarize the testimony offered by witnesses for the above mentioned parties in support of the proposals:

1. The Milk Diversion Program (MDP), which will expire on March 31, 1985, has caused production to decline. The MDP involves 2,446 Order 30 producers. In September 1984, average daily delivery per producer was down 39 pounds (2 percent) under Order 30 from the previous year, and producer milk pooled under Order 30 was down 17.55 million pounds (1.6 percent). This downward movement in production is expected to continue and accelerate due to yet unfilled MDP contracts. However, production is expected to increase as it has traditionally after the end of February. It was noted that over the past six years, production of milk in March has averaged 121.1 million pounds greater than February production.

The cooperatives noted also that a corollary of the MDP has been the increased shipments from areas of surplus to deficit areas. Order 30 handlers' shipments to other Federal order areas in September 1984 amounted to 18,910,895 pounds, 72 percent greater than such shipments a year earlier. It was projected that as production increases in the spring in these other areas, these shipments should no longer be required. Thus, the amendments proposed would be needed only for a temporary period.

2. The bulk of the shipments from reserve supply plants has come from too few handlers, according to proponents, who noted that in September 1984, 69 of the 104 reserve supply plants pooled that month shipped less than five percent of their producer milk receipts to Order 30 distributing plants. Shipments from these 69 reserve supply plants totaled 5,258,837 pounds, or only four percent of the total shipments made by all 104 reserve supply plants to Order 30 distributing plants. These 69 reserve supply plants pooled 45 percent of the total milk pooled that month; yet 41 of the plants did not ship any milk to Order 30 distributing plants.

AMPI pointed out that its facilities pooled 11 percent of the total milk pooled, and shipped 59,743,618 pounds to fluid handlers (48 percent of the total reserve supply plant shipments) during September 1984. These shipments represented more than 49 percent of AMPI's total receipts and over 80 percent of its milk in receiving stations. Reserve supply plants operated by the Chicagoland group shipped at least the supply plant shipping percentage (23 percent), in September and it is anticipated that shipments from its reserve supply plants during the five month period of October through February will be in excess of the supply plant shipping requirement.

The cooperatives that are shipping believe that they cannot meet any additional demands made of them because increased tanker orders from the fluid handlers would force the close-down of some surplus outlets operated by the cooperatives. AMPI, in an effort to make more milk available, ceased operations in September at two manufacturing plants. It was noted that when operations are halted, fixed costs still must be paid.

3. Fluid handlers have not been able to obtain all of the milk they ordered. Due to the decline in producer milk, the cooperatives have not been able to meet the orders of distributing plants. From September 2 through October 13, AMPI said it had not been able to supply an average of 75 loads per week (19 percent of the orders by fluid handlers), totaling approximately 14.1 million pounds per month. Hawthorn-Mellody said that it was not able to obtain all the milk it ordered in September and came up 12 loads short, approximately 4.8 million pounds.

AMPI testified that its inability to fill orders is greatest in the middle of the week. For example, during the first week of September a total of 59 loads were not filled Tuesday through Thursday; yet a total of only ten loads were not filled on Friday and Saturday. The previous Sunday, all orders were filled. It was pointed out that without tanker shipments to supplement Mid-West Dairymen's regular shipments of producer milk to the Muller-Pinehurst bottling plant, the plant's normal five-day bottling program would be disrupted. Moreover, union wage demands of time-and-a-half at night and double-time on Saturday and Sunday make weekend production cost inefficient.

4. All producers in the entire market share in the higher prices paid for Class I milk use, and to a lesser extent Class II use, through the pooling system; therefore, every plant that these producers ship to should have a minimal obligation to share in the overall supply needs of the market. The proponents pointed out that Class I utilization, and to a lesser extent Class II utilization, add value above the basic Minnesota-Wisconsin price, which when divided by Grade A pounds pooled raises the blend price. Thus, all reserve supply plants share in the pool whether they ship or not. As an example, in September reserve supply plants in Zone 7 drew 21.4 cents per hundredweight from the pool on Class III use to help pay producers. At the same time, Class I use at plants in Zone 7 contributed 79 cents per hundredweight to the total value of the pool.

It was maintained that shipments totaling five percent of each reserve supply plant's producer receipts per month would be sufficient to deal with the shortage. If such a requirement had been in place during September, an additional 18.8 million pounds would have been shipped to distributing plants from those 69 reserve supply plants that shipped less than five percent of their producer receipts.

The proponents stated the view that the minimum level of shipments for any plant should be four loads of not less than 47,000 pounds each. However, they acknowledged that there were 33 reserve supply plants that had total monthly producer milk receipts of 3.76 million pounds or less. Even though four loads would represent more than 5 percent of such a plant's receipts, this was held to be the minimum satisfactory level of shipments.

5. The current call provision is inadequate. The Order 30 call provision in reality applies only to the four distributing plants that have 90 percent or greater Class I utilization. Twenty-two other distributing plants do not meet the 90 percent qualification and thus are excluded from asking for a call when fluid milk is needed. Accordingly, those who favored the proposal maintained that "fluid needs" should include both Class I and Class II needs, because Class I handlers must offer their customers a full line of products. A full product line, in addition to fluid products, would include cottage cheese, yogurt, and sour cream. (There was some contention whether or not ice cream and condensed milk should be included). It was claimed that all of these products require Grade A milk. Hawthorn-Mellody noted that it has not been able to obtain a sufficient volume for Class II products; and as a result, has lost customers.

Supporters of the proposal pointed out that neighboring markets' supply plant performance standards require Grade A milk to be transferred to pool distributing plants without knowledge of the use made of such milk. Several examples were noted as follows: The Southern Michigan milk order requires shipments of 30 percent of receipts during October through March; The Ohio Valley and Indiana milk orders require shipments of 50 percent during September through February. The Iowa milk order requires shipments of 35 percent during September through November and 20 percent during December through August.

6. Some supporters contended that each plant should have the right to utilize its direct-shipped milk receipts any way it wishes, as long as something is given to the market. Thus, it was their view that Class I operators should be able to use their direct-shipped milk in any class product, and then require reserve supply plants to ship milk to them. Similarly, Class I handlers should not be required to use all of their Class II milk in Class I before they can expect reserve supply plants to ship milk to the market. Thus, the view that, as a matter of equity, all of the handlers should actively participate in the pool by either contributing funds for others to share (as in the case of Class I and Class II handlers) or making minimal shipments (as should be required of Class III manufacturers). Thus, no plants would be able to draw the blend price without

participating one way or another in supplying the market's fluid needs.

7. Pool handlers maintained that to pay a higher price (relative to current prices) for supplies of milk to meet their Class II needs would put them at a competitive disadvantage with competing nearby markets. They indicated that Class II manufacturers have been competing intensely for milk supplies due to a health market for cheese. During the first week of October, it was noted, Commodity Credit Corporation (CCC) purchases decreased 90.1 percent from those made during the corresponding week in 1983. The pool handlers pointed out that, to maintain their milk supplies, operators of cheese facilities have been offering premiums to their producers. In order for fluid handlers to purchase spot or supplemental loads of milk for Class II uses, they have been paying up to $1.50 per hundredweight, plus transportation, above the Class II price due to competition for supplies from cheese plants.

8. Sham lease operations should not be allowed to be included in a handler's unit. Legitimate leasing arrangements may be included in units. The proponents believe that units may be formed by handlers who own and operate two or more reserve supply plants. They also held that units may be formed by handlers who lease two or more reserve supply plants provided that the lessee: (1) Is the responsible person who pays producers, (2) has the plant's Board of Health permit to operate in his/her name, and (3) pays the employees who reload the milk or perform duties at the leased facility. They favored formation of units by handlers who both own and operate reserve supply plants and legitimately lease reserve supply plants.

Sham leases would be prohibited from being part of a unit. Proponents described a sham lease as one formed when a regulated handler leases a receiving room from a reserve supply plant at a nominal contractual rate of one dollar per year; and thus, the reserve supply plant becomes part of the handler's unit. The reserve supply plant in such a situation is able to retain most or all of its milk for manufacture without losing its pool plant status. They testified that the regulated handler may request shipments from the plant when needed, and is paid a fee per hundredweight from the manufacturing plant on milk received at the leased facility.

9. The lack of reserve supply plant shipping requirements will lead to chaotic conditions in the market. The proponents stated that without a five percent shipment from all reserve supply plants, distributing plant operators will seek milk from other sources to supplement the shipments from normal supply channels when these shipments are short. Handlers will raid other plants of their producers by offering higher premiums, and thus disrupt existing routes in direct producer procurement, in proponents view.

Opponents' Presentation

The proposal was opposed by the Farmers Union Milk Marketing Cooperative, the National Farmers Organization (NFO), Marigold Foods, Inc., Kolb-Lena Cheese, Universal Foods, the Trade Association of Proprietary Plants (TAPP), Wisconsin Cheese Makers Association (WCMA), and Kraft, Inc.

Farmers Union is an association of more than 7,100 producers in five Mid-Western states. In September 1984, Farmers Union members supplied 12 percent of the milk marketed under the Chicago Regional milk order.

NFO leases 10 reserve supply plants throughout the Order 30 market.

Marigold Foods own a distributing plant in Kewaskum, Wisconsin.

Kolb-Lena Cheese, located in Lena, Illinois, is a reserver supply plant that manufactures cheese. Its Grade A receipts per month are approximately 1.3 million pounds.

Universal Foods has an association with Cedarburg Dairy, Inc., a supply plant located in Cedarburg, Wisconsin. Both are members of TAPP.

TAPP is a group of operators of 30 plants which mainly manufacture cheese. TAPP also has one bottling plant member. Of the 30 plants, 28 are located in Wisconsin and two in Illinois. Fourteen of the Wisconsin members operate reserve supply plants and one Wisconsin member is a supply plant. The remaining plants are qualified through other supply plants.

WCMA represents 135 Wisconsin plants and eight Illinois plants purported to be affected by adoption of the proposal.

Kraft operates six reserve supply plants fully regulated under the Chicago Regional order.

These groups opposed the proposal on the following bases:

1. It was alleged by opponents to the proposal that there is no urgent need for additional milk for Class I use under Order 30. They pointed to the fact that in September 1984, twenty-three percent of producer milk receipts were used in Class I, which is equal to the Class I percentage of a year earlier; and that in total pounds Class I producer milk has declined 11.3 million pounds from a year earlier.

2. Another issue raised by the opponents was that under the current order provisions, reserve supply plants are only obligated to supply the Class I needs of handlers. Thus, according to the new rules, which were implemented on September 1, 1984, those plants that selected reserve supply status must ship at least one tank truck load (not less than 47,000 pounds) of Grade A fluid milk products to a pool distributing plant during any month of September through December of the same year, and must comply with any announcement by the market administrator calling for a minimum level of shipments which may not exceed twice the Class I utilization percentage for the same month in the previous year.

Therefore, it was stated that shipments made in excess of the order's requirement are made by choice. Cooperatives choose to develop a producer milk supply designated for Class I use, and manufacturing facilities choose to designate their milk for Class III use.

In addition, it was alleged that CMPC payments do not encourage small shipments made on a spot basis. Small shipments, those under five percent of a handler's producer receipts, receive the basic handling charge of 34–50 cents per hundredweight. No additional superpool payments are made on such shipments.

3. A further point made by opponents to the proposal was that all distributing plants were able to obtain enough milk for Class I uses. The witnesses for Marigold Foods, Dean Foods, and Hawthorn-Mellody testified that they were able to adequately supply their customers with Class I products. In addition, no call for Class I was issued. However, it was alleged that if any orders went unfilled, then they were for Class II use, which is not provided for under the Federal order provisions.

4. The opponents stated that requiring shipments for Class II entails a change in policy which up to this point only assured adequate supplies of Grade A milk for Class I purposes. The call provision only applies when Class I supplies are needed. Furthermore, the Class I differential is not high enough for this class of product to be given priority over Class III, as evidenced in September 1984, when the Class II differential was zero. Also, cheese plants are paying up to $2.25 per hundredweight over the Class III price for spot loads of milk, and do not want to release their regular supplies only to have to replace them at such a price.

5. One more point made by the opponents was that milk should move because of price incentives, not because of order requirements. It was alleged that forced shipments of milk to meet Class II needs reduces competitive forces. The shipping requirements would force an additional 18.8 million pounds of milk to be shipped (if shipments from reserve supply plants to Order 30 distributing plants approximate those made during September 1984), which must be physically received by distributing plants or the shipping handlers would lose pool plant status.

Consequently, it was suggested that the glut of milk will reduce the returns that producers receive relative to what they would receive if prices were allowed to allocate resources.

Furthermore, milk is available for Class II use if handlers are willing to pay the competitive price.

Also pointed out was that with regulatory requirements to move milk, some Class I handlers may receive supplies beyond their needs and sell back those supplies to manufacturers at a profit.

6. Lastly, some opponents to the proposal said that leasing arrangements must be included in units if the proposal is adopted. They alleged that to require each reserve supply plant to ship milk would be a return to inefficient movements of milk. Also, to allow only units consisting of fully owned and operated reserve supply plants would ignore many reserve supply plants not protected by such arrangements and would create market inequities.

Discussion of the Issues

The testimony indicates that under current conditions in this market strong competition exists for milk supplies not needed to meet the demand for Class I (fluid, or bottled) uses. These competing uses are the so-called "soft" products generally associated with bottling plants (Class II milk) and the "hard" products, primarily butter, nonfat dry milk, and cheese (Class III milk), but mostly cheese. Some handlers that produce soft products have ordered tanker loads of milk from certain cooperatives that the cooperatives have not provided. It must be noted here that a supply of milk for such Class II uses will not be required under the call provisions that went into effect on September 1.

The handlers that want the order to require shipments of milk for all the uses that they view as total fluid demand (Class I and most Class II uses) argue that they must provide a full line of such products in order to service and maintain their fluid milk customer accounts. If the order will not require such supplies to be made available, then those handler's alternatives include soliciting additional supplies of producer milk, or paying higher prices to entice the milk away from other users of Class II or III milk. Handlers are concerned that if the price that will attract milk gets too high, they will be unable to compete for sales with handlers that make these soft products under other federal orders.

On the other hand, the operators of some pool reserve supply plants (which include many cheese plants) are unwilling to ship milk to distributing plants for Class II uses. They can utilize the milk in their own operations or in another plant that they supply with milk. Apparently, commercial outlets for cheese plants are currently taking virtually all of the output from such plants. As a result, cheese plant operators are reluctant to give up their milk supplies to other plants for Class II use. In fact, some of the proponents of the proposal under consideration (who operate reserve supply plants) as well as a distributing plant operator supporting the proposal's adoption, control supplies of milk that are either being sold for fluid use in other markets, or used in manufacturing uses.

Some cheese plants have paid prices above the order's minimum Class I price for spot loads of milk. The costs of replacement supplies, keeping customers' orders filled, and maintaining customer accounts are factors involved when cheese plant operators decide whether to make milk available for Class II uses, and the price level at which those supplies will be available. In the short run, some cheese plant operators may not give up any of their milk supplies at any price.

The proponents maintain that pool reserve supply plants have an obligation to ship milk to meet fluid milk handlers' Class II needs, because these handlers' contributions to the pooled value of milk provide the monies that reserve supply plants draw from the pool to help pay their producers a competitive price.

The reserve supply plant operators, on the other hand, claim that their obligation is to supply only the Class I needs of fluid handlers. They contend that these needs are being met, and that if more milk is needed, then the call provision should be used.

There is no evidence in the record of this proceeding that indicates a shortage of milk for Class I needs. The market administrator received one request to initiate a call in September, but the request subsequently was withdrawn. To the extent that handlers' orders for tanker milk have not been filled, it is the Class II uses that have been curtailed, if they have been curtailed. The record shows that some handlers have obtained supplies from other sources when their orders for milk from cooperatives went unfilled. Moreover, a witness for one handler testified that his Class I plant had no real problems in obtaining sufficient milk for Class I uses. Another handler witness indicated that no attempt had been made to obtain milk from other sources after being informed that some of his orders for tanker milk would not be filled.

Data provided in exhibits indicate that Class I use of producer milk in September 1984 was about four percent below a year earlier. Part of this decline was due to the recent closing of two plants and the shift to plants regulated under other Federal orders of Class I sales previously distributed from those closed plants. Thus, the demand for Class I milk (based on only one months' data) is down, but increasing seasonally. September's Class I use of producer milk was about 6.8 percent above that for August on a daily average basis. In September 1983, daily average use of Class I producer milk was 9.7 percent above the average for August. In 1982, the August to September change was 10.7 percent. Total Class I producer milk during January through September 1984 was about two percent below the same period of 1983.

Class II use of producer milk, which usually declines seasonally in the fall, averaged 10 percent less on a daily basis in September then in August 1984. However, producer milk assigned to Class II uses during January through September 1984 was about two percent above the same period in 1983.

Meanwhile, total producer milk receipts also declined about 2.5 percent (daily average basis) from August to September. In 1983, producer milk receipts averaged about four percent less in September than in August. During the first nine months of 1984 total producer milk receipts were about one percent less than during the same months in 1983, on a daily average basis.

These data on Class I and II producer milk use and total producer milk receipts indicate that there has not been, so far, any really substantial change in the supply-use relationships in the market. The changes show, for example, a percentage decline in Class I use in September about twice the percentage decline in total producer milk, compared to a year ago. Thus, despite the claims of proponents, there has been no substantial change in the supply-demand picture for milk in this market. Any such changes have been minimal

and seasonal changes are about what would normally be expected.

The question in this proceeding is whether the order will require milk to be shipped to distributing plants for Class II uses? The answer, based on this proceeding, must be that such shipments will not be required. The record shows that handlers want and expect cooperatives to supply producer milk for their Class II operations. And, although not documented, testimony at the hearing indicates that some uses of Class II milk in the Chicago order area require the use of Grade A milk. Nevertheless, the order does not currently provide that supply plants or reserve supply plants must ship milk to handlers for Class II use.

There are compelling reasons why the proposed action should not be taken. One of these is that the Class II milk price was not designed to induce dairy farmers to produce milk for Class II uses.[1] Rather, although the Class II price differential reflects some additional value over Class III uses, it nevertheless is fixed at a level intended to help assure that the market is cleared of milk not needed for Class I uses. The Class II differential also was intended to be not so high as to induce handlers to subsitute other source milk and dairy products for producer milk in making Class II products. Although the Class II price for some time was fixed at 10 cents per hundredweight above the Class III price for each month, the price difference now can vary from zero to more than 10 cents per hundredweight due to actions taken later to provide a form of advanced notice of Class II prices to handlers.[2] During the period of October 1983 through September 1984, the Class II milk price averaged 12 cents per hundredweight above the Class III milk price.

In contrast, the Class I milk price differential is $1.26 per hundredweight in Zone 1 (Chicago). Again, due to advanced determination of the Class I price, the difference between the Class I price and the Class III price for the given month may not be exactly $1.26. However, for the 12 months from October 1983 through September 1984, the Class I price did average $1.26 per hundredweight above the Class III price. That level of price differential is set for the purpose of achieving a blend price that will assure the market of adequate supplies of milk. The Class I price adds generally about 30 cents per hundredweight to the basic value of the pooled milk. By contrast, the uniform price typically is about two cents per hundredweight higher due to the higher price for Class II milk.

Moreover, while the order will assure an adequate supply for Class I use, it also provides adjustments to reflect the location value of Class I milk and producer milk in each zone. However, no such adjustments are provided for Class II milk. Thus, the order's pricing mechanism does not reflect the cost to handlers for shipping milk to a plant for Class II use. For this reason also, the order should not require the operator of a reserve supply plant to ship milk to bottling plants for Class II use.

There was testimony that competitive problems would result if prices outside the order's pricing mechanism rose high enough to attract milk for Class II uses. However, this argument must carry limited weight on the basis of factual evidence contained in the record. The record is deficient in this regard in two critical areas: (1) The record does not disclose the actual prices being paid by handlers to obtain Class II milk in nearby or adjacent orders; and further, (2) There is no evidence that plant operators in nearby or adjacent markets have the capacity to provide the Class II milk needs of consumers in the Chicago Regional order marketing area. Absent such information, it is not possible to conclude that if handlers must pay a price which reflects the competitive value of Class II milk vs. Class III milk in this market, that it will in fact result in any substantial loss of Class II sales to other orders or unregulated handlers. Even if it did, it could be interpreted that if the Class II needs of the Chicago marketing area can be met with a lower cost supply of milk from elsewhere, then perhaps it should be.

Another point argued was that in other nearby markets, the supply plant pool performance standards require milk to be moved to distributing plants without any consideration of the use made of such milk. While this is a true statement, it nevertheless is not the whole story. Those provisions in the Southern Michigan, Ohio Valley, Indiana, Iowa, and Central Illinois orders require supply plant shipments that are either equal to or less than the basic Class I performance standards that distributing plants must meet to gain pool plant status in those orders. Such provisions should not be interpreted as requiring supply plants to ship milk to distributing plants for Class II use. Nevertheless, such provisions do not provide as direct a tie between Class I needs and supply plant shipping requirements as was indicated for application of the Chicago order's "call" provision.

The cooperatives that requested the hearing also are concerned about equity of performance in supplying the fluid handlers' needs. As noted earlier, AMPI, in September, shipped nearly one half of the supply of milk received at its plants to distributing plants. Others have also shipped substantial percentages of their supplies. At the same time, there were 41 pool reserve supply plants that did not ship any milk to pool distributing plants during September. There were another 28 plants that shipped less than five percent of their receipts. The proponent cooperatives contend that under current supply conditions, any reserve supply plant that has shipped less than five percent of its receipts has not done its fair share to supply the Class I and Class II needs of fluid milk handlers.

Equity of performance with respect to supplying the Class II needs of handlers is not an issue within the current purview of the order. Those cooperatives or other plant operators that agree to ship milk to a bottling plant for Class II uses do so at their own initiative. Presumably, a decision to ship such milk is based on whether or not it is economically feasible to make those shipments. However, the order does not impose any obligation to ship milk for Class II uses.

Moreover, adoption of the proposal could have a negative impact on returns to procedures. Requiring more milk to move to distributing plants via a shipping requirement could lessen the ability of cooperatives to obtain over-order prices for the milk so shipped. Also, a shipping requirement could result in a cooperative having to forego the opportunity to produce a profitable manufactured product on a portion of its milk supply, or to be able to supply milk to another market at a higher price. In either case, the order would not require a higher price for the milk shipped for Class II uses. This is in sharp contrast to the Class I price differential and location adjustment provisions, which are intended to reflect the costs associated with moving milk to the market for Class I uses. It would not be appropriate to change the order as proposed if the end result is to lower returns to producers.

The testimony of the proponents uses the terminology "fluid demand" to mean the milk ordered and used by a fluid

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[1] Official notice is taken of the Assistant Secretary's final decision, issued February 19, 1974, on proposed amendments to seven Federal milk marketing orders, including the Chicago Regional order (39 FR 8202)

[2] Official notice is taken of the final order amending 29 Federal orders, including the Chicago Regional order, issued August 25, 1981, by the Assistant Secretary, effective on September 1, 1981 (46 FR 43377).

handler in a distributing plant. Proponents also seek to define "associated fluid milk products" to mean cottage cheese, ice cream, sour cream, and other cultured products, all of which are Class II uses of milk. Thus, the desired application would be that a distributing plant's "fluid demand" would be comprised of the milk needed for Class I uses plus some of the milk needed for Class II uses. Milk used to produce bulk condensed milk, which is Class II if it is not used in a Class III product, would not be included in the suggested associated fluid milk products category.

The discussion of "fluid demand" and "associated fluid milk products" is essentially irrelevant to the proposals in this proceeding. The order does not recognize these concepts and such a radical change in approach would not seem to be appropriate for a problem for which only a temporary provision is requested. Another problem is that no evidence was presented that would allow a determination of how much additional milk would be needed by distributing plants to cover the uses specified. Also, there is no indication about the quantities of such products made in pool plants vs. nonpool plants. In short, the basic question of whether supply plants should be required to supply Class II milk to distributors is not resolved by a discussion of what constitutes fluid demand by distributing plants.

The record indicates that the problem of unfilled orders for tanker milk is greater on some days that on other days. If there is any connection between this issue and the need for milk to meet Class I uses, it is probably in this regard. Because bottling plants are unable to obtain all the milk they want on certain days of the week, there has been, and may continue to be for some unspecified period of time, a need for such plants to receive and process milk on days that they would perfer not to operate. Such situations add to costs due to overtime considerations, etc.

There is no assurance that the proposed changes would completely resolve this concern, unless reserve supply plant operators were specifically required by the order to ship milk on certain days. The likelihood that some handlers may have to receive and process milk on days other than their perferred schedule will probably continue so long as the demand for Grade A milk for Class III uses remains as strong as it apparently is at this time.

It should be noted here also that adoption of the proposed shipping requirement (which is a minimal requirement) would not necessarily guarantee that any more milk would actually be shipped to fluid milk plants. Such a requirement would likely result in plants shipping milk that did not do so in September. However, there are two reasons why it does not necessarily follow that a minimal shipping requirement will bring forth as much milk as proponents envision.

One reason is that plants that have been shipping more than 5 percent could choose to ship only the minimum amount required. For example, in September there were 41 reserve supply plants that shipped no milk. Those that did ship, however, shipped a combined total equal to 21 percent of their total receipts (about 124 million pounds of milk) to pool distributing plants. If each reserve supply plant had shipped only 5 percent of its receipts, the total shipments to distributing plants would have been only 46 million pounds. At a 5 percent rate, the plants that shipped less than 5 percent in September would have shipped about 24 million pounds rather than the 5.2 million pounds that they actually shipped. If a minimum shipping percentage were imposed, and the other plants cut back on their shipments, then the end result could be short of the shipments level the proponents are seeking. Whether such a situation would actually occur is purely a matter of speculation. However, nothing in the order or in the proposed changes would prevent any plant that shipped more than 5 percent in September from shipping a smaller percentage in the future.

Another possibility is that a reserve supply plant operator would decide to forego pool status for one or more plants. One reserve supply plant operator testified that under the current market situation, the imposition of even a minimal shipping requirement could result in a decision to choose nonpool plant status. The witness indicated that such a move would not jeopardize the plant's ability to keep a Grade A supply of milk sufficient to maintain operation. Obviously, any plant withdrawn from pool status would not have to ship any milk. The record does not reveal how many other plant operators might have the same view.

The fact that reserve supply plant operators may consider dropping out of the pool a viable option to shipping milk demonstrates the dilemma that the market faces. Obviously, if milk shipments are forced, there is more than enough milk produced in the area to supply the Class I and Class II needs of the market. Otherwise, the competitive pressures are so strong that milk will not be moved for class II uses unless the pricing structure that exists outside the order makes it economically feasible.

It is not possible, on the basis of this proceeding, to amend the order to make it economically feasible for reserve supply plants to ship milk to distributing plants for Class II uses. Therefore, the conclusion is that the proposed shipping requirements should not be adopted.

Statements presented at the hearing, and also in briefs, maintained that adoption of the proposal would represent a major policy change and urged that such a decision not be based on an emergency hearing as was held in this proceeding. As has been stated already, the proposal is denied. Therefore, no further comment about policy is needed.

Two aspects of the proposal have not yet been addressed. One would have provided the Director of the Dairy Division the authority to temporarily adjust by up to 5 percentage points the shipping requirements that were proposed. The other feature of the proposal would have allowed a handler to form a unit comprised of pool reserve supply plants owned and operated by the handler, if located in the area specified in defining reserve supply plants. Since the proposal to require minimal shipments by reserve supply plants is denied herein, there is no need to give further consideration to these related provisions of the proposal.

2. *Whether emergency marketing conditions exist in the Chicago Regional marketing area that warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.* The proponents of the proposals considered at the hearing, and others that testified in favor of the proposals, urged the Secretary to omit a recommended decision and the opportunity to file written exceptions. This action was needed, they claimed, to facilitate amending the order as quickly as possible so that more milk would be required to move to pool distributing plants.

The preceding discussion of issue No. 1 concludes that no action is recommended. Accordingly, the request for emergency action is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties

are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision. It is noted here that several briefs contained data or other information not adduced on the record at the hearing. As required by 7 CFR 900.9(b), all such information was disregarded in reaching this recommended decision.

Determination

The findings and conclusions of this decision do not require any changes in the requlatory provisions of the order.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on: December 12, 1984.

John T. Reeves,

Acting Administrator.

[FR Doc. 84–32895 Filed 12–17–84; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans; Secondary Market Substantive Rules

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 10, 1984, the Small Business Secondary Market Improvements Act of 1984 (Pub. L. 98–352) was enacted (98 Stat. 329) which amended the Small Business Act (15 U.S.C. 631 *et seq.*) (Act) to authorize the Small Business Administration (SBA) to issue certificates representing ownership of all or a fractional part of SBA guaranteed portions of loans which have been assembled into a SBA-approved pool, and certificates representing individual guaranteed portions of such loans. This proposed regulation implements section 3(b) of Pub. L. 98–352 which requires SBA to promulgate rules and regulations to implement this new authorization.

DATE: Comments must be received on or before February 1, 1985.

ADDRESS: Comments should be addressed to Associate Administrator for Finance and Investment, Small Business Administration, Room 800, 1441 L Street, NW, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Analyst, Room 800C, (202) 653–5954 or Allan S. Mandel, Special Assistant, Room 800B, (202) 653–5764, 1441 L Street, NW, Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION: The Small Business Secondary Market Improvements Act of 1984 (Pub. L. 98–352) was enacted on July 10, 1984. This legislation amended the Act to authorize SBA to issue certificates representing ownership of SBA guaranteed portions of individual loans and representing ownership of all or a fractional part of a pool approved by SBA and composed solely of the entire guaranteed portions of such loans (henceforth "guaranteed portions"). These regulations are intended to implement this legislation. Subpart G covers loan pools and Subpart H covers the sale of individual guaranteed portions.

Before discussing these proposed regulations, some background is in order. Under section 7(a) of the Act (15 U.S.C. 636(a)), SBA guarantees loans made by participating lenders. Such guaranty cannot exceed 90 percent of the loan, and in some cases, by statute, the maximum percentage that can be guaranteed is 80 percent. The lender which made the loan remains at risk for the unguaranteed portion and continues to service that loan. A secondary market has developed for the guaranteed portions of these loans. Until the enactment of Pub. L. 98–352, the only way for an investor to participate in this market was to purchase the entire guaranteed portion of an individual loan. There was no authority to fractionalize any single loan.

Congress recognized the benefits of an effective secondary market in S. Rep. No. 542, 98th Cong., 2d Sess. 6 (1984), accompanying Pub. L. 98–352:

> Among the benefits of an effective secondary market are increased liquidity and leverage of capital for lenders; increased access to capital for borrowers; wider distribution of capital among geographic areas; greater accessibility to long-term fixed-rate financing; and potentially lower costs of borrowing for small business.

The SBA Small Business Committee on Capital Access, a task force created by the Administrator of SBA, recommended in October 1982, that a new program of loan pooling and packaging be created in order to facilitate the purchase of fixed rate loans. The General Accounting Office subsequently issued a report which also recommended the use of loan pooling in order to provide fixed rate financing. (See S. Rep. No. 542, 98th Cong., 2d Sess. 9–10.) Both Congress and the Small Business Committee on Capital Access recognized the need to bring into the secondary market large numbers of institutional buyers of significant size. (See S. Rep. No. 542, *supra*, at p. 19.) The impact of this participation would, it is expected, reduce borrowing costs incurred by small business concerns.

As part of its plan to provide for a more efficient secondary market, Congress in Pub. L. 98–352 also required a central registration of all SBA guaranteed portions sold and resold in the marketplace, whether or not such portions were pooled. SBA implemented this requirement in a final regulation published in the **Federal Register** on October 11, 1984 (49 FR 39837).

In addition, SBA published on November 2, 1984, a final regulation, 49 FR 44091, intended to standardize the documentation relative to all secondary market transactions.

These proposed regulations provide that SBA shall guarantee to registered holders upon such terms and conditions as it deems appropriate, the timely payment of principal and interest on certificates which are based on and backed by a pool of SBA guaranteed portions of loans. With respect to the sale of individual guaranteed portions, SBA guarantees the holder against a failure by the borrower to repay the loan or a failure by either the lender or the SBA's Fiscal and Transfer Agent (FTA) to forward to the holder the borrower's payment on the guaranteed portion of the loan. SBA does not guarantee timely payment on individual guaranteed portions when the borrower has not made the payment to the lender. However, if the borrower defaults on any payment for sixty days or more, the FTA, on behalf of the registered holder, will make a written demand upon the lender to purchase the guaranteed portion. If the lender fails to make the repurchase, then the guaranteed portion will be repurchased by SBA.

Under the central registration requirement, an investor who purchases a guaranteed portion or an interest in a pool consisting of the guaranteed portions of loans will receive from the FTA a certificate representing such interest.

With the passage of Pub. L. 98–352, SBA's guaranty of a pool certificate was given the statutory backing of the full faith and credit of the United States. SBA's guaranty of an individual portion was not affected by enactment of this law.

Lenders will make, sell, and service loans as they do now. Certificates evidencing ownership of guaranteed portions will continue to be issued by the FTA. The relationship between the lender and FTA will continue to be

governed solely by SBA Form 1086. In the case of individual guaranteed portions the relationship between the holder and FTA will be governed by the individual portion certificate. With regard to pools, the relationship between the holder and FTA will be governed by the terms of the pool certificate.

Guaranteed interests forming a pool may be sent by the pool assembler to the FTA as an already assembled package of guaranteed interests or may be sent to the FTA separately. If sent separately, the FTA will issue certificates for individual guaranteed portions until such time as the pool is fully assembled. At that time, the individual SBA certificates will be converted into the required pool certificates in the appropriate denomination.

The pool assembler will be responsible for purchasing the guaranteed portions, applying for the pool certificate, and marketing the pool interests. The SBA and the FTA will not be a party to these contracts, and will not have any responsibility to deliver pool interests to the purchaser if the assembler fails to make good delivery of the individual guaranteed portions to the FTA. In general, the SBA and FTA will have no greater or lesser responsibility in regards to the sales of pool interests than they do at present in regard to the sales of individual guaranteed portions.

Each pool certificate will be in a minimum amount of $25,000 or in $5,000 increments above $25,000. In order to take care of the odd amount in any pool, one certificate in each pool can be in an amount which is not a multiple of $5,000. A certificate representing a guaranteed portion not in a pool has no minimum amount limitation.

An entity desiring to assemble a pool of guaranteed portions must be approved as a pool assembler by SBA. Any such entity must have a net worth of at least $100,000. It must be regulated either by SBA or by a State or Federal financial regulatory agency, or it must be a member of the National Association of Securities Dealers (NASD). It must have the financial capability of assembling acceptable and eligible guaranteed portions in sufficient quantity to support the required minimum issuances of pool certificates. And it must be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment and with any State or Federal regulatory body governing the entity's activities or with NASD, if it is a member.

While SBA has the statutory authority to regulate participants in the pooling program, the Agency does not desire to impose new regulatory burdens upon those who wish to participate. Therefore, the Agency is proposing to make use of NASD membership, State and Federal banking regulation and already existing SBA regulation (13 CFR 120.4(b)) and all that it entails as a standard for entry and continued participation in SBA secondary market loan pooling. Once it is approved by SBA, an entity shall continue to qualify as an eligible pool assembler only so long as it meets the eligibility requirements outlined above. It must also conduct its operations in accordance with accepted industry practices, ethics and standards, and is required to keep its books in accordance with generally accepted accounting principles. The SBA may suspend or terminate the continued eligibility of any pool assembler which fails to meet the stated characteristics and requirements. Any pool assembler which is terminated by SBA has the right to appeal such determination under Part 134, Title 13, Code of Federal Regulations (13 CFR Part 134).

After a pool assembler is approved by SBA, it must file an application with SBA to assemble each pool, together with the appropriate application fee charged by SBA's Fiscal and Transfer Agent.

The Agency has decided that each pool must include at least 4 guaranteed portions of loans with an aggregate principal balance of at least $1,000,000. No single guaranteed portion can constitute more than 25 percent of any pool. The Agency is not imposing any geographic requirement on the location of the loans which compose a pool, nor is it requiring that only loans to similar businesses must comprise a pool.

In selecting these requirements, SBA has endeavored to balance two conflicing consideration. The first is the need to moderate the effect of prepayment of loans, which is permitted under section 5(f)(4) of the Act (15 U.S.C. 634(f)(4)). The larger the pool the smaller the effect of prepayment of one loan. For example, in a pool consisting of two $500,000 loans, half of the investor's capital would be returned prematurely if one loan were prepaid. In contrast, in a pool of twenty $100,000 loans, only one-twentieth of the capital would be prematurely returned by a prepayment. The second need is to avoid mandating an undesirably high cost for assembling a pool (measuring cost both in dollars and time). To assemble a pool of two loans with a value of $500,000 each is less costly both in dollars and in time than it is to assemble a pool of fifty such loans valued at $25 million. One need favors smaller pools; the other, larger ones. We have endeavored to balance these conflicting interests in setting the size requirements.

Because of their importance, SBA requests public comment on the following pool parameters: minimum number of guaranteed portions, minimum dollar size, maximum percentage (§ 122.706(a)); minimum amount of a certificate (§ 122.706(b)); the maximum allowable difference in interest rates (§ 122.706(e)), and the maximum allowable difference in terms to maturity (§ 122.706(f)).

In order to comply with the statutorily-mandated central registration requirement, each certificate issued by the FTA, whether evidencing ownership of a pool interest or an individual guaranteed portion, shall be in registered form only. Each certificate must specify the principal amount, the interest rate, and the maturity date.

Each certificate is freely transferable on the books of the FTA except that a lender which made a loan in a pool or sold an individual guaranteed portion cannot be a holder of a certificate representing an interest in that pool or guaranteed portion. This requirement is intended to: (1) Avoid potential conflicts of interest and (2) carry out the Congressional intent that pooling attract additional investment in small businesses from institutions and individuals and not serve as a device for lenders to secure timely payment guarantees on loans that would have been made even if the pooling program did not exist.

There can only be one registered holder with respect to each certificate. This does not preclude ownership as joint tenants or as tenants in common, but it does preclude ownership in a disjunctive capacity (*i.e.*, Mary Smith or John Smith).

As required by the statute, SBA's guaranty for payment of interest on prepaid or defaulted loans, the guaranteed portions of which have been placed in a pool, extends only through the date of prepayment by the borrower or SBA's payment in honoring its guaranty on a defaulted loan.

If a pool assembler acquires central registration documents as it puts together a pool, it must deliver to the FTA all such required documents before the FTA will issue the certificates representing fractional interests in the pool to the registered holders. This is an appropriate function of pool. administration.

The proposed regulations also implement the statutory mandate that no state, local, or Federal law shall

preclude or limit SBA's exercise of its ownership right in the guaranteed portions in a pool or individual guaranteed interest against which the certificates are issued. When the Agency pays a claim with respect to a certificate, it shall be subrogated fully to the rights satisfied by such payment.

Eligible guaranteed interests in loans for assembly in a pool consist of any SBA guaranteed portion of a loan made pursuant to section 7(a) of the Act, except section 7(a)(13), which relates to development companies. Each such loan must be in a current status on the date of pool formation.

The Congress and the Agency are interested in disclosing relevant information to purchasers of pool certificates as well as to purchasers of guaranteed portions which are not pooled. Accordingly, prior to any sale, the seller of a pool certificate and any subsequent seller must provide the purchaser of the certificate with information on the terms, conditions and yield of that certificate.

The seller of an individual guaranteed portion must provide the same information to purchasers, with the exceptions that the requirement does not apply to the entity which made the loan or to any individual or entity which sells three or fewer guaranteed portions per year. In light of the clear Congressional intent that such disclosure occur prior to each sale, SBA seeks public comment on the appropriate procedure for making such oral and/or written disclosure.

Regulatory Flexibility Analysis

For the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* the Small Business Administration has determined that these rules may have a significant economic impact on a substantial number of small entities.

A. *Reasons for action.* This action is mandated by Pub. L. 98-352, "Small Business Secondary Market Improvements Act of 1984."

B. *Statement of Objectives.* The objective of these rules is to promote the orderly operation of the SBA secondary market and to create the SBA Loan Pooling Program.

C. *Description of affected entities.* Affected entities will be those businesses currently buying or selling guaranteed portions in the secondary market and those entities that decided to become pool assemblers. It is estimated that the number of businesses affected is approximately 3000.

D. *Description of projected recordkeeping.* Recordkeeping requirements are unchanged for individual sales in the secondary market. Recordkeeping for lenders selling loans into a pool will be the same as for those loans sold into the individual market. The fiscal and transfer agent will be responsible for maintaining records for each pool.

E. *Duplicative rules.* There are no Federal rules which duplicate or overlap the proposed rule.

F. *Significant alternatives.* There are no significant alternatives to this rule.

Analysis Under Executive Order 12291

The following analysis is provided under the guidelines of Executive Order 12291. SBA has determined that this rule could be considered a major rule.

A. *Potential Benefits.* The Secondary Market increases the supply of capital available to small business and mitigates the effect of cyclical fluctuations in bank liquidity on the supply of small business loans. The Loan Pooling Program is expected to increase the amount of fixed rate money available to small business.

B. *Potential Costs.* The potential costs are the administrative costs involved in program operation. These costs include the salaries and expenses of SBA and program participants.

C. *Net Benefit.* The net benefit will be better financing terms available to small business.

In addition, this rule, if promulgated in final form, would contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. Chap. 35. All such requirements will receive appropriate OMB approval numbers prior to publication of the rule in final form.

List of Subjects in 13 CFR Part 122

Loan programs, Business, Small business.

Part 122 is proposed to be revised to read as follows:

PART 122—BUSINESS LOANS

Subpart A-E [Reserved]

Subpart G—Pooling of SBA Guaranteed Portions

Sec.

Subpart H—Individual SBA Guaranteed Portions Sold in the Secondary Market

Sec.

Authority: Sec. 5(b)(6) Small Business Act, 15 U.S.C. 634(b)(6) and section 5(g) Small Business Act, 15 U.S.C. 634(g).

Subparts A-E—[Reserved]

Subpart G—Pooling of SBA Guaranteed Portions

§ 122.700 Statutory Provisions.

The statutory authority for this Subpart G is section 5(g) of the Small Business Act (15 U.S.C. 634(g)).

§ 122.701 General.

The SBA shall guarantee to registered holders, upon such terms and conditions as it may deem appropriate, the timely payment of principal of and interest on certificates which are based on and backed by a pool composed solely of the entire SBA guaranteed portions of loans which are made by private lenders. SBA's guaranty of the certificates is backed by the full faith and credit of the United States. Transactions involving the sale of interests in pools are governed by the specified terms and provisions of these regulations, SBA's Secondary Market Program Guide and contracts entered into by the parties. These transactions and those described in Subpart H of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at subpart F of this part and § 120.5(a)(3). Further information may be obtained from the Small Business Administration, Room 600, 1441 L Street, NW., Washington, D.C. 20416.

§ 122.702 Definitions.

(a) *Agency* or *SBA* means the Small Business Administration.

(b) *Certificate* means the document representing a beneficial interest in a pool consisting solely of the SBA guaranteed portions of loans.

(c) *Current status* means a loan repayment category in which no payments on a loan are more than 29 days overdue, as evidenced on the

records of the central registry maintained by the FTA.

(d) *FTA* means SBA's fiscal and transfer agent.

(e) *Payment date* means the date that checks are deposited in the U.S. mail by the FTA. Such date shall be the 25th of the month or the next business day thereafter if the 25th is not a business day, or such other date as may be chosen from time to time by SBA and published by notice in the **Federal Register.**

(f) *Pool Assembler* means a national or state bank or savings and loan association, life insurance company, broker-dealer, small business lending company, or similar institution, which meets the requirements set forth in § 122.703 of this Subpart. This entity, whether or not it is the SBA participating lender which made the loan, arranges and organizes the pool by acquiring the guaranteed portions of loans that are in accordance with subpart H and directs the FTA to issue the certificates.

(g) *Registered Holder* or *Holder* means the certificate owner whose identity is maintained on the books of the FTA.

§ 122.703 Eligible Pool Assemblers.

(a) *File Application.* In order to qualify as a pool assembler, an entity must file an application with SBA, along with an application fee, and certify that it:

(1) Has a net worth in assets acceptable to SBA of at least $100,000;

(2) Is either: (i) Regulated by a state or federal financial regulatory agency, (ii) regulated by SBA, or (iii) is a member of the National Association of Securities Dealers (NASD);

(3) Has the financial capability to assemble acceptable and eligible loans in sufficient quantity to support the required minimum issuances of pool certificates; and

(4) Is in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment and with any state or Federal regulatory body governing the entity's activities or with NASD, if it is a member.

(b) *Approval.* Only after its application has been approved by SBA may an entity submit pool applications to the FTA.

(c) *Conduct of Business.* An entity shall continue to qualify as an eligible pool assembler only so long as it: (1) Meets the eligibility standards of paragraph (a) of this section; (2) conducts its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations; and (3) maintains its books and records in accordance with generally accepted accounting principles.

§ 122.704 Termination of eligibility.

(a) *Notice of Termination.* In the event that an entity which has qualified as an eligible pool assembler should subsequently fail to comply with any of the requirements prescribed in §§ 122.703 (a) and (c) of this subpart, the Agency may suspend such entity's eligibility to participate as a pool assembler and decline to issue additional certificates to it until such time as the Associate Administrator for Finance and Investment is satisfied that the pool assembler has resumed business in compliance with such requirements; or may in its discretion terminate the entity's participation as a pool assembler. The Agency shall notify the entity in writing of such suspension or termination, using certified or registered mail, return receipt requested.

(b) *Appeal by Pool Assembler.* Any pool assembler whose eligibility is terminated by SBA has the right to appeal such decision to the SBA Office of Hearings and Appeals pursuant to the procedures established by Part 134 of this Title.

§ 122.705 Certificates.

(a) *General Certificate Characteristics.* All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate, the maturity date, and the date payments are to be made to the holders. The certificates may include call provisions and other characteristics depending on market conditions.

(b) *Pool Certificates.* Each certificate shall provide for payment on payment date of both principal installments and interest installments calculated on a fixed or variable rate of interest on the unpaid principal balance of the portion of the pool the certificates represents. These provisions shall be effective whether or not the payments on the loans which underlie the pool are collected. All prepayment on such loans will be passed through to the holder(s) as appropriate, on payment date. In the case of non-payment by the borrower on a loan in a pool backing the certificates, SBA through its FTA shall make advances to maintain the schedule of interest and principal payments to the registered holders until SBA purchases the guaranteed portion.

§ 122.706 Loan pools.

(a) *Pool Characteristics.* Every pool, at its outset, must include a minimum of 4 guaranteed portions of loans with an aggregate principal balance outstanding of such guaranteed portions at the time of certificate issuance of at least $1,000,000. Any individual guaranteed portion may not constitute more than 25% of the pool. The minimum number of guaranteed portions of loans in a pool, the aggregate principal balance and the percentage of pool make up all may be altered from time to time by SBA by publication of a notice in the **Federal Register.**

(b) *Amount of Certificate.* The face amount of any certificate representing an interest in a pool cannot be less than $25,000. With the exception of one certificate per pool, all certificates must be multiples of $5,000. The minimum amount requirement for certificates may be altered from time to time by SBA by publication of a notice in the **Federal Register.**

(c) *Transferability.* Each certificate shall be transferable, but only on the books and records of SBA or its FTA provided that a lender may not be a holder of a certificate in any pool in which any of the guaranteed portions was made by that lender. The share of the proceeds collected on account of the pool may not be payable to more than one registered holder with respect to any certificate.

(d) *Period of Interest Guaranteed.* Interest on prepaid or defaulted loans shall accrue and be guaranteed by SBA only through the date of prepayment or payment on the guaranty.

(e) *Maximum Allowable Difference in Interest Rates.* From time to time SBA may by notice publish in the **Federal Register** the maximum allowable difference between the highest note rate and the lowest note rate for all loans in a pool.

(f) *Maximum Allowable Difference in Terms to Maturity.* From time to time SBA may publish by notice in the **Federal Register** the maximum allowable difference between the remaining terms to maturity of all loans constituting the pool.

(g) *Redemption.* During the term of a certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

§ 122.707 Delivery requirements.

Before FTA issues any certificate, the pool assembler shall deliver to the FTA the following documents:

(a) A properly completed pool application form;

(b) Either: (i) Certificates evidencing the guaranteed portions comprising the pool or (ii) appropriate documentation evidencing ownership of the guaranteed interests, copies of the notes representing the loans whose guaranteed portions are to be part of the pool and certification that each of the loans has been closed in conformity with the SBA authorization; and,

(c) Such other documentation as may be required by SBA.

§ 122.708 Pool administration

(a) *FTA Responsibility.* Administration of each pool shall be the responsibility of the FTA which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each pool shall be self-liquidating as the result of borrower payments, redemption by SBA, prepayment by borrower, and/or payment by SBA or the lender because of default by borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this subpart, it shall be subrogated fully to the rights satisfied by such payment.

(d) *SBA Ownership Rights.* No State, local, or Federal law, shall preclude or limit the exercise by the SBA of its ownership right in the portions of loans constituting the pool against which the certificates are issued.

§ 122.709 Eligible loans for pools.

Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(a) Be in a current status as of the date of pool formation;

(b) Be guaranteed under the Small Business Act, as amended (except that loans guaranteed under section 7(a)(13) of the Small Business Act (relating to development companies) are not eligible for this program);

(c) Have such characteristics as SBA shall from time to time determine to be necessary for the successful operation of the pooling program.

With respect to any particular pool, the loans must meet only such standards as may be in effect at the time of issuance.

§ 122.710 Guaranty.

With respect to each pool certificate, SBA guarantees the timely payment on payment date, whether or not collected, of interest and principal installments, and any prepayments or other early recoveries of principal on the loans, as undertaken in the Agency's guaranty appearing on the face of the certificate.

§ 122.711 Fees.

The FTA is authorized to collect application fees, transfer fees and such other fees as the Agency may, from time to time, prescribe by notice in the **Federal Register.**

§ 122.712 Disclosure requirements.

Prior to any sale, the pool assembler or any subsequent seller of a certificate must disclose, to the purchaser, information on the maturity and yield of such instrument and such other terms and conditions as may be prescribed in the Secondary Market Program Guide.

Subpart H—Individual SBA Guaranteed Portions Sold in the Secondary Market

§ 122.800 Statutory provisions.

The statutory authority for this Subpart H is section 5(f) of the Small Business Act (15 U.S.C. 634(f)).

§ 122.801 General

SBA guarantees to purchase from the registered holder the guaranteed portion for an amount equal to the guaranteed percentage of unpaid principal and accrued interest due on the note as of the date of purchase by SBA, less deductions for the lender's and the FTA's servicing fees. SBA's guarantee to the registered holder shall become effective in the event: (a) The borrower defaults in making payments of principal or interest due on the note or (b) the lender fails to remit to the FTA payments received from the borrower. SBA also guarantees to forward to the registered holder any such payments that the FTA fails to remit to the registered holder. SBA's guarantee to such holder is unconditional and is backed by the full faith and credit of the United States. (SBA does not guarantee timely payment on individual guaranteed portions. *cf.* § 122.701) Transactions involving the sale of individual guaranteed portions are governed by the specified terms and provisions of the contracts entered into by the parties, SBA's Secondary Market Program Guide, and these regulations. These transactions and those described in Subpart G of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at subpart F of this part and § 120.5(a)(3). Further information may be obtained from the Small Business Administration, Room 800, 1441 L Street, NW., Washington, DC 20416.

§ 122.802 Definitions.

The definitions of the terms "Agency or SBA," "Certificate," "FTA," "Payment Date" and "Registered Holder or Holder" have the same meaning in this subpart as they do in subpart G.

(a) *Certificate* means the document representing a beneficial interest in the guaranteed portion of a loan made by a lender and guaranteed by SBA.

(b) *Current status* means a loan repayment category in which no payments on a loan are more than 29 days overdue, as evidenced on the records of the entity servicing such loan.

§ 122.803 Certificates.

(a) *Certificate Characteristics.* All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate and the maturity date.

(b) *Certificates Representing Individual Guaranteed Loans.* Each certificate shall represent a holder's undivided interest in an entire SBA guaranteed portion of a loan providing for a pass through to the holder of payments received by the FTA from the lender or any entity servicing the loans.

§ 122.804 Individual sale.

(a) *Amount of Certificate.* Each certificate representing the guaranteed portion of a single loan shall be for the entire amount of the guaranteed portion.

(b) *Transferability.* Each such certificate shall be transferable only on the books and records of SBA or its FTA, except that the lender (or its associate as defined in § 120.1) which made the loan shall not purchase the guaranteed portion in the secondary market.

(c) *Prepayment or Default.* The prepayment of the underlying loan or a default on such loan will cause the certificate to be redeemed in accordance with procedures prescribed in the SBA Form 1086.

§ 122.805 Delivery requirements.

(a) Before FTA issues the initial certificate for a particular guarantee portion, the original seller shall provide the following documents:

(1) Appropriate documentation evidencing ownership of the guaranteed interest;

(2) A copy of the note representing the guaranteed loan;

(3) A certification by the lender that the loan has been closed in conformity with the SBA authorization; and

(4) such other documentation as may be required by SBA.

(b) SBA reserves the right to review or require its Agent to review such documentation prior to certificate issuance. However, SBA shall not review any materials previously approved if the lender has certified that the loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the SBA regulations.

§ 122.806 Secondary market administration.

(a) *FTA Responsibility.* Administration of each individual guaranteed portion shall be the responsibility of the FTA which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each individual guaranteed portion shall be self-liquidating as the result of borrower payments, redemption by SBA, prepayment by borrower and/or payment by SBA because of the default by borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this subpart, it shall be subrogated fully to the rights satisfied by such payment.

(d) *SBA Ownership Rights.* No State, local, or Federal law, shall preclude or limit the exercise by the SBA of its ownership right in the portions of loans constituting the pool against which the certificates are issued.

§ 122.807 Eligible loans for the secondary market.

Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(a) Be in a current status at the time it is initially sold into the secondary market;

(b) Be guaranteed under the Small Business Act, as amended;

(c) Have such characteristics as SBA shall, from time to time, determine to be necessary for the successful operation of the secondary market.

§ 122.808 Fees.

The FTA is authorized to collect application fees, transfer fees and such other fees as the Agency may, from time to time, prescribe by notice in the Federal Register.

§ 122.809 Disclosure requirements.

Except for: (a) Any individual or entity which sells three or fewer guaranteed portions in any calender year, or (b) any entity which made the loan, every registered holder of the guaranteed portion must, prior to any sale, disclose to the purchaser in writing the terms and conditions and yield of such guaranteed portion.

Dated: November 15, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-32928 Filed 12-17-84; 8:45 am]

BILLING CODE 8025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 221

[Economic Regs. Docket 41690; EDR-477]

Tariffs; Baggage Liability in International Air Transportation

Dated: November 28, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to revise its rule prescribing a ticket notice concerning baggage liability in international air transportation. The amendment would delete a statement as to non-assumption of liability for fragile and perishable items since the statement is inconsistent with the provisions of the Warsaw Convention. This action is in response to a petition by Howard S. Boros.

DATES: Comments by: February 19, 1985
Reply comments by: March 6, 1985

Comments and relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be on Service List by January 9, 1985.

The Office of Documentary Services prepares the Service List and sends it to each person listed on it, who then serves comments on other on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41690, Office of Documentary Services (C-55), Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Comments may be examined in the Office of Documentary Services, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of Assistant General Counsel for Regulation and Enforcement, (202) 426-4723, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: Section 221.176(b) of the Board's rules requires that carriers include on or with the passenger ticket a notice of applicable liability limitations for baggage in international travel. Included in the prescribed notice is the statement:

> Carriers assume no liability for fragile or perishable articles.

Howard S. Boros filed a Petition for Rulemaking urging deletion of the statement as inconsistent with the provisions of the Warsaw Convention (49 Stat. 3000) governing carrier liability in international air carriage. Mr. Boros stated that Article 18 of the Warsaw Convention plainly establishes liability for damage, destruction or loss of any goods transported in international air transportation, and that a carrier is not entitled to make an exception for fragile or perishable goods. Accordingly, he submitted that the notice stating that carriers may disclaim liability for damage or loss affecting fragile or perishable items is both false and misleading. Such a statement, he argued, is likely to discourage shippers from making and pursuing legitimate claims.

No answers to the petition were filed.

We propose to delete the quoted statement from the baggage liability notice prescribed in § 221.176(b). We have previously held that the Warsaw Convention does not permit carriers to include an exoneration for liability as to baggage that has in fact been accepted for international transportation, although carriers would have available the defense of Article 20 (proof of freedom from fault) and, to the extent applicable, Article 21 (contributory negligence). *Exculpation of Liability for Passenger Baggage Proposed by Air Canada,* Order 79-5-144; *Trans International Airlines, Inc., Enforcement Proceeding,* Order 77-8-116. See also, *Danziger* v. *Compagnie Nationale Air France,* 14 Avi. 18,280 (DCNY, December 27, 1977).

The inclusion of the liability disclaimer in the prescribed notice was intended for applicability to domestic baggage where the Board permitted carrier tariffs that disclaimed liability for certain fragile items concealed in passenger baggage, when there was no negligence on the part of the carrier. See, *Domestic Baggage Liability Rules Investigations,* Order 77-9-80, at p. 4; Order 77-7-43, at pp. 2-3, 5. Since the Board no longer regulates tariffs in domestic air transportation, the notice was amended by ER-1310 (48 FR 227, January 14, 1983; 48 FR 3585, January 26, 1983) to be applicable only to international travel. Most international travel is governed by Warsaw Convention. Since the Warsaw

Convention does not permit carriers to exonerate themselves from such liability, inclusion of the quoted sentence in the notice is misleading. The statement should, therefore, be deleted.

We propose, nevertheless, to permit carriers to utilize existing ticket stock with the unamended notice. The amended notice would apply to any ticket stock printed after the effective date of this rule. Until the notice is corrected, the liability of the carriers will, of course, be governed by the preclusion of exoneration contained in the Warsaw Convention, despite the misleading statement in the baggage liability notice. We would expect all carriers to take steps to insure that no claims are denied on the basis of that notice.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96–354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses or other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The Board tentatively finds that these rules will not have a significant economic impact on a substantial number of small entities. The rule only applies to air carriers and foreign air carriers in foreign air transportation, almost all of which are not small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 221

Air rates and fares, Credit, Explosives, Freight, Handicapped.

PART 221—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 221, *Tariffs*, as follows:

1. the authority for Part 221 is:

Authority: Secs. 102, 204, 401, 402, 404, 411, 416, 1001, 1002, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788, 49 U.S.C. 1302, 1324, 1371, 1372, 1374, 1381, 1386, 1481, 1482.

2. Paragraph (b) of § 221.176 would be revised by removing the reference to fragile items in the prescribed "Notice of Baggage Liability Limitations" so that it would read as follows:

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

* * * * *

(b) * * *

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Further information may be obtained from the carrier.

* * * * *

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-31917 Filed 12-17-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[LR-271-83]

Withholding on Items of Income Covered by an Income Tax Convention; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to withholding on certain items of income subject to a reduced rate of, or exemption from, U.S. tax under an income tax convention to which the United States is a party.

DATES: The public hearing will be held on Friday, February 22, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, February 8, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-271–83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1441, 1461, and 6402 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Monday, September 10, 1984 (49 FR 35511).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, February 8, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearings.

By direction of the Commissioner of Internal Revenue:

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-32912 Filed 12-17-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Ch. II

43 CFR Ch. II

Intent To Propose Rulemaking To Require the Designation of a Single Payor for Each Federal and Indian Lease

Correction

In FR Doc. 84–31675, beginning on page 47624, in the issue of Thursday, December 6, 1984, make the following correction: On page 47625, first column, last paragraph, second line "comprising" should read "compiling".

BILLING CODE 1505-01-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Availability of Draft Technical Report—Special Study Report, Texas Topsoil Substitution Practice

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice of availability.

SUMMARY: The Office of Surface Mining (OSM) is making available for public inspection and copying a draft technical report which pertains to the adequacy of information available to the Texas Railroad Commission (TRC), Surface Mining and Reclamation Division (SMRD) when it evaluates topsoil substitution practices permitted by Texas under the approved State program. A thorough evaluation of the information prepared for mining and reclamation plans under the Texas State program is continuing, and will be presented in the form of a final report in March 1985.

ADDRESSES: Technical reports are available for inspection and copies are available at ten cents a page at the following OSM offices:

Office of Surface Mining, U.S. Department of the Interior, Interior South Building, Technical Information Branch, Room 139, 1951 Constitution Avenue, NW., Washington, D.C. 20240 (telephone: 202–343–5587)

Office of Surface Mining, U.S. Department of the Interior, Administrative Record, 1100 L Street NW., Room 5124, Washington, D.C. 20240 (telephone: 202–343–4855)

Office of Surface Mining, Eastern Technical Service Center, Deputy Administrator's Office, Ten Parkway Center, Pittsburgh, Pennsylvania 15220 (telephone: 414–644–4462)

Office of Surface Mining, Tulsa Field Office, 333 West Fourth St., Room 3014 Tulsa, Oklahoma 74103 (telephone: 918–581–7927)

Office of Surface Mining, Western Technical Service Center, Administrator's Office, Brooks Towers, 1020 15th Street, Denver, CO 80202 (telephone: 303–844–5421).

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, D.C. 20240 (telephone: 202–343–3197) or Kenneth Wangerud, Office of Surface Mining, 1020 15th Street, Denver, Colorado 80202 (telephone: 303–844–2451).

SUPPLEMENTARY INFORMATION: A special study report is being prepared to evaluate the adequacy of information available to the Texas Railroad Commission (TRC) in approving mining and reclamation plans under the approved Texas State program. Of primary concern is the information available to the TRC to make a finding that the applicant has demonstrated that surface coal mining and reclamation operations can be feasibly accomplished utilizing the topsoil substitution practice.

OSM is making available for inspection and copying three versions of a draft technical report dated March 1984, May 1984 and August 31, 1984, entitled *Texas Topsoil Substitution Practice or Texas Soil and Overburden Mixing Special Study Report.* This action is being taken because of a request from the public, and also because OSM believes that it is appropriate at this time to provide the material available to the public at large.

Dated: December 13, 1984.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84–32891 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–6–FRL–2738–5]

Oklahoma Regulation 3.1 "Pertaining to the Control of Smoke, Visible Emissions and Particulates"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: This notice proposes approval of Oklahoma's Regulation 3.1 "Pertaining to the Control of Smoke, Visible Emissions and Particulates" which was submitted by the Governor on February 6, 1984. On May 16, 1984, the Oklahoma State Department of Health (OSDH) submitted a letter of clarification on Regulation 3.1. Section 3.1(b) is more stringent than the previously approved Regulation 7, which was the number under the old system. Section 3.1(c) allows a source to petition for an increase of the 20 percent opacity limit, for particulates only.

DATE: Comments must be received at the Region 6 office by January 17, 1985.

ADDRESSES: Copies of the State's submittal is available for review during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air & Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270

Oklahoma State Department of Health Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Griffith, State Implementation Plan Section, Air Branch, Air and Waste Management Division, EPA Region 6, 1201 Elm St., Dallas, Texas 75270, (214) 767–9853.

SUPPLEMENTARY INFORMATION: On February 6, 1984, the Governor of Oklahoma, after adequate notice and public hearing, submitted a State Implementation Plan (SIP) revision to Regulation 3.1 "Pertaining to the Control of Smoke, Visible Emissions and Particulates". On May 16, 1984, the OSDH submitted a letter of clarification on Regulation 3.1. The revision was adopted by the Oklahoma State Board of Health on January 17, 1984.

EPA reviewed the revision and developed an evaluation report.[1] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other address listed above.

Section 3.1(b)(1) controls fumes, aerosol, mist, gas, smoke, vapor, particulate matter, or any combination thereof. The previously approved Regulation 7 controlled only smoke. EPA interprets Section 3.1(b)(1) as being more stringent.

Section 3.1(c) allows the 20 percent opacity limit to be increased, for particulates only, if specific requirements are met. The State was asked to clarify section 3.1(c)(4) which requires stack testing to determine mass emissions at maximum allowed capacity (i.e. permit limit, regulation limit, process limit). The May 14, 1984, letter of clarification says that if the stack testing shows that the source is not in compliance with the mass emissions limit then "the state will issue a notice of violation and commence the state's procedure to secure compliance."

The State previously addressed how each Oklahoma emission limitation regulation will not affect the EPA requirement which prohibits violation of the National Ambient Air Quality Standards (NAAQS). Under the State's Permit Regulation 1.4, a source must demonstrate that it will not violate the NAAQS (1.4.1 to 1.4.3) and must either meet the prevention of significant deterioration (PSD) requirements (1.4.4)

[1] EPA review of Oklahoma Regulation 3.1 "Pertaining to the Control of Smoke, Visible Emissions and Particulates."

or the requirements for major sources in nonattainment areas (1.4.5).

EPA will accept comments over the next 30 days on its proposal to approve Oklahoma's Regulation 3.1 "Pertaining to the Control of Smoke, Visible Emissions and Particulates."

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 a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen doixide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: November 5, 1984.

Dick Whittington,

Regional Administrator.

[FR Doc. 84-32848 Filed 12-17-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-2738-6; GA-008]

Approval and Promulgation of Implementation Plans; Georgia; Extended Compliance Schedule for General Motors' Lakewood Assembly Plant

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to disapprove a State Implementation Plan (SIP) revision submitted by Georgia, pursuant to the requirements of Part D of Title I of the Clean Air Act of 1977, for the control of volatile organic compound (VOC) emissions. The revision would provide an extended compliance schedule for General Motors' Lakewood Georgia Assembly Plant. Under the proposed revision, General Motors would comply with Georgia rule 391-3-1-.02(t), VOC Emissions from Automobile and Light Duty Truck Manufacturing, by 1987. EPA is proposing disapproval of the SIP revision because it does not satisfy EPA's requirements for such a revision.

DATE: To be considered, comments must reach us on or before January 17, 1985.

ADDRESSES: Address written comments to Douglas Cook of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street SW., Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Douglas Cook, EPA, Region IV, Air Management Branch, at the above Atlanta address, phone 404-881-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Following public hearing and adoption, the State of Georgia submitted nine proposed extended compliance schedules for volatile organic compound (VOC) sources to EPA on July 30, 1982. Seven of the nine proposed schedule extensions dealt with VOC sources in the 11-county Atlanta ozone nonattainment area. One of these was for General Motors' Lakewood Assembly Plant.

Specifically, General Motors (GM) requested a delay in the final compliance date for the electrophoretic (ELPO) prime operation for passenger cars at their Lakewood Plant from December 31, 1982, to December 31, 1987. Such a delay would be accompanied by a delay in the December 31, 1982, interim date for conversion to a higher solids primer-surfacer coating since that conversion would accompany the installation of the ELPO prime system. Furthermore, the compliance dates for topcoating and repair operations would also be delayed until priming operations were converted. In other words, all of the interim dates in GM's previously agreed to schedule (part of GM's national agreement with EPA) would be pushed back to a final compliance date of December 31, 1987. The proposed schedule required ELPO prime operations to comply with 1.2 pounds VOC per gallon of coating minus water by December 31, 1987; primer-surfacer and topcoat operations to comply with 2.8 pounds VOC per gallon of coating minus water by December 31, 1987; and repair operations to comply with 4.8 pounds VOC per gallon of coating minus water by December 31, 1987.

Additionally, GM proposed to delay compliance of certain coating operations governed by rule 391-3-1-.02(ii), Surface Coating of Miscellaneous Metal Parts and Products, of the Georgia Rules for Air Quality Control. The largest VOC emitter of such operations is the flow coat prime operation which is used for the priming of both hoods and fenders and many miscellaneous small parts. Due to the nature of the flow coat process, a large quantity of organic solvent has to be added to the flow coat bath and consequently, the "pounds of VOC per gallon coating applied excluding water" is higher than State regulations allow.

GM indicated it would probably have to convert to a different system of priming in order to comply. Such a conversion (e.g., to ELPO prime) would involve a multimillion dollar expenditure. When the car body ELPO prime system goes into operation by December 31, 1987, the hoods and fenders would be primed along with the car bodies. Thus, the State felt it was appropriate to parallel miscellaneous metal parts compliance with that of the car body ELPO prime system. Therefore, December 31, 1987, was included in the new GM permits for the final compliance date for the flow coat prime operation.

General Motors further requested an indefinite delay in compliance for two other miscellaneous metal parts coating operations (i.e., the zinc-rich primer application and the anti-corrosion coating application). Total emissions from these two sources equaled 24 tons per year.

The State concurred in the request, but conditioned the company's permit so that GM was required to replace those coatings with lower VOC coatings upon development. All other affected miscellaneous metal parts coating operations, except those mentioned above, came into compliance on or before September 1, 1983.

As EPA reviewed the State's proposed extended compliance schedule for this VOC source located in the Atlanta ozone nonattainment area, the 1982 summer ozone monitoring data began to raise concerns because of the magnitude and number of exceedances being recorded. It became apparent that the Atlanta nonattainment area was not going to demonstrate attainment by December 31, 1982. On February 24, 1984, EPA called for a revision to Atlanta's ozone state implementation plan (SIP) under authority of section 110(a)(2)(H) of the Clean Air Act as amended in 1977. EPA suspended further processing of those SIP revisions until EPA could resolve the policy issues related to giving compliance date extensions in areas failing to attain the ozone standard.

The SIP call notwithstanding, EPA policy (46 FR 51387, October 20, 1981) would allow approval of a deferred compliance schedule for ELPO in a few specific circumstances (e.g., scheduled

renovation, shutdowns or application of an alternative compliance technique) where significant expenses could be eliminated not just postponed. However, there is no evidence in the record to indicate substantial cost savings will occur by approaching this cance date extenso.

Although some questions were still not answered, on August 11, 1983, EPA notified the Georgia Department of Natural Resources that SIP relaxations were inappropriate in areas that were having difficulty demonstrating attainment of the National Ambient Air Quality Standard (NAAQS).

Since Atlanta has an inadequate SIP, it is not appropriate to continue to provide relaxations to it. The technical support document explaining these policies may be obtained from Region IV.

On February 23, 1984, Georgia requested EPA to reconsider its decision. Following additional review of the State's proposed schedule, EPA decided it could not accept a SIP revision to extend GM's compliance schedule.

Action

EPA proposes to disapprove the extended compliance schedule for General Motors' Lakewood assembly plant.

Under 5 U.S.C. 605(b), I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities since it affects only one plant.

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 EPA and any response are available for public inspection at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Parts 52

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

(Sec. 110 and 172 of Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: September 24, 1984.

Charles R. Jeter,

Regional Administrator.

[FR. Doc. 84-32849 Filed 12-17-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52a

NIH Center Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice sets forth proposed regulations covering grants by the National Institutes of Health for the support of research and demonstration centers. These regulations would replace existing regulations covering just centers supported by the National Heart, Lung, and Blood Institute.

DATES: Comments must be received by February 19, 1985.

ADDRESS: Send comments to: Dr. William Raub, Deputy Director for, Extramural Research and Training, OD, National Institutes of Health, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: Dr. William Raub, Deputy Director for, Extramural Research and Training, OD, National Institutes of Health, Bethesda, MD 20205, 301–496–1096.

SUPPLEMENTARY INFORMATION: In 1976 the National Heart, Lung, and Blood Institute (NHLBI) published regulations codified at 42 CFR Part 52a, covering grants authorized under section 415(b) of the Public Health Service Act to support the operation of research and demonstration centers. Since that time the Public Health Service Act has been amended on two occasions (Pub. L. 93–354 and 93–640) to give the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases similar authorities relating to diabetes (section 435) and arthritis (section 439).

Although they vary in some particulars, the basic policies governing the award of grants under each of these authorities are similar in most material respects. Therefore, NIH proposes to replace the NHLBI regulations with regulations which cover the centers programs administered by the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (NIADDK) as well as those administered by the NHLBI. As stated in the proposed § 52a.1, these regulations do not encompass grants for construction, research projects or for general research support. Although certain types of research project grants have been commonly referred to, or understood as "centers grants," those grants differ from the centers grant programs authorized by sections 415(b), 435 and 439 of the Public Health Service Act and are governed by the research project grant regulations at 42 CFR part 52, rather than by these proposed regulations.

The proposed regulations generally follow the format and substance of the current NHLBI regulations. Minor changes have been made as necessary to accommodate the addition of the NIADDK centers program. The regulations do not repeat provisions of the authorizing legislation and thus must be read in conjunction with sections 415(b), 435 or 439 of the Public Health Service Act, as appropriate for the particular centers grants.

The following statement is provided for the information of the public:

1. This rule primarily codifies existing Departmental policies and procedures on grants by NHLBI and NIADDK for the support of research and demonstration centers. Therefore, the Secretary has determined that the rule is not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

2. Section 52a.4 of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will be submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

3. Catalog of Federal Domestic Assistance numbered programs affected by this proposed rule are:

13.837 Heart and Vascular Disease Research;
13.838 Lung Diseases Research;
13.839 Blood Diseases and Resources Research;
13.846 Arthritis, Bone and Skin Disease Research; and
13.847 Diabetes, Endocrinology and Metabolism Research.

List of Subjects in 42 CFR Part 52a

Arthritis research, Blood diseases, Diabetes research, Grant programs—health, Health diseases, Health professions, Heart diseases, Medical research.

Dated: September 19, 1984.

Edward N. Brandt Jr.,

Assistant Secretary for Health.

Approved: October 22, 1984.

Margaret M. Heckler,

Secretary.

It is therefore proposed to amend Subtitle A of Title 42 of the Code of Federal Regulations by revising Part 52a to read as follows:

PART 52a—NIH CENTER GRANTS

Sec.

Authority: Sec. 215, 58 Stat. as amended, 63 Stat. 835 (42 U.S.C. 216); Sec. 415(b), 86 Stat. 683, as amended, 88 Stat. 347, 90 Stat. 403, 91 Stat. 387, 92 Stat. 3421, 3432 (42 U.S.C. 287d(b)); Sec. 435, 88 Stat. 376, as amended, 90 Stat. 376, 90 Stat. 2650, 94 Stat. 3185, 3186 (42 U.S.C. 289c-2); Sec. 439, 88 Stat. 2222, as amended, 90 Stat. 414, 90 Stat. 2646, 92 Stat. 3436, 94 Stat. 3189 (42 U.S.C. 289c-6).

§ 52a.1 To which programs do these regulations apply?

(a) These regulations apply to grants by the National Insitutes of Health and its bureau, institutes, and divisions to support the establishment, expansion, and operation of research and demonstration centers. Specifically, these regulations apply to National Research and Demonstration Centers for Heart, Blood Vessel, Lung, and Blood Disease and Blood Resources, as authorized by section 415(b) of the Public Health Service Act, Diabetes Research and Training Centers as authorized by section 435 of the Act, and Multipurpose Arthritis Centers as authorized by section 439 of the Act. The regulations do not apply to:

(1) Grants for construction;

(2) Grants covered by 42 CFR Part 52 (grants for reseach projects); or

(3) Grants for general research support under section 301(a)(3) of the Public Health Service Act (42 U.S.C. 241(a)(3)).

(b) The regulations also apply to cooperative agreements made to support the centers specified in (a). In such circumstances, when a reference is made in these regulations to "grants," the reference shall include "cooperative agreements."

§ 52a.2 Definitions.

As used in this part:

(a) "NIH" means the National Institutes of Health and its bureaus, institutes, and divisions.

(b) "Center" means:

(1) For purposes of the grants authorized by section 415(b) of the Public Health Service Act (the Act), a facility which provides, or a combination of facilities which together provide, a research, training, and demonstration program as prescribed by that section and, if the grant is to a center developed under section 415(a), the additional programs prescribed by that section.

(2) For purposes of the grants authorized by section 435 of the Act, a facility which provides, or a combination of facilities which together provide, the research training and information programs prescribed by the section.

(3) For purposes of the grants authorized by section 439 of the Act, a facility which provides, or a combination of facilities which together provide, a program for basic and clinical research, training, information and continuing education for professionals, and the dissemination of information to the public, as prescribed by that section.

(c) "Nonprofit" as applied to any agency or institution means an agency or institution which is a corporation or an association not part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

§ 52a.3 Who is eligible to apply?

(a) To be eligible for a grant under this part, an applicant must be:

(1) An agency, institution, or consortium of agencies or institutions and;

(2) Located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(b) An applicant for a grant to support a research and demonstration center for heart, blood vessel, lung, blood diseases and blood resources must also be a public or nonprofit private agency or institution or consortium of such agencies or institutions.

§ 52a.4 What information must each application contain?

Each application for a grant under this part must include detailed information as to the following:

(a) The personnel, facilities, and other resources available to the applicant with which to initiate and maintain the proposed center program;

(b) Any research, training, demonstration, or information dissemination activities in which the applicant is currently engaged; the sources of funding for these activities; and the relevance of these activities to the proposed center program;

(c) Proposed research, training, demonstration, and information dissemination activities;

(d) The proposed organizational structure of the center, and the relationship of the proposed center to the applicant organization(s);

(e) The names and qualifications of the center director and key staff members who would be responsible for conducting the proposed activities;

(f) Proposed methods for monitoring and evaluating individual activities and the overall center program;

(g) Proposed methods for coordinating the center's activities, where appropriate, with similar efforts by other public and private organizations;

(h) The availability or any community resources necessary to carry out proposed activities;

(i) Efforts to be made to generate and collect income from sources other than NIH to be used to further the purposes of the center program (NIH encourages such efforts.) Income may include but is not limited to that generated from the sale or rental of products or services produced by grant-supported activities, such as laboratory tests, computer time, and payments received from patients or third parties, where appropriate. (Disposition of grant-related income is governed by 45 CFR 74.40–74.47);

(j) The proposed budget for the center and a justification for the amount of grant funds requested; and

(k) Any other information that the Director of the awarding institute may request.

§ 52a.5 How will NIH evaluate applications?

(a) NIH considers the following in evaluating applications:

(1) The scientific and technical merit of the proposed program;

(2) The qualifications and experience of the center director and other key personnel;

(3) The statutory and program purposes to be accomplished;

(4) The extent to which the various components of the proposed program would be coordinated into one multidisciplinary effort within the center;

(5) The extent to which the center's activities would be coordinated with similar efforts by other organizations;

(6) The administrative and managerial capability of the applicant;

(7) The reasonableness of the proposed budget in relation to the proposed program; and

(8) Other factors which the awarding bureau, institute, or division considers appropriate in light of its particular statutory mission.

(b) Where required by statute or NIH policy, applications are reviewed by appropriate national advisory councils or boards before awards are made.

§ 52a.6 Information about grant awards.

(a) The notice of grant award specifies how long NIH intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 1–5 years.

(b) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the NIH that continued funding is in the best interest of the Federal government.

(c) Neither the approval of any application nor the award of any grant commits or obligates for Federal government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 52a.7 For what purposes may a grantee spend grant funds?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, the terms and conditions of the award, the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74, and the regulations of this part.

§ 52a.8 Other regulations that apply.

Several other regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
42 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Debarment and suspension from eligibility for financial assistance.
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in Health and Human Services programs or activities receiving Federal financial assistance
49 FR 46266 or successor—Guidelines for Research Involving Recombinant DNA Molecules, published by the National Institutes of Health

§ 52a.9 Additional conditions.

NIH may, with respect to any grant award, impose additional conditions prior to or at the time of any award when in NIH's judgment such conditions are necessary to assure or protect advancement of the approved program, the interests of the public health, or the conservation of grant funds.

[FR Doc. 84-32816 Filed 12-17-84; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 10]

Federal Motor Vehicle Safety Standard; Lamps, Reflective Devices, and Associated Equipment

Correction

In FR Doc. 84-31940 beginning on page 47880 in the issue of Friday, December 7, 1984, make the following corrections:

§ 571.100 [Corrected]

1. On page 47886, first column, Fig. 17., insert "Lower beam:" above (the thirteenth entry) "10U-90U²".

2. On the same page, third column, Fig. 18., insert "Lower beam:" above (the eighth entry) "10U-90U²".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC-95 (Sub-3)]

Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service; Modification of Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to supplemental notice of proposed rulemaking.

SUMMARY: At 49 FR 47277, December 3, 1984, the Commission solicited additional comments on the original notice of proposed rulemaking in this proceeding (44 FR 53092 (1979)) in light of the provisions of the Bus Regulatory Reform Act of 1982. On behalf of individual bus riders and groups, the Commission's Office of Special Counsel has requested that the time for filing comments in this proceeding be extended 30 days. This notice extends that date from January 2, 1985 to February 1, 1985.

DATE: Comments must be received by February 1, 1985.

ADDRESS: Send comments (original and 15 copies) to: Ex Parte No. MC-95 (Sub-No. 3), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:
James L. Brown, (202) 275-7898;

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: The Office of Special Counsel (OSC), Interstate Commerce Commission, on behalf of individual bus riders and groups, has requested that the time for filing comments in this proceeding be extended 30 days. OSC states it needs the extension to provide adequate time to enable bus riders to receive the Commission's November 30, 1984, decision, draft comments, and submit those comments to the Commission.

The 30-day extension of time is warranted. The additional time will give those individual bus riders who will be affected directly by the Commission's decision an opportunity to provide their opinions on the pending action.

It is ordered that the date for filing comments is extended to February 1, 1985.

Decided: December 12, 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 84-32840 Filed 12-17-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Five Petitions, and of Review of Five Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and review.

SUMMARY: The Service announces findings that four petitions to add five species to the List of Endangered and Threatened Wildlife have presented substantial information indicating that such listings may be warranted, and announced reviews of the status of these species. The Service also gives notice of a finding that one petition to add one species to the List of Endangered and Threatened Plants has not presented substantial information.

DATE: Relevant information or comments may be submitted until further notice.

ADDRESS: Information, comments, or questions should be submitted to the Associate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C 20240. The petitions, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires the Service to make a finding on whether a petition to add a species to the List of Endangered and Threatened Wildlife and Plants, or to remove or reclassify a species, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, such a finding is to be made within 90 days of receipt of the petition, and the finding is then to be promptly published in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. Recently, the Service received and made findings on the following five petitions.

1. A petition from Mr. Douglas H. Chadwick, dated June 17, 1984, and received by the Service on July 2, 1984, requested extension of endangered status to the woodland caribou (*Rangifer tarandus caribou*) in Montana. At present, such status is restricted to the southern Selkirk Mountain herd of caribou, which is found only in Idaho, Washington, and British Columbia. Mr. Chadwick provided evidence that caribou, probably members of another herd, also occur, at least on occasion, in northwestern Montana. It is likely that any caribou that are present in the latter area would be confronted by the same problems jeopardizing the southern Selkirk population. The Service therefore made the finding that this petition does present substantial information indicating that the requested action may be warranted.

2. A petition from Mr. Thomas P. Koenigs, dated July 5, 1984, and received by the Service on July 17, 1984, requested determination of endangered status for the Coeur d'Alene salamander (*Plethodon vandykei idahoensis*) of Idaho and Montana. Mr. Koenigs' data suggest a severe recent decline in numbers and distribution, resulting mainly from human habitat disruption. The Service therefore found that this petition does present substantial information indicating that the requested action may be warranted.

3. A petition from Dr. Ren Lohoefener and Dr. Lynne Lohmeier, dated July 15, 1984, and received by the Service on July 17, 1984, requested determination of endangered status for those populations of the gopher tortoise (*Gopherus polyphemus*) occurring west of the Tombigbee River in Alabama, Louisiana, and Mississippi. The petitioners provided extensive evidence that the tortoise populations are declining drastically because of killing and habitat destruction by people. The Service therefore found that this petition does present substantial information indicating that the requested action may be warranted.

4. A petition from W. D. Sumlin, III and Christopher D. Nagano, dated July 23, 1984, and received by the Service on July 24, 1984, requested determination of endangered status for Barbara Anne's tiger beetle (*Cicindela politula barbaraannae*) and the Guadalupe Mountains tiger beetle (*Cicindela politula* ssp.) of Texas. The petitioners furnished commercial trade information suggesting that over-collecting is jeopardizing these beetles. Moreover, the apparent small natural distribution and numbers of these beetles make them especially vulnerable. The Service therefore found that this petition does present substantial information indicating that the requested action may be warranted.

5. A petition from Dr. B. T. Burns, Dr. G. P. Nabhan, Mahina Drees, and Karan Reichhardt, dated July 23, 1984, and received by the Service on July 30, 1984, requested determination of endangered status for the plant *Panicum sonorum* (Sonoran panic grass), which originally occurred in Arizona, Mexico, and Central America. The petitioners submitted data showing that this plant has become very rare in Arizona, but provided insufficient data to ascertain its status in Mexico and Central America. The Service therefore made the finding that this petition does not present substantial information indicating that the requested action may be warranted.

As required in the case of positive findings, the Service hereby initiates reviews of the status of the woodland caribou population that occurs in Montana, the Coeur d'Alene salamander, Barbara Anne's tiger beetle, and the Guadalupe Mountains tiger beetle. A status review of the gopher tortoise is already in progress, as that species was covered by the Service's Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (47 FR 58454-58460). The Service continues to seek data on the gopher tortoise, especially those populations west of the Tombigbee River. With respect to all five species being reviewed, there is a particular need for information on distribution, numbers, systematics, recommended critical habitat, and threats.

Section 4(b)(3)(B) of the Act requires that within 12 months of receipt of a petition to present substantial information, a finding be made as to whether the petitioned action is not warranted, warranted, or warranted but precluded by other listing activity. All comments and information received in response to the status reviews hereby announced will be considered in making such findings regarding the five involved species.

The authors of this notice are C. Kenneth Dodd, George E. Drewry, Linda M. Hurley, Ronald M. Nowak, and LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington D.C. 20240 (703/235-1975 or FTS 235-1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: December 11, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-32878 Filed 12-17-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 244
Tuesday, December 18, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Docket No. 1718S]

Offer To Provide Reinsurance for Writers of Multiple-Peril Crop Insurance Policies

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of offer to provide reinsurance for writers of multiple-peril crop insurance polices.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby gives notice to writers of multiple-peril crop insurance policies of an offer to provide reinsurance coverage on such policies. The intended effect of this notice is to publish the Standard Reinsurance Agreement presently in effect and amendments thereto for the information of all interested parties in an effort to provide as much information as possible.

EFFECTIVE DATE: December 18, 1984.

ADDRESS: Written comments on this notice should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

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

SUPPLEMENTARY INFORMATION: Section 508(e) of the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), as amended by Pub. L. 96-365 (September 26, 1980), authorizes and directs FCIC to offer reinsurance, to the maximum extent practicable, to writers of multiple-peril crop insurance.

FCIC herewith publishes the terms and conditions of the Standard Reinsurance Agreement and amendments, in their entirety, effective with the 1984 crop year advising all interested parties of an offer to provide reinsurance for writers of multiple-peril crop insurance policies.

FCIC has developed fouir amendments to the Reinsurance Agreement; Amendments A-1 and A-2 provide surplus share reinsurance on a state line basis and a county and state line basis respectively, and are currently effective; Amendment B, affecting expense reimbursement rates and being effective with the 1985 crop year; and Amendment C, affecting the raisin crop program and being effective with the 1984 crop year, as outlined therein.

The purpose of this notice is to set forth the terms and conditions of the Standard Reinsurance Treaty, and amendments A-1, A-2, B, and C to the Reinsurance Agreement, as follows:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Standard Insurance Agreement

Company Name: _____
Street or P.O. Box: _____
City, State, Zip Code: _____
Agreement or IRS Number: _____
Crop Year Reinsurance Initiated with FCIC:—

Section I. Business Reinsured

A. The Federal Crop Insurance Corporation (FCIC) hereby agrees to reinsure the excess liability which may accrue to the Company as a result of losses incurred during the period this Agreement is in force under policies, contracts and binders of multiple-peril crop insurance (hereinafter called "policies") issued or renewed on or after the effective date of this Agreement. This Agreement applies to the policies written by the Company listed on the plan of operation as the lead entity (and whose name is listed on this Agreement) plus the policies written by other companies listed on the plan of operation and reinsured by the lead entity.

B. The multiple-peril crop insurance subject to this Agreement shall be written exclusively on policy forms and at premium rates approved by FCIC, and the policies so approved shall only be issued on crops and in territories authorized by FCIC. Such policy forms shall provide coverage identical to the coverage provided by FCIC policies at premium rates not less than those used by FCIC.

C. The plan of operation submitted by the Company and accepted by FCIC is incorporated into this Agreement, and may be changed only upon agreement in writing by both parties except for the maximum amount of book premium to which reinsurance shall apply, which may be limited in accordance with paragraph D of this section.

D. FCIC reserves the right to limit the amount of book premium subject to reinsurance. The maximum amount of book premium which can be written by the Company and reinsured by FCIC for the initial year of this Agreement will be indicated to the Company when the Agreement is approved by FCIC. For subsequent years, FCIC will notify the Company of the maximum amount of book premium to be covered by reinsurance for the next crop year within 30 days after the termination date for this Agreement. FCIC may require the Company to report, in a timely manner in advance of this date, information on expected carryover business and expected new sales so as to be able to administer this clause. The maximum may be raised by FCIC at a later date, in which case notice will be given to the Company. Notwithstanding any of the above, FCIC's ability to sustain the Agreement depends upon the availability of funds and all maximum amounts are subject to reduction or cancellation within 30 days of the passage of FCIC's Congressional Appropriation.

E. Closing of sales—FCIC may require the Company to immediately refrain from accepting applications for insurance or otherwise accepting liability that could affect the financial situation of FCIC if FCIC closes sales due to adverse risk conditions for any geographic area or for any crop.

F. Refusal of risk—FCIC may require the Company to notify it of the name(s) and address(es) of any applicant(s) refused insurance or cancelled from insurance subject to this Agreement, and the reasons for the action(s). The Company will immediately comply with that requirement.

Section II. Commencement and Termination

A. This Agreement shall become effective upon signature of authorized officials for both the Company and FCIC unless specified otherwise in the plan of operation. FCIC will reinsure only liability accepted on or after the effective date.

B. Either party may terminate this Agreement effective at the end of the current crop year by giving notice to the other party before December 1 unless the Company has insurance in force with a cancellation date earlier than December 31, in which case notification must be not later than April 1. If notice is given after the above dates, the termination shall take effect at the end of the following crop year.

C. FCIC may require the Company to discontinue accepting any applications for insurance after the notice of termination is received.

Section III. Reinsurance Settlements

A. An annual settlement will be made between the Company and FCIC based upon the loss ratio for the crop year, as specified below. The loss ratio will be computed to the nearest hundredth of a percent with numbers 5 and above rounded upward and numbers 4 and below rounded down in calculating the nearest hundredth of a percent.

1. If the loss ratio is over ninety-five (95) percent but not over one hundred forty-five (145) percent, the Company's share of the loss shall be the quantity determined by multiplying the difference between ultimate net losses and ninety-five (95) percent of book premium by fifteen (15) percent and from this quantity shall be subtracted five (5) percent of book premium. The calculated quantity shall have a minimum of negative five (5) percent and a maximum of plus two and one-half (2.5) percent of book premium.

2. If the loss ratio is over one hundred forty-five (145) percent but not over two hundred (200) percent, the Company's share of the loss is two and one-half (2.5) percent of book premium plus ten (10) percent of book premium multiplied by the difference between the loss ratio percent and one hundred forty-five (145) percent, or a maximum of eight (8) percent of book premium.

3. If the loss ratio is over two hundred (200) percent, but not over five hundred thirty-three and one-third (533⅓) percent, the Company's share of the loss is eight (8) percent of book premium plus one (1) percent of book premium multiplied by the difference between the loss ratio percent and two hundred (200) percent, or a maximum of eleven and one-third (11⅓) percent of book premium.

4. If the loss ratio exceeds five hundred thirty-three and one-third (533⅓) percent, the Company's share of losses shall be eleven and one-third (11⅓) percent of book premium.

5. FCIC's share of ultimate net losses (losses other than the Company's share) shall be charged against the Company reinsurance account maintained by FCIC, which may show a negative balance.

6. If the loss ratio is ninety-five (95) percent or less but not less than seventy-six (76) percent, the Company's share of book premium shall be five (5) percent of book premium plus thirty-three and one-third (33⅓) percent of book premium multiplied by the difference between the loss ratio percent and ninety-five (95) percent of book premium, or a maximum of eleven and one-third (11⅓) percent of book premium. FCIC's share of premium shall be credited to the Company reinsurance account.

7. If the loss ratio percent is less than seventy-six (76) percent for the crop year, the Company's share of premium shall be eleven and one-third (11⅓) percent of book premium. FCIC's share of premium shall be credited to the Company reinsurance account.

8. The amount due either party under this paragraph shall be payable upon submission of the annual summary or amendments thereto for the crop year.

B. At the end of the extended period, the Company shall be entitled to twenty (20) percent of the amount in the Company reinsurance account, but not more than five (5) percent of the total book premium written by the Company during the extended period. Any premiums subject to a surplus share agreement with FCIC (FCIC share of the surplus) will be excluded in computing the total premium for the extended period. If the Company reinsurance account has a negative balance at the end of the extended period, the Company share shall be zero. The amount due shall be payable upon submission of the annual summary or amendments thereto for the last crop year in the extended period.

C. If the agreement is terminated by FCIC, the extended period shall be considered to end at the end of the crop year when terminated and the Company shall be entitled to share in any positive balances in the Company reinsurance account according to the provision in paragraph B.

D. If the Agreement is terminated by the Company to take effect prior to the end of an extended period, the Company share of any positive balance in the Company reinsurance account will be determined upon the basis of the following short term cancellation clause after any distribution for the final year of the Agreement is made in accordance with paragraph A of this section. The formula specified in paragraph B of this section will be computed. The Company will be entitled to an amount equal to:

1. Twenty (20) percent of the computed amount if the termination takes effect after the first year of an extended period;

2. Forty (40) percent of the computed amount if the termination takes effect after the second year of an extended period;

3. Sixty (60) percent of the computed amount if the termination takes effect after the third year of an extended period; or

4. Eighty (80) percent of the computed amount if the termination takes effect after the fourth year of an extended period.

Section IV. Expense Reimbursement

A. FCIC shall provide the Company an operating and administrative expense reimbursement allowance equal to 22 percent of the Company's book premium on the policies covered by this Agreement for Company operating and agent commission expenses. An additional reimbursement of 5 percent of the book premium will be provided for new policies issued and for crops added to an existing policy, for the purpose of covering the additional expense of selling a policy for the initial year of insurance. This additional reimbursement shall not be applicable to any policy for which the crop was insured the previous year under a multiple-peril policy issued by another company reinsured by FCIC or issued by the Federal Crop Insurance Coporation. FCIC will also reimburse the Company 4 percent of book premium and 3 percent of ultimate net losses for direct loss adjustment expenses.

B. It is expressly agreed that FCIC shall not be liable for any dividends, commissions or taxes, or any board, exchange or bureau assessments, or any other expenses of whatever nature incurred by the Company, except the expense reimbursement provided in this section.

C. The expense reimbursement shall be due and payable in accordance with the following schedule:

1. Reimbursement in the amount of 12 percent of book premium for company operating expenses and 4 percent of book premium for loss adjustment expenses upon submission by the Company to FCIC of the first monthly report following submission of the annual acreage report by the insured (see Section VII, A).

2. Reimbursement in the amount of 10 percent of book premium and the additional 5 percent of book premium for new policies or crops added to an existing policy (as specified in paragraph A of this section) shall be due upon submission of the first monthly report following payment of premium by the insured or upon payment of premium to FCIC by the Company. Deduction of premium from any indemnity due the insured under policies covered by this agreement shall be considered premium payment under this paragraph.

3. Loss adjustment reimbursement in the amount of 3 percent of ultimate net losses paid under this agreement shall be due upon submission of the next monthly report following payment of the losses by the company to its insured.

Section V. Applicability of Premium Subsidy

FCIC shall pay a portion of each producer's premiums on the policies reinsured by this Agreement as authorized by the Federal Crop Insurance Act of 1980. Any restrictions or conditions on eligibility for subsidy imposed on producers insured directly by the Federal Crop Insurance Corporation shall apply to this Agreement. The subsidy shall be considered as premium remitted to the Company and further remitted from the Company to FCIC upon submission of the annual report or amendments thereto for the crop year the subsidy is due.

Section VI. Hail and Fire Exclusion

The Company shall provide the insured the option of deleting the perils of hail and fire from the policies covered by this Agreement, as authorized by the Federal Crop Insurance Act of 1980. A premium credit for the deletion of hail and fire coverages shall be provided in the rates approved by FCIC. Any hail and/or fire losses to crops insured under policies from which hail and fire coverages have been deleted shall not be subject to coverage under this Agreement. The liability of the Company on such policies, if hail and/or fire losses are paid, will be reduced according to provisions in the policy issued to the insured, as approved by FCIC.

Section VII. Reports

A. Within 30 days after the end of each month the Agreement is in force, and on forms mutually acceptable, the Company shall report to FCIC the following statistics on the reinsured policies as of the end of the previous month (end of month report):

1. Sales of crop insurance policies with separate totals for new policies for which the higher reimbursement allowance is applicable;

2. Cancellations of insurance contracts;

3. The known amount of book premium for the crop year;

4. The portion of producer premium paid or payable by FCIC (subsidy) for the crop year as provided in Section V;

5. The expense reimbursement allowance earned for the crop year as provided in Section IV; and

6. Ultimate net losses paid to the insured and premium collected from the insured.

The Company may, at its option if loss volume warrants, make a report indicating

the above as of the middle of each month (referred to as an interim report).

B. Not later than April 15 of the calendar year following the crop year under consideration, the Company shall prepare and forward to FCIC an annual summary setting forth the information necessary to make a settlement for the year. The information will be on forms mutually acceptable to both parties to this Agreement and contain all information required bn FCIC.

C. The Company shall submit an annual summary of experience for each insured as mutually agreed to by both parties of this agreement.

Section VIII. Retained Liability and Other Reinsurance

A. This Agreement shall apply only to that portion of any insurance which the Company retains net for its own account (except for other reinsurance permitted in paragraphs B and C of this section), and in calculating the amount of any loss hereunder and also in computing the amount on which this Agreement attaches, only loss or losses in respect to that portion of any insurance which the Company retains net for its own account shall be included. It is, however, understood and agreed that the amount of FCIC's liability hereunder with respect to any loss or losses shall not be increased by reason of the inability of the Company to collect from any other reinsurers, whether specific or general, any amounts which may have come due from them, whether such inability arises from the insolvency of such other reinsurers or otherwise.

B. The Company shall have the right to reinsure the policies covered hereunder on a pro rata basis, and if it is agreed that such reinsurances is maintained by the Company, recoveries thereunder shall inure solely to the benefit of the Company and be totally disregarded for purposes of applying all the provisions of this Contract including but not by way of limitation, the provisions of Sections III, IV, and V. If the Company utilizes other reinsurance, such provisions will be specified in the plan of operation or amendments thereto.

C. FCIC may offer the Company surplus reinsurance as a supplement to this agreement. Such reinsurance terms will be specified in Amendment I to this Agreement. Liability assumed by FCIC under the surplus agreement will be considered the same as that written through the provisions of this Standard Agreement except with respect to the distribution of premium and ultimate net losses, including but not limited to expense reimbursement and premium subsidy. Any premium or ultimate net losses that accrue to FCIC as a result of the surplus agreement shall not be entered into the Company reinsurance account.

Section IX. Insolvency

A. In the event of insolvency of the Company, this reinsurance shall be payable directly to the Company or to its liquidator, receiver, conservator or statutory successor on the basis of the liability of the Company without diminution because of the insolvency of the Company or because the liquidator, receiver, conservator or statutory successor of the Company has failed to pay all or a portion of any claim. It is agreed, however, that the liquidator, receiver, conservator or statutory successor of the Company shall give written notice to FCIC of the pendency of a claim against the Company indicating the policy reinsured which claim would involve a possible liability on the part of FCIC within a reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of sush claim, FCIC may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to the Company or its liquidator, receiver, conservator statutory successor. The expense thus incurred by FCIC shall be chargeable against the Company as part of the expense of conservation or liquidation to the extent of a pro rata share of the benefit which may accrue to the Company solely as a result of the defense undertaken by FCIC.

Insolvency of one part in a multi-party plan of operation will not affect the liability of any of the other parties under this contract or under any other agreements or guarantees between the parties necessary for the performance of this agreement.

B. It is further understood and agreed that, in the event of the insolvency of the Company, the reinsurance under this Agreement shall be payable directly by FCIC to the Company or to its liquidator, receiver or statutory successor except: (a) Where the Agreement specifically provides another payee of such reinsurance in the event of the insolvency of the Company or (b) where FCIC with the consent of the direct insured or insureds has assumed such policy obligations of the Company as direct obligations of FCIC to the payees under such policies and in substitution for the obligations of the Company to such payees.

Section X. Arbitration

If any misunderstanding or dispute arises between the Company and FCIC with reference to the amount of premium due, the amount of loss, the amount of expense reimbursement, or to any other factual issue under any provisions of this Agreement, other than as to legal liability or interpretation of law, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding only upon approval by FCIC. The Company and FCIC may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FCIC cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by FCIC.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by FCIC.

The Company and FCIC shall bear equally all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section shall upon objection by FCIC or the Company, be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

Section XI. Access to Books and Records

FCIC and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books, documents, papers and records of the company that are pertinent to the business reinsured under this Agreement. The Company shall keep records which fully disclose all matters pertinent to the business reinsured, including premiums and claims paid or payable under this Agreement. Records relating to premiums shall be retained and available for three (3) years after final adjustment of premiums, and to reinsurance claims three (3) years after final adjustment of such claims.

Section XII. Errors and Omissions

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either party from any liability which would have attached had such delay, error or omission not occurred, provided that such error or omission is rectified as soon as possible after discovery.

Section XIII. Salvage and Recoveries

With respect to any salvage or recovery in connection with any loss hereunder received subsequent to the payment of such loss, the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss hereunder was originally determined. Any amounts thus found to be due FCIC shall be immediately paid to FCIC by the Company.

Section XIV. Remittances

A. FCIC shall pay the Company the balance equal to the following after submission of each end of month or interim report:

1. Losses paid by the Company for the crop year (loss advances) until a loss ratio of 100 percent for the Company has been reached at which time the payment shall be 92 percent of the amount by which ultimate net losses paid exceed book premium; less

2. Net prior loss advances during the crop year; less

3. Cash premiums collected by the Company for the crop year; less

4. Any other premiums payable by the insured in accordance with paragraph B of this section; plus

5. Unremitted amount due to date for operating and loss adjustment reimbursements as specified in Section IV; less

6. Any interest charges due and payable to FCIC; less

7. Any other amount payable by the Company to FCIC.

B. Any book premium not reported as collected under paragraph A–3 (above), excluding that portion payable by FCIC under Section V, shall be due and payable to FCIC in accordance with a schedule submitted as part of the approved plan of operation

specifying dates by crop and geographic location. The Company may, at its option, defer payment on any premium subjects to this agreement uncollected from its insured until submission of the monthly report following receipt by the Company of any premiums but not later than the date established for the annual summary under this agreement (Section VII—B), in consideration for a simple interest charge of 1½ percentum per month or portion of any month that this payment is deferred. The interest shall be due and payable to FCIC on any premium at the time the premium is paid to FCIC.

C. FCIC shall pay the Company any balance due the Company within 15 days after submission of an end of month, interim, or annual summary report or amendment thereto.

D. If the end of month, interim, annual summary report or amended annual summary report shows a balance due FCIC, the amount shown shall be remitted with the report.

E. FCIC retains a claim on any premiums outstanding to the Company from their insureds on the policies of insurance covered under this Agreement to offset advance loss payments to the Company. The Company shall not encumber FCIC's claim on balances due from the insureds through pledging as collateral on debt or other obligations of the Company, except the company may pledge premiums outstanding as collateral in any amount equal to the amount by which loss payments exceed the sum of premiums collected plus loss advances from FCIC.

Section XV. Miscellaneous Clauses

A. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

B. The Company will not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex, age, handicap, marital status or national origin.

C. The lead entity is a guarantor of any or all obligations to FCIC that may arise out of this Agreement. If more than one legal entity is designated as the lead entity, all shall be jointly and severally liable to FCIC under this agreement.

D. Upon execution by the Company and acceptance by FCIC, this agreement replaces and supersedes any previous reinsurance agreement between FCIC and the Company. The extended period under this agreement will terminate when it would have terminated under the previous agreement. Terms of the previous agreement are unchanged and terms of this agreement will not be given retroactive effect. However, the Company Reinsurance Account will contain the balance existing from the prior agreement. All distributions at the end of the extended period will be in accordance with this new agreement.

E. Either party may propose amendments to this agreement at any time. Proposed amendments should be submitted as to allow sufficent time for study and good faith negotiation prior to the termination dates contained in paragraph B of Section II.

Section XVI. Sales by Agents

The Company shall sell the policies covered under this Agreement through licensed agents or brokers.

Section XVII. Loss Adjustment

A. The Company shall utilize loss adjustment procedures and methods consistent with those utilized by FCIC. FCIC may, at its own expense cooperate with the Company in the adjustment of claims.

B. FCIC may require the Company to utilize an approved program for training and certifying loss adjusters. The Company program must be approved either by FCIC or by an organization accepted by FCIC to grant such approval. FCIC may put this clause into effect for any crop year by giving written notice to the Company prior to February 1 of such crop year.

C. FCIC has the right to participate in any action brought against the Company or any of its agents with respect to any policies reinsured under this Agreement.

D. The Company agrees to hold FCIC harmless for any loss FCIC may incur as a result of the Company's conduct in the investigation, negotiation, defense or handling of any claim or suit or in any dealing with its policyholder.

Section XVIII. Definitions

As used in this Agreement the term:

A. "Loss ratio" means the percentage computed by dividing the amount of ultimate net losses for the reinsurance period by the book premium for the reinsurance period, the result multiplied by 100.

B. "Book premium" means gross premiums earned by the Company on the policies reinsured under the Agreement including the portion of producer premium subsidy paid or due from FCIC or other Governments in accordance with Section V.

C. "Crop year" means the calendar year within which the crops insured by the policies reinsured hereunder are normally harvested or mature for harvest.

D. "Ultimate net loss" means the sum or sums (excluding litigation expenses and all allocated and unallocated loss adjustment expenses incurred by or on behalf of the Company) paid or payable by the Company on insurance retained for its own account (see Section VIII—A) in settlement of claims and in satisfaction of judgments rendered on account of such claims, after deduction of all salvage and all recoveries. Liability of FCIC for any damages assessed against the Company arising out of its conduct in the investigation, negotiation, defense, or handling of any claims or suits or in any dealings with its policyholders is specifically excluded under this Agreement. Nothing herein shall be construed to mean that losses under this Agreement are not recoverable until the Company's ultimate net loss has been ascertained, it being understood and agreed that salvage recovered and/or recoveries received by the Company after a loss settlement hereunder shall be applied as if recovered or received before the said settlement, and all necessary adjustments shall be made by the parties hereto.

E. "Incurred" as applied to ultimate net losses incurred and to losses incurred shall mean losses happening to crops for the crop year under consideration.

F. "Company" means the party or parties indicated in Item Number 1 of the plan of operation who will participate in writing the reinsured policies. At least one of the parties must be a firm authorized to engage in the crop insurance business under the laws of the states in which the insurance is to be written. If more than one legal entity is involved, one or more must be designated in the plan of operation as lead entity(ies).

G. "Lead entity" means the party(ies) designated in the plan of operation to serve as guarantor for all the Company obligations to FCIC under this agreement.

H. "Extended period" means the period of time encompassing five crop years beginning with the crop year for which this Agreement is initiated and including the next four crop years with subsequent periods running from the expiration of an extended period through five crop years. If the Agreement is terminated by FCIC, the provisions of Section III, paragraph C shall apply to the timing of the end of the extended period.

I. "Company reinsurance account" means a balance maintained by FCIC for the Company party to this Agreement in accordance with Section III. A separate Company reinsurance account shall apply for each extended period.

J. "Insured" means a policyholder of the Company with an insurance contract in force that is reinsured through this agreement.

Approved and executed for the corporation by:

Name:_____
Title: _____
Date: _____

Approved and executed for the company by:

Name:_____
Title: _____
Date: _____

Amendment A–1 (State-Only Treaty Surplus Share Amendment) to the Reinsurance Agreement between the Federal Crop Insurance Corporation and the:

(Company Name) _____
(Mailing Address) _____
(Agreement Number) _____

A. FCIC hereby agrees to provide a surplus reinsurance treaty to the Company as a supplement to the Standard Reinsurance Agreement.

B. Cessions of book premiums and ultimate net losses on a state basis are as follows:

1. The Company will annually establish a state line for each state, which cannot be changed without the written approval of FCIC. The initial state line is set forth in Attachment A hereto. Attachment A is hereby incorporated into this treaty.

2. Where the book premium for a state exceeds the state line FCIC will assume a share of the ultimate net losses in consideration for a specified share of the book premium. The share of premiums ceded to FCIC under this paragraph shall equal 90 (ninety) percent of the amount by which total

book premium for the state exceeds the state line. The FCIC share of ultimate net losses for the state under this paragraph shall be the same percentage of total ultimate net losses for the state as the share of total book premiums for the state ceded to FCIC under this paragraph.

3. When the book premium for a state is equal to or less than the state line established for the crop year, the cessions shall be zero under this paragraph.

C. The company's share of book premiums and ultimate net losses not ceded to FCIC under this paragraph will be treated in accordance with the provision of the Standard Reinsurance Agreement in effect between FCIC and the Company.

D. The Company will report to FCIC, as part of the monthly and annual summary reports required in Section VII of the Standard Reinsurance Agreement, the Company's share and FCIC's share of the premium and ultimate net losses under this treaty for each state.

E. Responsibility of the Company for premium collection is not changed with this supplement. Premiums will be remitted to FCIC in accordance with the schedule provided for in the Standard Reinsurance Agreement.

F. Notwithstanding the terms of the supplement, FCIC will only reinsure the maximum amount of book premium set out in the Standard Reinsurance Agreement.

G. All terms of the Standard Reinsurance Agreement not inconsistent with this treaty remain in effect

Approved and executed for FCIC by:

(Signature) _____
(Name) _____
(Title) _____
(Date) _____

Accepted and executed for the company by:

(Signature) _____
(Name) _____
(Title) _____
(Date) _____

Amendment A–2 (The State And County Treaty Surplus Share Amendment) to the Reinsurance Agreement between the Federal Crop Insurance Corporation and the:

(Company Name) _____
(Mailing Address) _____
(Agreement Number) _____

A. FCIC hereby agrees to provide surplus reinsurance to the Company as a supplement to the Standard Reinsurance Agreement whereby premium and ultimate net losses will be ceded to FCIC on a county and state basis according to the provisions in this treaty.

B. Cessions of book premium and ultimate net losses to FCIC on a county basis are as follows:

1. For the purposes of this treaty the Company will annually establish for each state a dollar amount of book premiums as a county line. That county line shall apply to each county within that state. Once established for a crop year the county line cannot be changed without the written approval of FCIC. The initial county lines are set forth in Attachment A hereto. Attachment A is hereby incorporated into this treaty.

2. Where the book premium for a county exceeds the county line, FCIC will assume a share of the ultimate net losses in consideration for a specified share of the book premium. The share of premium ceded to FCIC shall equal 90 (ninety) percent of the amount by which total book premium exceeds the county line. The FCIC share of ultimate net losses for the county under this paragraph shall be the same percentage of total ultimate net losses for the county as the share of total book premium for the couty ceded to FCIC under this paragraph.

3. When the book premium for a county is equal to or less than the county line established for the crop year, the cessions under this paragraph shall be zero.

C. Cessions of book premiums and ultimate net losses on a state basis in addition to those on a county basis are as follows:

1. The Company will annually establish a state line for each state, which cannot be changed without the written approval of FCIC. The initial state lines are set forth in Attachment A hereto. Attachment A is hereby incorporated into this treaty.

2. Where the book premium for a state, after deducting all premiums ceded to FCIC under the county surplus specified in Paragraph B, exceeds the state line, FCIC will assume a share of the ultimate net losses in consideration for a specified share of the book premium. The share of premiums ceded to FCIC under this paragraph shall equal 90 (ninety) percent of the amount by which total book premium for the state (after deducting cessions under Paragraph B) exceeds the state line. The FCIC share of ultimate net losses for the state under this paragraph shall be the same percentage of total ultimate net losses for the state, after deducting any cessions under the county surplus share amendment as the share of total book premiums for the state ceded to FCIC under this paragraph.

3. When the book premium for a state, after cessions in Paragraph B, is equal to or less than the state line established for the crop year, the cessions shall be zero under this paragraph.

D. The Company's share of book premiums and ultimate net losses not ceded to FCIC under this paragraph will be treated in accordance with the provisions of the Standard Reinsurance agreement in effect between FCIC and the Company.

E. The Company will report to FCIC, as a part of the monthly and annual summary reports required in Section VII of the Standard Reinsurance Agreement, the Company's share and FCIC's share of premium and ultimate net losses under this treaty for each county and state.

F. Responsibility of the Company for premium collection is not changed with this supplement. Premiums will be remitted to FCIC in accordance with the schedule provided for in the Standard Reinsurance Agreement.

G. Nothwithstanding the terms of the supplement, FCIC will only reinsure the maximum amount of book premium set out in the Standard Reinsurance Agreement.

H. All terms of the Standard Reinsurance Agreement not inconsistent with this treaty remain in effect.

Approved and executed for FCIC by:

(Signature) _____
(Name) _____
(Title) _____
(Date) _____

Accepted and executed for the company by:

(Signature) _____
(Name) _____
(Title) _____
(date) _____

Amendment B to the Reinsurance Agreement between the Federal Crop Insurance Corporation and the:

(Company name) _____
of (city, state) _____

Whereas, the Federal Crop Insurance Corporation (FCIC) and the insurance company named above (Company) have entered into a reinsurance agreement entitled the Standard Reinsurance Agreement (Rev. 8–82) (Agreement),

Whereas, said Agreement provides for the reimbursement of direct loss adjustment expenses at a constant rate, although these expenses do not vary in constant proportion to the amount of the losses paid, and

Whereas, direct loss adjustment expense should be reimbursed at a rate that diminishes as the loss ratio increases, and

Whereas, the present loss advance payment schedule requires that the Company provisionally retain for its own account until the year-end settlement eight (8) percent of losses paid, and

Whereas, this amount may provide for too great a retention by either FCIC or the Company, depending on the year-end loss ratio, and may create significant cash flow difficulties for some companies;

Now Therefore, in consideration of these premises, the Parties mutually agree that Section IV and XIV of the Standard Reinsurance Agreement shall be amended, effective for the 1985 and succeeding crop years so that Paragraphs IV A and C and XIV A read as follows:

Section IV. Expense Reimbursement

A. FCIC shall provide the Company an operating and administrative expense reimbursement allowance equal to 28 percent of the company's earned book premium on the policies covered by this Agreement for Company operating and agent commission expenses, which allowance also includes four (4) percent for indirect loss adjustment expenses. FCIC shall also provide an allowance for direct loss adjustment expenses in accordance with the following schedule.

DIRECT LOSS ADJUSTMENT EXPENSE SCHEDULE

Loss Ratio	FCIC payment rate
Zero to 100.00	3.00% of ultimate net losses in this range.
100.01 to 200.00	2.50% of ultimate net losses in this range.
200.01 to 300.00	2.00% of ultimate net losses in this range.
300.01 to 400.00	1.50% of ultimate net losses in this range.
Above 400.01	Zero.

C. The FCIC expense reimbursement shall be paid to the Company upon receipt and

acceptance of the report required by Section VII A of this Agreement as follows:

1. Sixteen (16) percent of the earned book premium, based upon the Company's first monthly report following receipt of the insured's annual acreage report, or tonnage report for raisins.

2. Twelve (12) percent of the earned book premium based upon the Company's first monthly report following premium payment.

3. The direct loss adjustment reimbursement expense due upon the Company's next monthly report following actual payment of the losses.

Section XIV. Remittances

A. After submission of each monthly or interim report, FCIC shall pay to the Company on losses actually paid for the crop year a loss advance according to the following loss advance schedule.

LOSS ADVANCE SCHEDULE

Loss Ratio	FCIC payment rate
Zero to 126.33	100.00% of losses in this range.
126.34 to 145.00	85.00% of losses in this range.
145.01 to 200.00	90.00% of losses in this range.
200.01 to 533.33	99.00% of losses in this range.
Above 533.34	100.00% of losses in this range.

For purposes of determining loss ratios under the loss advance schedule, the reinsurance period shall be considered to be the elapsed portion of the crop year on the date covered by the report on which payment is being made.

FCIC shall pay the Company the amount determined under the loss advance schedule plus the amount of expense reimbursement payable to the Company under Section IV, minus the following amounts.

1. Prior loss advances paid during the crop year;

2. Cash premiums collected by the Company for the crop year;

3. Any other premiums payable by the insured in accordance with paragraph B of this section;

4. Any interest charges due and payable to FCIC; and

5. Any other amount payable by the Company to FCIC.

Approved, Accepted, and Executed for:

FCIC
(Name) _____
(Title) _____
(Date) _____

Company
(Name) _____
(Title) _____
(Date) _____

Amendment C to the Reinsurance Agreement between the Federal Crop Insurance Corporation and the:

(Company name) _____
of (city, state) _____

Whereas, the Federal Crop Insurance Corporation (FCIC) and the insurance company named above (Company) have entered into a reinsurance agreement entitled the Standard Reinsurance Agreement (Rev. 8-82), as amended, (Agreement), and

Whereas, said Agreement does not provide for the initial reimbursement of expenses until submission of the acreage report, and

Whereas, because of the unique nature of raisin marketing, the expense reimbursement is delayed until the final settlement, which is considerably later than the intitial expense reimbursement for other crops, and

Whereas, this delay in the expense reimbursement causes cash-flow difficulties for reinsured companies, thus decreasing their ability to serve this market, and

Whereas, it is to the benefit of FCIC to prudently accelerate the payment of administrative expenses to companies writing raisin crop insurance;

Now therefore, in consideration of these premises, FCIC and the Company agree to amend said Agreement as follows:

1. THe following sub-paragraph 4 is added to paragraph IV, C:

4. Notwithstanding the provisions of sub-paragraph C, 1, the Company may, in the case of raisins, submit to FCIC after the end of the insurance period a preliminary report of raisin tonnage. This report may be used to determine the expense reimbursement provided in sub-paragraph C, 1. In the event the Company reports to FCIC excess raisin premium based upon said preliminary tonnage report, the Company shall refund to FCIC any excess expense reimbursement, together with interest established under Section 12 of the Contract Disputes Act (41 U.S.C. 611) from the date of said payment by FCIC to the date of refund by the Company.

2. Sub-paragraph 1 of paragraph VII, B, is amended to read as follows:

1. Not later than April 15, or July 31 for raisins, of the calendar year following the crop year under consideration, the Company shall prepare and forward to FCIC an annual summary setting forth the information necessary to make a settlement for the year. The information will be on forms mutually acceptable to both parties to this Agreement and contain all information required by FCIC.

3. The provision of this Amendment are effective for the 1984 and subsequent crop years.

Approved and Executed for:

FCIC _____
(Signature) _____
(Name) _____
(Title) _____
(Date) _____

Company _____
(Signature) _____
(Name) _____
(Title) _____
(Date) _____

Done in Washington, D.C., on November 6, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved: December 11, 1984.

Edward Hews,

Acting Manager.

[FR Doc. 84-32860 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-08-M

Packers and Stockyards Administration

Posted Stockyards; Cattleman's Commission Co. et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AR-161 Cattleman's Commission Co., Batesville, AR.	Nov. 5, 1984.
CO-149 Gunnison Valley Horse Auctions Gunnison, CO.	Oct. 20, 1984.
TN-182 Hogin Livestock Sales Dixon, TN.	Oct. 30, 1984.

Done at Washington, D.C., this 10th day of December, 1984.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 84-32893 Filed 12-17-84; 8:45 am]

BILLING CODE 3410-02-M

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; Systems of Record

AGENCY: Central Intelligence Agency.

ACTION: Amendment of General Routine Uses.

SUMMARY: This amends and renumbers one general routine use and is applicable to all of the CIA systems of records (last published in full text in the Federal Register, Vol. 42, No. 184, p. 48269). The other six routine uses remain unchanged except for being renumbered.

EFFECTIVE DATE: November 9, 1984.

FOR FURTHER INFORMATION CONTACT: George LaPlante, Phone (703) 351-6046.

SUPPLEMENTARY INFORMATION: The seventh routine use (formerly number 1) has been amended to more clearly identify the specific legal authorities which govern the conduct of CIA activities. In order to eliminate any confusion that might be engendered by the general nature of the language used, the Privacy Act requirement that disclosure be "compatible with the purpose for which the record was collected" has been included in the amended text. The statement that "[t]his

routine use is not intended to supplant the other routine uses published by the Central Intelligence Agency" was included in order to indicate that the general routine use does not apply under circumstances when any of the other published uses apply.

For the reasons set out in the preamble and pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), this Agency amends the statement of general routine uses as stated below.

The following routine uses apply to, and are incorporated by reference into, each system of records maintained by the CIA:

1. In the event that a system of records maintained by the Central Intelligence Agency to carry out its functions indicates, or relates to, a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be disclosed, as a routine use, to the appropriate agency whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with the responsibility to take appropriate administrative action, or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Central Intelligence Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance or special access, or the performance of the Agency's acquisition functions.

3. A record from this system of records may be disclosed, as a routine use, to a federal, state, or local agency, or other appropriate entities, or individuals, in connection with the hiring or retention of an employee, the issuance of a security clearance or special access, the reporting or an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the entity's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing parties or their counsel or other representatives in the course of settlement negotiations, and disclosures made pursuant to statutes or regulations governing the conduct of such proceedings.

5. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation, as set forth in OMB Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in the Circular.

6. A record from a system of records may be disclosed, as a routine use, to NARS (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

7. A record from this system of records may be disclosed, as a routine use, to a federal, state, or local agency, other appropriate entities or individuals, or, through established liaison channels, to selected foreign governments, provided such disclosure is compatible with the purpose for which the purpose for which the record was collected and is undertaken to enable the Central Intelligence Agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, national security directives applicable to the Agency and classified implementing procedures approved by the Attorney General promulgated pursuant to such Orders and directives, as well as statutes, Executive orders and directives of general applicability. This routine use is not intended to supplant the other routine uses published by the Central Intelligence Agency.

Harry E. Fitzwater,

Director for Administration.

December 4, 1984.

[FR Doc. 84-32913 Filed 12-17-84; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-405]

Barbed Wire and Barbless Fencing Wire From Argentina; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Argentina are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have been alleged. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 3, 1985, and we will make ours on or before April 28, 1985.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On November 19, 1984, we received a petition in proper form filed by Forbes Steel and Wire Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(e)) (the Act).

The petitioner based the United States prices on actual sales and offers for sale of barbed wire and barbless fencing wire, to U.S. purchasers, less ocean freight and insurance, handling, and off-loading charges.

The petitioner based foreign market value on its own costs of production, adjusted for estimated differences in production costs in Argentina.

By comparing the prices calculated by the foregoing methods the petitioner alleged a dumping margin of 58.4 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on barbed wire and barbless fencing wire and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Argentina are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by April 28, 1985.

Scope of Investigation

The products under investigation are barbed wire and barbless fencing wire currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 642.0200 and 642.1105 respectively.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 3, 1985, whether there is a reasonable indication that imports of barbed wire and barbless fencing wire from Argentina are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: December 10, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-32818 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-407]

Barbed Wire and Barbless Fencing Wire From Brazil; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Brazil are being, or are likely to be, sold in the United States at less than fair value Critical circumstances have been alleged. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 3, 1985, and we will make ours on or before April 28, 1985.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Consitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On November 19, 1984, we received a petition in proper form filed by Forbes Steel and Wire Corporation. In compliance with the filing requirements § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(e) (the Act).

The petitioner based the United States prices on actual sales and offers for sale of barbed wire and barbless fencing wire, to U.S. purchasers, less ocean freight and insurance, handling, and off-loading charges.

The petitioner based foreign market value on its own costs of production, adjusted for estimated differences in production costs in Brazil.

By comparing the values calculated by the foregoing methods the petitioner alleged at a dumping margin of 55.4 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on barbed wire and barbless fencing wire and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by April 28, 1985.

Scope of Investigation

The products under investigation are barbed wire and barbless fencing wire currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 642.0200 and 642.1105 respectively.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 3, 1985, whether there is a reasonable indication that imports of barbed wire and barbless fencing wire from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: December 10, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-32819 Filed 12-17-84; 8:45 am]

BILLING CODE 2510-DS-M

[A-455-401]

Barbed Wire and Barbless Fencing Wire From Poland; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Poland are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have been alleged. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 3, 1985, and we will make ours on or before April 28, 1985.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On November 19, 1984, we received a petition in proper form filed by Forbes Steel and Wire Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Critical circumstances have also been alleged under section 733b(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(e)) (the Act).

The petitioner based the United States prices on actual sales and offers for sale of barbed wire and barbless fencing wire, to U.S. purchasers, less ocean freight, handling, and off-loading charges.

The petitioner based foreign market value on the average entered value of barbed wire imports into the United States, in 1983 (a representative period), from all countries except Poland, the People's Republic of China (also a controlled economy), Austria, and Taiwan. The imports from the latter two countries were excluded because their average prices far exceeded the general range of prices.

The petitioner alleges that since Poland is a state-controlled economy for foreign market value of its barbed wire exports (and barbless fencing wire) must be determined in accordance with section 773(c) of the Act and, since home market prices in comparable market economy countries are not available, the "average entered price" of barbed wire imported into the United States, in 1983, with certain exclusions, should be used.

By comparing the values calculated by the foregoing methods the petitioner alleged a dumping margin of 29.5 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on barbed wire and barbless fencing wire and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Poland are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by April 28, 1985.

Scope of Investigation

The products under investigation are barbed wire and barbless fencing wire currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 642.0200 and 642.1105 respectively.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secreraty for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 3, 1985, whether there is a reasonable indication that imports of barbed wire and barbless fencing wire from Poland are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: December 10, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration..

[FR Doc. 84-32820 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-081]

Polyvinyl Chloride Sheet and Film From Taiwan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On September 20, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers the 28 known manufacturers and/or exporters and one known third-country reseller of this merchandise to the United States currently covered by the findings and the period June 1, 1982, through May 31, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: December 18, 1984.

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

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 36897) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan (43 FR 28457, June 30, 1978). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of unsupported, flexible, calendered polyvinyl chloride ("PVC") sheet, film and strips, over 6 inches in width and over 18 inches in length, and at least 0.0002 inch but not over 0.020 inch in thickness, currently classifiable under items 771.4312 and 774.5595 of the Tariff Schedules of the United States Annotated.

The review covers the 28 known manufacturers and/or exporters and one known third-country reseller of Taiwanese polyvinyl chloride sheet and film to the United States currently covered by the finding and the period June 1, 1982, through May 31, 1983.

We have further determined that merchandise exported by C.Y.&C. Manufacturing Corp. and Mike Hung Products Co., Ltd. is merchandise not subject to the finding. We, therefore, will not cover these two firms in this review or future section 751 reviews unless they begin shipping the covered merchandise.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as the preliminary results, and we determine that the following margins exist for the period June 1, 1982, through May 31, 1983:

Manufacturer/Exporter	Margin (percent)
Asiam International Inc	[1]11.37
Berlin International Taiwan Corp	12.04
Brave Dragon Industry Ltd	12.04
Collins Co., Ltd	[1]5.9
Diamond Shamrock Trading Corp	[1]0
Essex Sporting Goods	12.04
Fashion Plastics Fabrication Co	[1]5.9
Kangel Enterprises, Inc	[1]11.37
Long Joy Enterprises Co., Ltd	12.04
Long-Prosper Enterprises Co., Ltd	12.04
Nan Lung Plastics Co., Ltd	12.04
Odin Industries Co., Ltd	[1]11.37
Pleasure Time Products Inc	12.04
Progress Plastics Co., Ltd	0
Resy Plastic Co., Ltd	0
San Ching Plastics	12.04
Sequence Co., Ltd	[1]0
Taur Yang Enterprises Co., Ltd	12.04
The Orchard Corp. of Taiwan, Ltd	12.04
Orchard/Highest International Development Corp	12.04
Orchard/Digest International Development Corp	12.04
Truly Enterprises Co., Ltd	12.04
Union Industries Limited	[1]11.37
Wan Chang Lung Trading Co., Ltd	12.04
Winport Marketing Ltd	[1]0
Yeai Fung Enterprises Co., Ltd	12.04
Yung Chieh Enterprises Co., Ltd	[1]0
Yunloon Enterprises Co., Ltd	12.04
Third-Country Reseller/Country	
Hop Kee Hong/Hong Kong	12.04

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margins for those firms. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after May 31, 1983, and who is unrelated to any reviewed firm, a cash deposit of 12.04 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese polyvinyl chloride sheet and film entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

December 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-32822 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-401]

Red Raspberries From Canada; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

SUMMARY: We determine that red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by February 23, 1985. We further determine that "critical circumstances" do not exist.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Julia E. Hathcox or David Johnston, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–0184 or 377–2239.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have determined that red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value, pursuant to section 733(b) of the Tariff Act of 1930, as amended (the Act). Two exporters, Jesse Processing Limited and Mukhtiar and Sons Packers Limited are excluded from this determination because we found *de minimis* margins on the sales at less than fair value. We further determined that critical circumstances do not exist.

We have found that the foreign market value of red raspberries exceeded the United States price on 39 percent of the sales compared. These margins ranged from 0.02 percent to 28.6

percent. The overall weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by February 23, 1985.

Case History

On July 3, 1984, we received a petition from the Washington Red Raspberry Commission, the Red Raspberry Committee of the Oregon Caneberry Commission, the Red Raspberry Committee of the Northwest Food Processors Association, the Red Raspberry Member Group of the American Frozen Food Institute, Rader Farms (a grower/packer of red raspberries), Ron Roberts (a grower of red raspberries) and Shuksan Frozen Foods Inc. (an independent packer of red raspberries), on behalf of themselves and the domestic producers of red raspberries.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of red raspberries from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We also are investigating whether there were sales in the home market at less than the cost of production. We notified the ITC of our action and initiated such an investigation on July 23, 1984 (49 FR 30342). On August 20, 1984, the ITC determined that there is a reasonable indication that imports of red raspberries are threatening to material injure a United States industry.

On September 11, 1984, questionnaires were sent to Abbotsford Growers Cooperative Association (AG), East Chilliwack Fruit Growers Cooperative (EC), Mukhtiar & Sons Packers Ltd. (M&S) and Jesse Processing Ltd. (JP), processors of red raspberries. On November 1, 1984, we received their responses. On October 25, 1984, cost of production questionnaires were sent to AG, EC, M&S, JP, and a representative sample of growers (Mukhtiar Growers Ltd., J.J. Martens, Chester Lien, Harnack S. Gill, H.P. Riemer, Darshan Mahil, Nachattar Bains, Hoege Driegen, Sandhu Fruit Farms, John Enns, Egan Foerderer, and Jesse Farms Ltd.).

On November 20, 1984, we received an allegation from petitioners that critical circumstances exist.

Scope of Investigation

The merchandise covered by this investigation is fresh and frozen red raspberries packed in bulk containers and suitable for futher processing. Fresh raspberries are classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of certain sales of red raspberries to represent the United States price for sales by AG, EC, and JP when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the f.o.b. plant, packed, price. We made no deductions.

As provided in section 772(c) of the Act, we used the exporter's sales price of certain sales of red raspberries to represent the United States price for sales by AG, EC, and M & S when the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the duty paid, f.o.b. warehouse, packed, price. We made deductions for freight, commissions to unrelated U.S. agents, U.S. customs or import duty, brokerage, discounts, quality control, cold storage, puree processing, and all costs and expenses generally incurred by or for the account of the exporter. We made deductions for expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise.

Foreign Market Value

Petitioners alleged that sales of red raspberries in the home market were at prices below the cost of producing red raspberries. We examined the production costs, which included all appropriate costs: growing, processing and general, selling, and administrative expenses. We found all sales of frozen raspberries were made at prices above the cost of production. Therefore, in accordance with § 353.3 of the Commerce Regulations (19 CFR 353.3), we used home market sales for the determination of foreign market value for AG, EC, JP and M&S for comparisons to sales of red raspberries imported in frozen condition. We calculated the home market prices on the basis of the f.o.b. plant or delivered, packed or unpacked, price as appropriate. We made deductions for freight, where appropriate, and discounts. In accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15), we made a circumstance of sale adjustment for differences in credit expenses. We made an adjustment to foreign market value for home market selling expenses on purchase price sales where commissions were paid to unrelated U.S. commission agents. Where exporter's sales prices were used as United States price, we made deductions for indirect selling expenses incurred in the home market up to the amount of U.S. sales commissions and indirect selling expenses in accordance with § 353.15 of the Commerce Regulations. We made adjustments for packing costs. We made no deduction for in-transit warehousing as there was not sufficient documentation showing the nature of this claim.

For purposes of determining fair value for comparison to raspberries which were imported into the United States in fresh condition, we found no home market sales of such or similar merchandise. Therefore, we based the foreign market value on the constructed value.

We used the statutory minimum of 10 percent for calculating general expenses since respondents' general expenses were below the statutory minimum. We calculated profit using the statutory minimum of eight percent of the sum of general expenses and cost since the actual profit was less than the statutory minimum. We added the cost of U.S. packing.

Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of red raspberries from Canada present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine: (1) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of red raspberries from Canada in the United States or elsewhere, we reviewed past

antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on red raspberries from Canada.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. In this case, the margins calculated on the basis of the response to the Department's questionnaire are not sufficiently large that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that the importer did not have knowledge of sales at less than fair value. Since there is no history of dumping in the United States or elsewhere and we have no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, we did not consider whether there had been massive imports over a relatively short period.

Based on the foregoing, we determined that critical circumstances do not exist with respect to imports of this product.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with Section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of red raspberries packed in bulk containers from Canada except those from Jesse Processing Limited and Mukhtiar and Sons Packers Limited, entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price.

This suspension of liquidation will remain in effect until further notice. Imports of red raspberries sold by JP and M&S are excluded from this suspension of liquidation, since the weighted-average margins are 0.03 and 0.07 percent, respectively, which are *de minimis*. The weighted-average margins are as follows:

WEIGHTED-AVERAGE

Manufacturers Margin	Percentage
Mukhtiar and Sons Packers Limited (*de minimis Excluded*	0.07)
Jesse Processing Limited (*de minimis Excluded*	0.03 Excluded)
Abbotsford Growers Cooperative Assoc	7.49
East Chilliwack Fruit Growers Coop	4.54
All Other Manufacturers/Producers/Exporters	6.29

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on January 23, 1985 at the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 16, 1985.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: December 10, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-32821 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of California

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-266. Applicant: University of California, Berkeley, CA 94720. Instrument: FTIR Spectrometer System, Model IZM03. Manufacturer: Bomen, Inc., Canada. Intended use: See notice of 49 FR 35397.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) a resolution of 0.012 cm^{-1}, (2) a spectral range of 10 cm^{-1} to 45000 cm^{-1} (far infrared to visible) and (3) operation under vacuum. The National Bureau of Standards advises in its memorandum dated October 22, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director Statutory Import Programs Staff.

[FR Doc. 84-32824 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Chicago

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-237. Applicant: University of Chicago, Argonne, IL 60539. INSTRUMENT: Microscope System for Reflected Lights. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: See notice at 49 FR 30984.

Comments: None received.

Decision: Approved. No instrument of equivalent scentific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Bureau of Standards advises in its memorandum dated October 22, 1984 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32828 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Chicago

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-65R. Applicant: University of Chicago, Argonne, IL 60439. Instrument: Infrared Spectrometer System, Model DA3-02. Original notice of this resubmitted application was published in the **Federal Register** of March 5, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 84-65 which was denied without prejudice to resubmission on procedural grounds. The foreign instrument provides an apodized resolution of 0.02 cm^{-1}, vacuum operation, and dynamic alignment for high spectral accuracy. The National Bureau of Standards advises in its memorandum dated October 29, 1984 that (1) the capability of the foreign instrument described above is pertinemt to th applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32833 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Los Alamos National Laboratory

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Material Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Consitution Avenue, NW., Washington, D.C.

Docket No. 84-258. Applicant: Los Alamos National Laboratory, Los Alamos, NM 87545. Instrument: Laboratory Interferometric Spectrophotometer, Model IZMO5. Manufacturer: Bomem, Inc., Canada. Intended use: See notice at 49 FR 35168.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a resolution of 0.003 cm^{-1} and operation under vacuum. The National Bureau of Standards advises in its memorandum dated October 19, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32829 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Michigan State University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301. Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-102. Applicant: Michigan State University, East Lansing, MI 48824. Instrument: FT-IR Spectrophotometer. Manufacturer: Bomem, Inc., Canada. Intended use: See notice at 49 FR 10139.

Comments: None received.

Decision: Approved: No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an apodized resolution of 0.02 cm^{-1}. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value

to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32830 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Notre Dame

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-298. Applicant: University of Notre Dame, Notre Dame, IN 46556. Instrument: EMG 102E Excimer Multi-Gas Laser and FL 2001 Dye Laser. Manufacturer: Lambda Physik GmbH and Co., West Germany. Intended use: See notice at 48 FR 44099.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provisions the lowest possible pulse time jitter, ±0.5 nanoseconds.

The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32825 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision of Application for Duty-Free Entry of Scientific Instrument: Pitt County Memorial Hospital

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-193. Applicant: Pitt County Memorial Hospital, Greenville, NC 27834. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 23095.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purpose as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides 0.34 nanometer lattic resolution and can make high quality micrographs over the magnification range of 150X to 250 000X. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 32826 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Rockefeller University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-18. Applicant: Rockerfeller University, New York, NY 10021. Instrument: Gas chromatograph/Mass Spectrometer/Data System, Model VG 70-250. Manufacturer: VG Instruments, United Kingdom. Intended use: See notice at 49 FR 922.

Comments: None received.

Decision: Approved. No. instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides rapid alternate scanning of positive or negative chemical ionization, positive electron impact or negative chemical ionization, with a scanning capability of 0.2 seconds per decade for mass below 2000 and a resolution of 1-2000 amu at an accelerating voltage of 6000 volts with a data system capable of handling such rapid mode changes. The National Bureau of Standards advises in its memorandum dated September 7, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of not other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials

Leonard E. Mallas,

Acting Director Statutory Import Programs Staff.

[FR Doc. 84-32827 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Scripps Clinic and Research Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-94. Applicant: Scripps Clinic and Research Foundation, La Jolla, CA 92037. Instrument: Nuclear Magnetic Resonance Spectrometer System, Model AM 500. Manufacturer: Bruker Instruments, Inc., West Germany. Intended use: See notice at 49 FR 10138.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a working field strength of 11.747 Tesla (for a proton frequency of 500 megahertz) and digital radio frequency phase shifting permitting multiple quantum experiments. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the

foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Malls,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32823 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Massachusetts Institute of Technology

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-272. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: X-Ray Microanalyzer, Model Superprobe 733. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 35397.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument performs x-ray analysis of surfaces with a spatial resolution of 2.0 microns and provides scanning electron microscope capabilities with a spatial resolution of 7.0 nanometers. The National Bureau of Standards advises in its memorandum dated November 7, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32832 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Yale University School of Medicine, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-256. Applicant: Yale University School of Medicine, New Haven, CT 06510. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use: See notice at 49 FR 39356. Application received by Commissioner of Customs: September 7, 1984.

Docket No. 84-289. Applicant: Center for Ulcer Research & Education Foundation, Los Angeles, CA 90073. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 39356. Instrument ordered: August 6, 1984.

Docket No. 84-296. Applicant: Whitehead Institute for Biomedical Research, Cambridge, MA 02142. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 39357. Intsrument ordered: August 9, 1984.

Docket No. 84-297. Applicant: U.S. Department of Energy, Idaho Falls, ID 83415. Instrument: Electron Microscope, Model EM 420. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 39357. Instrument ordered: August 22, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-32831 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-602-401]

Galvanized Carbon Steel Sheet From Australia; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that galvanized carbon steel sheet from Australia is being sold, or is likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise, and to require a cash deposit or posting of a bond for each such entry in an amount equal to the estimated dumping margin as described in the "suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that galvanized carbon steel sheet from Australia is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). We found that the foreign market value of galvanized carbon steel sheet from Australia exceeded the United States price on 83 percent of sales. These margins ranged from 1.21 to 93.20 percent. The weighted-average margin on all sales compared is 38.22 percent.

Case History

On February 10, 1984, we received a petition from United States Steel Corporation of Pittsburgh, Pennsylvania filed on behalf of the U.S. industry producing galvanized carbon steel sheet. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of galvanized carbon steel sheet from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated the investigation on March 1, 1984 (49 FR 8656). On April 4, 1984 (49 FR 13442), the ITC found that there is a reasonable indication that imports of galvanized carbon steel sheet from Australia materially injure, or threaten material injury to, a United States industry.

We presented a questionnaire to John Lysaght (Australia), Ltd. (JLA) on March 9, 1984. JLA is the only known producer that exported the subject merchandise to the United States during the period of investigation. Due to the large number of sales transactions, we instructed JLA to report its home market and U.S. sales transactions in hard copy and on computer tape in the format outlined in our questionnaire. We received JLA's response to our questionnaire on April 16 and May 1, 1984. On May 8, 1984, in a letter to counsel for JLA, we outlined several deficiencies in the response, and requested that the company submit a supplemental response no later than May 25, 1984. We received JLA's amended response, including a new computer tape, on May 23, 1984. During the week of June 5, 1984, we conducted a verification in Australia of JLA's response. Certain data concerning JLA's sales to the United States through its related U.S. subsidiary were verified during the week of August 27, 1984. After verification, in response to our request, JLA submitted, on June 27, 1984, an amended response and a revised computer tape to update information on shipments and to correct deficiencies or errors that were found during verification. On July 19, 1984, we made a preliminary determination that galvanized carbon steel sheet from Australia was being, or was likely to be, sold in the United States at less than fair value (49 FR 29993). As required by the Act, we afforded interested parties an opportunity to submit oral and written views. No request for a hearing was received. Written views were submitted by counsel for the respondent on August 23, 1984.

On September 11, 1984, U.S. Steel amended its petition to include an allegation that "critical circumstances" exist with respect to imports of carbon steel galvanized sheet from Australia. A notice of "Preliminary Negative Determination of Critical Circumstances" was published on October 17, 1984 (49 FR 40633). On August 3, 1984, the respondent requested a postponement of the final determination until December 7, 1984. The notice of postponement was published on October 31, 1984 (49 FR 43733).

Scope of Investigation

The merchandise covered by this investigation is galvanized carbon steel sheet. The term "galvanized carbon steel sheet" covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1320 or 608.1330 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc or with a zinc-aluminum-zinc alloy is not included.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value, as explained below.

United States Price

As provided for in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. Although JLA reported the U.S. sales made through its related U.S. subsidiary as exporter's sales price sales, we have determined that these are purchase price sales because the sale to the first unrelated U.S. purchaser was made prior to the date of importation.

We calculated the purchase price on the basis of the c.i.f. or c.&f. packed price to unrelated U.S. customers. We made deductions, where appropriate, for a discount, foreign inland insurance, foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. duty.

Foreign Market Value

As provided for in section 773 of the Act, we based foreign market value on the delivered packed prices of JLA's home market sales to unrelated purchasers. In accordance with section 771(16)(B) of the Act, we made comparisons of "such or similar" merchandise based on quality, width, thickness, and length categories, as determined by our Commerce Department industry expert. In calculating foreign market value, we made currency conversions from Australian dollars to U.S. dollars in accordance with § 353.56(a)(1) of our regulations, using the appropriate certified exchange rates.

We made deductions, where appropriate, for foreign inland freight, settlement discounts, and rebates. We adjusted for differences in packing. We made adjustments where appropriate for credit expenses, advertising expenses attributable to a later sale of the merchandise by a purchaser, and claimed warranty expenses, including a discretionary allowance, which were directly related to the sales under consideration. We also made an adjustment for the differences between commissions on sales to the United States and indirect selling expenses in the home market used as an offset to U.S. commissions, in accordance with § 353.15(c) of our regulations. In accordance with section 773(a)(4)(C) of the Act, we also made adjustments for physical differences in the merchandise.

We disallowed the following deductions and adjustments claimed by JLA. We did not deduct inland insurance on home market sales because we were unable to verify the amount claimed. We made no circumstance-of-sale adjustment for technical services expenses because JLA could not demonstrate that these expenses were directly related to the sales under consideration. Certain advertising expenses were also disallowed because they could not be attributed to a later sale of the merchandise by the purchaser. We also did not allow a claimed adjustment to the U.S. sales price for the rebates JLA received from its suppliers on its purchases of the feedstock. This rebate constitutes a reduction in JLA's cost of production. The cost saving has not been tied to the sales under consideration.

Petitioner's Comments

Petitioner has not submitted any comments concerning our fair value comparisons.

Respondent's Comments

Comment 1: Counsel for the respondent claims that home market sales to related parties should have been included in the calculation of the foreign market value.

DOC Response. We reviewed the sales listing submitted by the respondents. In doing so, we compared sales prices after adjusting for discounts and rebates granted on individual sales. We found that the net prices to unrelated purchasers were consistently above those to related purchasers. Therefore, we disregarded sales to related purchasers as not being at prices comparable to those to unrelated purchasers (19 CFR 353.22).

Comment 2: Counsel for the respondent claims that in some instances calculations were made on the basis of short tons where a conversion to long tons was appropriate.

DOC Response. For purposes of the final determination, all calculations were based on long tons.

Final Determination of Critical Circumstances

Petitioner alleges that imports of galvanized carbon steel sheet from Australia present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

We analyzed recent trade statistics on imports from Australia for the periods immediately preceding and subsequent to the petition filing. Our analysis indicates that imports from Australia decreased during the period February through July.

Based on our comparison of the data for the periods set forth above, we find that there have not been massive imports of galvanized carbon steel sheet from Australia over a relatively short period of time.

Therefore, for the reasons described above, we determine that critical circumstances do not exist with respect to galvanized carbon steel sheet from Australia.

Verification

In accordance with section 776(a) of the Act, we verified all data used in making this final determination by using verification procedures which included on-site inspection of the manufacturer's facilities and examination of company records and selected original source documentation containing relevant information.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on July 25, 1984, we directed the United States Customs Service to suspend liquidation of all entries of galvanized carbon steel sheet from Australia as described in the "Scope of Investigation" section of this notice. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption, of this merchandise shall continue to be suspended. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin is 38.22 percent.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry, within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess antidumping duties on galvanized carbon steel sheet from Australia, as appropriate.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-32894 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 41042-4142]

Federal Information Processing Standards 60-2, 61-1, 62, 63-1, 97 Technical Verification Guidance

Correction

In FR Doc. 84-31359 beginning on page 47080 in the issue of Friday, November 30, 1984, make the following corrections:

In the second column, **Technical Verification Guidance**, paragraph designated as 7.1, third line, "to" should read "be"; seventh line from the bottom of the column, "least" should read "lease"; and forth line from the bottom "and" should read "an".

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification No. 1 to Permit No. 472; Tampereen Sarkanniemi Oy

Notice is hereby given that pursuant to the provision of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and Section C-4e of the Public Display Permit No. 472 issued to the Tampereen Sarkanniemi Oy, SF-33230 Tampere 23, Finland on June 14, 1984 (49 FR 25271), that permit is modified as follows:

Section A is modified by adding: "2. The Permit Holder is authorized to take a sixth Atlantic bottlenose dolphin

(*Tursiops truncatus*) by the means described in the application."

This modification became effective on December 7, 1984.

This permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 7, 1984.

Richard B. Roe,

Director Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 84-32855 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Modification No. 7 to Permit No. 93; Dr. William W. Dawson

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 93 issued to Dr. William W. Dawson, J. Hillis Miller Health Center, University of Florida, Gainesville, Florida, on April 8, 1975, is further modified to extend the period of authorized taking for one year.

Accordingly, Section B-9 is deleted and replaced by: "9. This permit is valid with respect to the taking authorized herein until December 31, 1985."

This modification becomes effective upon publication in the **Federal Register.**

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 6, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-32856 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limit for Certain Wool Apparel Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 13, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 19, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

A CITA directive of March 16, 1984 (49 FR 10567) established limits for certain wool and man-made fiber textile products in Category 443/643 (men's and boys' wool and man-made fiber suits), produced or manufactured in Yugoslavia and exported during 1984. Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of February 21 and 27, 1984, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, and at the request of the Government of the Socialist Federal Republic of Yugoslavia, the sublimit for Category 443 is being increased by the application of swing and carryover, increasing it to 10,010 dozen for goods exported during 1984.

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, and November 9, 1984 (49 FR 44782).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of March 16, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool textile products in Category 443 exported during 1984, according to the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of February 21 and 27, 1984, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia [1] to the following, effective on December 19, 1984.

Category	Adjusted 12-mo level of restraint [1]
443/643	19,000 dozen of which not more than 10,010 dozen shall be in Cat. 443.

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32883 Filed 12-17-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Matching Program—Department of Defense/ Department of Transportation/ Veterans Administration

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of a proposed continuing Computer Matching Program between the Department of Defense and the Department of Transportation and the Veterans Administration .

SUMMARY: The Department of Defense, as the matching agency, proposes to match by computer certain Department of Defense records with records provided by the source agencies, the Department of Transportation and the Vererans Administration, to detect any fraud and abuse of ageny programs and to locate debtors to the Federal Government. This will be an ongoing Matching Program conducted annually thereafter. The matches will be made under written agreements between the Department of Defense and the Department of Transportation and Veterans Administration. A matching report is set forth below.

DATE: This action shall be effective without further notice on or before January 17, 1985, unless comments are received which would result in a contrary determination.

[1] The bilateral agreement provides, among other things, that (1) within the group limit the specific limit may be exceeded by no more than five percent in any agreement period; and (2) the group limit may be exceeded for carryover and carryforward not to exceed 11 percent of the applicable limit.

ADDRESS: Send any comments to Mr. Kenneth C. Scheflen, Director, Defense Manpower Data Center, Room 400, 1600 Wilson Boulevard, Arlington, VA 22209. Telephone: 202/696–5816.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, ODASD(A), The Pentagon, Washington, DC 20301–1100. Telephone: 202/694–3027.

SUPPLEMENTARY INFORMATION: A copy of this notice has been provided to the Congress (President of the Senate and Speaker of the House of Representatives) and to the Director of the Office of Management and Budget on December 11, 1984. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance of Conducting Matching Programs, effective May 11, 1982 and published in the **Federal Register** (47 FR 21656) on May 19, 1982.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 12, 1984.

Report of a Continuing Matching Program Between the Department of Defense and the Department of Transportation and Veterans Administration

a. *Authority:* 5 U.S.C. 552a; 10 U.S.C. 136; Debt Collection Act of 1982 (Pub. L. 97–365); Inspector General Act of 1978 (Pub. L. 95–452).

b. *Program Description:* The Manpower Data Center of the Department of Defense, as the matching agency, will receive a magnetic tape of the Department of Transportation's U.S. Coast Guard Reserve file and of the Veterans Administration's benefit payment data file annually to conduct several computer matches as follows:

(1) To identify those members of the active Reserve Forces (Army, Navy, Air Force, Marines and Coast Guard) who are also receiving Veterans Administration pension or compensation. The records identified (hits) will be transmitted to the Veterans Administration to identify which of the benefit recipients must waive their Veterans Administration benefits in order to receive reserve drill pay.

(2) Those reservists who have not filed a waiver of their benefits with the Veterans Administration will be identified to the Defense Manpower Data Center, who in turn, will notify the respective military service finance center of the debts to the Veterans Administration for appropriate adjustments or repayment of debts owed the Government.

c. *Records to be Matched:*

(1) Department of Defense System of Records.

The Department of Defense system of records to be used in this match is identified as § 322.10 DLA–LZ, entitled: Defense Manpower Data Center Data Base. This record system notice can be located in the **Federal Register** at 49 FR 44941, November 13, 1984. No amendment to this notice is required. The disclosure of information from this system of records, for the purpose of the matching program, is permitted by the existing routine uses.

(2) Department of Transportation System of Records.

The Department of Transportation system of records involved is identified as DOT/CG 533, entitled: Retired Pay and Personnel System. This record system notice can be located in the **Federal Register** at 49 FR 15359, April 18, 1984. The disclosure of information from this system of records, for the purpose of the matching program, is permitted by the existing routine uses.

(3) Veterans Administration System of Records.

The Veterans Administration system of records involved is identified as 58VA21/22/28, entitled: Compensation, Pension, Education and Rehabilitation Records—VA. This record system notice can be located in the **Federal Register** at 47 FR 372, January 5, 1982; and amended at 47 FR 16132, April 14, 1982; 47 FR 40742, September 15, 1982; 48 FR 1384, January 12, 1983; 48 FR 39197, August 29, 1983; 48 FR 45866, October 7, 1983; 48 FR 52799, November 22, 1983. The disclosure of information from this system of records, for the purpose of the matching program, is permitted by the existing routine uses.

d. *Period of the Match:* The matching will begin when this notice becomes effective as set forth under "date" in the preamble of this notice and will be conducted annually thereafter.

e. *Security Safeguards:* Tapes containing personal data are stored in a secure computer data processing facility at the W.R. Church data processing center, Naval Postgraduate School, Monterey, CA. Access to the tapes is by authorized personnel only. The data will only be used for the purposes stated above and data on non-matching records will not be used for any purpose. Data on the entire file may be used for aggregate statistical purposes, not identifying any individual. All matching records will be further examined for accuracy and any actions taken will conform to all applicable due process standards. Tapes will be returned to the originating agency.

f. *Retention and Disposition of Records:* The records furnished by the Department of Transportation and the Veterans Administration are only loaned to the Department of Defense and, while in the temporary custody, any release of information from the files will be made in accordance with established procedures and approval of these agencies. These source agencies may either request return of the data furnished or direct its destruction at any time. Any records on individuals of interest to the Department of Defense will be collected and maintained in appropriate Department of Defense systems of records subject to the Privacy Act of 1974, as amended, and may be disseminated or disclosed under established procedures only for a lawful purpose.

[FR Doc. 84–32881 Filed 12–17–84; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the military retirement system. Notice of this meeting is required under the National Advisory Committee Act.

DATE: January 23, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: Defense Manpower Data Center, 4th floor, 1600 N. Wilson Blvd., Arlington, Virginia 222092593.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 N. Wilson Blvd., Arlington, Virginia 22209 (202/696–5869).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense. December 12, 1984.

[FR Doc. 84–32845 Filed 12–17–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Office of the Secretary, DoD.

ACTION: Public Information Collection Requirement Submitted to OBM for Review.

SUMMARY: The Department of Defense has submitted to OBM for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Industrial Plant Equipment Replacement Analysis Worksheet (DD Form 1106)

The DD Form 1106 is used by Defense Contractors and in-house activities to perform the required economic analysis for replacement of industrial plant equipment. This economic analysis compares operating and capital costs of the existing equipment with those of the proposed replacement equipment to assure judicious expenditure of Defense funds.

DoD contractor and in-house activities
Responses 205
Burden hours 8,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C., 20301–1155, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Mr. John R. King, Office of Industrial Base Assessment, Suite 1406, 5203 Leesburg Pike, Falls Church, Virginia 22041–3466, telephone (202) 756–2310.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
December 12, 1984.

[FR Doc. 84-32844 Filed 12-17-84; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Deletion of and Amendments to Notices for Systems of Records.

SUMMARY: The Department of the Army proposes to delete 14 and amend 24 system notices for systems of records subject to the Privacy Act of 1974, as amended. Following identification of changes, amended notices are printed below in their entirety.

DATE: This action shall be effective without further notice on or before January 17, 1985, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments may be submitted to Headquarters, Department of the Army, ATTN: DAAG–AMR–S, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of The Adjutant General, Headquarters, Department of the Army, at the above address; telephone: 703/325–6163.

SUPPLEMENTARY INFORMATION: The Army's systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

FR Doc 83–12048 (48 FR 25502), June 6, 1983
FR Doc 83–18883 (48 FR 32046), July 14, 1983
FR Doc 83–24181 (48 FR 40291), September 6, 1983
FR Doc 83–28792 (48 FR 49086), October 24, 1983
FR Doc 84–1118 (49 FR 2006), January 17, 1984
FR Doc 84–2331 (49 FR 3506), January 27, 1984
FR Doc 84–3683 (49 FR 5170), February 10, 1984
FR Doc 84–6438 (49 FR 8993), March 9, 1984
FR Doc 84–11652 (49 FR 18600), May 1, 1984
FR Doc 84–14035 (49 FR 22122), May 25, 1984
FR Doc 84–15558 (49 FR 24045), June 11, 1984
FR Doc 84–16178 (49 FR 24914), June 18, 1984
FR Doc 84–16520 (49 FR 25499), June 21, 1984
FR Doc 84–17271 (49 FR 26625), June 28, 1984
FR Doc 84–18684 (49 FR 28754), July 16, 1984
FR Doc 84–19506 (49 FR 29812), July 24, 1984
FR Doc 84–38067 (49 FR 28967), October 2, 1984
FR Doc 84–39168 (49 FR 39188), October 4, 1984
FR Doc 84–40637 (49 FR 40637), October 17, 1984
FR Doc 84–26818 (49 FR 43990), November 1, 1984
FR Doc 84–31705 (49 FR 47520), December 5, 1984

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
December 12, 1984.

DELETIONS

A0225.07aDACS

System name:

Teleprocessing Customer Identification System (48 FR 25556), June 6, 1983.

Reason:

Records are covered by system notice A0225.12DAIM, printed in this **Federal Register.**

A0225.11kDACS

System name:

Computer Users Information System (48 FR 25558), June 6, 1983.

Reason:

Records are covered by system notice A0225.12 DAIM, printed in this **Federal Register.**

A0401.07bOSA

System name:

Medal of Honor Recipient Files (Vietnam Era) (48 FR 25581), June 6, 1983.

Reason:

Records are not subject to the Privacy Act of 1974, as amended.

A0412.05aOSA

System name:

Press Interest Reference Files (48 FR 25597), June 6, 1983.

Reason:

Records are covered in system notice A0412.140SA, reprinted in this **Federal Register.**

A0506.05DAAG

System name:

Diplomatic Immunity Roster (48 FR 25610), June 6, 1983.

Reason:

Records are covered by system notice A0102.03DAAG, Personnel Locator/ Organizational Roster/Telephone Directory.

A0508.11bUSACIDC

System name:

Criminal Information Reports and Cross Index Card Files (48 FR 25614), June 6, 1983.

Reason:

Records are covered by system notice A0508.11USACIDC, printed in this **Federal Register.**

A0508.11cUSACIDC

System name:

Special Agent Evaluation Files (48 FR 25615), June 6, 1983.

Reason:

Records are covered by system notice A0508.07aUSACIDC, reprinted in this **Federal Register.**

A0508.25aUSACIDC

System name:

Index to Criminal Investigative Case Files (48 FR 25619), June 6, 1983.

Reason:

Records are covered by system notice A0508.11USACIDC, reprinted in this **Federal Register.**

A0509.19cDAAG

System name:

Vehicle Registration Files (48 25626), June 6, 1983.

Reason:

Records are covered by system notice A0511.05DAPE, Traffic Law Enforcement/Vehicle Registration System: MPMIS.

A0509.20aDAAG

System name:

Ration Control/Commissary/ Cosmetic Purchase File (48 FR 25627), June 6, 1983.

A0509.20bDAAG

System name:

Alphabetical Roster (Thailand) (48 FR 25628), June 6, 1983.

Reason:

Records are covered by system notice A0102.03DAAG, Personnel Locator/ Organizational Roster/Telephone Directory.

A0606.07aDAPE

System name:

Safety Award Files (48 FR 25629), June 6, 1983.

Reason:

Records are not subject to the Privacy Act of 1974, as amended.

A0608.04aDASG

System name:

Radiation Incident Case Files (48 FR 25631), June 6, 1983.

Reason:

Records are covered by system notice A0609.01DASG, printed in this **Federal Register.**

A0701.08DAAG

System name:

Clemency Project (48 FR 25639), June 6, 1983.

Reason:

Records in this system no longer exist.

AMENDMENTS

A0225.12aDACS

System name:

Data Processing Installation Control System (48 FR 25558), June 6, 1983.

Changes:

System ID:

Delete "aDACS"; add: "DAIM".

System name:

Delete title; substitute therefor: "Access to Computer Areas, Systems Electronically, and/or Data Control Records".

System location:

Delete entries; substitute therefor: "Information processing and/or communications activities, Army-wide."

Categories of individuals covered by the system:

Delete entry; substitute therefor: "Personnel assigned to the Army Information Processing installation; contractor personnel; authorized customers/users".

Categories of records in the system:

Delete entry; substitute therefor: "Name, SSN; organization; telephone number and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and name and phone numbers of contributors; similar relevant information."

After "Authority for maintenance of the system", add:

"Purpose(s):

To administer passwords and ID's for operators/users of data in automated media; to identify data processing and communications customers permitted access to or disclosure of data residing in Information Processing and/or Communications Activities; to determine propriety of individual access into the physical data residing in automated media."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Delete entry; substitute therefor:

"See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add: "punch cards; magnetic tapes/ discs".

Retrievability:

Change to read: "Name, subject, user identification code, news item number, password, application program key word/author".

System manager(s) and address:

Delete entry; substitute therefor: "Assistant Chief of Staff for Information Management; Headquarters, Department of the Army, The Pentagon, Washington, DC 20310."

Notification procedure:

Delete entry; substitute therefor: "Individuals desiring to know whether or not information on them exists in this system of records should inquire of the Army Information Processing Installation Operation Center where information is believed to exist, providing their full name, sufficient details to permit locating pertinent records, and signature."

Record access procedure:

Delete entry; substitute therefor: "Individuals wishing to access information about themselves should address an inquiry as indicated in 'Notification procedure', providing information specified therein."

Record source categories:

Change entry to read: "System managers, computer facility managers, automated system interfaces for user codes on file at Army sites."

A0402.06DAJA

System name:

Legal Assistance Files (48 FR 32048), July 13, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To respond to inquiries and settle issues; for management and statistical reports."

Routine uses of records in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "None authorized."

A0405.02DAJA

System name:

Foreign Jurisdiction Case Files (48 FR 32048), July 13, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To monitor development and status of each individual case to ensure that all rights and protections to which US personnel abroad and their dependents are entitled under pertinent international agreements are accorded such personnel; to obtain information to answer queries regarding the status and disposition of individual cases involving the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies; to render management and statistical report."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

A0406.01bUSAREUR

System name:

Civil Process Case Files and Reference Files (48 FR 25592), June 6, 1983.

Changes:

System ID:

Delete suffix "b".

System name:

Delete "and Reference Files".

System location:

Change entry to read: "Office of the Judge Advocate, Headquarters, US Army, Europe and 7th Army, APO NY 09403; segments exist at other Army Judge Advocate Offices in the Federal Republic of Germany."

Categories of individuals covered by the system:

Change to read: "Military members of the Armed Forces, civilian employees of the US Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies."

Categories of records in the system:

Delete entry; substitute therefor: "Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and peanlties, demands for court costs or for costs for administrative proceedings, summonses and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between US Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports."

Authority for maintenance of the system:

Delete entry; substitute therefor: "10 U.S.C., section 3012; North Atlantic Treaty Organization Status of Forces Agreement."

Add: *Purpose(s):* to ensure that US Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and that rights of US Government employees are protected by making legal assistance available."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in the Federal Republic of Germany of Department of Defense military and civilian personnel. Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys."

System manager(s) and address:

Delete entry; substitute therefor: "The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310."

Notification procedure:

Change entry to read: "Individuals wishing to know whether or not information on them exists in this system of records may write to the Office of The Judge Advocate, Headquarters, US Army Europe and 7th Army, ATTN: Chief, International Affairs Division, APO 09403. Individuals should furnish their full name, rank/grade, service number, sufficient details to permit locating the records, and signature."

Record access procedure:

Delete entry; add: "Individuals desiring access to records access to records about themselves should write as indicated in 'Notification procedure', furnishing information required therein."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

A0411.03c0SA

System name:

Congressional Inquiry File (48 FR 25596), June 1983.

Changes:

System ID:

Delete suffix "c".

After "Authority for maintenance of the system", add:

"Purposes(s):

To conduct necessary research and/or investigations so as to provide information responsive to Congressional inquiries."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "None".

A0412.14aOSA

System name:

Biography Files (48 FR 25599), June 6, 1983.

Changes:

System ID:

Delete suffix "a".

System location:

Delete entries; substitute therefor: "Office of the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310 and their field operating agencies at Los Angeles, CA: Washington, DC; and Kansas City, MO; public affairs offices of Army Staff agencies, field operating agencies, major commands, installations, and activities."

After "Authority for maintenance of the system", add:

"Purposes(s):

To respond to queries from the press and from Army agencies/command relating to idividuals concerned."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry: substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310."

Record access procedures:

Delete entries; substitute therefor: "Requests should be addressed as indicated in 'Notification procedure'."

Contesting record procedures:

Change to read: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Add: "From the individual; clippings . . . commands."

A0501.08eUSACIDC

System name:

Informant Register (48 FR 25601), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s): To monitor performance and reliability; to check utilization of informants; to maintain an accounting of expenditures connected with the informant; to answer Congressional inquires concerning misuse or mistreatment of informants or those who allege they were not informants; to document fear-of-life transfers for military informants."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983. In addition, information may be disclosed to foreign countries under the provisions of Status of Forces Agreement or Treaties."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Safeguards:

Delete entries; substitute therefor: "All information is stored in locked containers within secured buildings; information is accessible only by designated officials having need therefor in the performance of official duties."

Retention and disposal:

Delete entry; substitute therefor: "Records concerning Level I Drug Suppression Team informants are maintained for 10 years after termination of informant's service; information concerning other informants is retained for 5 years at US Army Criminal Investigation Command Headquarters; for 3 years at other USACIDC locations. Destruction is by shredding."

A0508.04USACIDC

System name:

US Army Criminal Investigation Fund Vouchers (48 FR 25611), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To maintain proper accounting of the USACIDC 015 contingency fund.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Delete entry; substitute therefor: "Individuals wishing to know whether or not information on them exists in this system may write to the Director, US Army Crime Records Center, USACIDC, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099. Individual must provide his/her full name, current address and telephone number, date and place of birth, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records about themselves should write as indicated in 'Notification procedure', providing information required therein."

Contesting record procedures:

After "determinations", delete remainer and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

A0508.07aUSACIDC

System name:

Criminal Investigation Accreditation Files (48 FR 25612), June 6, 1983.

Changes:

System name:

Add before "Files", "and Polygraph Examiner Evaluation".

System location:

Delete the second paragraph. Substitute therefor: "Information concerning polygraph examiners is located at the Crime Records Center, USACIDC, 2301 Chesapeake Avenue, Baltimore, MD 21222 and subsequently at the Washington National Records Center, GSA, Suitland, MD."

Categories of individuals covered by the system:

Add: "and polygraph examiners".

Categories of records in the system:

Delete: "polygraph examiner performance and evaluation data". Add the following paragraph: "Polygraph examiner performance and evaluation data, maintained at the Crime Records Center, include individual's name, personal history statement, certificate number, polygraph examinerion history, year of polygraph report, ROI or CRC cross reference number, type of examination, and monitor's comments."

After "Authority for maintenance of the system", add:

"Purpose(s):

To determine applicant's acceptance/rejection into the USACIDC program, and his/her continuing eligibility, placement or standing therein."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Delete entry; substitute therefor: "Individuals wishing to know whether or not information on them exists in this system of records may write to the Director, US Army Crime Records Center, USACIDC, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099. Individuals must provide full name, SSN, date and place of birth, current address and telephone number, date of application into the program, sufficient details to permit locating the record, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records about themselves should address an inquiry as indicated in 'Notification procedure' and provide information specified therein."

Contesting record procedures:

After the word "determinations", delete remainder and add: "are

contained in Army Regulation 340–21 (32 CFR Part 505)."

Systems exempted from certain provisions of the act:

Change to read: "Portions of this system which fall within 5 USC 552a(k)(2), (5), or (7) are exempt from the following provisions of 5 USC 552a: (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f)."

A0508.11aUSACIDC

System name:

Criminal Investigation and Crime Laboratory Files (48 FR 25613), June 6, 1983.

Changes:

System ID:

Delete suffix "a".

After "Authority for maintenance of the system", add:

"Purpose(s):

To conduct criminal investigations and crime prevention activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, and detecting organized criminal activity. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties."

Notification procedure:

Delete entry; substitute therefor: "Individuals wishing to know whether or not information on them exists in this system of records may write to the Director, US Army Crime Records Center, USACIDC, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099. Individual must furnish his/her full name, date and place of birth, current address and telephone number, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records on themselves should write as indicated in 'Notification procedure', providing information specified therein."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

System exempted from certain provisions of the act:

Change entry to read: "Portions of this system which fall within 5 USC 552a(j)(2) are exempt from the following provisions of 5 USC 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g)."

A0607.01bDAPE

System name:

Accident and Incident Case Files: Army Safety Management Information System (48 FR 25630), June 6, 1983.

Changes:

System ID:

Delete suffix "b".

Categories of individuals covered by the system:

Delete entry; substitute therefor: "Individuals involved in accidents incident to Army operations."

Categories of records in the system:

Change entry to read: "Pertinent and relevant information concerning Army mishaps/accidents. For aviation mishaps, records consist of Preliminary Reports of Aviation Mishaps (but exclude aircraft accident reports). For ground accidents, records include DA Form 285."

After "Authority for maintenance of the system", add:

"Purpose(s):

Information is maintained solely for accident prevention purposes."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Information may be disclosed to the Department of Labor, Federal Aviation Agency, National Transportation Safety Board, other Federal, State, and local agencies and applicable civilian organizations such as the National Safety Council for use in accident prevention efforts."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retrievability:

Delete entry; substitute therefor: "By date, location, and type of accident; by name and SSN."

Safeguards:

Delete entry; substitute therefor: "At the US Army Safety Center, information is coded, stored in locked rooms, and accessed only by authorized personnel who have appropriate clearance. Paper records are maintained in a room with a manipulation-proof combination lock inside file cabinets secured by locks. Computer stored reports are secured similarly behind security doors. At other Army locations, reports are maintained in locked file cabinets' storage areas."

Retention and disposal:

Change entry to read: "At the US Army Safety Center, accident reports are retained in paper medium until microfilmed; microfilmed records are destroyed after 30 years. At offices having staff responsibility for safety function and reviewing offices at lower echelons, records are destroyed after 5 years."

Notification procedure:

Delete entry; substitute therefor: "Individuals wishing to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: Judge Advocate. Individual must furnish his/her full name, SSN, current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature."

Record source categories:

Change entry to read: "Army records and reports containing information in reports of accident, injury, fire, morbidity, military police traffic accident investigations, casualty reports, individual sick slips, reports of vehicle accidents, marine casualty reports, and military aviation records."

A0609.01aDASG

System name:

Individual Radiation Protection Files (48 FR 25631), June 6, 1983.

Changes:

System ID:

Delete suffix "a".

System name:

Change title to read: "Radiation Exposure Records".

Categories of records in the system:

Delete the first paragraph; substitute therefor: "Documents reflecting individual's training, experience, and certification to work within hazardous environments such as require the handling of or exposure to radioactive materials or equipment, exposure to radiation. Records may include DD Form 1852 (Dosimeter Application and Record of Occupational Radiation Exposure), DD Form 1141 (Dosimetry Record), DA Form 3484 (Photodosimetry Report), SF 11–206, exposed dosimetry film; investigative reports of harmful chemical, biological, and radiological exposures; relevant management reports."

Authority for maintenance of the system:

Delete cites; add: "US Nuclear Regulatory Commission Regulation (10 CFR Part 19); Department of Labor Regulation (29 CFR Part 1910)."

Add:

"Purpose(s):

To ensure individual qualifications to handle radioactive materials and/or to work under management identified stressful conditions; to monitor, evaluate, and control the risks of individual exposure to ionizing radiation or radioactive materials by comparison of short and long-term exposures; to conduct investigations of occupational health hazards and relevant management studies; to determine safety standards."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete information beginning with "To insure * * * long-term exposures;".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Delete entries; substitute therefor: "Personnel dosimetry and bioassay records are permanent. Investigative reports of harmful chemical, biological, and radiological exposures are retained for 30 years. Processed film showing individual exposure is retained 5 years after evaluation and recorded on permanent records. Medical test results are transferred to military member's medical records or, in the case of civilians to their civilian personnel records on reassignment, transfer, or separation."

Notification procedure:

Add: "Individual must furnish full name, SSN, dates and locations at which exposed to radiation or radioactive materials, etc., and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records in this system pertaining to themselves should write as indicated in 'Notification procedure', providing information required therein."

Contesting record procedures:

After "determination", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Add: "Army and/or DOD records and reports."

A0713.09aTRADOC

System name:

Skill Qualification Test (SQT) (48 FR 25678), June 6, 1983.

Changes:

System ID:

Delete suffix "a".

After "Authority for maintenance of the system", add:

"Purpose(s):

Skill Qualification Test scores are used to measure a soldier's job proficiency, to determine eligibility for schooling and eligibility for promotions. SQT Job Books are used by commanders and non-commissioned officers to assess individual and unit proficiency and combat readiness and to identify routine and intensified training needs."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Delete entry; substitute therefor: "Indivduals desiring to know whether or not information on them exists in this system of records should inquire of the System Manager."

Record access procedures:

Change entry to read: "Individuals desiring access to information about themselves should contact the System Manager. If requested in person, individual should present appropriate identification such as driver's license; written requests must bear notarized signature of the individual making request to prevent disclosure to unauthorized persons."

A0727.05OSA

System name:

Army Council of Review Boards (48 FR 23688), May 26, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

Records are used by the following Boards to determine propiety of action taken or requested, within the purview of the Board's charter: (1) Army Discharge Review Board, (2) Army Board for Review of Elimination, (3) Army Discharge Rating Review Board, (4) Army Physical Disability Appeal Board, (5) Army Security Review Board, and (6) Ad Hoc Board."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

"See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

A0917.10DASG

System name:

Family Advocacy Case Management Files (48 FR 25717), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

(1) To provide child abuse and neglect treatment services for abused and abusive spouses. Services include mental health, education, counseling, health care, child protection, legal and referral, for members and former members of the uniformed services, civilians, and dependents receiving medical care under Army auspices; (2) To determine qualifications and suitability of Army personnel for duty assignments and fitness of continued military service; (3) To perform research studies and compile statistical data concerning uniformed services personnel, civilians and dependents receiving medical care under Army auspices."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first and second paragraphs.

A1012.01DAPE

System name:

Applicants/Students, US Military Academy Prep School (48 FR 25728), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To evaluate applicant's acceptance and, once admitted, to assess his/her leadership, academic, and physical aptitude potential for the US Military Academy."

Routine uses of records maintained in the system; including categories of users and the purpose of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

A1012.03kUSAREUR

System name:

Individual Academic Record Files (48 FR 25733), June 6, 1983.

Changes:

System location:

Delete entries; substitute therefor: "Headquarters, Seventh Army Combined Arms Training Center, APO NY 09114."

Categories of records in the system:

Delete entries; substitute therefor: "Student's name, SSN, race, unit of assignment, course quota status, roster number, applicable Army Classification Battery Scores, eligibility for course attendance, academic achievements, awards, and similar relevant data."

After "Authority for maintenance of the system", add:

"Purpose(s):

To determine eligibility for enrollment/attendance; monitor student progress, and record accomplishments; for management studies and reports."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Commander in Chief, U.S. Army Europe and Seventh Army, APO NY 09403."

Record source categories:

Delete entry; substitute therefore: "From the individual, his/her commander, Army records and reports."

A1013.01DAPC

System name:

Civilian School Files (48 FR 25740), June 6, 1983.

Changes:

System name:

Change title to: "Civilian Schooling for Military Personnel".

After "Authority for maintenance of the system", add:

"Purpose(s):

To document, monitor, manage, and administer the service member's attendance at a civilian training agency or civilian school pursuant to 10 U.S.C., section 4301."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Delete entry; substitute therefor: "Individuals wishing to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: DAPC–OPA–E, furnishing full name, SSN, civilian school or training agency attended, current address and telephone number, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to information about themselves should inquire of the System Manager, as indicated in 'Notification procedure'.

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

A1013.02aDASG

System name:

Long Term Civilian Training Student Contract Files (48 FR 25740), June 6, 1984.

Changes:

System ID:

Delete suffix "a".

System name:

Add: ":AMEDD Personnel".

System location:

Delete entries; substitute therefor: "US Army Medical Personnel Support Agency, 1900 Half Street, Washington, DC 20324–2000".

Categories of individuals covered by the system:

Delete information following "basis".

After "Authority for maintenance of the system", add:

"Purpose(s):

To negotiate contract between the Army and a civilian academic institution for the purpose of sending Army Medical Department officer and enlisted personnel to long term civilian training under fully funded programs."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Notification procedure:

Change entry to read: "Individuals wishing to know whether or not information exists on them in this system of records may write to the System Manager, ATTN: EDP. Writer must furnish full name, SSN, sponsoring program and calendar year of training, current mailing address and telephone number, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records on themselves should write as indicated in 'Notification procedure', providing information required therein."

A1014.01DAAG

System name:

Army Continuing Education System (48 FR 32050), July 13, 1983.

Changes:

System ID:

Change "DAAG" to "DAPE".

After "Authority for maintenance of the system", add:

"Purpose(s):

To determine academic/vocational level of education; to provide educational guidance and counseling; to enhance solders' military effectiveness, prepare them for greater responsiblity in the Armed Forces and for productive post-service careers; to provide for systematic recording of all educational accomplishments of Army members; and

to render statistical and managerial reports."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first paragraph.

System manager(s) and address:

Delete entry; substitute therefor: "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310."

Notification procedure:

After "System Manager", add: "ATTN: Education Division, Office, Director of Military Personnel Management".

A1015.01aDAAG

System name:

Dependent Children School Program Files (48 FR 25743), June 6, 1983.

Changes:

System ID:

Delete "ADAAG"; add: "DAPE".

After "Authority for maintenance of the system", add:

"Purpose(s):

To record education provided for eligible dependent children of military and civilian personnel residing on Army bases indentified under 'System location'."

Routine uses of records maintained in the system, including categories of used and the purposes of such uses:

Delete the first paragraph.

System manager(s) and address:

Delete entry; substitute therefor: "Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310."

A1019.03FORSCOM

System name:

US Army Marksmanship Unit Data System (48 FR 25745), June 6, 1983.

Changes:

After "Authority for maintenance of the system", add:

"Purpose(s):

To monitor the competitive status of marksmanship qualified personnel throughout the Army, coordinate their assignment or attachment to appropriate marksmanship units in support of the National Trophy Group for Interservice and National Matches competitions, and/or for support of US Army efforts to place individuals on US Shooting Teams. In addition, information is used to assist installation commanders in identifying persons to conduct marksmanship programs."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "information may be disclosed to the National Rifle Association in connection with competitions. In addition, see 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

A1111.16aUSACC

System name:

Controller Training and Proficiency Record Files (48 FR 25749), June 6, 1983.

Changes:

System ID:

Delete "aUSACC"; add: "USAISC".

System name:

Change to read: "Air Traffic Controller Records".

System location:

Before current entry, insert: "A centralized data base of current qualified Air Traffic Controllers is maintained at the US Army Information Systems Command, Ft Huachuca, AZ."

After "Authority for maintenance of the system", add:

"Purpose(s):

To determine proficiency of individuals to perform Air Traffic Controller duties."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "Information for this system may be disclosed to the Federal Aviation Agency and/or to the National Transportation Safety Board."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add: "historical data on magnetic tape at the centralized location".

Retention and disposal:

Add: "Historical data are maintained until no longer required by the Army".

System manager(s) and address:

Delete the second and third paragraphs.

Notification procedure:

Delete entry; substitute therefor: "Individuals who believe information on them exists in this system of records should inquire of the Air Traffic Control Facility where assigned, or to the System Manager. Individual should provide full name, details that will facilitate locating the records, current address, and signature."

Record access procedures:

Delete entry; substitute therefor: "Individual desiring access to their records should write as indicated in 'Notification procedure', providing information specified therein."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

Record source categories:

Add: "and ATC Facility Personnel Status Reports (DA Form 3479–6–R)".

A1434.10AMC

System name:

Small Arms Sales Record Files (48 FR25767), June 6, 1983.

Changes:

System location:

Change to read: "US Army Armament Munitions and Chemical Command, Rock Island, IL 61299–6000."

After "Authority for maintenance of the system", add:

"Purpose(s):

To respond to individual citizen requests to purchase firearms from the US Government for personal use."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "Federal, State and local law enforcement investigative agencies may be furnished information from this system of records to determine last known firearm ownership, to trace recovered or confiscated firearms, and to assist in criminal prosecution or civil court actions."

System manager(s) and address:

Change entry to read: "Commander, US Army Armament Munitions and Chemical Command, Rock Island, IL 61299–6000."

Notification procedure:

Change entry to read: "Individuals wishing to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: AMSMC–

MMD–LS, providing their full name, current address as well as address at time of firearm purchase, if different, type caliber, and serial number of firearm(s) purchased, and signature."

Record access procedures:

Delete entries; substitute therefor: "Individuals desiring access to records about themselves should write as indicated in 'Notification procedure', providing information required therein."

Contesting record procedures:

Change to read: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)."

A0225.12DAIM

SYSTEM NAME:

Access to Computer Areas, Systems Electronically, and/or Data Control Records.

SYSTEM LOCATION:

Information Processing and/or Communications Activities, Army-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel assigned to the Army Information Processing and/or Communications installation; contractor personnel; authorized customers/users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Operator's/user's name, SSN, organization, telephone number and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To administer passwords and ID's for operators/users of data in automated media; to identify data processing and communications customers authorized access to or disclosure from data residing in Information Processing and/or Communications activities; to determine propriety of individual access into the physical data residing in automated media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards; magnetic tapes/discs.

RETRIEVABILITY:

Name, subject, user identification code, news item number, password, application program key word/author.

SAFEGUARDS:

All information is maintained in secured areas accessible only to designated individuals having official need therefor in the performance of official duties. Storage and processing areas meet the administrative, physical, and technical requirements of Army Regulation 380–380. Either Army Information Processing Installation security guards or remote location operators check access against system reports.

RETENTION AND DISPOSAL:

Individual data remain on file while a user of compute facility; destroyed on person's reassignment or termination.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief of Staff for Information Management, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should inquire of the Army Information Processing Installation Operations Center where information is believed to reside, providing their full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to access information about themselves should address an inquiry as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

System managers, computer facility managers, automated system interfaces for user codes on file at Army sites.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0402.06DAJA

SYSTEM NAME:

Legal Assistance Files.

SYSTEM LOCATION:

Legal Assistance Office, Office of The Judge Advocate General's Office, Headquarters, Department of the Army, Washington, DC 20310; Staff Judge Advocate Offices at Army commands, installations, and activities; addresses are listed in the Appendix to the Army inventory of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty or retired military personnel and/or their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade/rank, SSN, organization, and details of problem/incident/matter on which legal assistance is sought. Records may be in the form of correspondence, memoranda, opinions of legal assistance officers, and may include interviews, summary of problems considered, advice rendered, referrals made, and documents created as a result of assistance provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To respond to inquiries and settle issues; for managment and statistical reports.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorizes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By client's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Destroyed by shredding 1 year from the closing date of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Assistance Office, Office of The Judge Advocate General, HQDA (DAJA-LA), Washington, DC 20310; and the Staff Judge Advocates of organizations listed in the DOD directory.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system of records may inquire of either the System Manager or the Staff Judge Advocate of the installation or command where legal assistance was sought. Individual should furnish his/her full name, SSN, and any details that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Access may be obtained by addressing a written inquiry as indicated in "notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0405.02DAJA

SYSTEM NAME:

Foreign Jurisdiction Case Files.

SYSTEM LOCATION:

Office of The Judge Advocate General, Headquarters, Department of the Army, International Affairs Division, Washington, DC 20310. (Copy of record will exist for shorter periods in Office of the Staff Judge Advocate at the command where case originated.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the US Army; civilians employed by, serving with, or accompanying the US Army abroad; and dependents of such individuals who have been subject to the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies and/or sentenced to unsuspended confinement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual case reports concerning the exercise of jurisdiction by foreign tribunals, trial observor reports, requests for provision of counsel, records of trials, requests for local authorities to refrain from exercising their jurisdiction; communications with other lawyers, officials within the Department of Army and/or Defense, diplomatic missions; other selected relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To monitor development and status of each individual case to ensure that all rights and protections to which US personnel abroad and their dependents are entitled under pertinent international agreements are accorded such personnel; to obtain information to answer queries regarding the status and disposition of individual cases involving the exercise of civil or criminal jurisdiction by foreign courts of foreign administrative agencies; to render management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Individual case files are retained for 30 years following completion of the case. Consolidated and summary reports are permanent records at the Office of The Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is maintained in this system of records may inquire of either the System Manager of the Staff Judge Advocate of the installation or command where legal assistance was sought. Individual must furnish full name, current address and telephone number, case number and office symbol appearing on official correspondence concerning the matter, any other identifying information, and signature.

RECORD ACCESS PROCEDURE:

Access may be obtained by addressing a written inquiry as indicated in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, foreign government agencies, Department of State, law enforcement jurisdictions, relevant Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0406.01USAREUR

SYSTEM NAME:

Civil Process Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate, Headquarters, US Army, Europe and Seventh Army, APO NY 09403; segments exist at other Army Judge Advocate Offices in the Federal Republic of Germany.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces, civilian employees of the US Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liabililty, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings, summonses and sub poenas, paternity notices, complaints, judgments, griefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administratiave writs; correspondence between US Government authorities and the Federal

Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; North Atlantic Treaty Organization Status of Forces Agreement.

PURPOSE(S):

To ensure that US Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and the rights of US Government employees are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to foreign law enforcement of investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in Federal Republic of Germany of Department of Defense military and civilian personnel. Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and cards in steel filing cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties. Records are housed in buildings protected by Military Police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after completion of case; card files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records may write to the Office of The Judge Advocate, Headquarters, US Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO 09403. Individuals must furnish their full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to information about themselves should write as indicated in "Notification procedure", furnishing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; German authorities; Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0411.03OSA

SYSTEM NAME:

Congressional Inquiry File.

SYSTEM LOCATION:

Office, Chief of Legislative Liaison, Office, Secretary of the Army, The Pentagon, Washington, DC 20310. A segment of this system may exist at Department of the Army staff agencies, field operating agencies, major commands, installations and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any citizen who writes to a Member of Congress and is so indentified by that Member in his/her request to the Department of the Army for information related to the citizen's request.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request to the Member of Congress, the Member's inquiry to the Army, the Army's response, and relevant supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 1034.

PURPOSE(S):

To conduct necessary research and/or investigations so as to provide information responsive to Congressional inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm records in an automatic retrieval device.

RETRIEVABILITY:

Coded by Congressman and individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

In the Office, Chief of Legislative Liaisons, OSA, records are destroyed after 5 years. In other offices of legislative coordination and control at Army Staff level and at headquarters of major and subordinate commands, records are destroyed after 3 years; at lower echelons, records are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURES:

Individuals wishing to know whether or not information on them exists in this system of records may write to the System Manager or to the legislative liaison and control officer at the Army Staff or field office known to have the record. Individual must provide full name, current address and telephone number, and sufficient detail to permit locating the record.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Member of Congress; Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0412.14OSA

SYSTEM NAME:

Biography Files.

SYSTEM LOCATION:

Office of the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 23010, and their field operating agencies at Los Angeles, CA; Washington, DC; and Kansas City, MO; public affairs offices of Army Staff agencies, field operating operating agencies, major commands, installations, and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Leading Department of the Army military and civilian personnel and other important personalities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical material, including photographs, newspaper clippings, speeches, and related documents. Name, position/rank/grade, SSN, summary of service, and outstanding achievements may also be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSES(S):

To respond to queries from the press and from Army agencies/commands relating to individuals concerned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated officials having need therefor in the performance of their assigned duties. Storage areas are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained as long as individual seems likely to be recurring subject or press interest.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the public affairs officer in the organization to which the individual is or was assigned or employed. Individual should provide his/her full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Requests should be addressed as indicated in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; clippings from published media; published biographical data from Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0501.O8eUSACIDC

SYSTEM NAME:

Informant Register.

SYSTEM LOCATION:

Primary system is a Headquarters, US Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041. Segments of the system exist at subordinate elements of the US Army Criminal Investigation Command whch exercise local administrative and technical control of informants.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals, civilian or military, who are used as informants by the US Army Criminal Investigation Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain cross indexed code numbers; name, race, military occupational specialty, sex, date and place of birth, home of record, educational level, area of utilization, civilian employment, handler, letters, vouchers, personal history, performance, citizenship, marital status, physical description, criminal history, expertise, talents, actions taken, and other related personal data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To monitor performance and reliability; to check utilization of informants; to maintain an accounting of expenditures connected with the informant; to answer Congressional inquiries concerning misuse or mistreatment of informants or those who allege they were not informants; to document fear-of-life transfers for military informants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983. In addition, information may be disclosed to foreign countries under the provisions of Status of Forces Agreements or Treaties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files and paper records in file folders.

RETRIEVABILITY:

By individual's name, code number, or MOS.

SAFEGUARDS:

All information is stored in locked containers within secured buildings; information is accessible only by designated officials having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records concerning Level I Drug Suppression Team informants are maintained for 10 years after termination of informant's service; information concerning other informants is retained for 5 years at HQ US Army Criminal Investigation Command; for 3 years at other locations of USACIDC. Destruction is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Command, Headquarters, US Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Requests from individuals should contain individual's full name, current address, date of birth, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information concerning themselves in this system of records must write to the System Manager, furnishing information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the military personnel records if informant is military, or the civilian

personnel records if informant is a civilian employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system of records which fall within 5 USC 552a(j)(2) are exempt from the following provisions of 5 USC 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

A0508.04USACIDC

SYSTEM NAME:

US Army Criminal Investigation Fund Vouchers.

SYSTEM LOCATION:

Headquarters, US Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041. Segments of the system are located at USACIDC subordinate elements, the addresses of which may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special agents of USACIDC or Military Police Investigators of the US Army who have made expenditures or have requested reimbursement from USACIDC limitation 015 contingency funds authorized by Army Regulations 37-47.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade, reason for expenditure, receipts (or certificates when receipts are unavailable), and relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012(g).

PURPOSE(S):

To maintain proper accounting of the USACIDC 015 contingency funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name at USACIDC subordinate elements; by voucher number at HQ, USACIDC.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Clothing records are transferred with the special agent; individual vouchers are destroyed 8 years after the last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system may write to the Director, US Army Crime Records Center, USACIDC, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099. Individual should provide his/her full name, current address and telephone number, date and place of birth, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information required herein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, informant, or the statement of third parties pertaining to the expenditure.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0508.07aUSACIDC

SYSTEM NAME:

Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

SYSTEM LOCATION:

Headquarters, US Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041. Information concerning polygraph examiners is located at the Crime Records Center, USACIDC, 2301 Chesapeake Avenue, Baltimore, MD 21222 and subsequently at the Washington National Records Center, GSA, Suitland, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for entry into the USACIDC program as an apprentice special agent, a polygraph examiner, for supervisory credentials, for USACIDC officer specialty program or warrant officer appointments; or for laboratory technician credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application, statement of personal history, personal identifiers, photographs, fingerprint cards, qualifications record, biography, information pertaining to assignment capability, letters of recommendation, educational institutional documents, character investigation data, reclassification actions, reassignment orders, commander's inquiry data, reports of investigation, reasons for withdrawal from program, reason for denying application, date of acceptance into program, date appointed, date of accreditation, badge number, credential number, agent sequence number, assignment, date assigned, marital status, and other data pertinent to the accreditation function, physical profile, date of last physical, assignment preference, transfer restrictions, job title, security clearance data, date of last background investigation, foreign language proficiency, special qualifications, service agreement, spouse's place of birth and citizenship; agent's place of birth, private licenses, hobbies, and last 10 assignments.

Polygraph examiner performance and evaluation data maintained at the Crime Records Center include individual's name, personal history statement, certificate number, polygraph examination history, year of polygraph report, ROI or CRC cross refernece number, type of examination, and monitor's comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012g.

PURPOSE(S):

To determine applicant's acceptance into or rejection from the USACIDC program; his/her continuing eligibility, placement or standing therein.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards; magnetic tapes.

RETRIEVABILITY:

By individual's surname; agent sequence number; SSN; badge/credential/polygraph certificate number.

SAFEGUARDS:

All records are maintained in buildings protected by security guards or a locked wire enclosure; information is accessed only by designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records of accepted applicants are retained until the individual retires, is released from active duty, or is removed from the USACIDC program; at that time, files are placed in inactive storage at HQ USACIDC for 2 additional years and then stored at the Washington National Records Center for an additional 8 years before being destroyed by shredding. Records of rejected applicants are retained at HQ USACIDC for 1 year; then destroyed by shredding. Information on Criminal Investigation Information Data Cards is maintained permanently. Information in automated media is retained for 90 days following termination of investigator's active status.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records may write to the Director, US Army Crime Records Center, USACIDC, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099. Individuals must provide full name, SSN, date and place of birth, current address and telephone number, date of application into the program, sufficient details to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should address an inquiry as indicated in "Notification procedure", and provide information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her previous or present employers, financial institutions, relatives and former spouses, educational institutions, trade or fraternal organizations, neighbors past and present, work associates, social acquaintances, churches, public records, law enforcement and investigative agencies, Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system which fall within 5 U.S.C. 552a(k) (2), (5), or (7) are exempt from the following provisions of 5 USC 552a: (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0508.11USACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files.

SYSTEM LOCATION:

Headquarters, US Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041. Segments exist at subordinate USACIDC elements, the addresses of which may be obtained from the System Manager. An automated index of cases is maintained at the Crime Records Center, 2301 Chesapeake Avenue, Baltimore, MD and at the Defense Investigative Service, Ft Holabird, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, civilian or military, involved in or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel of the US Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, rank, date and place of birth, chronology of events; reports of investigation containing statements of witnesses, subject, and agents; laboratory reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative agencies and departments; similar relevant documents.

Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims or criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files, witness identification data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012(g).

PURPOSE(S):

To conduct criminal investigations and crime prevention activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, and detecting organized criminal activity. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; card files and indices; automated indices.

RETRIEVABILITY:

By name or other identifier of individual.

SAFEGUARD:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Criminal investigative case files are retained for 40 years, except that, at USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved. Laboratory reports at the USACIDC laboratory are destroyed after 3 years. Destruction is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURE:

Individual's wishing to know whether or not information on them exists in this system of records may write to the Director, US Army Crime Records Center, USACIDC, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099. Individual must furnish his/her full name, date and place of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should write as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, USACIDC special agents and other personnel, informants; various DOD, Federal, State, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization that may supply pertinent information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system which fall within 5 USC 552a(j)(2) are exempt from the following provisions of 5 USC 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

A0607.01DAPE

SYSTEM NAME:

Accident and Incident Case Files: Army Safety Management Information System.

SYSTEM LOCATION:

Primary system exists at US Army Safety Center, Ft Rucker, AL 36362-5363. Segments exist at Army Staff agencies, field operating agencies, major commands and installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in accidents incident to Army operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pertinent and relevant information concerning Army mishaps/accidents. For aviation mishaps, records consist of Preliminary Reports of Aviation Mishaps (but exclude aircraft accident reports). For ground accidents, records include DA Form 285.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 7902; Pub. L. 91-596, Section 19, Occupational Safety and Health Act of 1970; and Section 2, Executive Order 11807, Occupational Safety and Health Programs for Federal Employees".

PURPOSE(S):

Information is maintained solely for accident prevention purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Labor, Federal Aviation Agency, National Transportation Safety Board, other Federal, State, and local agencies and applicable civilian organizations such as the National Safety Council for use in accident prevention efforts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; magnet tapes/discs; microfilm.

RETRIEVABILITY:

By date, location, and type of accident; by name and SSN.

SAFEGUARDS:

At the US Army Safety Center, information is coded, stored in locked rooms, and accessed only by authorized personnel who have appropriate clearance. Paper records are maintained in a room with a manipulation proof combination lock inside file cabinets secured by locks. Computer stored reports are secured similarly behind security doors. At other Army locations, reports are maintained in locked file cabinets/storage areas.

RETENTION AND DISPOSAL:

At the US Army Safety Center, accident reports are retained in paper medium until microfilmed; microfilmed records are destroyed after 30 years. At offices having staff responsibility for safety function and reviewing offices at lower echelons, records are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records should write to the Commander, US Army Safety Center, Ft Rucker, AL 36362-5363, ATTN: Judge Advocate. Individual must furnish his/her full name, SSN, current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information on themselves should inquire by writing to the Commander, US Army Safety Center, providing information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulations 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Army records and reports containing information in reports of accident, injury, fire, morbidity, military police traffic accident investigations, casualty reports, individual sick slips, report of vehicle accidents, marine casualty reports, and military aviation records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0609.01DASG

SYSTEM NAME:

Radiation Exposure Records.

SYSTEM LOCATION:

Army installations, activities, laboratories, etc., which use or store radiation producing devices or radioactive materials or equipment. An automated segment exists at Lexington Blue Grass Depot, KY.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by the Army, including employees of contractors, who are occupationally exposed to radiation or radioactive materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting individual's training, experience, and certification to work within hazardous environments such as require the handling of or exposure to radioactive materials or equipment, exposure to radiation. Records may include DD Form 1852 (Dosimeter Application and Record of Occupational Radiation Exposure), DD Form 1141 (Dosimetry Record), DA Form 3484 (Photodosimetry Report), SF 11-206, exposed dosimetry film;

investigative reports of harmful chemical, biological, and radiological exposures; relevant management reports.

Automated records contain data elements such as individual's name, SSN, date of birth, film badge number, coded cross-reference to place of assignment at time of exposure, dates of exposure and radiation dose, cumulative exposure, type of measuring device, and coded cross-reference to qualifying data regarding exposure readings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

US Nuclear Regulatory Commission Regulation (10 CFR Part 19); Department of Labor Regulation (29 CFR Part 1910).

PURPOSE(S):

To ensure individual qualifications to handle radioactive materials and/or to work under management identified stressful conditions; to monitor, evaluate, and control the risks of individual exposure to ionizing radiation or radioactive materials by comparison of short and long term exposures; to conduct investigations of occupational health hazards and relevant management studies; to determine safety standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to Federal agencies, academic institutions, and non-governmental agencies such as the National Council on Radiation Protection and Measurement, and the National Research Council which are authorized to conduct research, evaluation, and monitorship.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders, film packets, magnetic tapes/discs.

RETRIEVABILITY:

By individual's name and/or SSN.

SAFEGUARDS:

Access to all records is restricted to designated individuals having official need therefor in the performance of assigned duties. In addition, access to automated records is controlled by card key system which requires positive identification and authorization.

RETENTION AND DISPOSAL:

Personnel Dosimetry and bioassay records are permanent. Investigative reports of harmful chemical, biological, and radiological exposures are retained for 30 years. Processed film showing individual exposure is retained 5 years after evaluation and recorded on permanent records. Medical test results are transferred to military member's medical records, or, in the case of civilians to their civilian personnel records on reassignment, transfer, or separation.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: DASG–HGH, Washington, DC 20310. Individual must furnish full name, SSN, dates and locations at which exposed to radiation or radioactive materials, etc., and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records in this system pertaining to themselves should write as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, dosimetry film, Army and/or DOD records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0713.09TRADOC

SYSTEM NAME:

Skill Qualification Test (SQT).

SYSTEM LOCATION:

a. Headquarters, US Army Training and Doctrine Command (TRADOC), Ft Monroe, VA 23651: Main computer location and soldier response files.

b. US Army Training Support Center: Individual Training Evaluation Directorate (ITED): Enlisted master file and original test forms.

c. Test Control Officers (TCO) at military installations worldwide: Transmittal rosters and source documents for Hands-On-Component (HOC) and Performance Certification Component (PCC): (Retained 120 days).

d. US Army Military Personnel Center (MILPERCEN) Enlisted Evaluation Center: Soldier's SQT scores (DA Form 10a).

e. Supervisory Non-Commissioned Officers (NCOs) at unit level worldwide: SQT Job Books.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active Army and Reserve Component enlisted personnel who take the SQT.

CATEGORIES OF RECORDS IN THE SYSTEM:

Soldier response history of answers to SQTs, both individual and cumulative; quarterly analyses of soldier's test results. The Enlisted Master File at ITED contains update listings of name, SSN, pay grade, primary and secondary military occupational specialties (MOS), and component. File in TCO (located at the soldier's installation) contains name, rank, SSN, and source document (for HOC and PCC. SQT Job Books (located at soldier's unit) contains name, rank, and record of individual performance of job tasks conducted in a unit training environment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

Skill Qualification Test scores are used to measure a soldier's job proficiency, to determine eligibility for schooling and eligibility for promotions. SQT Job Books are used by commanders and non-commissioned officers to assess individual and unit proficiency and combat readiness and to identify routine and intensified training needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape/disc; computer printouts.

RETRIEVABILITY:

Paper records filed in folders retrieved by processing date and imprinted serial number; computer magnetic tape and disc retrieved by SSN and name.

SAFEGUARDS:

Paper records are filed in folders sorted in locked rooms. Magnetic tapes are kept in controlled vault area. Magnetic discs are protected by a user identification and manual controls.

RETENTION AND DISPOSAL:

Magnetic tapes are retained 1 year after which data are erased; discs retained for 8 months before data are erased; hard copy is retained for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Training and Doctrine Command, Ft Monroe, VA 23651.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should inquire of the Commander, US Army Training Support Center, ATTN: ITED, Ft Eustis, VA.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information about themselves should write as indicated in "Notification procedure". If inquiring in person, individual should present appropriate identification such as valid driver's license; written requests must bear notarized signature of the individual making request to prevent disclosure to unauthorized persons.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; from other Department of Army Staff and Commands in document and computer readable form.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system are exempt pursuant to 5 U.S.C., section 552a(k)(6) from subsection (d) of 5 U.S.C., 552a.

A0727.050SA

SYSTEM NAME:

Army Council of Review Boards.

SYSTEM LOCATION:

Office, Secretary of the Army, The Pentagon, Washington, DC 20310. The US Army Management Systems Support Agency maintains an automated index of Discharge Review Board cases by alphanumeric code and case summary data by personal identifier. The Discharge Review Directorate of US Army Reserve Components Personnel and Administration Center, St. Louis, MO performs administrative processing of these cases via its on-line terminal to the Army Discharge Review Board. Decisions of the Army Council of Review Boards are incorporated in the Official Military Personnel File of the petitioner at the US Army Reserve Component Personnel and Administration Center, St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and/or former members of the active Army; prospective enlistees/inductees separated or pending separation who have cases pending or under consideration by the Army Council of Review boards or any of its component panels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for review which includes name, SSN; present address; name and address of counsel, if applicable; type, authority, and reason for discharge; mode of hearing, if desired; issues addressed by the board, findings, conclusions, and decisional documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 1214, 1216, 1553, 1554.

PURPOSE(S):

Records are used by the following Boards to determine propriety of action taken or requested, within the purview of the Board's charter: (1) Army Discharge Review Board, (2) Army Board for Review of Elimination, (3) Army Discharge Rating Review Board, (4) Army Physical Disability Appeal Board, (5) Army Security Review Board, and (6) Ad Hoc Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, paper records in file folders; magnetic tapes and/or discs; microfiche.

RETRIEVABILITY:

Within individual Board, by SSN or surname of petitioner.

SAFEGUARDS:

Information is privileged, restricted to individuals who have need therefor in the performance of official duties. Records are retained in locked rooms within buildings having security guards. Automated records are identified as Privacy Act data and further protected by assignment of user ID and passwords.

RETENTION AND DISPOSAL:

Paper records are permanently stored in the Official Military Personnel File. Active cases in automated media are retained for 2 years before being transferred to the historical files where they are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Army Military Review Boards Agency, ATTN: MISD, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information exists on them in this system of records may inquire by writing to the Executive Secretary, Management Information and Support Directorate, SFRB–2, Army Military Review Boards Agency, Room 1E–520, The Pentagon, Washington, DC 20310. Individuals must furnish full name, SSN, home address and telephone number, and sufficient details to permit locating the record in question.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

The Army's rule for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; his/her Official Military Personnel File; correspondence, documents, and related information generated as a result of action by the Boards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0917.10DASG

SYSTEM NAME:

Family Advocacy Case Management Files.

SYSTEM LOCATION:

Primary: Commander, Patient Administration System and Biostatiss Activity, ATTN: HSHI, OPS (AFAP), Ft. Sam Houston, TX 78234. Secondary: Office of The Surgeon General, Headquarters, Department of the Army, ATTN: DASG–PSC–G, The Pentagon, Washington, DC 20310; US Army medical treatment facility and/or family advocacy case management team office on post, camp, or station where file was initiated or, in some cases, subsequently transferred upon reassignment of military member. Addresses are

contained in the appendix to the Army inventory of system notices at 48 FR 25773, June 6, 1983.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All family members entitled to care at Army medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities and all persons suspected of abusing or neglecting such family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of suspected or established cases of child abuse or neglect and cases of spouse abuse; extracts of law enforcement investigative reports, correspondence, family advocacy case management team reports, follow-up and evaluative reports, and other supportive data relevant to individual family advocacy case management files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Child Abuse Prevention and Treatment and Child Abuse Prevention and Treatment and Adoption Program Reform Acts, 42 U.S.C. 5101, et seq; 5 U.S.C., section 301; and 10 U.S.C., section 3012.

PURPOSE(S):

To provide child abuse and neglect treatment services for abused and abusive spouses. Services include mental health, education, counseling, health care, child protection, legal and referral for members and former members of the uniformed services, civilians, and dependents receiving medical care under Army auspices; (2) To determine qualifications and suitability of Army personnel for duty assignments and fitness of continued military services; (3) To perform research studies and compile statistical data concerning uniformed services personnel, civilians and dependents receiving medical care under Army auspices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to (1) departments and agencies of the Executive Branch of government in the performance fo their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect and spouse abuse; (2) The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies; (3) Federal, State, or local governmental agencies when it is deemed appropriate to use civilian resources or counseling and treating individuals or families involved in child abuse or neglect or spouse abuse, or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; (4) National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation such as Joint Commission for the Accreditation of Hospitals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Paper records in file folders, microfilm, magnetic tape or disc, punched cards, machine listings, and other computerized or machine readable media.

RETRIEVABILITY:

By name of the suspected abused child or the abused or abusive spouse and the name and/or SSN of the military member. (Information is never indexed by the name or SSN of any other person not an Army employee or member.)

SAFEGUARDS:

Records are maintained in Various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained and on a need-to-know basis only. Computer terminals are located in supervised areas with access controlled by passwords or other user code system.

RETENTION AND DISPOSAL:

Records are retained in decentralized office files for 5 years after the end of the year in which the case is closed and are then destroyed. Records (DA Form 4461–R) in the central registry at the primary location are retained until the child is age 23 after which information is erased/destroyed; information on adults is retained for 5 years after the end of the year in which the case was closed and is then erased.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system should contact either the commander of the medical center or hospital where treatment was received or the Central Registry at the Patient Administration System and Biostatistical Activity, Ft Sam Houston, TX 78234.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure". Individual should provide his/her full name, SSN, current address, date and location, details that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, State and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (i.e., social workers, physicians, including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system which fall within 5 U.S.C., section 552a(k) (2) and (5) are exempted from the following provisions of 5 U.S.C., section 552a: (d).

A1012.01DAPE

SYSTEM:

Applicants/Students, US Military Prep School.

SYSTEM LOCATIONS:

US Military Academy Preparatory School Ft Monmouth, NJ 07703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and students, US Military Academy Preparatory School.

CATEGORIES OF RECORDS IN THE SYSTEM.

Application for admission, high school/college transcripts, Scholastic Aptitude/American College Test (CLEP/GT/Officer Candidate, and related test scores, admissions evaluation worksheets and correspondence relating to admission, medical history, academic

progress/grades and related reports, and relevant information comprising the cadet candidate's attendance and behavior at the School.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To evaluate applicant's acceptance and, once admitted, to assess his/her leadership, academic, and physical aptitude potential for the US Military Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By applicant/student surname.

SAFEGUARDS:

Records are stored in locked rooms within buildings which are secured during non-duty hours, and are available only to authorized persons having an official need for the information.

RETENTION AND DISPOSAL:

For applicants who are rejected or who choose not to enter the US Military Academy, records are maintained until individual exceeds the age limit for acceptance to the Academy. For applicants who are accepted and enter the US Military Academy, records are retained for 40 years after individual's class graduates from the Academy, following which records are destroyed by burning and/or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the Commandant, US Military Academy Preparatory School, Ft. Monmouth, NY 07703. Written requests should include the full name, SSN, current address and telephone number of the requester, and year of application and/or attendance. For personal visits, the individual should be able to provide acceptable identification such as military, employee, or other individually identifying number, valid driver's license, building pass, etc.

RECORD ACCESS PROCEDURES:

Individuals desiring access to their records should follow the procedures and provide the information set forth under "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; high school/college transcripts, nationally recognized and Army testing services, staff and faculty of the US Military Academy Preparatory School, military supervisors/unit personnel officers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system which fall within 5 U.S.C., 552a(k) (5) and (7) are exempted from subsection (d) of 5 U.S.C. 552a.

A1012.03kUSAREUR

SYSTEM NAME:

Individual Academic Record Files.

SYSTEM LOCATION:

Headquarters, Seventh Army Combined Arms Training Center, APO NY 09114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military or civilian personnel admitted as a student at a course of instruction conducted by the Seventh Army Combined Arms Training Center.

CATEGORY OF RECORDS IN THE SYSTEM:

Student's name, SSN, race, unit of assignment, course quota status, roster number, applicable Army Classification Battery Scores, eligibility for course attendance, academic achievements, awards, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, and record accomplishments; for management studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape.

RETRIEVABILITY:

By student's surname; course/class number.

SAFEGUARDS:

Records are maintained in locked rooms, accessible only to designated persons authorized to use in the performance of official duties.

RETENTION AND DISPOSAL:

Information in automated media is contained for 5 years before being erased. Manual records are retained for 3 years. Academic records, class rosters, and grade sheets are retired to the National Personnel Records Center, St. Louis, MO and held for 40 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander in Chief, US Army Europe and Seventh Army, APO NY 09403.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records should write to the Commander, Seventh Army Combined Arms Training Center, APO NY 09114, providing their full name, course and class or dates of attendance, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to information about themselves should address an inquiry as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; his/her commander; instructors; Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1013.01DAPC

SYSTEM NAME:

Civilian Schooling for Military Personnel.

SYSTEM LOCATION:

Primary system is at US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332. Segments exist at Army commands/installations/organizations/activities, including overseas areas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any military service member who applies for or is selected for attendance at civilian school or for training with industry, or participation in a fellowship/scholarship program of training or instruction.

CATEGORIES OF RECORDS IN THE SYSTEM:

Department of the Army Forms 618–R, 2086–R, 2593–R, 3719–R containing name, SSN, address, home phone, duty phone, permanent legal address, branch of service, date of birth, marital status, number of dependents, state of legal residence, military occupational specialties, enlistment status, component, foreign service, civilian educational data, military educational data, transcripts, social fraternities, honorary fraternities, clubs, degree major, class standing, and personal resumes, school contracts, student training report, photographs, enlisted qualification record, theses, statements of service and schooling obligation; US Armed Forces Institute test report; civilian institution academic evaluation reports, SF 1034, similar relevant documents and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 4301.

PURPOSE(S):

To document, monitor, manage, and administer the service member's attendance at a civilian training agency or civilian school pursuant to 10 U.S.C., section 4301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having need therefor in the performance of assigned duties, within security protected buildings.

RETENTION AND DISPOSAL:

Destroyed by shredding after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: DAPC–OPA–E. Individual should provide his/her full name, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves in this system should write as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, documents from the civilian school or industry training agency.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1013.02DASG

SYSTEM NAME:

Long Term Civilian Training Student Contract Files.

SYSTEM LOCATION:

US Army Medical Personnel Support Agency (AMEDDPERSA), 1900 Half Street, Washington, DC 20324–2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All AMEDD personnel currently participating in long term civilian training on a fully funded basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment application, notification of acceptance/rejection, contract between the Army and the civilian college or university, similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 401, Section 4301.

PURPOSE(S):

To negotiate contract between the Army and a civilian academic institution for the purpose of sending Army Medical Department officer and enlisted personnel for long term civilian training under fully funded programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By student's surname.

SAFEGUARDS:

All records are maintained in offices which are locked during non-duty hours, accessible only to designated officials having need therefor in the performance of official duties. Building housing records requires valid pass for entry.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after an individual has completed training or has been cancelled or withdrawn from the program.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or nor information on them exists in this system of records should write to the Commander, Army Medical Department Personnel Support Agency, ATTN: SGPE–ED. Individual should provide his/her full name, SSN, current mailing address current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should submit a written inquiry as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, correspondence with the selecting academic institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1014.01DAPE

SYSTEM NAME:

Army Continuing Education System.

SYSTEM LOCATION:

Education Centers at Army installations; addresses are in the appendix to the Army inventory of system notices at 48 FR 25773, June 6, 1983. A centralized automated education registry transcript system is maintained at Ft Leavenworth, KS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel on active duty, Army Reserves and National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, rank, SSN, Military Occupational Specialty, educational and military training achievements, course attendance/completion records; tuition assistance documents; counseling records; academic and diagnostic tests which measure educational level and/or needs including recommendations of American Council on Education (ACE). A composite of course descriptors and scores is recorded in a transcript registry for each soldier who volunteers for educational courses and/or programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 4302; Section 722 of Pub. L. 96–154; 38 U.S.C., Chapters 32–34, and 36.

PURPOSES(S):

To determine academic/vocational level of education; to provide educational guidance and counseling; to enhance soldiers' military effectiveness, prepare them for greater responsibility in the Armed Forces and for productive post-service careers; to provide for systematic recording of all educational accomplishments of Army members; and to render statistical and managerial reports.

ROUTINE USES OF RECORDS MAITAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Labor, Bureau of Apprenticeship and Training for individuals enrolled in an Army Apprenticeship Program. Information also may be disclosed to institutions, prospective employers, and others as authorized by the individual concerned.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer printouts; discs and tapes. Individually identifiable course data and scores are transferred to DA Form 669. Information transferred to the registry transcript system resides on magnetic tape at Ft. Leavenworth.

RETRIEVABILITY:

By individual's surname or SSN.

SAFEGUARDS:

Records are protected from unauthorized disclosure by storage in areas accessible only to authorized personnel within buildings secured by locks or guards. Automated records may be called up by terminals supported by remote and dedicated lines. Each terminal has a physical key lock and is identified by its own physical profile containing user ID, user password which are confidential. Software prohibits entry to files by other than designated authorized personnel.

RETENTION AND DISPOSAL:

Automated data are erased after selected information is captured for managerial reports and course/score data transferred to individual's DA Form 669 which becomes part of the Military Personnel Records Jacket. Automated data in the registry transcript system are retained during the soldier's tenure and for 2 additional years following separation after which they are converted to microfishe and retained for 40 years.

SYSTETM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system of records contains information about them should contact the System Manager, ATTN: Education Division, Office, Director of Military Personnel Management, or the installation Education Services Officer/Counselor.

RECORD ACCESS PROCEDURES:

Individuals may obtain their records by contacting the appropriate Education Services Officer or Counselor, presenting acceptable identification such as military ID card, official building pass, or current driver's license.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

School transcripts, Education Services Officer/Counselor, the individual, test results, SIDPERS, Enlisted Master File.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1015.01DAPE

SYSTEM NAME:

Dependent Children School Program Files.

SYSTEM LOCATION:

Army-operated dependents schools located at Ft Benning, GA; Ft Bragg, NC; Ft Campbell, KY; Ft Jackson, SC; Ft Knox, KY; Ft McClellan, AL; Ft Rucker, AL; Ft Stewart, GA; US Military Academy, West Point, NY. Records of former students are located at the Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the Army-operated dependents schools located at installations identified in "System location".

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment/admission/registration/transfer applications; course preferences/curriculum; health records; attendance registers; academic achievements and report cards reflecting grades/credits earned; aptitude, IQ, and other test results; notes regarding student's special interests, hobbies, activities, sports; counseling documents; high school transcripts and certificates; and related supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 6, Pub. L. 81–874.

PURPOSE(S):

To record education provided for eligible dependent children of military and civilian personnel residing on Army bases identified under "System location".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Department of Education in connection

with Federal funding for public education, to Federal and State educational agencies in connection with student's application for financial aid, to student's parents/legal guardians when Army officials determine bona fide need therefor and disclosure is not otherwise precluded by the Family Educational Rights and Privacy Act of 1974 (The Buckley Amendment), 20 U.S.C., section 1232g.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By student surname.

SAFEGUARDS:

Records are accessible only to authorized personnel having need for the information in the performance of their official duties.

RETENTION AND DISPOSAL:

Academic records for elementary school students are destroyed at the school attended after 5 years; those for secondary students are destroyed after 65 years by the Washington National Records Center where such records are retired 5 years following student's graduation/withdrawal.

Individual student health records and tests/achievements documents are retained at the local school 1 year for elementary students; 2 years for secondary students, after which they are destroyed.

Teacher class registers of attendance and scholastic marks and averages are retained at the local school for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals who wish to know whether or not this system contains information on them may write to the principal of the school attended or, if the records have been retired to the Washington National Records Center, to the Department of the Army, ATTN: DAAG–AMR–S, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301. Individuals must furnish name, name at the time of school attendance if different, date of birth, identity and location of school attended, dates of attendance, and signature.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should follow the information outlined in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, school teachers, principal, counselors, medical personnel, parents/guardians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1019.03FORSCOM

SYSTEM NAME:

US Army Marksmanship Unit Data System.

SYSTEM LOCATION:

Primary system exists at the US Army Marksmanship Unit, Ft Benning, GA; segments exist at similar units at Ft Meade, MD; Ft Riley, KS; and Ft Ord, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Army personnel who compete in regional or US Army Rifle and Pistol Championships, Interservice Shooting Campionships or National Rifle Association National Shooting Championships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, SSN, information concerning shooting classifications, levels of participation in competition, scores fired in such competitions; primary military occupational specialty, duty assignments, last unit address, phone number, and assignment preferences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To monitor the competitive status of marksmanship qualified personnel throughout the Army, coordinate their assignment or attachment to appropriate marksmanship units in support of the National Trophy Group for Interservice and National Matches competitions, and/or for support of US Army efforts to place individuals on US Shooting Teams. In addition, information is used to assist installation commanders in identifying qualified persons to conduct marksmanship programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the National Rifle Association in connection with competitions. In addition, see "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards; magnetic tapes/discs.

RETRIEVABILITY:

By individual's surname and SSN.

SAFEGUARDS:

All records are maintained in locked containers accessible only to coaches and managers of Marksmanship Unit teams.

RETENTION AND DISPOSAL:

Information is destroyed 4 years after the last competition entry.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Forces Command, Ft McPherson, GA 30330.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them is contained in this system of records should write to the Commander, US Army Marksmanship Unit, Ft Benning, GA 31905. Writer should provide his/her full name and SSN, current address and telephone number.

RECORD ACCESS PROCEDURE:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1111.16USAISC

SYSTEM NAME:

Air Traffic Controller Records.

SYSTEM LOCATION:

Primary system is at US Army Information Systems Command, Ft Huachuca, AZ. Segments are located at Army Air Traffic Control facilities at Fixed Army airfields and other aviation units requiring ATC personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Traffic Controllers employed by the Department of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; SSN; ATC qualifications, training and proficiency data; medical examination reports; performance appraisals; ratings and date assigned to current facility; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Aviation Act of 1958, 49 U.S.C., sections 313, 601, 1354, and 1421.

PURPOSE(S):

To determine proficiency of Air Traffic Controllers and reliability of the ATC system operations within the Department of the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Federal Aviation Agency, the National Transportation Safety Board, and similar authorities in connection with aircraft accidents, incidents, or traffic violations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards; magnetic tapes/discs.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All records are maintained in secure areas, available only to designated persons having official need therefor.

RETENTION AND DISPOSAL:

Records are retained so long as individual is employed or on active duty. Copy of controller's qualifications, training, performance assessments, medical examination results, and similarly relevant data are filed in military member's Military Personnel Records Jacket or civilian employee's Official Personnel Folder. Historical data are maintained indefinitely at the primary location.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Information Systems Command, Ft Huachuca, AZ 85613–5000.

NOTIFICATION PROCEDURE:

Individuals who believe information on them exists in this system of records may inquire of the Air Traffic Control Facility where assigned, or to the System Manager. Individual should provide full name, details that will facilitate locating the records, current address, and signature.

RECORD ACCESS PROCEDURE:

Individuals who desire access to their records should write as indicated in "Notification procedure", furnishing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; his/her supervisor, Army of Federal Aviation Agency physicians, ATC Facility Personnel Status Reports (DA Form 3479–6–R).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A143310AMC.

SYSTEM NAME:

Small Arms Sales Record Files.

SYSTEM LOCATION:

US Army Armament Munitions and Chemical Command, Rock Island, IL 61229–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any US citizen considered eligible under Federal regulations who purchased a firearm from the US Government for personal use.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, mailing address, application for purchase of firearm, date purchased, DA Form 3535 (Weapon Sales Record), information concerning weapon caliber, model, type and serial number of firearm; relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 4308.

PURPOSE(S):

To respond to individual citizen requests to purchase firearms from the US Government for personal use.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Federal, State and local law enforcement investigative agencies may be furnished information from this system of records to determine last known firearm ownership, to trace recovered or confiscated firearms, and to assist in criminal prosecution or civil court actions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets.

RETRIEVABILITY:

By purchaser's surname; type of weapon; and serial number.

SAFEGUARDS:

Records are maintained in areas accessible only to designated persons having official need therefor in the performance of their duties. Building housing records is protected by security guards.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Armament Munitions and Chemical Command, Rock Island, IL 61299–6000.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: AMSMC–MMD–LS, providing their full name; current address as well as address at time of firearm purchase, if different; type, caliber, and serial number of firearm(s) purchases; and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–32892 Filed 12–17–84; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposed Mitigation Report for the Lake Pontchartrain and Vicinity Hurricane Protection, LA, Project

AGENCY: Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. *Proposed Action.* Public concerns relating to the needs and opportunities to provide hurricane flood protection for the City of New Orleans, Louisiana, were investigated by the New Orleans District (NOD) of the U.S. Army Corps of Engineers. The selected plan for hurricane flood protection provides for the raising of existing levees, the construction of new levees, and the construction of floodwalls where necessary. Construction of this selected plan would result in adverse impacts on fish and wildlife resources. The purpose of the proposed project is to mitigate these adverse impacts. Several plans are being evaluated for their effectiveness in achieving this mitigation goal. Shoreline protection, marsh creation, and water-level management are specific methods that are being evaluated.

2. *Alternatives.* Although various site-specific mitigation plans are being formulated, they all implement one or more of the following habitat manipulation methods:

a. *Method 1—Shoreline Protection.* Three wetland areas adjacent to Lake Pontchartrain would be protected from wave-induced erosion by the construction of rock dikes in shallow water adjacent to the shore. These dikes would be approximately two feet high and would serve to significantly dissipate wave energy.

b. *Method 2—Marsh Creation.* Under two plans, marsh would be created by pumping hydraulically dredged material into open-water areas. The dredged material would be deposited at an elevation conductive to the growth of marsh plants, and this elevation would be maintained through periodic redisposal. Under another plan, marsh would be created along the lakeside toe of a project flood protection levee. This would be accomplished by planting marsh vegetation in an area protected by a foreshore dike. This dike is presently part of the levee design and would not be an additional feature. In addition, marsh vegetation would be planted on the protected side of the shoreline protection dikes discussed under Method 1.

c. *Method 3—Water-level Management.* Two plans provide for the construction of water-level management structures within wetland areas. These structures would be used to manipualte water levels within the marshes for the purpose of both encouraging the growth of marsh plants valuable to wildlife and controlling salinity levels.

3. *Scoping Process.*

a. On June 28, 1984, a scoping meeting was held to obtain questions, comments, and recommendations from the interested public concerning several conceptual mitigation plans persented at the meeting. In addition, the U.S. Fish and Wildlife Service, in cooperation with the National Marine Fisheries Service and the Louisiana Department of Wildlife and Fisheries, has prepared a Final Fish and Wildlife Coordination Act Report (FWCAR) which outlines several mitigation alternatives. This final FWCAR) was part of the Reevaluation Reprot for the Lake Pontchartrain and Vicinity Hurricane Protection, Louisiana, Project. Another scoping meeting is scheduled for December 13, 1984. The purpose of this meeting will be to obtain questions and issues that the interested public would like addressed in the proposed project DEIS.

b. Impacts of the proposed action on wetlands, water quality, fish, wildlife, endangered species, cultural resources, and other significant resources will be analyzed in the DEIS.

c. Coordination among appropraite Federal, state, and local agencies will continue throughout the public involvement process to ensure compliance with appliable Federal and state environmental statutes.

4. *Scoping Meetings.* One scoping meeting was held on June 28, 1984, and another is scheduled for December 13, 1984. Any member of the interested public could attend both meetings.

5. *Availability.* The DEIS is scheduled for filing with the U.S. Environmental Protection Agency and issuance to the public in June, 1985.

ADDRESS: Questions concerning the proposed action and the DEIS should be directed to Mr. David Carney, U.S. Army Corps of Engineers, Environmental Analysis Branch (LMNPD–R), P.O. Box 60267, New Orleans, Louisiana 70160–0267, commercial telephone (504) 838–2528, FTS telephone 8–504–838–2528.

December 10, 1984.

Eugene S. Witherspoon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-32851 Filed 12-17-84; 8:45 am]
BILLING CODE 3710-84-M

Intent To Prepare a Draft Environmental Impact Statement (EIS); Enlargement of Bayou Courtableau Portion of the Bayou Cocodrie and Tributaries, LA, Project

AGENCY: Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of Intent to prepare a Draft EIS.

SUMMARY: 1. *Proposed Action.* The proposed action to be described in this statement is the enlargement of Bayou Courtableau from the vicinity of Washington to the vicinity of Courtableau, Louisiana.

2. *Alternatives.*

a. *General.* In response to flood control concerns within the Bayou Cocodrie project area, the construction of a diversion channel from Washington to the west Atchafalaya Basin protection levee (WABPL) borrow pit was authorized by Congress in 1965. Planning on the diversion channel ceased when the local sponsor advised that it would be impossible to obtain the necessary rights-of-way. Congress, in 1974, specifically authorized the enlargement of Bayou Courtableau in lieu of the diversion channel. Each action alternative formulated is in response to the portion of that authorization to enlarge Bayou Courtableau. Each action alternative is contingent upon, but does not include, the construction of an outlet for flood flows through the WABPL. This outlet is authorized under the 1974 Bayou Cocodrie legislation as well as the 1970 legislation for the Eastern Rapides and South-Central Avoyelles, Parishes (ERSCAP), Louisiana, project. Construction would be accomplished under the ERSCAP authorization. The outlet would include culverts constructed through the WABPL for those flood flows coming from the drainage basin immediately east of the Bayou Cocodrie project basin.

b. *No Action.* The alternative of no action, or future conditions without Federal action, will be the basis for comparison for any action alternative considered.

c. *Authorized Plan.* The enlargement of Bayou Courtableau from approximately 3 miles upstream of Washington and progressing downstream to 3½ miles below Port Barre providing protection against those storm flows occurring approximately once every 10 years.

3. *Scoping Process.*

a. A public meeting was held on February 28, 1979, in Opelousas, Louisiana, to discuss preliminary plans

to enlarge Bayou Courtableau and to receive public input. Project proponents and opponents were in attendance and presented diverse concerns. Significant concern regarding cultural and historical resources in the Washington area was evident. The Louisiana State Historic Preservation Officer has been consulted regarding historic properties in the study area and study methodology. Communication has been maintained with the U.S. Fish and Wildlife Service (USFWS) regarding impacts of the project upon fish and wildlife resources. An information packet which also solicits public input into the EIS analysis process has been disseminated to obtain sincere public interest in project planning, design, and construction.

b. The most significant issues to be analyzed are project economics and the effects of the project on the human environment including cultural, historical, biological, and physical features.

c. The USFWS will provide a Draft fish and Wildlife Coordination Act Report for attachment to the statement.

d. A minimum of a 45-day review period for the draft statement will be allowed for all agencies and individuals on the project mailing list and other interested parties.

4. *Availability.* The draft EIS is scheduled to be available to the public in December 1985.

ADDRESS: Questions concerning the proposed action and draft EIS can be directed to Mr. Bill Wilson, U.S. Army Corps of Engineers, Environmental Quality Section (LMNPD–RE), P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 838–2527.

December 10, 1984.

Eugene S. Witherspoon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84–32852 Filed 12–17–84; 8:45 am]

BILLING CODE 3710–84–M

Department of the Navy (Marine Corps)

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of an amendment to a system of records.

SUMMARY: The U.S. Marine Corps proposes to amend a system of records to its inventory of systems of records subject to the Privacy Act of 1974. The proposed amendment is set forth below.

DATES: The proposed action will be effective without further notice on or before January 17, 1985, unless comments are received which would result in a contrary determination.

ADDRESSES: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION: Mrs. B.L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C 20380, telephone: (202) 694–1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 83–6317 (48 FR 10422) March 11, 1983
FR Doc. 83–6992 (48 FR 11312) March 17, 1983
FR Doc. 83–8688 (48 FR 14432) April 4, 1983
FR Doc. 83–12048 (48 FR 25964) June 6, 1984
FR Doc. 83–28621 (48 FR 48701) October 20, 1983
FR Doc. 84–9930 (49 FR 14791) April 13, 1984
FR Doc. 84–21236 (49 FR 32098) August 10, 1984

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which required the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Office, Department of Defense.

December 12, 1984.

AMENDMENTS

MFD00004

System name:

Bond and Allotment (B&A) System (48 FR 25970) June 6, 1983.

Changes:

Categories of individuals covered by the system:

Delete the entire entry and substitute the following: "The allotment system contains all active allotments and limited stop history (12 months) for all active duty, retired, and Fleet Marine Corps Reserve (FMCR) members who authorized an allotment from their pay and allowances."

Add the following paragraph after *Authority for maintenance of the system:*

"Purpose(s): To provide record of payments of allotments, issuance and cancellation of U.S. Treasury checks and bonds as authorized and managed by officials and employees or the Marine Corps."

Routine uses of records maintained in the system including categories of user and the purposes of such uses: Delete the entire entry and substitute the following paragraphs:

"The Blanket Routine Uses that appear at the beginning of the Marine Corps compilation apply to this system.

"To State Officials for the purpose of detecting and curtailing fraud and abuse in Federal Assistance Programs, specifically Aid to Families with Dependent Children and Food Stamps."

Retention and disposal: In the last sentence after the words "directed by," add the works "the current edition of."

Record source categories: Delete the entire entry and substitute the following:

"The input of data via scannable Allotment/Bond Authorizations (ABA's), terminal key station to a magnetic storage area for subsequent transmission via AUTODIN, or submission by magnetic tapes, and the computer interfaces with the Joint Uniform Military Pay System/Manpower Management System and Retired Pay/Personnel System are the principle sources of the information contained in the B&A automated system."

MFD00004

SYSTEM NAME:

Bond and Allotment (B&A) System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The allotment system contains all active allotments and limited stop history (12 months) for all active duty, retired, and Fleet Marine Corps Reserve (FMCR) members who authorized an allotment from their pay and allowances.

* * * * *

PURPOSE(S):

To provide record of payments of allotments, issuance and cancellation of U.S. Treasury checks and bonds as authorized and managed by officials and employees of the Marine Corps.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Marine Corps compilation apply to this system.

To State Officials for the purpose of detecting and curtailing fraud and abuse in Federal Assistance Programs, specifically Aid to Families with Dependent Children and Food Stamps.

* * * * *

RETENTION AND DISPOSAL:

Magnetic records are maintained by MCCDPA on all active allotments during the life of the allotment and for a period of 12 months after the allotment has

been stopped. Paper and microform files relating to the Centralized Pay Division files are disposed of as directed by the current edition of SECNAVINST P5212.53.

RECORD SOURCE CATEGORIES:

The input of data via scannable Allotment/Bond Authorization (ABA's), terminal key station to a magnetic storage area for subsequent transmission via AUTODIN, or submission by magnetic tape, and the computer interfaces with the Joint Uniform Military Pay System/ Manpower Management System and Retired Pay/Personnel System are the principle sources of the information contained in the B&A automated system.

* * * * *

[FR Doc. 84-32843 Filed 12-17-84; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Executive Committee of the Intergovernmental Advisory Council on Education; Closed Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the Executive Committee meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 4, 1985.

ADDRESS: Department of Education, Patterson Room, 1130 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Department of Education, Washington, D.C. 20202, [202) 472-6464.

SUPPLEMENTARY INFORMATION: The Executive Committee meeting will be closed to the public to interview applicants for the position of Executive Director of the Council. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix 1) and under exemption (6) contained in the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)(6)). Discussion will include consideration of the qualifications and fitness of the candidates and will touch upon matters which would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Signed at Washington, D.C. on Wednesday, December 12, 1984.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 84-32889 Filed 12-17-84; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council Refinery Survey Task Group; Date/Location Change for Meeting

The date and location of the December 13, 1984, meeting of the Refinery Survey Task Group, which was to be held at the Crown Central Petroleum Corporation, 111 Red Bluff Road, Pasadena, Texas, has been changed. The new date and location should read: Tuesday, December 18, 1984, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, Washington, D.C.

Issued at Washington, D.C., on December 5, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84-32924 Filed 12-17-84; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Swann Oil, Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Swann Oil, Inc., 130 Presidential Boulevard, Bala Cynwyd, Pennsylvania 19004. This Proposed Remedial Order allages that during the period November 1, 1973, through December 31, 1973, Swann Oil, Inc., sold various petroleum products at prices in excess of those allowed pursuant to 6 CFR 150.359, subsequently 10 CFR 212.93(a) of the Mandatory Petroleum Allocation and Price Regulations. The principal amount of the alleged violations is $2,789,266.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: James Solit, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. With fifteen 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued at Washington, D.C. on the 28th of November 1984.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-32919 Filed 12-17-84; 8:45 am]
BILLING CODE 6450-01-M

Century Resources Development, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Century Resources Development, Inc. and its parent Energy Production and Sales, Inc. and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order .

EFFECTIVE DATE: Comments by: January 17, 1985.

ADDRESS: Send comments to: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, 440 S. Houston, Room 306, Tulsa, OK 74127.

FOR FURTHER INFORMATION CONTACT: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, 440 S. Houston, Room 306, Tulsa, OK 74127, (918) 581-7781.

SUPPLEMENTARY INFORMATION: On November 16, 1984, the ERA executed a proposed Consent Order with Century Resources Development, Inc. (CRD) of Orange, California and its parent, Energy Production and Sales, Inc. (EPS), also of Orange, California. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it

receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Century Resources Development, Inc., with its home office located in Orange, California, is a firm engaged in the resale of crude oil, and was subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212 during the period covered by this Consent Order. To resolve certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Part 212, Subparts F and L, in connection with CRD's transactions involving crude oil during the period October 1977 through January 27, 1981 ("the period covered by this Consent Order"), the ERA, CRD and EPS entered into a Consent Order, the significant terms of which are as follows:

A. During the period October 1977 through January 27, 1981, CRD engaged in the resale of crude oil.

B. DOE has alleged that during the period covered by the Consent Order, CRD improperly priced crude oil in violation of 10 CFR Part 212, Subparts F and L.

C. The execution of this Consent Order constitutes neither an admission by CRD nor a finding by DOE of any violation by CRD of any statute or regulation administered by DOE.

II. Refunds

Under this Consent Order, CRD and EPS will pay the sum of $1,500,000 to DOE for ultimate disposition, in no more than eight quarterly installments plus installment interest commencing fourteen business days after the Consent Order has become effective. Upon full satisfaction of the terms and conditions of this Consent Order by CRD and EPS, the DOE releases CRD from any civil claims that the DOE may have arising out of the specified transactions during the period covered by this Consent Order.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on Century Resources Development, Inc.'s Consent Order." The ERA will consider all comments it receives by 4:30 p.m., local time, on January 17, 1985. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Tulsa, Oklahoma on the 16th day of November, 1984.

John W. Sturges,

Director, Tulsa Office Economic Regulatory Administration.

[FR Doc. 84-32921 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

Coastal Petroleum Refiners, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Coastal Petroleum Refiners, Inc. (Coastal) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

EFFECTIVE DATE: Comments by: January 17, 1985.

ADDRESS: Send comments to: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, 440 S. Houston, Room 306, Tulsa, OK 74127.

FOR FURTHER INFORMATION CONTACT: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, 440 S. Houston, Room 306, Tulsa, OK 74127, (918) 581-7781.

SUPPLEMENTARY INFORMATION: On November 16, 1984, the ERA executed a proposed Consent Order with Coastal Petroleum Refiners, Inc. of Tustin, California. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a ntoice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Coastal Petroleum Refiners, Inc., with its home office located in Tustin, California, is a firm engaged in the resale of crude oil, and was subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212 during the period covered by this Consent Order. To resolve certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Part 212, Subpart L, in connection with Coastal's transactions involving crude oil during the period September 1979 through January 27, 1981 ("the period covered by this Consent Order"), the ERA and Coastal entered into a Consent Order, the significant terms of which are as follows:

A. During the period September 1979 through January 27, 1981, Coastal engaged in the resale of crude oil.

B. DOE has alleged that during the period covered by the Consent Order, Coastal improperly priced crude oil in violation of 10 CFR Part 212, Subpart L.

C. The execution of this Consent Order constitutes neither an admission by Coastal nor a finding by DOE of any violation by Coastal of any statute or regulation administered by DOE.

II. Refunds

Under this Consent Order, Coastal Petroleum Refiners, Inc. will pay the sum of $500,000 to DOE for ultimate disposition, within thirty days after the Consent Order has become effective. Upon full satisfaction of the terms and conditions of this Consent Order by Coastal, the DOE releases Coastal from any civil claims that the DOE may have arising out of the specified transactions during the period covered by this Consent Order.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on Coastal Petroleum Refiners, Inc.'s Consent Order." The ERA will consider all comments it receives by 4:30 p.m., local time, on January 17, 1985. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Tulsa, Oklahoma on the 16th day of November, 1984.

John W. Sturges,

Director, Tulsa Office Economic Regulatory Administration.

[FR Doc. 84-32920 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-021; OFP Case No. 61051-9257-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Applied Energy Services, Inc.

SUMMARY: On August 20, 1984, Applied Energy Services, Inc. (AES Geismar) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for the planned AES Geismar facility located in Geismar, Louisiana, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

AES Geismar proposes to construct and operate a combined cycle cogeneration facility in Geismar, Louisiana, approximately 25 miles southeast of Baton Rouge. The facility will include one combustion turbine generator, one heat recovery steam generator, one steam turbine and other support equipment. The cogeneration facility will produce approximately 280,000 lb/hr of process stem and 123,400 kilowatts of electrical power. Since the facility will sell more than 50 percent of its net electrical power to Gulf States Utilities (GSU), it will be considered an electric power plant.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR §§ 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before February 1, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Docket No. ERA-FC-84-021 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-9629

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will include one Westinghouse 501-D5 gas turbine/generator or equivalent as the fuel burning unit. The heat recovery steam generator will be unfired, except during emergency conditions when the gas turbine is not operating. Natural gas will be the only fuel used and there will be no emergency standby fuel.

Under normal operating conditions the capacity of the proposed combined cycle plant will be approximately 280,000 lb/hr of process steam and 123 MWe (net) of electrical power at average ambient air conditions. Under minimum process steam conditions the capacity of the plant will be approximately 120,000 lb/hr of process steam and 140 MWe (net) of electrical power at average ambient air conditions. Under maximum process steam conditions the capacity of the plant will be approximately 340,000 lb/hr of process steam and 117 MWe (net) of electrical power at average ambient air conditions.

The primary purpose of the proposed facility is to provide process steam for use by the adjacent Uniroyal Chemical Plant. Electric power will also be generated for sale to GSU as a secondary benefit derived from efficient facility operation.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), AES Geismar has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR § 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), AES Geismar has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR § 503.13. In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that AES Geismar is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during

the public comment period provided for in this notice.

Issued in Washington, D.C. on December 5, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-32922 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-019; OFC Case No. 52975-9255-20,21-22]

Order Granting Turlock Irrigation District Walnut Substation Peakload Powerplant Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

SUMMARY: On August 15, 1984, the Turlock Irrigation District, Walnut Substation Peakload Powerplant (Turlock) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exemption a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (52 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

Turlock requested a permanent peakload exemption under 10 CFR § 503.41 for a simple-cycle combustion turbine installation consisting of two 25.8 MW combustion tubine-generator systems and appurtenant equipment. The proposed units are to be installed at the Turlock facility in Stanislaus County, California. The powerplant will be capable of burning natural gas and petroleum.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to Turlock a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combusion turbine facility in Stanislaus County, California.

The basis for ERA's order is provided in the SUPPLEMENTARY INFORMATION section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on February 19, 1985.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-6002.

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available for inspection upon request at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.,-4:00 p.m.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Turlock has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Stanislaus County, California facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR § 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availablility of Certification relating to this facility in the **Federal Register** on September 26, 1984 (49 FR 37832), commencing a 45-day public comment period pursuant to section 701(c) of FUA. AS required by section 701(f) of the Act, ERA provided a copy of Turlock's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed November 13, 1984. No comments were received and no hearing was requested.

Turlock certified in its Petition for Exemption that the proposed facility will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt-hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours." Documentary evidence submitted by Turlock in support of its certification indicates that the maximum electrical generation in kilowatt-hours will not exceed the powerplant gross design capacity, 51,600 kilowatts (48,000 kilowatt net capacity) multiplied by 1,500 hours or 38,700,000 kilowatt-hours during any 12 month period, constituting a "peakload powerplant" operation within the definition.

Turlock has also certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

As ERA determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR § 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that Turlock has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR § 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants Turlock a permanent exemption for a peakload powerplant to be installed at its facility in Stanislaus County, California, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Office of Fuels Programs, Coal and Electricity Division, of Turlock's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C. on December 6, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-32923 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-006; COFP Case No. 61047-9243-20-24)]

Extension of Decision Period on Petition for Exemption by AES Placerita, Inc., for a Proposed Facility in Newhall, CA

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days to March 7, 1985 the Decision Period within which to either grant or deny the request for a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") filed by AES Placerita, Inc. (AES Placerita) for its proposed electric powerplant in Newhall, California.

Section 501.68(a)(2) of 10 CFR Part 510—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a date certain by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension is the second extension by ERA to grant or deny the request for a permanent cogeneration exemption. The extension by ERA to finalize the decision is necessary pending a determination by the United States Environmental Protection Agency as to whether air permits issued to cogeneration facilities in the South Coast Air Quality Management District, using exemptions from emissions offset requirements under California Assembly Bill 1862, are consistent with the Clean Air Act.

Issued in Washington, D.C. on December 5, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-32871 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Clean Coal Use Technology Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Clean Coal Use Technology Panel of the Energy Research Advisory Board (ERAB).

Date and Time: January 16, 1985 from 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Clean Coal Use Technology Panel is examining the status of the principal technologies for the clean use of coal, including:

- The current Department of Energy, private sector, and foreign R&D effort;
- The relative cost effectiveness of alternative technologies; and
- The adequacy and timing of this work relative to the national need.

Agenda

- Review and discuss the first draft of the Panel's report on clean coal utilization.
- Propose and agree on revisions necessary for preparation of a draft report suitable for submission to the Energy Research Advisory Board.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying in the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 10, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-32874 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Demand Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Demand Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: February 6, 1985—8:30 a.m.-5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Room 6A-110, Washington, DC 20585, 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Demand Subpanel is a subgroup of the Energy Research Advisory Board. The Board has been charged with overall responsibility for assessing the proper scope and balance of energy R&D programs which are expected to have a payoff around 2020. The Panel's specific charge is to assess the nation's future energy demand so that it will be possible to assess what will be needed in that timeframe to bring research results to the marketplace.

Agenda

- Discussion of Draft Subpanel Report
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 10, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs, Office of Energy Research.

[FR Doc. 84-32872 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Infrastructure Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Infrastructure Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: January 9, 1985—8:30 a.m.—5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington DC 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, 202/252-8933

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Infrastructure Subpanel is a subgroup of the Energy Research Advisory Board. The Board has been charged with overall responsibility for assessing the proper scope and balance of energy R&D programs which are expected to have a payoff around 2020. The Subpanel's specific charge is to assess the infrastructure which will be needed to bring research results to the marketplace in that timeframe.

Agenda

- Discussion of proposed new staff studies
- Status of current staff studies
- Briefings by R&D managers
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 10, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-32873 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Supply Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Supply Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: February 6, 1985—9:30 a.m.-4:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, 202/252-5444.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: To examine the future energy needs of the nation and develop judgments on the essential ingredients of a balanced energy R&D effort. The Panel has established Supply, Demand, Research, and Infrastructure Subpanels to assist in carrying out its assignments.

Tenative Agenda

- Review of long-range energy R&D goals and the National Energy Policy Plan
- Briefing by Department of Energy staff on the Renewable Energy Program evaluation process
- Review of revised working papers on:
  - —Electricity
  - —Liquids
  - —Gas
  - —Coal
  - —Renewables
  - —Fusion
  - —Transportation, distribution, and storage
- Plan future subpanel efforts and meetings
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address and telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 10, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-32875 Filed 12-17-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-168-000]

CP National Corp.; Filing

December 13, 1984.

The filing Company submits the following:

Take notice that on December 6, 1984, CP National Corporation submitted for filing an initial rate schedule for service to the City of Hurricane, Utah. Notice of this filing was served upon the City of Hurricane and the Utah Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32896 Filed 12-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-8-000]

Forest Oil Co.; Petition for Declaratory Order

Issued December 13, 1984.

On December 3, 1984, Forest Oil Company (Forest) filed a petition for a declaratory order with the Federal Energy Regulatory Commission

(Commission) under Rule 207 of the Commission's Rules of Practice and Procedure.[1] Forest seeks a declaratory order that it is entitled to collect the post-1974 vintage price under § 271.402(b)(1)[2] for gas produced as a result of its sidetracking operation on the Outer Continental Shelf, Vermilion block 255, Offshore Louisiana.

Forest first spudded the Well No. A–3 in 1965. Forest discovered gas bearing sands and commenced production in the EH–6, EH–2 and EH–1 sands in 1969. Production continued until September, 1977 when the productive sands watered out. Forest made an unsuccessful attempt to plug back the Well No. A–3 in November 1977. Thereafter, the A–3 was temporarily plugged and abandoned.

In October, 1983, Forest reentered Well No. A–3 whereupon it was discovered that recompletion was not possible and that sidetracking and redrilling was necessary. The Mineral Management Service (MMS) approved Forest' permit to sidetrack Well No. A–3 on November 15, 1983.[3]

Forest then successfully completed its sidetracking operations in the E–2 sand. Forest assets that the vintage of the gas produced from the new sidetracked Well No. A–3 should be determined by the date the sidetracking operations commenced, not the original spud date. Forest cites the Commission Order in *Amoco Production Company*, Docket No. RI80–11, 15 FERC ¶ 61,120 (1981) in support of its position.

Any person desiring to be heard or to protest this petition should file within 30 days after notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Stree, NW., Washington, D.C. 20426, a Motion to Intervene or a Protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceedings.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–32897 Filed 12–17–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–170–000]

Idaho Power Co.; Filing

December 13, 1984.

The filing Company submits the following:

Take notice that on December 6, 1984, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during October 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company, Supplement 36
Sierra Pacific Power Company, Supplement 32
Portland General Electric Company, Supplement 29
Southern California Edison Company, Supplement 23
San Diego Gas & Electric Company, Supplement 19
Washington Water Power Company, Supplement 24
Los Angeles Water & Power Company, Supplement 20
City of Burbank, Supplement 19
City of Glendale, Supplement 19
City of Pasadena, Supplement 19
Puget Sound Power & Light Company, Supplement 10
Pacific Gas and Electric Company, Supplement 4
Western Area Power Administration, Supplement 2

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–32898 Filed 12–17–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–169–000]

The Kansas Power and Light Co.; Filing

December 13, 1984.

The filing Company submits the following:

Take notice that on December 3, 1984, The Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated November 16, 1984, with the City of Muscotah, Kansas for wholesale service to that community. KPL states that this contract permits the City of Muscotah to receive service under rate schedule WSM–12/83 designated Supplement No. 10 to R.S. FERC No. 167. The proposed effective date is January 3, 1985 and KPL requests that the Commission waive the notice requirements as allowed in Section 35.11 of its Regulations. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Muscotah and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–32899 Filed 12–17–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF85–5031–000]

Western Area Power Administration; Filing

December 13, 1984.

The filing Company submits the following:

By Rate Order No. WAPA–24, the Deputy Secretary of the Department of Energy placed increased power rates into effect on an interim basis for the Pick-Sloan Missouri Basin Program (P–SMBP) power marketed by the Western Area Power Administration (Western).

The rate adjustment will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of it, or substitute rates, on a final bases, or until superseded. The Deputy Secretary states

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[1] 18 CFR 385.207.

[2] 18 CFR 271.402(b)(1).

[3] The MMS did not assign a new well number to the sidetracking operation.

that the rate schedules are submitted for confirmation and approval on a final basis, for a period of 5 years, pursuant to authority vested in the FERC by Delegation Order No. 0204–108.

Any person desiring to be heard or to protest aid filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before Janaury 10, 1985. 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 Commisison and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–32900 Filed 12–17–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–171–000]

Wisconsin Public Service Corp.; Filing

December 13, 1984.

The filing Company submits the following:

Take notice that Wisconsin Public Service Corporation on December 7, 1984, tendered for filing supplements to the following service agreements.

Service Agreement No. 1

June 24, 1977, "Partial Requirements Service Agreement," between Consolidated Water Power Company and Wisconsin Public Service Corporation.

Service Agreement No. 2

June 19, 1978, "Partial Requirements Service Agreement," between the City of Maitowoc, Wisconsin and Wisconsin Public Service Corporation.

Service Agreement No. 3

February 21, 1980, "Partial Requirements Service Agreement," between the City of Marshfield, Wisconsin, and Wisconsin Public Service Corporation.

These supplements will revise the contract demand quantities in accordance with Exhibit 1 of the service agreement, Paragraph 6, *Requirements.*

Copies of this filing were served upon the City of Marshfield, Wisconsin, City of Manitowoc, Wisconsin, and the Consolidated Water Power Company.

The supplement is to be effective on and after June 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–32901 Filed 12–17–84; 8:45 a.m.]

BILLING CODE 6717–01–M

[Project No. 2903–004, et al.]

Hydroelectric Applications (Calaveras County Water District, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed wih the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No: 2903–004.

c. Date Filed: October 9, 1984.

d. Applicant: Calaveras County Water Distict (Licensee).

e. Name of Project: New Hogan Dam Water Power Project.

f. Location: At the Corps of Engineers' New Hogan Dam on Calaveras County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Steve, Felt, General Manager, Calaveras County Water District, P.O. Box 846, San Andreas, California 95249.

i. Comment Date: January 22, 1985.

j. Description of Project: The Licensee proposed to: (1) Delete from the licensed project a 1,000-foot-long, 12-kV transmission line that would have connected the project with an existing 12-kV transmission line at the site; and (2) add a 2.3-mile-long, 60-kV transmission line to connect the project with an existing Pacific Gas and Electric Company line northwest of the powerhouse.

k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Transer of License.

b. Project No: 3512–002.

c. Date Filed: August 3, 1984.

d. Applicant: David Goodman & George R. Oliger (Licensee) and UAH-Braendly Hydro Associates (Transferee).

e. Name of Project: Braendly Hydropower.

f. Location: On Fishkill Creek in Dutchess County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David Goodman, UAH-Braendly Hydro Associates, 80 Eighth Avenue, Room 711, New York, New York 10011.

i. Comment Date: January 18, 1985.

j. Description of Proposed Transfer: On January 26, 1984, a license was issued to David Goodman & George R. Oliger for the Braendly Hydropower Project No. 3512, with commencement of construction due within two years. In order to facilitate the financing of the construction, operation, and maintenance of the project, the Licensee proposes to transfer the license to UAH-Braendly Hydro Associates. Transferee states that it will comply with all applicable laws of the State of New York as required by Section 9(b) of the Federal Power Act. The Transferee has proposed to develop and operate the project in accordance with the existing license. The Transferee is a limited partnership, organized under the laws of the State of New York.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Transfer of License (Minor).

b. Project No.: 4021–002.

c. Date Filed: August 20, 1984.

d. Applicants: Saranac Energy Corporation and McRay Energy, Inc.

e. Name of Project: Lake Tahoma Hydro Project.

f. Location: On the Buck Creek, a tributary to the South Fork Catawba River, near the City of Marion, McDowell County, North Carolina.

g. Filed Pursuant to: Section 9 of the Federal Power Act.

h. Contact Person: Ronald B. Powers, Saranac Energy Corporation, P.O. Box 1240, Bessemer City, North Carolina 28016, and W. Allen McNeill, McRay Energy, Inc., P.O. Box 1240, Bessemer City, North Carolina 28016.

i. Comment Date: January 18, 1985.

j. Description of Proposed Transfer: On July 13, 1982, a minor license was issued to Saranac Energy Corporation to rehabilitate, operate, and maintain the

Lake Tahoma Hydro Project No. 4021. Saranac Energy Corporation intends to sell the project to McRay Energy, Inc., a private North Carolina-chartered business corporation. For that reason, Saranac Energy Corporation and McRay Energy, Inc. has filed a request that the project license be transferred to McRay Energy, Inc.

k. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: Minor License.

b. Project No: 5192–002.

c. Date Filed: July 18, 1984.

d. Applicant: Lind and Associates.

e. Name of Project: Upper Rock Creek Water Power Project.

f. Location: On Rock Creek, near Placerville, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. A. A. Lind, Lind & Associates, 8715 Curragh Downs Drive, Fair Oaks, California 95628.

i. Comment Date: February 14, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 160-foot-long diversion dam at elevation 1,361 feet; (2) a 5.5-foot-diameter, 900-foot-long diversion pipeline; (3) a 5.5-foot-diameter, 60-foot-long steel penstock; (4) a powerhouse containing one generating unit with a rated capacity of 500 kW operating under a head of 37 feet; and (5) a 4,000-foot-long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.5 GWh to be sold to PG&E. The project cost has been estimated to be about $1.0 million. The Applicant does not propose any recreational facilities as part of the project.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

5 a. Type of Application: Exemption (5 MW or less).

b. Project No: 5605–001.

c. Date Filed: September 4, 1984.

d. Applicant: Woodbridge Irrigation District.

e. Name of Project: Woodbridge Dam Hydroelectric.

f. Location: On the Mokelumne River in San Joaquin County in California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Miss Mable Hall, Secretary-Manager, Woodbridge Irrigation District, 18777 North Lower Sacramento Road, Lodi, California 95240.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) The Applicant's existing 20-foot-high diversion dam at elevation 40 feet; (2) an existing reservoir with gross storage capacity of 2,464 acre-feet; (3) a proposed powerhouse at the foot of the dam, close to the east abutment, to contain four generating units with a combined rated capacity of 750 kW, operating under a head of approximately 20 feet; and (4) a 560-foot-long, 12-kV transmission line will connect the project with an existing Pacific Gas and Electric Company line northeast of the powerhouse.

k. Purpose of Project: The estimated 2.3 million kWh of annual project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

6 a. Type of Application: Major License.

b. Project No: 6015–007.

c. Date Filed: August 31, 1984.

d. Applicant: Charles D. Howard.

e. Name of Project: Rock Creek No. 2.

f. Location: On Rock Creek in Twin Falls County, Idaho, partially on lands of the United States administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles D. Howard, 1139 Falls Avenue East, Suite B, Twin Falls, Idaho 83301.

i. Comment Date; February 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A 9.5-foot-high, 40-foot-long concrete diversion dam with crest elevation 3,306 feet; (2) a concrete intake structure with an overall length of 88 feet; (3) a 66-inch-diameter, 2,700-foot-long steel penstock; (4) a 30-foot-wide, 50-foot-long, 14-foot-high concrete powerhouse containing three generating units, rated at 1.1 MW, 0.52 MW, and 0.28 MW; (5) a concrete tailrace with a normal water surface elevation of 3,161 feet; (6) a 4,700-foot-long, 4.16-kV transmission line connecting to an existing Idaho Power Company substation; and (7) access facilities including a 14-foot-wide, 44-foot-long steel bridge, 20,000 feet of existing gravel road, and 2,700 feet of proposed gravel road. The estimated project cost, as of August 1984, is $2,240,000.

This application has been accepted for filing as of March 30, 1984, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et al., 28 FERC ¶ 61,062, issued July 18, 1984. The Applicant had a preliminary permit for this project.

k. Purpose of Project: Project output would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A9, B and C.

m. License or Conducit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

7 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8075–000.

c. Date Filed: February 13, 1984.

d. Applicant: James River—Groveton, Inc.

e. Name of Project: Northumberland Dam.

f. Location: On the Connecticut River, in Coos County, New Hampshire and Essex County, Vermont.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*.)

h. Contact Person: Mr. Jack Hiltz, James River—Groveton, Inc., Groveton, New Hampshire 03582.

i. Comment Date: January 18, 1985.

j. Competing Application: Project No.: 7960–000, Date Filed: January 4, 1984.

k. Description of Project: The proposed run-of-river project would consist of: (1) Reconstruction of the existing 12.5-foot-high, 180-foot-long dam at elevation 845 feet m.s.l.; (2) an existing impoundment with a surface area of 235-acres and a gross storage capacity of 1,000 acre-feet; (3) an existing powerhouse on each end of the dam with a combined project rated capacity of 2,000-kw; and (4) a new 240-foot-long transmission line tying into the Public Service Company of New

Hampshire line. The existing facilities are owned by the New Hampshire Water Resource Board. The Applicant estimates a 7,000,000 kWh average annual energy generation.

l. Purpose of Project: Power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A2, A9, B, C, and D3a.

n. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 8398–000.

c. Date Filed: June 28, 1984.

d. Applicant: Rory M. Poulin and Peter B. Marx.

e. Name of Project: Rock City Falls Water Power.

f. Location: Kayaderosseras River in Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rory M. Poulin, 1 Warren Avenue, Troy, New York 12180.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 65-foot-long concrete dam owned by Coltrell Paper Co., Inc. with a crest elevation of 460 feet m.s.l.; (2) an existing reservoir with a surface area of 3 acres; (3) a proposed 600-foot-long, 72-inch-diameter penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 410 kW; and (5) a proposed 600-foot-long transmission line tying into the existing Niagara Mohawk Power Company line. The Applicant estimates a 2,500,000 kWh average annual energy production. A preliminary permit, if issued, does not authorize construction. Applicant has requested an 18-month permit to conduct feasibility studies and prepare a license application at a cost of $15,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No: 8477–000.

c. Date Filed: July 31, 1984.

d. Applicant: Stephen J. Gaber.

e. Name of Project: Anderson Creek.

f. Location: On Anderson Creek and Unnamed Tributary to the North Fork Nooksack River, near the Town of Glacier in Whatcom County, Washington, within the Mt. Baker National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Stephen J. Gaber, 10 Canyon Lk. Rd., Deming, Washington 98244.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 10-foot-high and 40-foot-long reinforced rock and earth fill diversion dam having a concrete spillway with crest elevation 3,200 feet msl; (2) a 24-inch-diameter and 4,800-foot-long pipeline/penstock, (3) a powerhouse containing a generating unit rated at 3,000-kW operated at a net head of 1,200 feet at a flow of 60 cfs; (4) a tailrace; (5) a 6-mile-long three-phase transmission line; and (6) 20-foot-wide graveled access roads to the powerhouse/lower pipeline and to the diversion dam/upper pipeline.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36-months during which time it would conduct technical, environmental, and economic feasibility studies, and would prepare an application for an FERC license. No test pits, borings, or other exploration have been proposed. Applicant estimates that the cost of the work under the terms of the permit would be $281,000.

k. Purpose of Project: Project energy would be sold to Puget Sound Power and Light. Applicant estimates that the average annual generation would be 12 million kWh.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8493–000.

c. Date Filed: August 6, 1984.

d. Applicant: Hydroelectric Development, Inc.

e. Name of Project: Cochiti Water Power.

f. Location: On the Rio Grande in Sandoval County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Alan R. Mauzy, CH2M HILL, P.O. Box 22508, Denver, Colorado 80222.

i. Comment Date: February 11, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cochiti Dam and Reservoir, located on lands of the Pueblo de Cochiti, and would consist of: (1) Two new penstocks utilizing the existing outlet works near the left river bank; (2) a new powerhouse containing one turbine-generator unit rated at 9,000 kW; (3) a tailrace returning flow to the river near the existing stilling basin outlet; (4) a new underground transmission line, about 0.6 mile long, connecting to an existing substation; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 38,000,000 kWh. Project energy would be sold to a local power supplier.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $40,000.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 8496–000.

c. Date Filed: August 6, 1984.

d. Applicant: F. and T. Energy Corporation.

e. Name of Project: DeQueen Hydro Project.

f. Location: On Rolling Fork River in Sevier County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., Post Office Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: February 11, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' DeQueen Dam and Reservoir and would consist of: (1) A new 6-foot-diameter, 250-foot-long steel penstock connecting to the existing outlet works; (2) a new powerhouse containing a turbine-generator unit having a rated capacity of 2,000 kW; (3) a tailrace returning flow to the river about 75 feet downstream from the dam; (4) a new 34.5–kV transmission line about 3 mile long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 10,200,000 kWh. Project energy would be sold to a local utility or to municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

1. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $25,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 8507–000.

c. Date Filed: August 9, 1984.

d. Applicant: HydroPool.

e. Name of Project: Eagle Creek Project.

f. Location: On Eagle Creek, near Trinity Center, within the Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ivan L. Gold, HydroPool, 2539 Larkin Street, San Francisco, California 94109.

i. Comment Date: February 8, 1985.

j. Competing Application: Project No. 8508, Date Filed August 10, 1984.

k. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 91-foot-long concrete diversion dam at elevation 3,200 feet; (2) a 50-inch-diameter, 5,800-foot-long conduit or a 5-foot-wide, 2.5-foot-deep, 5,800-foot-long channel; (3) a 36-inch-diameter, 750-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,600 kW operating under a head of 484 feet; and (5) a 0.5-mile-long, 12.5-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 12.4 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No: 8508–000.

c. Date Filed: August 10, 1984.

d. Applicant: Bonanza King Hydro Ltd.

e. Name of Project: Bonanza King Hydroelectric Project.

f. Location: On Eagle Creek, near Trinity Center, within Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, P.O. Box 1154, Beverly Hills, California 90213–4154.

i. Comment Date: February 8, 1985.

j. Competing Application: Project No. 8507–000, Date Filed: August 9, 1984.

k. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 91-foot-long diversion dam at elevation 3,200 feet; (2) a 50-inch-diameter, 5,800-foot-long diversion pipeline; (3) a 36-inch-diameter, 750-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,600 kW operating under a head of 485 feet; and (5) a 2,600-foot-long, 12.5-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 12.4 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 8545–000.

c. Date Filed: August 21, 1984.

d. Applicant: Placer County Water Agency (PCWA).

e. Name of Project: Horseshoe Bar Tunnel.

f. Location: On Middle Fork American River, near Foresthill, in Placer County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ed Schnable, 185 Ferguson Road, P.O. Box 3218, Auburn, California 95604, (916) 885–2411.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed project would utilize the existing Horseshoe Bar Tunnel with a hydraulic capacity of 26,000 cfs and would consist of: (1) A 14-foot-high, 200-foot-long concrete diversion weir across Middle Fork American River; (2) an intake structure located at a normal water surface elevation of 1,049 feet msl; (3) a powerhouse located 30 feet upstream of the tunnel inlet with wingwalls and containing a single turbinegenerator unit with a rated capacity of 4.4 MW and producing an estimated average annual generation of 16.7 GWh; (4) a switchyard; and (5) a 1,500-foot-long, 60-kV transmission line to interconnect with an existing Pacific Gas and Electric Company (PG&E) line serving the PCWA Oxbow Reservoir and Power Plant. The proposed project would be located on American Bar Quartz Mining Company lands and would be surrounded by Tahoe and Eldorado National Forest lands. Project power would be sold to PG&E.

A preliminary permit, if issued, does not authorize construciton. Applicant seeks an 18-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No: 8687–000.

c. Date Filed: October 26, 1984.

d. Applicant: TKO Power.

e. Name of Project: Sugarloaf Hydroelectric.

f. Location: On Hat Creek, within Lassen National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Norman E. Kamp, TKO Power, P.O. Box 1226, Redding, California 96099.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A 20-foot-high, 105-foot-long diversion dam at elevation 4,160 feet; (2) a 66-inch-diameter, 2,400-foot-long low pressure pipe; (3) a 57-inch-diameter, 2,450-foot-long penstock; (4) a powerhouse to contain generating units with combined rated capacity of 1,900 kW operating under a head of 197 feet; and (5) a 12.5-kV, 1,500-foot-long transmission line would connect the project with an existing Pacific Gas and Electric Company line east of the powerhouse.

k. Purpose of Project: The estimated annual generation of 11.6 million kWh would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

16 a. Type of Application: Small Conduit Exemption.

b. Project No.: 8256–001.

c. Date Filed: May 25, 1984.

d. Applicant: Electro Technologies, Ltd.

e. Name of Project: Highland Canal Hydroelectric Plant.

f. Location: Highland Irrigation Ditch, Rio Blanco County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Mr. Doyle E. Young, P.O. Box 27602, Denver Colorado 80227.

i. Comment Date: January 22, 1985.

j. Competing Application: Project No. 8244, Date Filed: April 13, 1984.

k. Description of Project: The proposed project would be located between Highland Irrigation Ditch and the Lower Irrigation Canal approximately 1½ miles east of Meeker, Colorado. The Applicant intends to convey water from the Highland Irrigation Ditch through a penstock to the proposed project which is located on privately owned land and which will consist of: (1) A proposed 16-foot by 24-foot powerhouse with the installation of one turbine/generator unit, operating at a hydraulic head of 155 feet, for a total-installed capacity of 800 kW; (2) a proposed switchyard; and (3) appurtenant facilities. Water used for generation would be discharged into the Lower Irrigation Canal. The Applicant estimates the average annual energy production to be 6.4 GWh.

l. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Public Service Company of Colorado.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

17 a. Type of Application: Exemption (5MW or Less).

b. Project No: 8354–000.

c. Date Filed: June 8, 1984.

d. Applicant: Killington Hydroelectric Company.

e. Name of Project: Killington Project.

f. Location: On the Kent Brook in Rutland County, Vermont.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Jeff Gehris, P.O. Box 53, Bridgewater Corner, Vermont 05035.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 50-foot-long, 4-foot-high concrete gravity dam; (2) a reservoir with negligible storage, a surface area of 0.02 acre, and a normal water surface elevation 1,210 feet NGVD; (3) an existing intake structure; (4) a proposed 400-foot-long, 18-inch-diameter steel penstock; (5) a proposed powerhouse containing one generating unit with a capacity of 100kW; (6) a 7.2-kV Transmission line; and (7) appurtenant facilities. The Applicant estimates the annual generation would be 350,000kWh.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3A.

m. Purpose of exemption: An exemption, if issued, gives the exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee form permit or license applicants that would seek to take or develop the project.

18 a. Type of Application: Preliminary Permit.

b. Project No: 8388–000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Platoro Water Power Project.

f. Location: On Conejos River in Conejos County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, Vice President, PRODEK, Inc., Post Office Box 12608, El Paso, Texas 79912.

i. Comment Date: February 8, 1985.

j. Description of Project: The Proposed project would utilize the U.S. Bureau of Reclamation's (USBR) Platoro Dam and Reservoir, would impact lands within the Rio Grande National Forest, and would consist of: (1) A new 48-inch-diameter penstock about 60 feet long, utilizing the existing outlet works near the right dam abutment; (2) a new powerhouse to contain turbine-generator units having a total rated capacity of 1,000 kW; (3) a tailrace returning flow to the river just downstream of the outlet works stilling basin; (4) a new transmission line connecting to local existing lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,500,000 kWh. Project energy would be sold to an established electric utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of the Studies under Permit: a preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $85,000.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 8463–000.

c. Date Filed: July 24, 1984.

d. Applicant: Town of Estes Park, Colorado.

e. Name of Project: Olympus Water Power.

f. Location: On the Big Thompson River, in Larimer County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: William D. Harris, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation Olympus dam, reservoir and outlet works and would consist of: (1) The addition of 70 feet of 18 inch pipe which will connect to the existing penstock; (2) a new powerhouse, approximately 25 feet by 15 feet, housing one turbine-generating unit with an installed capacity of 75 kW; (3) a proposed 12-kV underground transmission line approximately 300 feet in length; and (4) appurtenant facilities. Applicant estimates that the average annual energy would be 400,000 kWh.

k. Purpose of Project: The Applicant, a municipal utility, proposes to use all project energy within its system.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $75,000.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8479–000.

c. Date Filed: July 31, 1984.

d. Applicant: Stephen J. Gaber.

e. Name of Project: Damfino Creek.

f. Location: In the Mt. Baker-Snoqualmie National Forest, on Damfino and Quartz Creeks, and unnamed tributaries, near Glacier, In Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Stephen J. Gaber, 10 Canyon Lk. Rd., Deming, Washington 98244.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-tall rock and earth fill diversion dam across Damfino Creek at elevation 2,800 feet; (2) a 200-foot-long, 18-inch-diameter penstock; (3) a second 10-foot-tall rock and earth fill diversion dam across Quartz Creek at elevation 2,800 feet; (4) a second 200-foot-long, 18-inch-diameter penstock; (5) a third 10-foot-tall rock and earth fill diversion dam across an unnamed tributary to Damfino Creek at elevation 2,800 feet; (6) a 13,000-foot-long, 36-inch-diameter penstock; (7) a powerhouse containing a single generator with a rated capacity of 4.3 MW and an annual energy production of 18 GWh, at elevation 2,000 feet; (8) a six-mile-long transmission line to an existing Puget Sound Power and Light Company line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $281,000. The applicant has stated that drilling will not be part of the studies.

k. Purpose of Project: Power may be marketed to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 8480–000.

c. Date Filed: July 31, 1984.

d. Applicant: Stephen J. Gaber.

e. Name of Project: Lookout Creek.

f. Location: On Lookout Creek and Fossil Creek, tributaries to the North Fork Nooksack River in the Mount Baker National Forest near the Town of Glacier in Whatcom County, Washington, and within the Mt. Baker National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Stephen J. Gaber, 10 Canyon Lk. Rd., Deming, Washington 98244.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 10-foot-high and 35-foot-long reinforced rock and earth fill diversion dam having a concrete spillway with crest elevation 3,000 feet msl and located on Fossil Creek; (2) a 10-foot-high and 35-foot-long reinforced rock and earth fill diversion dam having a concrete spillway with crest elevation 3,000 feet msl and located on Lookout Creek; (3) an 18-inch-diameter and 4,000-foot-long pipeline; (4) an 18-inch-diameter and 4,500-foot-long penstock; (5) a powerhouse containing a generating unit rated at 1,500-kW operated at a net head of 1,600 feet at a flow of 20 cfs; (6) a tailrace; (7) a 0.25-mile-long three-phase transmission line, and (8) 20-foot-wide graveled access roads to the powerhouse/penstock and to the diversion dams/pipeline.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct technical, environmental, and economic feasibility studies, and would prepare an application for an FERC license. No test pits, borings, or other exploration have been proposed. Applicant estimates that the cost of the work under the terms of the permit would be $61,000.

k. Purpose of Project: Project energy would be sold to Puget Sound Power and Light. Applicant estimates that the average annual generation would be 6 million kWh.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 8632–000.

c. Date Filed: October 1, 1984 and supplemented October 29, 1984.

d. Applicant: City of Kankakee, Illinois.

e. Name of Project: Kankakee Dam Hydro Project.

f. Location: On the Kankakee River in Kankakee, Kankakee County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: James R. Clarno, P.E., City Hall Building, 385 East Oak Street, Kankakee, Illinois 60911.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high and 440-foot-long concrete dam with additional 12-inch-high flashboards; (2) an existing reservoir with a gross storage capacity of approximately 2,400 acre-feet at normal maximum water surface elevation of 595 feet m.s.l.; (3) an existing powerhouse which will house four 300-kW generators for a total installed capacity of 1,200 kW; (4) a new 12.5-kV transmission line approximately 110 feet long; and (5) appurtenant facilities. The Applicant estimates the average annual generation would be 8,700 MWh. The existing project dam is owned by Illinois Department of Conservation. All project energy generated would be sold to Commonwealth Edison Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

23 a. Type of Application: Declaration of Intention.

b. Project No.: EL85–3–000.

c. Date Filed: October 23, 1984.

d. Applicant: Henry River Power Company, Inc.

e. Name of Project: Henry River Hydro.

f. Location: On the Henry Fork River in Burke County, North Carolina.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Sam G. Davis, Jr., Henry River Power Company, Inc., Rt. 5 Box 31–A1, Taylorsville, North Carolina 28681.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 35-foot-high and 250-foot-long concrete dam; (2) a reservoir with a surface area of approximately 30 acres; (3) intake structures at the western side of the dam; (4) an existing powerhouse, approximately 20 feet by 20 feet, housing one 400-kW generator; (5) a new 12.47-kV transmission line approximately 30 feet long; and (6) appurtenant facilities. Applicant estimates the average annual generation to be 2,000 MWh. All power will be sold to Duke Power Company.

The Applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, Section 23(b), Federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for these reasons: (1) The project is not located on a navigable water of the United States; (2) does not occupy lands of the United States or utilize surplus water or water power from a government dam; and (3) has not involved any construction subsequent to 1935 that may have increased the project's head, generating capacity, or water storage capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

24 a. Type of Application: Exemption (Less than 5 MW).
b. Project No.: 7920–000.
c. Date Filed: December 15, 1983.
d. Applicant: Alden T. Greenwood.
e. Name of Project: Waterloom Falls.
f. Location: Souhegan River in Hillsboro County, New Hampshire.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended).*
h. Contact Person: Mr. Alden T. Greenwood, RR #1, Box 56, Greenville Road, Mason, New Hampshire 03048.
i. Comment Date: January 25, 1985.
j. Description of Project: The project consists of: (1) An existing 205-foot-long, 18-foot-high concrete dam owned by the Applicant; (2) an existing 75-acre reservoir at elevation 931 feet M.S.L.; (3) an existing intake structure; (4) an existing 64-foot-long, 6-foot-diameter steel penstock; (5) an existing powerhouse; (6) a new turbine/generator unit with an installed capacity of 150 KW, operating under a head of 24 feet; (7) an existing 92-foot-long tailrace; (8) a new 150-foot-long, 600-volt transmission line; and (9) appurtenant facilities. The estimated average annual energy would be 324,000 kWh.
k. Purpose of Project: Project power would be sold to Public Service Company of New Hampshire.
l. This notice also consists of the following standard paragraphs: A1, B, C, D3a, and A9.
m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and projects the Exemptee from permit or license applicants that would seek to take or develop the project.
25 a. Type of Application: Exemption (5MW or Less).
b. Project No: 8012–001.
c. Date Filed: September 7, 1984.
d. Applicant: Mason & Parker Manufacturing Company, Inc.
e. Name of Project: Hunts Pond Dam Project.
f. Location: On the Millers River, in the Town of Winchendon, Worcester County, Massachusetts.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*
h. Contact Person: Charles Andrews, Mason & Parker Manufacturing Company, 28 Front Street, Winchendon, Massachusetts 01475.
i. Comment Date: January 28, 1985.
j. Description of Project: The proposed project would consist of: (1) The existing 16-foot-high, 184-foot-long, concrete Hunts Pond Dam; (2) the impoundment having a surface area of 13 acres, a storage capacity of 120 acre-feet, and a normal water surface elevation of 954.4 feet NGVD; (3) a proposed intake structure; (4) a proposed powerhouse containing two generating units having a total installed capacity of 120 kW; (5) a proposed 200-foot-long 4.16-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the annual generation would be 593,663 kWh. The estimated costs of constructing this project would be $250,000.
k. Purpose of Project: All project power generated would be sold to the Massachusetts Electric Company.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3A.
m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or beforee the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in respose to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the

Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the Title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 298 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly form the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State

Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 13, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32906 Filed 12-17-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G2503/T465; PH-FRL 2720-6]

Pesticides; Renewal of Temporary Tolerances; Amitraz

Correction

In FR Dec. 84-30231, appearing on page 45925, in the issue of Wednesday, November 21, 1984, make the following correction: On the same page, second column, under *Supplementary Information*, ninth line, remove the closed bracket(]) after "imino".

BILLING CODE 1505-01-M

[OPTS-51548; FRL-2732-6]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-31970, beginning on page 47921, in the issue of Friday, December 7, 1984, make the following correction: on page 47923, third column under **PMN 85-227**, thirteenth line "gμ" should read "μg".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 12, 1984.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

Proposal to Approve Under OMB Delegated Authority the Extension With Revision

1. Report title: Weekly and Monthly Money Market Mutual Funds Asset Reports

Agency form number: FR 2051a, FR 2051b, FR 2051c, FR 2051d

OMB Docket number: 7100-0012; 7100-0167

Frequency: Weekly; Monthly

Reporters: Money Market Mutual Funds

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 353 et seq.] and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports provide information on the assets of money market mutual funds that is used by the Federal Reserve System in the construction of the monetary aggregates.

Board of Governors of the Federal Reserve System, December 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32836 Filed 12-17-84; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms under Review

December 12, 1984.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR § 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before January 2, 1985.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in §261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829).

Proposal to Approve, Under OMB Delegated Authority, the Extension, Without Revision

1. Report title: Ongoing Intermittent Survey of Households
Agency form number: FR 3016
OMB Docket number: 7100–0150
Frequency: Monthly if needed
Reporters: Individuals and Households
Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(i), 353 *et. seq.*, and 461(b)]. No issues arise either under the Freedom of Information Act (FOIA) or under the Privacy Act.

This information is used by the Federal Reserve Board and the Federal Open Market Committee to enhance interpretation of the monetary aggregates and effects of monetary policy. The Board also requires this information to fulfill its statutory responsibilities to administer consumer credit regulations.

Board of Governors of the Federal Reserve System, December 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–32837 Filed 12–17–84; 8:45 am]

BILLING CODE 6210–01–M

Ohio Bancorp, el al; Formations of; Acquisition 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. Interest 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 January 9, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland Ohio 44101:

1. *Ohio Bancorp*, Youngstown, Ohio, to acquire 100 percent of the voting shares of the Miners and Mechanics Savings and Trust Company, Steubenville, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CBS Banschares, Inc.*, Spencer, Tennessee; to acquire 16.50 percent of the voting shares of Citizens Bank, Gainesboro, Tennessee.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rochester State Bankshares, Inc.*, Rochester, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Rochester State Bank, Rochester, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Deposit Bancorp*, Eminence, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Deposit Bank, Eminence, Kentucky.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Banking Group, Ltd.*, Castle Rock, Colorado; to become a bank holding company by acquiring 100 percent of the Voting shares of First National Bank of Castle Rock, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, December 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 32835 Filed 12–17–84; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Information Collection, Trade Practices, Standards and Certification, and Building Products; Application Review

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for review of a voluntary telephone survey of manufacturers, regulators, and other professionals involved in the process of obtaining the approvals required by law for building materials.

SUMMARY: The FTC is requesting OMB review under 5 CFR 1320.14 of a telephone survey of a representative sample of executives in five major sectors of the building community: (1) Manufacturers; (2) Owners/Users; (3) Regulators; (4) Standards and Testing Laboratories; and (5) Homebuilders. The FTC is participating in a study to determine the experiences with and needs of five sectors of the building products approval process: owners/users of commercial buildings, manufacurers of products used in the construction of buildings, standards and testing professionals, regulators, and residential builders. The study is being undertaken under the auspices and direct supervision of the National Institute of Building Sciences (NIBS) and contracted to the Arthur D. Little Inc. The basic research questions of interest to the FTC relate to the standards and certification program in the Service

Industry Practices Division of the Bureau of Consumer Protection.

DATES: Comments on this request for OMB review must be submitted on or before January 17, 1985.

ADDRESS: Send comments to Mr. Don Arbuckle, Office of Information Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. Copies of the application may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas J. Maronick, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 523–4810.

John H. Carley,

General Counsel.

[FR Doc. 84–32867 Filed 12–17–84; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ralston Purina Co., Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ralston Purina Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of gamma radiation for microbial disinfection of laboratory diets for rats, mice, and hamsters. The radiation source is cobalt-60, cesium-137, or electron bean.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2198) has been filed by Ralston Purina Co., Checkerboard Square, St. Louis, MO 63164, proposing that the food additive regulations be amended to provide for the safe use of gamma radiation for microbial disinfection of laboratory diets for rats, mice, and hamsters. The radiation source is cobalt-60, cesium-137, or electron beam.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: December 6, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–27854 Filed 12–17–84; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Amendment of Meeting

Correction

In FR Doc. 84–31492 beginning on page 47336 in the issue of Monday, December 3, 1984, make the following correction:

On page 47337, first column, second complete paragraph, eighth line, "18–971" should have read "18–917".

BILLING CODE 1505–01–M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of an altered Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to combine two systems of records into one system, to be renamed "Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/ADAMHA/NIDA," in the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), National Institute on Drug Abuse (NIDA). The two systems are currently entitled, "Administrative Records on Civilly Committed Drug Abusers Under the Narcotic Addict Rehabilitation Act, HHS/ADAMHA/NIDA," 09–30–0020 and "Patient Medical Records on PHS Beneficiaries 1935–1974 and Civilly Committed Narcotic Addicts 1967–1978 Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/ADAMHA/NIDA," 09–30–0021. This alteration will expand system 09–30–0020 and terminate system 09–30–0021.

PHS invites interested parties to submit comments on the proposed changes on or before January 17, 1985.

DATE: PHS has sent a Report of An Altered System to the Congress and to the Office of Management and Budget (OMB) on December 11, 1984. The altered system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments on the revisions which would result in a contrary determination.

ADDRESS: Please address comments to: Privacy Act Officer, Extramural Policy and Project Review Branch, Office of Science, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, Maryland 20857.

Comments received will be available for inspection at the same address, from 9:00 a.m. to 4:00 p.m., Monday through Thursday.

FOR FURTHER INFORMATION CONTACT: Director, Division of Prevention and Communications, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10A–46, Rockville, Maryland 20857, Telephone: (301) 443–1124. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The original purposes of these two systems of records were to monitor the patient's progress while being treated at one of the PHS hospitals in Fort Worth, Texas, or Lexington, Kentucky, and to ensure continuity of that care. These systems are now inactive. However, because of the nature of the medical problem for which care was provided at these hospitals, some of the individuals or their dependent(s) may be eligible to receive certain Federal benefits. This record repository is the primary, often the only, available source from which an individual can obtain the supporting information needed to obtain benefits such as Social Security or the extension of veterans or educational benefits, etc. Therefore, it is essential that these records continue to be retained. In addition, the records continue to be used to provide information to subsequent health care providers at the request of the individual regarding medical treatment received to ensure continuity of care.

The records in these two systems of records cover any adult individual who was admitted at either PHS hospital (Fort Worth, Texas, or Lexington, Kentucky) for any medical treatment (i.e., routine medical examination, x-rays, major or minor surgery, etc.) as well as the civilly committed narcotic addicts, some of whom were referred under the Narcotic Addict Rehabilitation Act. At present, system

09–30–0020 contains the individual's administrative record and the system 09–30–0021 contains the individual's medical record. We propose to consolidate the records under one system—09–30–0020—because each individual admitted has both an administrative and a medical record, and we are making changes throughout the system notice to accommodate the alteration. Combining the systems will also serve to reduce the administrative burden of the Institute in maintaining two separate systems and will enhance the Institute's ability to respond to access requests by necessitating search of only one system.

The actual copies of both the administrative and medical records have been sent to a Federal Records Center (FRC). Microfilm, containing only a part of the admission and discharge information on each individual, is stored at the National Institute on Drug Abuse.

We are not proposing any new routine uses nor are we making any changes to the litigation routine use listed for the existing systems. However, we are reformatting the Safeguards section and making minor editorial changes throughout the system notice.

The system notices were published most recently in the **Federal Register**, November 29, 1983 (Vol. 48, No. 230, pp. 53814–53816). We are republishing below system notice 09–30–0020 in its entirety to incorporate the proposed changes, and will terminate system 09–30–0021 when the alteration of system 09–30–0020 becomes effective.

Dated: December 11, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–30–0020

SYSTEM NAME:

Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky, HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Prevention and Communications, National Institute on Drug Abuse, Room 10A–46, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857.

Federal Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344.

Mental Health Care Services Financing Branch, National Institute of Mental Health, 5600 Fishers Lane, Room 11–105, Rockville, Maryland 20857.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilly committed narcotic addicts (1967–1978) and adult PHS beneficiaries (1935–1974) treated at either the PHS hospital in Fort Worth, Texas, or Lexington, Kentucky.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Administrative records, such as treatment admission and release dates, name and address, and other demographic data; medical records, such as, but not limited to, medical history information, drug abuse/use data as well as treatment information, any laboratory tests, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Narcotic Addict Rehabilitation Act of 1966, and Narcotic Addict Rehabilitation Amendments of 1971, Titles I and III (42 U.S.C. 3411 et seq. and 28 U.S.C. 2901 et seq.), and Public Health Service Act, Sections 321–326, 341(a) and (c) (42 U.S.C. 248–253, 257 (a) and (c)).

PURPOSE(S):

The records were collected originally to monitor the individual's progress while being treted at either of two PHS hospitals and to ensure continuity of that care. These systems are now inactive. The records are used solely to respond to requests from subject individuals (or his/her designated representative) to (1) establish eligibility for certain Federal benefits for the individual or his/her dependent(s), and (2) provide information to subsequent health care providers at the request of the individual regarding medical treatment received to ensure continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We may disclose those records collected prior to the enactment of the HHS regulations (August 1, 1975) concerning the confidentiality of drug abuse and alcohol patient records (42 CFR Part 2), in the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records at NIDA are on microfilm and contain only part of the admission and discharge information. The microfilm is stored in a file cabinet in a locked room. Records sent to Federal Records Center are stored in GSA-approved storage containers.

RETRIEVABILITY:

The administrative records and microfilm are filed by patient name.

The medical records are filed either by patient name or by patient's hospital number with a cross reference list at NIDA matching number to name.

SAFEGUARDS:

Authorized Users: Only the System Manager and designated staff.

Physical Safeguards: The microfilm is in a room which is locked at all times, unless in use. The room is located in a building with a 24-hour security patrol service.

Procedural Safeguards: Only the System Manager and his/her staff have access to the microfilm information and have been trained in accordance with the Privacy Act. Search of information in the files is performed in a room when there are no other persons present.

IMPLEMENTATION GUIDELINES:

DHHS Chapter 45–13 and Supplementary Chapter PHS.hf: 45–13 in the General Administration Manual.

RETENTION AND DISPOSAL:

All administrative and medical records have been retired to a Federal Records Center. The records collected under the Narcotic Addict Rehabilitation Act of 1966 will be destroyed when they are 25 years old, which will be in 2003 because the last patient was released from treatment in 1978. The PHS beneficiaries' records will be destroyed at the same time. The records will be shredded in 2003 upon written request from the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Prevention and Communications, National Institute on Drug Abuse, Room 10A–46, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request with notarized signature. The request should include, if known: patient hospital record number full name or any alias used, patient's address during treatment, birth date, veteran status (if applicable) and approximate dates in treatment.

An individual who requests notification of a medical record shall, at that time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought.

An individual may also request an accounting of any disclosures of his/her records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; patients' drug treatment program counselers; court records; hospital personnel

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–32884 Filed 12–17–84; 8:45 am]

BILLING CODE 4160–20–M

Social Security Administration

Reallotment of Funds for FY 1984; Low Income Home Energy Assistance Program

AGENCY: Social Security Administration, HHS.

ACTION: Notice of final termination of funds available for reallotment.

SUMMARY: Section 2607 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8626) permits the Secretary of the Department of Health and Human Services to reallot unused Low-Income Home Energy Assistance Program (LIHEAP) funds among LIHEAP grantees. Procedures established by the Department at 45 CFR 96.81 require each grantee to report to us by August 1 of each year the amount of funds available for reallotment. Grantees reported that no FY 1984 funds are available for reallotment. Therefore, we have determined that no fiscal year 1984 funds will remain unused in the fiscal year, with the exception of funds to be held available by grantees for use in Fiscal Year 1985, pursuant to section 2607(b)(2) of the Omnibus Budget Reconciliation Act of 1981. Accordingly, we will not undertake the reallotment of Fiscal Year 1984 funds.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson, Director, Office of Energy Assistance, (202) 245–2030.

December 7, 1984.

Martha A. McSteen,

Acting Commissioner.

[FR Doc. 84–32868 Filed 12–17–84; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 25146]

Oregon; Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Under the provisions of Pub. L. 97–451 petitions for reinstatement of oil and gas lease OR 25146 for lands in Morrow County, Oregon, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1984, the date of termination.

No valid lease has been issued affecting the lands. The Lessee has agreed to new lease term for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of $500.00 administrative fee has been made.

Having met all requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), The Bureau of Land Management is proposing to reinstate the lease effective July 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: December 7, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–32850 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–33–M

Colorado; Grand Junction District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Grand Junction District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that a meeting of the Grand Junction District Advisory Council will be held on Wednesday, January 23, 1985.

SUPPLEMENTARY INFORMATION: The main agenda item is the proposed Ute Water Conservancy District land exchange near Collbran, Colorado. The transfer would include 470 acres of public land around Jerry Creek Reservoirs 1 and 2, in exchange for 426 acres of Ute Water Conservancy District land north of the reservoirs.

The meeting will begin at 9:30 a.m. with a field tour of the two reservoirs. Beginning at 1:00 p.m. the Council will discuss the proposed land exchange and make a recommendation to the District Manager. The afternoon session will take place in the third floor conference room, BLM District Office, 764 Horizon Drive, Grand Junction, Colorado.

The entire meeting is open to the public; however, field transportation will only be provided for Council members.

Wright Sheldon,

District Manager, Grand Junction District.

[FR Doc. 84–32857 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–JB–M

Boise District, Idaho, Advisory Council Meeting

SUMMARY: In accordance with Pub. L. 92–483, the Federal Advisory Committee Act, and Pub. L. 94–579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Advisory Council will meet January 15–16, 1985.

SUPPLEMENTARY INFORMATION: The meeting will take place January 15 and 16 from 8:00 a.m. to 4:30 p.m. both days. It will be held in the main floor conference room at the BLM, Boise District Office. The Council will discuss and make its recommendation to the District Manager concerning the Jacks Creek Wilderness Study Areas and will

provide input into the alternatives of the Draft Jarbidge Resource Management Plan. An election of officers will also be held.

The public is invited to attend. A public comment period has been scheduled from 1:00 p.m. to 2:00 p.m. on January 15 and from 10:00 a.m. to 11:00 a.m. on January 16.

FOR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

Gene Schloemer,

Acting District Manager.

December 7, 1984.

[FR Doc. 84–32853 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–GG–M

[C–38683]

Colorado; Realty Action—Direct Sale of Public Lands to Mary J. and William T. Ward

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action C–38683. Direct sale of public lands to Mary J. and William T. Ward.

SUMMARY: The following described public land has been examined and identified as 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 of $280.

Sixth Principal Meridian, Colorado

T. 15 S., R. 69 W.,
Sec. 32, lot 54.

The parcel described above contains .032 acre.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The lands are being offered as a direct, noncompetitive sale to Mary J. and William T. Ward, the owner of a house and garage located on the parcel. The structures have been in existence since 1898 and the Wards have invested significant money in remodeling and improving the structures on this property. The above mentioned improvements were thought to be on private land until a remonumentation of property boundaries revealed they were located, in part, on public land. Disposal by direct sale to Ms. and Mr. Ward, rather than by public auction, will legalize the use of this parcel and protect their equity investment in improvements on the land avoid any undue hardship that would occur if they were required to cease their use of the parcel. The sale will resolve an unintentional, unauthorized use situation.

The parcel is isolated and disconnected from other public lands and has not been used for and is not required for any Federal purpose. Due to the location and physical characteristics of the parcel, it is difficult and uneconomical to manage as public land. Disposal would not have any significant effect on existing public use or resource values. Disposal would best serve the public interest.

The proposed sale is consistent with BLM land use plans. Disposal would not conflict with local planning and zoning.

Any patent issued as a result of this proposed sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for rights-of-way for ditches and canals constructed by the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), and all minerals will be reserved to the United States as required by section 209(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). Any patent issued for this parcel will also be subject to those rights for a powerline granted under Right-of Way Colorado 0120045.

Sale Procedures: The designated bidders, Mary J. and William T. Ward, will be required to submit payment of at least 30 percent of the fair market value by cash, certified or cashier's check, or money order to BLM, 3080 E. Main Street, P.O. Box 311, Canon City, Colorado 81212, on or before February 20, 1985.

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

In addition to the appraised fair market value of the lands, the prospective purchaser of any of the lands offered by direct sale shall be required to pay the cost of publishing this notice in the **Federal Register** and in the local newspaper. These costs must be paid before a patent will be issued.

Further Information and Public Comment: Additional information concerning the sale offering, including the planning documents and environmental assessment, is available for review in the Royal Gorge Resource Area office at the First National Bank Building, 831 Royal Gorge Boulevard, P.O. Box 1470, Canon City, Colorado 81212. For a period of 45 days from the date of this publication, interested parties may submit comments to the District Manager, Canon City District Office, 3080 East Main Street, P.O. Box 311, Canon City, Colorado 81212. Any adverse comments will be evaluated by the District Manager, who may cancel 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.

Donnie R. Sparks,

District Manager.

[FR Doc. 84–32854 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Roger Bringas, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Roger Bringas, No. Hollywood, CA—PRT–687215

The applicant requests a permit to import 8 birds each of scarlet-chested (*Neophema splindida*), turquoise (*N. pulchella*) and golden-shouldered (*Psephotus chrysopterygius*) parakets from Emil Antonin, West Germany, for enhancement of propagation.

Applicant: Dr. B. Riley McClelland, School of Forestry/Univ. of Montana, Missoula, MT—PRT–671281

The applicant requests an amendment to this existing permit to take (capture) bald eagles (*Haliaeetus leucocephalus*) for banding, marking, blood-sampling and radio-telemetry for scientific research. The amendment would expand the authorized location from Glacier National Park and Blackfoot River in Montana to "Western Montana".

Applicant: Gatti Productions, Orange, CA—PRT–683354

The applicant requests a permit to export and reimport one female Asian elephant (*Elephas maximus*) for enhancement of propagation by conservation exhibition.

Applicant: Zoological Society of San Diego, San Diego, CA—PRT–687645

The applicant requests a permit to import one male captive-bred African wild ass (*Equss asinus somalicus*) from Basel Zoo, Basel Switzerland, for enhancement of propagation.

Applicant: David E. Monuszko, Poulsbo, WA—PRT–687422

The applicant requests a permit to export 2 male and 2 female captive-bred nene geese (*Branta sanvicensis*) to Hardy Nennemann, Port Robinson, Ontario, Canada, for enhancement of propagation.

Applicant: James L. Parrish, Glen Allen, VA—PRT–687471

The applicant requests a permit to import one captive-bred sport-hunted bontebok (*Damaliscus dorcas dorcas*) trophy legally culled from the herd of Theo Erasmus, Rictgat, South Africa, for enhancement of survival.

Applicant: Laboratory for Comparative Biochemistry, San Diego, CA—PRT–687476

The applicant requests a permit to import multiple shipments of extracts of red blood cells and plasma taken from wild leatherback sea turtles (*Dermochelys coriacea*) from Mexico, for scientific research.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the approriate PRT number when submitting comments.

Date: December 13, 1984.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84–32879 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species; Receipt of Application for Permit; Salisbury Zoological Park and Gladys Porter Zoo

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Salisbury Zoological Park, Salisbury, MD—PRT–686473

The applicant requests a permit to import one captive born male ocelot (*Felis pardalis*) from the Emmen Zoo, the Netherlands, for enhancement of propagation.

Applicant: Gladys Porter Zoo, Brownsville, TX—PRT–686806

The applicant requests a permit to purchase in interstate commerce two male Galapagos tortoises (*Geochelone e. elephantopus*) from International Animal Exchange, Ferndale, MI, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT/APP number when submitting comments.

Date: December 6, 1984.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84–32880 Filed 12–17–84; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 8, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 2, 1985.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Beverly Hills, *U.S. Post Office (Beverly Hills Main Post Office) (U.S. Post Office in California 1900–1941 TR)*, 469 N. Crescent Dr.

Glendale, *U.S. Post Office (Glendale Main Post Office/Federal Building) (U.S. Post Office in California 1900–1941 TR)*, 125 E. Olive Ave.

DISTRICT OF COLUMBIA

Washington, *Fuller House*, 2317 Ashmead Pl., NW.

Washington, *Sun Building (American Bank Building)*, 1317 F St., NW.

IOWA

Calhoun County

Lake City, *Central School*, 201 S. Center

Cedar County

Durant, *St. Paul's Episcopal Church and Parish Hall*, 206 6th Ave.

Clarke County

Osceola, *Brady-Bolibaugh House*, 217 W. Washington

Johnson County

Solon, *Cottage at Rock and Dubuque Streets*, Rte. 4, Box 3

Madison County

Winterset, *Wallace, Henry C., House*, 422 W Jefferson

Marion County

Bussey, *Ellis, Evan F., Farmhouse*, Off Hwy 156

Monroe County

Albia, *Albia Square and Central Commercial Historic District*, Roughly bounded by the alley of S. and N. Clinton, E. and W. A Ave., N. and S. 2nd St., and E. and W. 2nd Ave.

Polk County

Des Moines, *Stevenson, Samuel A. and Margaret, House*, 2940 Cottage Grove Ave

Scott County

Davenport, *Whitaker, Charles, House (Davenport MRA)*, 1530 E. 12th St.

Wapello County

Ottumwa, *Benson Block*, 109–112 N. Market

Woodbury County

Sioux City, *Boston Block*, 1005—1013 E. 4th St.

Sioux City, *Evans Block*, 1126—28 4th St.

KANSAS

Ford County

Dodge City, *Lora Locke Hotel*, Central and Gunsmoke Sts.

Harper County

Harper vicinty, *Thompson-Wohlschlegel Round Bar*, Off U.S. 160, South on County Rd. 1485

Reno County

Hutchinson, *Kansas Sugar Refining Company Mill*, 600 E. First St.

Shawnee County

Topeka, *St. John's Lutheran School (Johannes Arms Apartments)*, 315 W. 4th St.

Trego County

Collyer, *Walsh Archeological District*,

MARYLAND

Baltimore (Independent City)

Baltimore, *Loft Historic District North*, Roughly bounded by Paca, Redwood, Eutaw, and Lombard Sts.
Baltimore, *Loft Historic District South*, Along 500 Bk,. W. Pratt St. bounded by Green St. and 100 Blk. S. Paca St.
Baltimore, *Old Pine Street Station (Old Western District Police Station House)*, 214 N. Pine St.

Charles County

Pomfret vicinity, *McPherson's Purchase*, MD. 227

Queen Anne's County

Stevensville, *Stevensville Bank*, Love Point Rd.

MASSACHUSETTS

Bershire County,

Adams, *Anthony House*, 67 East Rd.

Bristol County

New Bedfort, *Ernestina (schooner)*, Steamship Wharf

Essex County

Lawrence and Methuen, *Arlington Mills Historic District*, Broadway between Manchester, Stafford and Chase Sts.

Hampden County

Springfield, *Myrtle Street School*, 64 Myrtle St.
Springfield, *South Main Street School*, 11 Acushnet Ave.

Hampshire County

Amherst, *Baird House*, 38 Shays St.

Middlesex County

Lowell, *St. Partick's Church*, 284 Suffolk St.
Newton, *Warrent, Dr. Samuel, House* 432 Cherry St.

Norfolk County

Foxborough, *Carpenter, Ezra, House*, 168 South St.

Suffolk County

Chelsea, *Bellilngham Square Historic District*, Roughly bounded by Broadway, Chester, Chestnut, City Hall Ave., 5th, 4th, Grove, Hawthorn, Marlboro, Shawmut, Shurtleff and Washington Sts.

NEW JERSEY

Monmouth County

Upper Freehold Towenship, *Imlaystown Historic District*, Roughly Imlaystown-Davis Station Rd., and Imlaystown-Red Valley Rd.

NEW MEXICO

Rio Arriba County

Ojo Caliente vicinity, *Hupobi-ouinge*,

OREGON

Clackamas County

Timberline Lodge vicinty, *Silcox Hut*, Timberline Rd.

PENNSYLVANIA

Berks County

Stouchsburg, *Stouchsburg Historic District*, 12 to 153 Main St., and Water St.

Bucks County

Penn's Park, *Penn's Park General Store Complex*, 2310—2324 Second St. Pike

Clinton County

Mill Hall, Harvey, Nathan, House, 425–427 S. Water St.

Lancaster County

Lancaster, B.F. Good & Company Leaf Tobacco Warehouse, 49—53 W. James St.

Lehigh County

Allentown, *Dime Savings and Trust Company*, 12 N. 7th St.

Montgomery County

Collegeville, *Perkiomen Bridge Hotel*, Main St. and Rt. 29

Philadelphia County

Philadelphia, *Bergdoll, Louis, House*, 929 N. 29th St.
Philadelphia, *Franklin Institute Science Museum*, 20th St. and the Benjamin Franklin Pkwy.

PUERTO RICO

Mayaguez County

Yauco, *Casa Franceschi Antongiorgi, 25 de Julis St.*
Yauco, *Chalet Amill*, No. 33 Mattei Lluberas St.
Yauco, *Filardi House*, 25 de Julio St. and corner of Baldorioty St.
Yauco, *Tomb of the Unknown Soldier (Tumba de Soldado Desconocido)*, PR. 121 near Km. 229 Hm. 1
Yauco, *Casona Cesari (Cesari Manor)*, 25th of July and Matienzo Cintron Sts.

TEXAS

Harris County

Houston, *Freedmen's Town Historic District*, Roughly bounded by Genesse, West Dallas, Arthur and W. Gray Sts.

Runnels County

Ballinger, *Day, Edwin and Hattie House*, 302 N. Broadway

Tarrant County

Fort Worth, *South Side Masonic Lodge No. 114*, 1301 W. Magnolia

UTAH

Beaver County

Minersville, *Jenner, George, House*, 10 N. 300 East

Davis County

Farmington, *Haight, Hector C., House (Union Hotel)*, 208 N. Main St.

Uintah County

Vernal, *St. Paul's Episcopal Church and Lodge*, 226 W. Main St.

[FR Doc. 84–32925 Filed 12–17–84; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use in Desiring Competitive Rail System in Northeast

Pursuant to 49 CFR Part 1244, the Interstate Commerce Commission requires rail carriers to file waybill sample information for all line have revenue waybills terminated on their lines if they terminate at least (1) 4,500 revenue carloads, or (2) 5 percent of the revenue carloads terminating in any state in any of the three preceding years. Commission rules allow release of waybill data only under certain restrictions and, except for use in cases before the Commission, only after public notice. 49 FR 40328 September 6, 1983; See 49 FR 1011.7(f).

The Commission has received a request from a consultant to the Grand Trunk Corporation (GTC) and the Pittsburgh and Lake Erie Railroad (PLE) for access to the 1983 rail waybill sample. These data are to be used to design a competitive rail system in the event of Norfolk Southern acquisition of the Consolidated Rail Corporation (Conrail).

The consultant states that while it has the lead role in the design project, certain specified officers of the GTC and PLE would also review the data.

We intend to make an exception to our usual confidentiality requirements and allow GTC/PLE's consultant to release information to specified officers of GTC/PLE as follows:

(1) In terms of corridors: movements between countries,

(2) In terms of commodities: no commodity identification,

(3) In terms of carrier identification: GTC, PLE, Norfolk Southern (NS), Guilford Transportation Industries (GTI) and Conrail (CR). All other carriers would be aggregated into an "all other carriers" category, and

(4) There would be no shipper identification, and

(5) The GTC/PLE team will not use the waybill information for any business, commercial or competitive purpose other than for design of a competitive rail system in the event of NS acquisition of CR.

Objections to release as described above must be received within fourteen (14) calendar days of the date of this public notice. If objections are received by that date, the Commission's Director of Transportation Analysis will consider such objection in determining whether to release the data. If no objections are

received, no further notice will be provided before release of the data.

James H. Bayne,

Secretary.

[FR Doc. 84-32838 Filed 12-17-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Margee Sportswear, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 3, 1984–December 7, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,443; Margee Sportswear, Inc., Miami, FL

TA–W–15,471; Wayne City Manufacturing Co., Inc., Wayne City, IL

TA–W–15,460; Camden, SC Plant, Textile Fibers Dept., E.I. DuPont De Nemours & Co., Inc.

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,497; Airwork Corp., Millville, NJ

The investigation revealed that the workers do not produce an article within the meaning of Section 223(3) of the Act.

TA–W–15,468; RCA Corp., Indianapolis, IN

The investigation revealed that criterion (2) has not been met. Sales or production of stylus cartridges did not decline during the relevant period as required for certification.

The investigation also revealed that criterion (3) has not been met. There are no imports of grooved videodiscs.

Affirmative Determinations

TA–W–15,382; H & A Industries, Inc., Xenia, OH

A certification was issued covering all workers engaged in employment related to jute twine production separated on or after December 1, 1983.

TA–W–15,357; Goodall Rubber Co., Trenton, NJ

A certification was issued covering all workers in Departments 3, 4, 7, 10, 11, 14, 15, 16 and 17 separated on or after December 31, 1984.

TA–W–15,388; Stride Rite Corp., Boston, MA

A certification was issued covering all workers separated on or after January 1, 1984 and before August 1, 1984.

TA–W–15,347; Ingersoll-Rand Co., Phillipsburg, NJ

A certification was issued covering all workers engaged in the production of turbo machinery separated on or after May 18, 1983.

TA–W–15,453; A.E. Nettleton Shoe Co., Inc., Syracuse, NY

A certification was issued covering all workers separated on or after April 1, 1984 and before October 1, 1984.

TA–W–15,450; Merrill and Ring, Inc., Port Angles, WA

A certification was issued covering all workers separated on or after August 17, 1983.

TA–W–15,462; Kellwood Co., Dresden, TN

A certification was issued covering all workers separated on or after April 15,1984.

TA–W–15,330; New B Manufacturing Corp., Hawthorne, PA

A certification was issued covering all workers separated on or after October 1, 1983 and before January 1, 1984.

TA–W–15,317; Wheaton Fine Glass, Millville, NJ

A certification was issued covering all workers separated on or after December 1, 1983.

TA–W–15,459; Dresser Industries, Whitney Chain Operation, Jeffrey Chain Div., Hartford, CT

A certification was issued covering all workers separated on or after August 31, 1983.

I hereby certify that the aforementioned determinations were issued during the period December 3, 1984–December 7, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

December 11, 1984.

[FR Doc. 84-22910 Filed 12-17-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; JSC Shoe Corp., et al.

Petitions have been filed with the Secretary of labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 10th day of December 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
JSC Shoe Corp. (United Food & Commercial Wkrs)	Johnstown, PA	12/3/84	11/21/84	TA-W-15,602	Shoes, women's.
Allied Materials Corp., Allied Refinery (Co.)	Stroud, OK	11/26/84	11/16/84	TA-W-15,603	Gas, petroleum, liquified, natural, diesel, jet, naphthas.
Allied Materials Corp., Allied Roofing Co. (company)	Stroud, OK	12/26/84	11/16/84	TA-W-15,604	Asphalt shingles, asphalt coated rolled roofing and saturated felt.
Cincy Sportswear, Inc. (ILGWU)	Cincinnati, OH	11/23/84	11/16/84	TA-W-15,605	Sportswear, women's.
Craddock-Terry Shoe Corp. (workers)	Lynchburg, VA	11/21/84	11/19/84	TA-W-15,606	Support services for manufacturing plants.
Craddock-Terry Retail (workers)	Lynchburg, VA	11/21/84	11/19/84	TA-W-15,607	Support services for manufacturing plants.
Levi Strauss & Co. (ACTWU)	Arkadelphia, AR	11/20/84	11/14/84	TA-W-15,608	Men's wear, apparel.
Levi Strauss & Co. (ACTWU)	Memphis, TN	11/20/84	11/14/84	TA-W-15,609	Jeans—apparel.
Levi Strauss & Co., (ACTWU)	Rock Island, TN	11/20/84	11/14/84	TA-W-15,610	Apparel.
Miller Shoe Co. (UFCW)	Cincinnati, OH	11/20/84	11/19/84	TA-W-15,611	Shoes, women's.
North Star Steel—Texas (workers)	Beaumont, TX	11/20/84	11/14/84	TA-W-15,612	Wire rod.
Tereda Manufacturing Co. (ILGWU)	Elizabeth, NJ	11/14/84	11/12/84	TA-W-15,613	Lingerie.

[FR Doc. 84-32911 Filed 12-17-84; 8:45 am]

BILLING CODE 4510-30-M

MERIT SYSTEMS PROTECTION BOARD

Publication of Decisions of the United States Merit Systems Protection Board, Volume 13 (January Through March 1983)

AGENCY: Merit Systems Protection Board.

ACTION: Issuance of Volume 13.

SUMMARY: The Board announces the publication of the 13th volume in its series of indexed decisions volumes available through the Superintendent of Documents, Government Printing Office.

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: Ada R. Kimsey, Merit Systems Protection Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: Included in this hard-cover book are Board final orders and precedential interlocutory orders, indexed under the MSPB key-number system. To purchase, contact the Superintendent of Documents, Government Printing Office, Washington, D.C. 20401. The stock number is 062-000-00018-0, and the cost is $11. Earlier volumes are out of print, except for Volume 12, which is also available from the Superintendent of Documents; stock number 062-000-00017-1; $16.

The Board also publishes *The Digest*, a monthly summary and listing of opinions and orders, and "Federal Employee Appeals Decisions," quarterly microfiche with paper index of initial decisions issued in its 11 regional offices. Further, the Board has published a special microfiche edition of initial decisions resulting from the air traffic controller strike of 1981: "Federal Employee Appeals Decisions, Air Traffic Controller Cases."

To subscribe to *The Digest* at $21 per year (stock number 062-000-80001-1), contact the Superintendent of Documents at the above address.

To purchase the quarterly microfiche at $150 per year, contact the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (stock number PB85-922700). The special edition of air traffic controller cases (paper index included) is also available at $150 from NTIS (stock number PB83-922750).

To view Board orders, initial decisions, the published volumes and *The Digest*, visit the Board library at 1120 Vermont Ave., NW., Washington, D.C. 20419. To obtain copies of individual orders or initial decisions, write to the library, specifying name, date and docket number of the case requested; also, please note whether the request is for an initial decision or for a Board order. For requests encompassing more than 50 pages, the Board charges a copying fee of 10¢ per page.

For the Board.

Herbert E. Ellingwood,

Chairman.

December 11, 1984.

[FR Doc. 84-32876 Filed 12-17-84; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Responses from

Marine—*Saint Lawrence Seaway Development Corporation: Nov. 19: M-84-1:* Funds for a lighted range at Point Vivian have been budgeted for Fiscal Year 86 with a targeted completion date of August 1986. *M-84-2:* Until a lighted range is established on Point Vivian, large vessels are restricted from attempting to meet and pass at night in the area until a lighted range can be established at Point Vivian. *M-84-3:* Will make available to all commercial users of the Seaway current and velocity survey measurement data and will update same as additional data becomes available.

Federal Highway Administration: Nov. 15: M-81-20 through -22: Instructed its field offices to be sure that State inspections of bridges over navigable waters continue to include an assessment and evaluation of bridge piers and fendering systems for structural integrity.

Texaco, U.S.A.: Oct. 12: M-80-45: Posted warning signs at facilities where active pipelines cross navigable waters of the Mississippi River Delta to prohibit mooring with spuds or anchors. *M-80-46:* Posted warning signs at tank batteries to prohibit smoking.

State of Alaska: Oct. 26: M-83-76: State Statute 28.35.030(2) defines the level of legal intoxication for recreational boat operators. *M-83-78:* State Statutue 28.35.31, "Implied

Consent," incorporates a water craft operator who is arrested for operation of a boat while intoxicated.

State of Delaware: Oct. 10: M–83–76 and –77: State law prohibits operation of a boat while intoxicated but does not specify a blood alcohol count as it does for motor vehicles.

State of Kansas: Nov. 9: M–83–77: Will consider alcohol testing provisions for recreational boat operators in proposed expansion of alcohol abuse enforcement measures. Conducts blood and breath tests when boating accidents occur and toxicological tests in the event of a fatality.

State of Maine: Oct. 29: M–83–78: Department of Inland Fisheries and Wildfife is working on draft legislation regarding alcohol-related boating accidents and fatalities.

State of Minnesota: Oct. 12: M–83–77: Is proposing an "implied consent" bill for boaters in the 1985 legislature. A study of boating accident reports for 1983 indicated that alcohol was involved in about one-third of the cases.

State of Nevada: Nov. 7: M–83–76 and –77: Will monitor and evaluate information concerning alcohol use in recreational boating, will attempt to determine the extent of the problem in Nevada, and will seek effective statutes if legislation is found to be needed.

State of New Mexico: Oct. 12: M–83–76 and –77: Is submitting legislation to define the level of legal intoxication for recreational boat operators and to allow a chemical test of blood, breath, or urine if a recreational boating operator is suspected of being intoxicated.

State of North Dakota: Oct. 23: M–83–76 and –77: State law prohibits operation of boats while intoxicated. Some courts have interpreted level of intoxication from chemical tests under the vehicle law. Does not have an "implied consent" law relating to boat operation.

State of Vermont: Oct. 17: M–83–76 and –77: Will attempt to update State boat DWI law to define the level of legal intoxication for recreational boat operators and to allow a chemical test of blood, breath, or urine if a recreational boating operator is suspected of being intoxicated.

Pipeline—*Interstate Natural Gas Association of America: Sep. 4: P–84–35:* Notified its members of the recommendation that companies include within their written procedures the sequence of steps to be taken for safely isolating segments of gas facilities from gas under pressure and for testing the adequacy of the isolation action before other work is performed on the isolated segment. *Nov. 9: P–84–35:* Committees on Construction and Operations and Pipeline Safety have met and discussed the recommendation concerning isolating and testing segments of gas facilities.

American Gas Association: Oct. 18: P–84–13: Directed its members to assure that plastic pipe joining procedures prescribed in Federal regulations are followed by qualified personnel. *P–84–14:* Directed its members to review their rapid shut down procedures for adequacy and also ensure that personnel responsible for such shut downs and associated emergency actions are properly trained.

El Paso Natural Gas Company: Sep. 6: P–83–31 through –37: Has adopted a Torquing Manual for Equipment in Critical Service for each plant and compressor station. Has revised the Plant Emergency Plan for the Blanco plant. Held emergency drills at the Blanco plant. Is installing emergency blowdown activators for compressor plants A and B. Has designated one employee in each of its three divisions to serve as liaison with local emergency response resources.

Interstate Power Company: Sep. 13: P–84–11: Has reviewed with its pipefitter/operators fusion procedures that cover all facets of company operations with particular attention to the importance of strict adherence to each element of the procedure. *P–84–12:* Has reviewed with district clerks the proper procedures for immediate recording of leak complaints and immediate dispatching of personnel.

Trunkline Gas Company: Nov. 6: P–83–17: All Compressor buildings now have gas detection systems installed.

Railroad—*Norfolk and Western Railway Company: Jun. 19: R–83–60 and –61:* Maintains the same position as in its letter of Aug. 3, 1983, which stated that although the NW does not require its line supervisors to examine all employees at reporting places, it does insist that supervisors perform frequent unannounced spot checks. Will continue reliance upon quality supervisory efficiency checks and insistence on rules compliance. *Jul. 16: R–83–60 and –61:* Responding on behalf of the Norfolk, Franklin and Danville Railway Company which is now part of the NW, response of Jun. 19 also pertains to the former NF&D property.

Federal Railroad Administration: Oct. 11: R–84–30 and –31: Will hold a locomotive cab safety inquiry which will address alerting devices. Will initiate a proceeding to explore all the issues and evaluate the need for further Federal action on radio communication in railroad operations. *Oct. 18: R–83–14:* Inspection practices are incorporated into the track safety standards, which prescribe a detailed shcedule of frequency and manner of inspecting track to detect deviations. The standards contain clearly defined limits of allowable track structure conditions. *R–83–15:* Met with the Association of American Railroads, the Federal Highway Administration, the American Trucking Associations, Inc., and the Research and Special Programs Administration to discuss implementation of a model plan for use by railroads and motor carriers to make certain that waybills for Trailer-On-Flat-Car and Container-On-Flat-Car shipments containing hazardous materials include accurate information regarding the contents of the trailers and/or containers. *R–83–16:* A survey of nine locations revealed no significant exceptions to compliance with the Hazardous Materials Regulations concerning the designation of Freight-All-Kind for Trailer-On-Flat-Car and Container-On-Flat-Car shipments. *Nov. 26: R–83–107:* Met with the Federal Highway Administration regarding highway right-of-way construction and maintenance information that could be used by railroads.

Amtrak: Oct. 12: R–83–22: Has undertaken steps to strengthen its response to weather emergencies. *R–83–24:* Has developed and distributed to the field an updated, advanced four-hour course on Emergency Procedures. *A–83–25:* Believes that the two-hour minimum of acceptable illumination provided by each passenger car's battery and charger system when the primary power source is interrupted is adequate and reasonable. *R–83–26:* Diagram cards have been installed in all compartments of Superliner sleepers describing the required emergency information. *Oct. 12: R–83–62:* Is studying a central alarm system for sleeping cars to alert passengers of an emergency. *R–83–63:* Has incorporated an over-ride feature in the intercom system of new equipment so that an emergency alarm would be received irrespective of the setting of the volume control and channel selection switch. *R–83–64:* Emergency windows will be installed in each compartment of Superliner sleepers at time of overhaul. *R–83–66:* Will provide low-mounted emergency lights in new equipment. *R–83–67:* Will continue to investigate new handle designs for emergency escape windows. *R–83–68:* Is equipping the car fleet with emergency signage. *R–83–69:* Fireproof trash containers are being installed on Superliner cars. *R–83–70:* Door operating switches are identified with a red cover and their operating positions are inscribed on the plate. Further instructions would only tend to complicate the situation in an emergency. *R–83–71:* Forwarded a copy of Manual A—Amtrak Rules of Conduct-General Rules for Service Employees Working On-Board. *R–83–72:* Has

developed a progam to provide refresher training in emergency procedures to Amtrak supervisors and on-board service personnel. *R–83–73:* Developed and distributed to the field an updated, advanced four-hour course on emergency procedures, which includes hands-on experience in extinguishing a fire under controlled conditions. *R–83–74:* Matevials in pre-Amtrak and pre-guideline cars which do not meet present specifications for flammability, smoke emission, and toxicity are replaced, when practical, during overhaul. *R–83–75:* Diagram cards with emergency information are being installed in all cars. *Nov. 13: R–82–89:* Strobe light circuit modifications have been made to all of the AEM–7 locomotive units to enable the strobes to remain on after a battery protector relay is tripped. *R–82–94:* Will modify the Format Q Train Order issued to a disabled train, requiring the crew to protect it until the rescue engine arrives. Will modify Rule 99 to prescribe the manner in which such protection will be afforded.

Association of American Railroads: Aug. 23: R–84–6 and –7: Believes that the current organization of the Track-Train Dynamics project is working well and that an advisory committee to develop a methodology for the practical application in railroad operations of the guidelines on train makeup, train handling, and engineer training is not necessary. *Aug. 24: R–84–13:* Shippers associations have been requested to advise their members that the excess flow valves on a railroad tank car are intended to protect the tank and its contents in transportation and are neither designed for nor intended to be used as a constituent of any loading or unloading system. *R–84–14*: Certified facilities have been advised of the incident a Formosa Plastic Corporation's facility in Baton Rouge, Louisiana, on July 30, 1983, and will be informed of the findings of the AAR inspection program instituted by the Tank Car Committee to determine the condition of the seats on 2-inch and 3-inch excess flow valves on cars in flammable gas and anhydrous ammonia service. *Sep. 19: R–84–35*: State and Federal highway agencies should develop a standard roadway (profile) design for grade crossings. *R–84–36*: Will encourage railroads that are involved in track and/or grade crossing maintenance to coordinate these activities with appropriate government agencies so as to preserve the integrity of the profiles at such crossings.

American Public Transit Association: Nov. 15: R–82–19: Shares information with the Nationa Safety Council on all transit-related safety topics. *R–82–20*: Attempts to keep its rail operating members aware of developments in the area of hazardous materials movements, including information on incorporating such hazard identification into their system safety programs. *R–82–24*: Closely monitors the problem of passengers falling between cars to provide information to all transit systems.

New York City Transit Authority: Sep. 26: R–82–35: Is revising the Track Circuit Section of the training manual to add a step-by-step explanation of the signal systems with a series of sequential diagrams to make clear the differences between the two signal systems. *R–82–39*: Is modifying circuits on part of the #2 IRT Line so that whenever signal power is removed, the automatic stop arm rises to the "Up" or "Stop" position, as it does on the prevalent TA train control system. *R–82–42*: Will establish an Inter-Agency Committee consisting of representatives from the fire department, police department, energency medical service, and the transit authority, which will meet regularly to address coordination and emergency response problems involving outside agencies. *Sep. 18: R–81–103*: Forwarded a copy of the NYCTA training program for car maintenance and inspection employees and supervisory personal. *R–81–104*: Is reviewing its inspection needs in detail and expects to implement new procedures soon. *R–81–105*: A central engineering division is being created to support the two major operation divisions and will be responsible for establishing and implementing car maintenance policy and procedures, and performing inspections and audits of the maintenance activities being performed. Is appointing aditional managers within the Car Equipment Department so there will be at least two managers at each of its inspection and repair facilities. These managers will be responsible and accountable for the quality of all the work performed at their location. *R–81–106*: A revised schedule for the fire and evacuation training phase for both new and existing employees will be developed shortly. *R–81–108*: A new emergency evacuation information card has recently been designed and is scheduled for installation in all cars. *R–81–109*: Feels that carrying fire extinguishers on cars is impractical because of vandalism and manpower required for continual replacement. *R–81–111:* Issued a revised directive that in the event of a heavy smoke or fire condition on a car, the train should not be moved and the fire department should be called immediately. *R–81–112*: Is revising procedures and rules to prevent the dispatch or operation of a train with revenue passengers into an area where there is an emergency involving fire and smoke. *R–81–113*: Relocation of the main air brake line will be included in the specifications of all subsequent overhaul projects. *R–81–114*: Is completing modification of cars to install an air velocity fuse in the air line of the Westinghouse propulsion controllers that automatically shuts off the supply of air to the controller when it senses a sudden increase in velocity as would result from an air line rupture. *R–81–115*: Individual car case history and train failure information is available "on-line" from the new System 38 management information system for car equipment.

Metro-Dade Transportation Administration: Oct. 1: R–84–22: Stresses educating Rail Attendants in safe manual block operating procedures, both in the class and by "hands-on" train operations. *R–84–23*: Has 21 supervising personnel in transportation directly involved in monitoring Rail Attendant's performance in operating trains in accordance with operating rules and procedures. Rail attendant performance is observed at certain locations and all radio transmissions are continuously monitored. *R–84–25*: When conditions require that two or more trains enter the same block when the ATC is inoperative, train orders are used that require all trains to operate at a maximum speed of 15 mph and prepared to stop short of an improperly lined switch, obstruction, or track defect as well as another train. *R–84–27*: Transportation Special Order #10 concerns the working hours of employees. *R–84–28*: Speed signs using the Metro-Dade Fire Department color standard have been ordered and will be located in the North line for final evaluation under operating conditions. *R–84–29 and –30*: Promulgated a Standard Operating Procedure for Emergency Response personnel and MDTA personnel on May 18, 1984, which provides for specific actions in response to emergencies.

Washington Metropolitan Area Transit Authority: Oct. 18: R–82–8: Special Order 83–12 requires that an absolute block be established whenever a train operator is in Mode 2 (stop and proceed up to 15 mph) when he has a zero cab speed indication. *R–82–9*: Special Order 84–02 requires that an absolute block be established on both tracks until all switches are aligned for main track movement and requires that after correct alignment is established.

each route must be verified one route at a time until the entire interlocking is verified for main track movement. *R–82–11:* Will install positive wayside route signals to inform a manually operated train when it can enter a block containig an interlocking. *R–82–15*: The training program for transportation supervisors has been upgraded and crosstraining for supervisors, assistant superintendents, and superintendents in the transportation branch has begun. *R–82–16*: Has a new qualification program for station attendants and supervisors and has revised selected modules in courses for train operators, transportation supervisors, and OCC supervisors. *R–82–17*: Will retrofit the system with standard circuit breakers that assure that the breaker stays "locked out" after a short delay. All rail employees have been reinstructed on evacuation procedures and their roles in the evacuation process. Nonoperating employees will be trained to assist in evacuation procedures in the event they are on a train involved in an emergency. *R–82–18*: Prepared a brochure to educate passengers on train evacuation. Will post evacuation procedures in each car. Will initiate a public relations and media campaign regarding the brochure. *R–82–55*: The training program for transportation supervisors has been upgraded and crosstraining for supervisors, assistant superintendents, and superintendents in the transportation branch has begun. Has a new qualification program for station attendants and supervisors and has revised selected modules in courses for train operators, transportation supervisors, and Operations Control Center supervisors. *R–82–57*: Is seeking contractor support to conduct a comprehensive review of all training package. Is establishing a formal quality assurance section in the Rail Training Branch. *R–82–66*: PMI's are performed daily Monday through Friday and have been revised to be more comprehensive. *R–82–70*: Plans to install passenger-initiated evacuation devices on the car center doors on all cars, in lieu of installing escape windows. *R–82–71*: The existing car storage battery on the Metrorail cars provides battery power for emergency interior lights, tail lights and headlights, door operations, communictions, and other critical systems if third rail power is lost or removed in an emergency. Has concluded that an additional back-up system is not justified. *R–82–72*: Brochures and instruction posters, which will be permanently installed next to the doors in the center of each Metrorail car, will provide emergency information. *R–82–73*: Evaluation of derailment detector devices indicates that they are unreliable and would result in the need for frequent manual intervention to move trains. *R–82–74*: Will install carbone monitors on all cars when a test program is successfully completed.

State of Connecticut: Oct. 15: R–83–44 and -45: Discussed the matter of commuter railroads using employees who may be under the influence of or whose judgment may be impaired by alcohol or drugs. The railroad feels that its present operating procedures do provide the degree and extent of control that is possible under existing labor contracts with the various brotherhoods.

Chessie System Railroads: Sep. 6: R–80–40 and R–83–60: Has extensively checked its employees for compliance with Rule G in the past and plans to continue to do so. *R–83–36 and -61:* Its program relies basically on instructions to the Operating Rules Examiners to verbally explain, during periods of instruction, the responsibilities of employees. The Operating Rules are used to emphasize these responsibilities during rules classes. Operating Rule E–1 requires all employees to report any violation of rules, including Rule G. Rule 106 assigns the responsibilities of conductors and engineers and requires that they supervise crewmembers in the performance of their duties.

The Denver and Rio Grande Western Railroad Company: Sep. 13: R–83–61: All employees who are promoted to conductor must complete a training program and examination. Annual rules examinations are held for all operating crafts. The monthly report of efficiency tests made by officers on the two divisions has been revised to include "Crew Condition, Rule G."

Atlanta & Saint Andrews Bay Railway Company: Sep. 10: R–83–60 and -61: Has met will all operating officials and support personnel to make everyone aware of the hazards associated with train crewmen who violate Rule "G" or who are sick. Emphasizes in rule and safety meetings the importance of conductors and engineers observing the conditions of employees and insuring compliance with all operating rules.

Burlington Northern Railroad: Sep. 28: R–84–8: Has issued instructions concerning the inspection of maintenance-of-way equipment.

Soo Line Railroad Company: Oct. 5: R–83–60 and -61: Due to the number of terminals in relation to the number of available transportation officers, it is not possible for a supervisor to meet every crew coming on duty. Is emphasizing the importance of spot checks. Has implemented a Rule "G" by-pass agreement with the various crafts which makes it less difficult for employees to report fellow employees noted in violation of Rule "G."

Norfolk and Portsmouth Belt Line Railroad Company: Nov. 19: R–84–1 through -3: Has implemented recommendations concerning training of rail yard employees responsible for the repair of rail cars containing hazardous materials; establishing procedures for the repair of rail cars containing hazardous materials; and establishing procedures describing actions to be taken in all types of hazardous materials emergencies.

Conrail: Nov. 12: R–83–60 and -61: Lesson plans for training employees stress crew member responsibility for their own and other members of the crew's conduct while on duty and their responsibilities when reporting for duty.

The Atchison, Topeka and Santa Fe Railway Company: Oct. 19: R–83–60 and -61: Company's commitment to strict discipline and continued control of alcohol and drug use is demonstrated in its November 3, 1983, letter to the Federal Railroad Administration citing data pertaining to handling of alcohol and drug matters on the railroad.

The Monongahela Railway Company: Dec. 4: R–84–20: Even though the maximum speed on the MGA is 30 mph and there is no chrome-vanadium alloy rail on the system, rail cuts are made with abrasive saws and bolt holes appropriately drilled before movements are made. Though not required, internal defect inspections are made twice a year.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Baord, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

December 13, 1984.

[FR Doc. 84–32859 Filed 12–17–84; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

General Public Utilities Nuclear Corp.; Environmental Assessment and Finding of No Significant Environmental Impact

[DOCKET NO. 50-320]

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue an Amendment of Order and two Exemptions relative to Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located Loundonderry Township, Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: There are three actions being considered by the Commission. They include an Amendment of Order, an exemption from the seismic instrumentation requirements of 10 CFR 50.36(c)(3) and 10 CFR Part 100, Appendix A, Section VI(a)(3); and an Exemption from the Code Safety Valve requirements of 10 CFR 50.55a.

The Amendment of Order is being issued in response to General Public Utilities Nuclear Corporation's (GPUNC) letters dated January 12, 1983, September 12, 1983, and September 30, 1983. The subject Exemptions were requested in two letters from GPUNC, both dated April 18, 1984.

The Need for the Action: The Amendment of Order is warranted because of the need to update the Proposed Technical Specifications (PTS) for the present conditions at TMI-2. The changes were grouped in six categories:

(1) Editorial Changes that correct spelling, grammer, page numbers, and the associated index and do not affect the technical content nor the intent of the section; (2) Modifications to the existing Limiting Conditions for Operation and Safety Limits that were made to more correctly state what systems or equipment are necessary based on the present status of TMI-2; (3) New Limiting Conditions for Operation that were added to also more correctly reflect what systems or equipment are necessary based on the present status of TMI-2; (4) Design Features of Section 5.0 that were modified or deleted to more accurately state design limits that can be verified; (5) Bases that were revised because of changes in technical approaches resulting from data that has been obtained and analyzed; and (6) Tables listing specific pieces of equipment that were moved from the Limiting Conditions for Operation sections to the applicable section of the Recovery Operations Plan.

Exemption From 10 CFR 50.55a

In the current system configuration, with the reactor vessel head removed to facilitate defueling, the code safety valves are not usable and are not required in order to relieve system pressure. As discussed in the concurrently issued safety evaluation, the reactor coolant system will remain open to the reactor building atmosphere throughout the recovery period. The system's configuration inherently provides overpressure protection because of the lack of a closed system that is necessary for a significant pressure buildup. The only thermodynamic event that can occur in the RCS that would have potential negative consequence is a system heatup. Because of the open vessel, even a heatup would have no pressure consequences unless the containment atmosphere pressure increased. Because of the volume of the containment (approximately 2×10^6 cu. ft.) and the amount of decay heat present (approximately 15 Kw), any significant containment pressure buildup would occur over a period of days, if not weeks. Should a currently unforeseen even occur that could potentially cause pressure to increase or which would require that a pressurized system be reestablished, the staff and the licensee would have sufficient response time to decide a course of action whether it be placing the head back on the vessel, installing a pressure relief component, or leaving the system as is. None of these decisions would have a negative impact on environmental conditions.

Exemption From 10 CFR 100, Appendix A and 50.36(c)(3)

The TMI-2 core is cooled via loss of heat to the reactor building environment. This is a passive mode that does not require any mechanical equipment to be operating to maintain an ability to cool the core. As stated in 10 CFR 100, Appendix A, Section VI(a)(3), one of the reasons for seismic instrumentation is to decide whether or not the plant can be operated safely. In the July 20, 1979 Order for Modification of License, the authority to operate the facility was suspended and the licensee's authority was limited to the maintenance of the facility in the present shutdown cooling mode. Therefore this basis for Section VI(a)(3) does not apply to TMI-2. In reference to the seismic instrumentation providing information for timely actions by plant personnel and the NRC, it is the staff's opinion that if a seismic event were to occur at TMI, the status of the core would not be affected because of the passive cooling mode and therefore no immediate actions would have to be taken to maintain the health and safety of the public. It is also the staff's opinion that when considering the above discussion, maintenance and surveilance requirements for seismic instrumentation is also not justified and is an unnecessary burden on the licensee. There are no negative radiological effects as a result of these requirements.

Environmental Impacts of the Proposed Actions: The staff has evaluated the PTS modifications proposed by the Amendment of Orders and concluded that they will not result in significant increases in airborne or liquid contamination radioactivity inside the reactor building or in corresponding releases to the environment. There are also no non-radiological impacts to the environment as a result of these actions.

Alternative to this Action: Since we have concluded that there is no significant environmental impact associated with the subject Amendment of Order and Exemptions, any alternatives to these changes will have either no significant environmental impact or greater environmental impact. The principal alternative would be to deny the requested actions. This would not reduce significant environmental impacts of plant operations and would result in the application of overly restrictive regulatory requirements when considering the unique conditions at TMI-2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternate Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Programmatic Impact Statement for TMI-2 dated March 1981.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the subject Amendment of Order and Exemptions. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see (1) Letter to B.J. Snyder, USNRC, from R.C. Arnold, GPUNC, Technical Specification Change Request No. 39, dated January 12, 1983, (2) Letter to B.J. Snyder, USNRC, from R.C. Arnold, GPUNC, Technical Specification Change Request No. 41, dated

September 12, 1983, (3) Letter to B.J. Snyder, USNRC, from R.C. Arnold, GPUNC, Technical Specification Change Request No. 43, dated September 30, 1983, (4) Letter to L.H. Barrett, USNRC, from B.K. Kanga, GPUNC, Recovery Operations Plan Change Request No. 19, dated January 12, 1983, (5) Letter to L.H. Barrett, USNRC, from B.K. Kanga, GPUNC, Recovery Operations Plan Change Request No. 20, dated September 12, 1983, (6) Letter to L.H. Barrett, USNRC, from B.K. Kanga, GPUNC, Recovery Operations Plan Change Request No. 22, dated September 30, 1983, (7) Letter to B.J. Snyder, USNRC, from E.E. Kintner, GPUNC, Seismic Monitoring Exemption Request, dated April 18, 1983, (8) Letter to B.J. Snyder, USNRC, from E.E. Kintner, GPUNC, Exemption Request from 10 CFR 50.55a with respect to Code Safety Valves, dated April 18, 1984, and (9) the Director's Order of February 11, 1980.

All of the above documents are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 84-32905 Filed 12-17-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14271; 812-5859]

State Bond Common Stock Fund, Inc., et al.; Filing of Application for an Order Exempting Applicants

December 11, 1984.

Notice is hereby given that State Bond Common Stock Fund, Inc., State Bond Diversified Fund, Inc., State Bond Progress Fund, Inc. (collectively the "Funds"), State Bond and Mortgage Company (the "Advisor"), and State Bond Sales Corporation ("State Bond Sales") 100–106 North Minnesota Street, New Ulm, Minnesota 56073 (all collectively the "Applicants"), filed an application on May 21, 1984, and an amendment thereto on October 29, 1984, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of section 22(d) of the Act and Rule 22d–1 thereunder to the extent necessary to permit sales of securities of the Funds and of such other investment companies sold with a sales charge as may be added to the group of investment companies having the same investment advisor of which the Funds are a part at net asset value without a sales charge to or for the benefit of the State Bond Association Persons, as defined below. 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 and the Rules thereunder for the text of all applicable provisions thereof.

According to the application, each of the Funds is a diversified, open-end investment company currently managed by the Advisors. The application states that State Bond Sales is the distributor of the Funds' shares and is a registered broker-dealer and NASD member. Applicants state that shares of the Funds are offered at a maximum sales charge of 9.29% of the net amount invested (or 8.5% of the offering price) and that these charges decline according to the volume of purchases.

Applicants state that the Adviser is a registered investment adviser which acts as investment manager for the Funds, and two other registered open-end investment companies, State Bond Cash Management Fund, Inc. and State Bond Government Securities Fund, Inc., the shares of which are sold without a sales charge. Applicants further state that, in addition to State Bond Sales, the Advisor has two other wholly-owned operating subsidiaries, State Bond and Mortgage Life Insurance Company ("State Bond Life") and State Bank & Trust Company of New Ulm ("State Bank"). State Bond Life, a licensed life insurer, issues a variety of ordinary life insurance plans and flexible premium and single premium deferred annuities to individuals. State Bank is a Minnesota chartered commercial bank for the activities of which include deposit taking, and commercial and personal lending. Applicants state that State Bank also has trust powers and has a trust department that operates in a fiduciary capacity for trusts, custodial accounts, and other types of fiduciary relationships.

Applicants propose to permit sales of shares of the Funds and of such other investment companies sold with a sales charge as may be added to the group of investment companies having the same investment advisor of which the Funds are a part at net asset value without a sales charge to or for the benefit of the State Bond Associated Persons. Applicants state that the term "State Bond Associated Persons" means (a) any officer, director, or employee of the Advisor, of any investment company managed by the Advisor or of any parent or subsidiary or other affiliate of the Advisor ("Employee Offerees") and (b) any investment advisory, custodial, trust or other fiduciary account managed or advised by the Advisor or any parent or subsidiary or other affiliate of the Advisor wherein such entity has discretionary investment authority ("Advisory Offerees"). Applicants further state that the terms "officer," "director," or "employee" include any such person's spouse and minor children and also retired officers, directors, and employees and their spouses and minor children. Applicants assert that because many of the individual trust accounts held by the trust department are relatively small, it is not economically feasible to set up separate diversified equity securities portfolios for such accounts.

Applicants represent that State Bond Associated Persons who are not presently within the class of persons covered by Rule 22d–1(i) will at least annually receive a notice at the expense of the entity with which they are employed or associated concerning the availability of shares of the Funds at net asset value. Applicants further represent that this notice will describe the Funds and their investment objectives, indicate that investment would be at net asset value and detail the methods by which investments could be made. The notice will also indicate where additional information concerning the Funds can be obtained. Applicants state that a copy of the appropriate prospectus(es) would be furnished prior to the time any State Bond Association Persons would make an initial investment in the Fund. Applicants further state that each prospectus would contain appropriate disclosure concerning the ability of such persons to make an investment in a Fund without a sales charge.

Applicants admit that the sale of Fund shares to State Bond Associated Persons at net asset value may conflict with section 22(d) and Rule 22d–1 thereunder in the absence of an order. Applicants submit, however, that investments by both Employee Offerees and Advisory Offerees in shares of the Funds at net asset value is supported by policy considerations, that such sales should result in demonstratable economies in

sales efforts and sales related expenses as compared with other sales and would not be unjustly disciminatory. Both Employee Offerees and Advisory Offerees have or should have a basic understanding of the nature of an investment in an investment company as well as general familiarity with the Funds. Applicants believe that the association of the Funds with the other organizations and accounts that are managed or advised by or are subsidiaries of the Advisor forms the basis for a unique relationship to the Funds which can be expected to result in economies in sales efforts and sales related expenses that justifies elimination of all sales charges on shares of the Funds purchased by State Bond Associated Persons.

Applicants state that the possibility exists that Advisory Offerees who invest in the Funds could incur double investment management fees consisting of a fee by the trust department of State Bank for managing assets of the trust account and a fee by the Advisor for managing the Funds. Applicants undertake that Advisory Offerees will not be charged double asset management fees. Applicants state that no asset management fee will be charged such Advisory Offerees by the account fiduciary for the portion of such accounts which are invested in the Funds.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 4, 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 Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-32909 Filed 12-17-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21548; File No. SR-AMEX-84-37]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to Amex Options Switch System (AMOS)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange has determined to expand its Amex Options Switch System (AMOS) to increase the limit in AMOS options market and marketable limit orders from five to 10 contracts and to permit away-from-the-market options limit orders for up to 100 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex Options Switch System (AMOS) provides a means for Exchange member firms to send options market and marketable limit orders directly to the specialist's post and receive back execution reports through their wire systems. The system was implemented in order to extend to options the benefits of automation already proven valuable in equities through the Post Execution Reporting (PER) system: an increase in the capacity of the floor to handle order flow by facilitating the transmission, execution and reporting of small routine orders.

Since its inception in 1979, options market and marketable limit orders up to five contracts in size have been eligible for execution through AMOS. An analysis of option clearing data, however, indicates that the average size of an options transaction has increased significantly since those parameters were set, resulting in a substantial decrease in the percentage of orders eligible for inclusion in AMOS. Meanwhile, enhancements to the AMOS system, including AUTOAMOS, have greatly improved the ability of options specialists to handle larger order flow and permit the reporting of executions on a more timely basis. The Exchange therefore proposes to raise the present order parameters to up to 10 contracts for options market and marketable limit orders and to permit away-from-the-market options limit orders up to 100 contracts. The proposed changes would not only increase the percentage of orders which are eligible for the AMOS system, but would permit the Exchange to respond to member firm requests for greater efficiency in the processing of small, routine orders, including away-from-the-market limit orders, and to competitive systems at the New York Stock Exchange and the Chicago Board Options Exchange.

While the Exchange intends to implement the proposed rule change with regard to options limit and away-from-the-market options limit orders upon approval by the Commission, it intends to implement the increase in the size of eligible market orders at some time in the future upon the determination of the Chairman of the Exchange.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objective of section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will create no burden on competition given that use of the AMOS system is optional, and those firms which use AMOS can achieve more efficient handling of their

respective orders. The proposed rule change will also enhance the Exchange's competitive status in providing an efficient, fast and accurate order-delivery system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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 5th 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, 450 5th Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32908 Filed 12-17-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21549; File No. SR-CBOE-84-30]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Retail Automatic Execution System Pilot

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on Nov. 26, 1984 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 letter dated February 4, 1983 from the staff of the Commission required that changes to the basic characteristics of a small order system be filed as a rule change under section 19(b)(2) of the Securities Exchange of 1934 (the Act). Therefore, the Exchange is filing the following description of its proposed S & P 100 (OEX) retail automatic execution system (RAES) pilot program. The pilot is scheduled to begin on February 1, 1985 and to continue for three months from the date it begins.

The pilot will route small public customer market orders into a system. Firms presently on the Exchange's Order Support System (OSS) will use the currently installed method of sending orders to OSS. If a firm is on OSS, it is automatically on RAES; firms can go on and off OSS at will. Firms not presently on OSS that wish to participate in the pilot will be given access to RAES from terminals at their booths. These terminals will not be operational until early March, since programming for them takes longer to complete.

When the system receives an order, the system automatically will attach a price to the order, which price will be determined from the displayed market quote at the time of the order's entry. A buy order will pay the offer, and a sell order will sell the bid. A participating market maker will be assigned as contrabroker.

A RAES market order to buy will be effected at the lowest offering price; if that offering price is equal to the book offer, the transaction will take place at the book offer price as an exception to the normal priority accorded to customer offers on the book. In no case, however, will the RAES order to buy result in a purchase transaction at a price higher than the book offer. Similarly, a RAES market order to sell will be effected at the highest bid price; if that bid price is equal to the book bid, the transaction will take place at the book bid price as an exception to the normal priority accorded to customer bids on the book. In no case, however, will the RAES order to sell result in a sell transaction at a lower price than the book bid.

Market makers may sign on and off the system at terminals located near the OEX crowd. At the end of the day all signed-on market makers automatically are removed from the system.

Participating market makers will be assigned by the system as contrabrokers on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Participating market makers are obligated to trade at the displayed market quote at the time of an order's entry into the system. Exchange rules shall not apply to the extent that they are inconsistent with the terms of the pilot, including but not limited to Rule 6.45 (Priority of Bids and Offers), Rule 6.43 (Manner of Bidding and Offering) and Rule 8.1 (Market-Maker Defined). Rules 24.4 and 24.5 (Position and Exercise Limits) will remain effective. RAES orders will count toward fulfillment of the in-person requirement of Rule 8.7.

Once a trade has been executed, all participants will be informed. A price report will be generated to the public. A fill report will be generated to the firm at the firm's point of entry into the system, that is, either a branch office or a booth. A trade acknowledgement ticket (TAT) will be generated at printers located in the OEX trading crowd and will be delivered by hand to the market maker in the OEX crowd as quickly as possible. TATs for market makers not present in the OEX crowd will be alphabetized and set aside for pickup. A log of all transactions will be available throughout the day for review by participants. Audit reports will be sent to Exchange's regulatory staff.

Eligible orders must be for five or fewer contracts. Eligible orders must be in one of eight OEX series in the near-term month: (1) Calls on four contiguous strike prices, one below and three above

the prior day's closing value and (2) puts on four contiguous strike prices, one above and three below that value. If the OEX closing value is also a strike price, the Exchange will select which four calls and which four puts are eligible, that is, which are most likely to have the highest public-customer volume. Each four calls and each four puts will involve contiguous strike prices and will include the strike price that was the closing value. Announcements concerning eligible series will be made daily by the Exchange in the same way new strike prices currently are announced, that is, by means of memoranda and taped phone messages.

Each trading day that the system is available, an OEX post director or his representive will start the system, after quotes in the series involved have been updated following completion of the opening rotation. If there are no market makers signed on, the system will not be started. If the system is or becomes unavailable for whatever reason, eligible orders will be handled as they are handled currently. The Exchange will charge regular OBO fees for transactions executed by means of the pilot.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to enable the Exchange to experiment with a pilot OEX automatic execution system for small public customer market orders. The pilot is intended to determine the system's effects and capabilities. RAES is expected to benefit public customers, market makers, floor brokers and member firms. It will reduce the amount of paper entering the trading crowd, will enable floor brokers to concentrate on larger orders, will improve fill-report turnaround time, and will guarantee a price (the displayed market quote). It also will provide accurate and timely price reports, trade-match data and a last-sale audit trail.

The exception to book priority for RAES transactions occurring at the book bid or offer when an inside market quote equals the book quote is justified because a significant increase in efficiency is expected to result from RAES. It is consistent with current practices involving spread, straddle and combination orders, which can touch the book but cannot trade through it.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act, in that it would protect the public interest by helping to better handle small customer market orders in OEX.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change creates any burden on competition not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On November 19 and 20, 1984 the Exchange's membership voted to endorse this proposed pilot project.

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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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, 450 Fifth Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32907 Filed 12-17-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 01/01-0332]

Capital Impact Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Capital Impact Corporation (Capital) 234 Church Street, New Haven, Connecticut 06510, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers, directors and their shareholding of the Applicant are as follows:

Kevin S. Tierney, 234 Church Street, New Haven, CT 06510, President

Leonard Vignola, Jr., 234 Church Street, New Haven, CT 06510, Executive Vice President

John J. Cuticelli, Jr., 234 Church Street, New Haven, CT 06510, Executive Vice President

Walter Baum, Singing Woods Rd., Norwalk, CT 06851, Director

Robert W. Dixon, 70 Kettle Creek Rd., Weston, CT 06883, Director

Ernest C. Trefz, 34 Red Coat Lane, Trumbull, CT 06601, Director

Robert L. Berchem, 81 Broad Street, Milford, CT 06460, Director

Jonathan A. Topham, 87 Poca Hontas Road, West Redding, CT 06896, Director

George F. Taylor, 179 Northwood Rd., Fairfield, CT 06432, Director

Capital will be a wholly owned subsidiary of City Trust Bancorp., Inc., 962 Main Street, Bridgeport, Connecticut 06460.

The Applicant, Capital, a Connecticut Corporation will begin operations with

$3,000,000 paid in capital and paid in surplus. Capital will conduct its activities primarily in the State of Connecticut but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of pblication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New Haven, Connecticut.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 1, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32926 Filed 12-17-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0172]

Enterprise Equity Corp.; Issuance of a Small Business Investment Company License

On June 11, 1984, a notice was published in the **Federal Register** (49 FR 24095) stating that an application has been filed by Enterprise Equity Corporation, 7787 Leesburg Pike, Falls Church, Virginia 22043 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business July 11, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0172 on December 5, 1984, to Enterprise Equity Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-32927 Filed 12-17-84; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 244
Tuesday, December 18, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the Federal Register on December 6, 1984. Published in the **Federal Register** of 12–11–84 page 48252.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, December 14, 1984.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

1. Appointment of new members to the Consumer Advisory Council. (This item was previously announced for a meeting on December 10, 1984.)
2. Federal Reserve Bank and Branch director appointments. (This item was previously announced for a meeting on December 5, 1984.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 14, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–20997 Filed 12–14–84; 8:45 am]

BILLING CODE 6210–01–M

2

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, January 2, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of December, 1984.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

DATE OF NOTICE: December 11, 1984.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 84–32953 Filed 12–14–84; 10:31 am]

BILLING CODE 7550–01–M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 17, 24, 31, 1984 and January 7, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of December 17

Monday, December 17

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (CLOSED—Ex. 2 & 6)

Meeting on Material False Statements *postponed.*

Tuesday, December 18

10:00 a.m.
Discussion of 1985 Policy and Planning Guidance (Public Meeting)
2:00 p.m.
Briefing and Discussion on the Hearing Process (Public Meeting) (postponed from 12/14)

Thursday, December 20

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Emergency Feedwater Flow Indication in the TMI–1 Restart Proceeding
b. Review of Alab–789 and Petition for Stay of Low-Power License

Week of December 24—Tentative

Friday, December 28

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 31—Tentative

Thursday, January 3

2:00 p.m.
Affirmation Meeting (Public Meeting) (If needed)

Week of January 7—Tentative

Tuesday, January 8

10:00 a.m.
Discussion/Possible Vote on Proposed Amendments to 10 CFR Part 2 (Public Meeting)
2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be closed)

Wednesday, January 9

9:00 a.m.
Discussion of Adjudication Matters Related to Byron–1 (closed—Ex. 10)
10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Byron–1 (Public Meeting)
2:00 p.m.
Discussion of QA Program Plan (Public Meeting)

Thursday, January 10

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, January 11

10:00 a.m.
Discussion/Affirmation of Indian Point Order (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

Discussion of Adjudication Matters Related to Catawba–1 scheduled for December 10, *postponed.*

Discussion/Possible Vote on Full Power Operating License for Catawba–1 scheduled for December 14, *postponed.*

Status of Investigation (Closed—Ex. 5 & 7) held on December 14.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

George T. Mazuzan

Office of the Secretary.

[FR Doc. 84–33019 filed 12–14–84; 3:56 pm]

BILLING CODE 7590–01–M

4

PAROLE COMMISSION

Public Announcement

Pursuant To The Government in the Sunshine Act Pub. L. 94–409 (5 U.S.C. Section 552b).

AGENCY HOLDING MEETING: U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters).

TIME AND DATE: 2:00 p.m., Tuesday, December 18, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commisisoners of approximately four cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated December 14, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–32996 Filed 12–14–84; 2:06 pm]

BILLING CODE 4410–01–M

5

POSTAL SERVICE

Notice of Vote To Close Meeting.

At its meeting on December 11, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for January 7, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General designate Carlin; Deputy Postmaster General Finch; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], becuase it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(6) of Title 5 United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84–32996 Filed 12–14–84; 1:46 pm]

BILLING CODE 7710–12–M

federal register

Tuesday
December 18, 1984

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Loading, Hauling, and Dumping at Metal and Nonmetal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Loading, Hauling, and Dumping at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration has developed a proposed rule which would revise the existing loading, hauling, and dumping standards for metal and nonmetal mines. In addition, a new standard addressing restricted clearances would be added to MSHA's travelway standards. These changes are intended to improve the quality and effectiveness of MSHA's standards by eliminating duplication, reducing recordkeeping requirements, upgrading standards to make them consistent with current mining technology, eliminating unnecessary standards, and clarifying the requirements of each standard. The proposal would also combine Part 55 which applies to open pit mines with Part 56 which applies to sand, gravel, and stone operations. The proposed Part 56 would apply to all surface metal and nonmetal mines. Part 57 would continue to apply only to underground metal and nonmetal mines.

DATES: Written comments and requests for public hearings on the proposed rule must be received on or before February 19, 1985.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 1980, MSHA published and Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (45 FR 19267) announcing its comprehensive review of metal and nonmetal mine safety and health standards in 30 CFR Parts 55, 56, and 57. On November 20, 1981, MSHA published a subsequent ANPRM in the **Federal Register** (46 FR 57253) listing eight sections the Agency had selected for priority review. Standards in 30 CFR 55/56/57.9 (Loading, Hauling, and Dumping), were included in the priority group.[1]

On March 9, 1982, MSHA published a notice in the **Federal Register** (47 FR 10190) announcing that public conferences would be held in April 1982 to discuss issues related to the loading, hauling, and dumping standards under review. Subsequent to those conferences, MSHA developed a preproposal draft, which it released for public comment on April 22, 1983, by announcing its availability in the **Federal Register** (48 FR 17513). The Agency received and reviewed suggestions and recommendations from over 40 commenters including mine operators, labor groups, and equipment manufacturers.

II. Discussion of Proposed Rule

A. General Discussion

MSHA's review of the existing standards and the comments received has resulted in many substantive changes. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act in that the proposed standards would provide new compliance alternatives to accommodate advances in mining technology while offering the most effective protection for persons working at mines. These alternatives address concerns expressed by small mine operators. In drafting this proposed rule, MSHA has also attempted to eliminate duplicate standards and to clearly convey the requirements of each standard.

The proposed rule would make several organizational changes. MSHA proposes to reorganize Part 55 into Part 56 which would apply to surface metal and nonmetal mines. Part 57 would continue to apply to underground metal and nonmetal mines. The Section .9 standards would be codified in Subpart H—Loading, Hauling, and Dumping for Part 56 and Subpart H—Loading, Hauling, and Dumping for Part 57. This reorganization would reduce the repetition of identical standards which presently exists in the Code of Federal Regulations (CFR).

The standards in each Subpart H would be preceded by their own set of definitions and arranged into seven related groups: (1) Mobile Equipment; (2) Self-propelled Equipment; (3) Rail Equipment; (4) Dumping Locations and Facilities; (5) Chutes; (6) Slushers; and (7) Safety Devices and Procedures.

To facilitate this recodification, a new numbering system would be used. For example, in proposed standard 56/57.9101, (56/57) indicates that the standard applies to both Parts 56 and 57. After the decimal point, the first digit (9) represents the general subpart category, loading, hauling, and dumping; the second digit (1) represents the related group, in this case mobile equipment; and the final two digits (01) indicate that the standard has general application. In Subpart H of Part 57, if the final two digits are 00 to 29, the standard applies to all areas of underground mines; if the digits are 30 to 59, the standard would only apply to surface areas of these underground mines. If the final two digits are 60 to 99, the standard would only apply to underground areas of underground mines. Two tables are included in this document to aid in the comparison of the existing standards with the proposed standards. A derivation table cross-references the proposed standard numbers in Parts 56 and 57 with the existing numbers and the preproposal draft numbers. A redesignation table cross-references existing standard numbers with the numbers of the proposed standards and denotes standards proposed for revocation.

Presently there are 69 standards in Part 55, Section .9. These are duplicated in Part 56. The same standards appear a third time in Part 57 with an additional 17 standards that have application only to underground mining. As a result of the elimination of duplicative standards, the consolidation of closely related standards, and the deletion and transfer of others, the proposed rule would reduce these 224 standards to a total of 113. Each of these proposed changes is discussed below. MSHA believes that the proposal provides an essential level of safety and protection for workers at metal and nonmetal mines.

Several commenters suggested that MSHA index its standards to cross-reference related subject areas. The Agency agrees with this concept and intends to establish a comprehensive index to its metal and nonmetal standards when revisions to Parts 56 and 57 are complete.

B. Transfers

The provisions of existing standards 55/56/57.9-6 (conveyor start-up warnings), 55/56/57.9-7 (unguarded conveyors with adjacent travelways), 55/56/57.9-13 (backstops and brakes for inclined conveyors), and 55/56/57.9-14 (transporting persons on conveyors)

[1] Standards that uniformly appear in 30 CFR Parts 55, 56, and 57 are referred to in this document as "55/56/57." Standards that would uniformly appear in 30 CFR Parts 56 and 57 are referred to as "56/57."

were proposed to be transferred to Section .14, Machinery and Equipment (49 FR 8375, March 6, 1984). Commenters supported the relocation of these standards.

Existing standards 55/56/57.14–13 (falling object protective structures) and 55/56/57.14–30 (blocking equipment in a raised position) are included as part of this proposed rule because the hazards they address are closely related to the hazards addressed by Section .9. Commenters agreed with this proposed relocation.

C. Deletions

The proposed rule would delete four existing Section .9 standards. Two of the proposed deletions are covered by other standards, one contains an outdated requirement, and one has no practical means of compliance.

Existing standard 55/56/57.9–19 which requires blocking of track guardrails, lead rails, and frogs to prevent a person's foot from becoming wedged in those devices, would be deleted because the potential for an injury occurring is very low and there is no practical means of compliance.

Existing standard 55/56/57.9–53, which requires the removal of water, debris, or spilled material creating a hazard to moving equipment, would be deleted. MSHA proposes to delete this standard because the Agency believes existing standards 55/56/57.4–50,[2] which prohibits the accumulation of hazardous flammable waste materials, grease, or flammable liquids and 55/56/57.20–3, which requires workplaces to be kept clean and dry, provide adequate protection from these hazards.

The proposed rule would also delete existing standard 57.9–114, which requires the designation of discharge and boarding points where mantrips are used because proposed standard 56/57.9103 (getting on or off moving equipment) fully addresses this hazard.

Existing standard 55/56/57.9–42 which requires rocker-bottom or bottom-dump railcars to be equipped with locking devices would be deleted. In MSHA's view, the locking device requirement is unnecessary because bottom-dump or rocker-bottom railcars would not function without the devices.

MSHA solicits additional comment on each of these proposed deletions.

D. Other Changes

The proposal also includes a proposed standard for Section .11, Travelways and Escapeways. Several commenters believed that the existing provision in 55/56/57.9–60 that requires warning devices for restricted clearances should be limited to persons traveling on mobile equipment. These commenters believed that all other exposures to restricted clearance hazards should be addressed by other sections, such as Section .11. MSHA agrees. However, since no standard in Section .11 specifically addresses this hazard, a new standard is being proposed. The proposed standard, 55/56/57.11–8, provides: "Where restricted clearance creates a hazard to persons the restricted area shall be conspicuously marked." Injuries can occur when persons walking along travelways strike or bump into restricted clearances. The Agency believes a conspicuous marking would help alert persons to these restrictions. MSHA solicits additional comment on this proposed standard.

E. Definitions

The proposed rule contains two new defined terms in Parts 56 and 57 which were introduced in the preproposal draft: "mobile equipment" which is defined as equipment capable of moving or being moved readily; and "self-propelled equipment" which is defined as equipment capable of moving itself. Commenters generally favored the introduction of these defined terms, which were intended to clarify varying and undefined references to mobile equipment in the existing standards.

The proposed rule also modifies the existing definition of "mantrip" (55/56/57.2) to clarify that a mantrip is "a trip having the primary purpose of transporting persons to and from a work area."

The proposed rule revises the term "berm" to clarify that a berm is "a pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway."

The Agency is proposing to delete the defined term "trip light" in 55/56/57.2 because the term appears only in Section .9 and MSHA believes it is self-explanatory. The proposed rule does not include any of the other existing definitions found in 30 CFR 55/56/57.2.

F. Incorporation by Reference

The proposed rule contains two standards that incorporate national consensus standards by reference; standard 56/57.9209 which addresses falling object protective structures (FOPS), and standard 56.9230 which addresses roll-over protective structures (ROPS).

In the preproposal draft, MSHA attempted to delete the existing incorporation by reference for ROPS and substitute performance criteria for these devices. However, commenters urged MSHA to retain and update the present incorporation by reference. Existing standard 55/56/57.9–88 requires ROPS for certain classes of self-propelled equipment. Under this standard, the ROPS must be built and installed according to several Federal, State, and Society of Automotive Engineers (SAE) technical publications which are incorporated by reference. The proposed rule would update the publications incorporated by reference in the existing standard.

The proposed rule also contains a new incorporation by reference. Existing standard 55/56/57.14–13 requires substantial canopies to be provided on fork-lift trucks, front-end loaders, and bulldozers when necessary to protect the equipment operator. These canopies are referred to as FOPS. Commenters requested that this standard should incorporate the appropriate technical publications for FOPS published by SAE and and the American Society of Mechanical Engineers. MSHA agrees and the proposed rule contains this incorporation.

G. Sections

Th following section-by-section analysis discusses the proposed rule and its effect of existing standards.

Mobile Equipment

Section 56/57.9100 Safety defects.

This proposal would consolidate existing standards 55/56/57.9–2 and .9–73 which require the removal, tagging, and repair of equipment with defects affecting safety. The proposal requires that defects affecting safety be corrected in a timely manner and, in instances when a defect makes continued operation of the equipment hazardous to persons, removal and tagging are also required. Equipment must be repaired before it is returned to service.

Defects affecting safety are those which do have an impact upon the safe operation of the equipment. Although all defects affecting safety must be corrected, in response to commenters, the proposal takes into consideration that not all defects create a hazard which requires immediate removal of equipment from service. Therefore, in the proposal, the Agency distinguishes between defects that affect safety and defects which make continued operation of the equipment unsafe. Defects which affect safety must be corrected in a

[2] Existing standard 55/56/57.4–50 was proposed to be revised as § 58.4162 in the proposed rule for the Section .4 standards, Fire Prevention and Control (48 FR 45348, October 4, 1983).

timely manner. However, because defects which make continued operation of the equipment unsafe present a greater and more immediate hazard, equipment with such defects must be removed from service and repaired before it is returned to service. The time allowed to correct a safety defect that does not make continued operation of the equipment unsafe will vary, depending upon the specific circumstances involved. For example, an inoperative headlight on a piece of surface equipment would be a defect affecting safety which must be corrected. However, immediate correction would not be required if the defect was noted during a day shift, as long as other visibility factors did not require daytime use of the headlights. In contrast, a defect that makes continued operation of the equipment unsafe, such as broken windshield wipers when it is raining, would require immediate removal of the equipment from service.

Although commenters generally favored the consolidation of these standards, they suggested additional changes. Some commenters believe that the standard should permit alternatives to tagging, as spray painting the defective equipment to indicate disrepair, or removing the equipment to a designated repair location. Other commenters believed the scope of the standard should be clarified as to its application to either mobile or self-propelled equipment, or both.

Commenters also suggested that the standard should permit defective equipment to be safely removed to the repair site. It was also suggested that MSHA establish a time frame for correction of safety defects that do not make continued operation of the equipment unsafe. These commenters suggested that MSHA require such defects to be corrected in a "timely" manner. Other commenters considered the provision for correction of "defects affecting safety" to be excessively broad. Commenters generally agreed on the need to remove defective equipment from service and to identify it as out of service until appropriate repairs are made. However, commenters differed on how the standard should be applied in a given situation.

In considering the difficulty of establishing a specific time frame for correcting defects that affect safety but do not make operation unsafe, MSHA believes that the standard should require all defects affecting safety to be corrected in a timely manner, and removal of the equipment when the defect makes continued operation hazardous to persons.

The proposed rule also clarifies that standard 56/57.9100 applies to all mobile equipment. Mobile equipment includes self-propelled equipment. However, safety defects affecting self-propelled equipment must also be reported to and recorded by the mine operator. Standard 56/57.9200 address this recordkeeping requirement for self-propelled equipment. Standard 56/57.9100 adopts the suggestion that provisions be made to permit removal of defective equipment to a repair location as long as removal is safely performed. The proposal would allow alternatives to tagging defective equipment, as long as the alternative provides an effective method of marking the defective equipment.

Section 56/57.9101 Traffic control.

This proposal clarifies several provisions of existing standard 55/56/57.9–71 which requires the establishment and posting of traffic safety rules, signs, and signals. The proposed rule reflects additional clarification to the preproposal draft. In response to comments that MSHA make the standard more specific, the proposed rule emphasizes that the purpose of this standard is to assure the safe movement of mobile equipment., The proposed standard clarifies that the required traffic rules involve three major classes of traffic control: equipment speed, right-of-way, and direction of movement. The proposed standard also clarifies that signs or signals must be placed at appropriate locations on roadways, be visible, and be uniform in size and shape for each purpose, as well as provide warning information.

Commenters also suggested that the standard require that self-propelled equipment be operated at speeds below the posted limits when weather or other factors create hazards. MSHA agrees with this perspective but notes that proposed standard 56/57.9205 (operating speeds and control of self-propelled equipment) addresses the principle that speeds be consistent with operating conditions.

Section 56/57.9102 Transporting persons.

Existing standards 55/56/57.9–40, .9–41, .9–67, and .9–85 involve safety practices to be followed in transporting persons on mobile equipment. The proposed rule consolidates these related safety standards, and makes several changes to the preproposal draft. The proposed rule prohibits certain means or practices of transporting persons. It also uses the defined term "mobile equipment," and allows transportation of persons in the beds of railcars as long as they are seated and provisions are made for their safety. The proposal also specifies additional dangerous riding locations on trains. Riding outside the operators' stations of mobile equipment is permitted when necessary for maintenance, testing, or training purposes, as long as provisions are made for secure travel. The means used would depend upon the mobile equipment involved, and may include use of such safety devices as platforms, grab rails, seat belts, or harnesses. These changes are responsive to many of the comments received.

Some commenters also urged an exception to the preproposal's prohibition of persons riding in dippers, forks, clamshells, or buckets, if special safety provisions were made. However, MSHA believes that because this equipment has not been designed to transport persons, no exceptions should be made. Commenters also suggested that persons be permitted between cars of trains when tending brakes, as long as the persons are secured. In MSHA's view, this braking practice is too hazardous, has resulted in many accidents, and may be avoided by braking from the non-leading end of the train, or single car, as long as too many cars are not being dropped.

Other commenters raised the issue of MSHA's jurisdiction and party liability when a violation of an MSHA standard involves railroads. Several factors are involved in determining MSHA's jurisdiction in these instances. The particular railroad activity and its relationship to mining must be examined. Therefore, MSHA believes that the proper party to be cited in this situation should generally be resolved on the basis of the individual facts surrounding the violation. MSHA has also independently reviewed the Department of Transportation's regulations governing railroads and has found no overlapping or inconsistent requirements.

Section 56/57.9103 Getting on or off moving equipment.

The proposed rule makes editorial changes to existing standard 55/56/57.9–39 which prohibits persons from getting on or off moving mobile equipment, except in certain instances for slowly moving trains.

Some commenters stated the standard should be deleted on the basis that the phrase "slowly moving trains" was vague and unenforceable. The exception for trains is stated in general performance language and is based upon the necessity for trainmen to get on or off slowly moving trains in order

to perform their duties. In MSHA's view, the performance-oriented language of the exception is preferable to establishing a specific train speed for getting on or off trains.

Section 56/57.9104 Loading, hauling, and unloading of equipment or supplies.

Existing standard 55/56/57.9–45 pertains to the hauling of equipment and requires that it be loaded and "protected" to prevent "sliding or spillage." The preproposal draft clarified the standard to more accurately describe that the hazard involved is falling or shifting of equipment.

The proposed rule further clarifies that the standard would apply to supplies as well as equipment, since each may fall or shift, causing injury. The proposal also states that these hazards may exist during each of three distinct phases of haulage: loading, transporting, and unloading.

One commenter suggested that the standard should also require that the load be checked and rebound if necessary. MSHA believes that the proposal includes a responsibility to recheck loads that have been secured if there are indications of shifting.

Section 56/57.9105 Loading and hauling large rocks.

The proposal clarifies the requirements of existing standard 55/56/57.9–62 which prohibits loading rocks in haulage vehicles when the rocks are too large to be handled safely. This practice may endanger persons or adversely affect the stability of mobile equipment. For example, persons have been injured while dumping material from haulage vehicles when large rocks have become lodged in the tail section of the equipment, and caused the equipment to become unstable and overturn. To reduce this hazard, the proposed rule requires that such rocks be broken before loading.

Section 56/57.9106 Minimizing spillage.

Existing standard 55/56/57.9–34 requires that haulage equipment be loaded in a manner to minimize spilling during hauling. The proposed rule clarifies that this requirement applies where a hazard to persons would be created.

In response to commenters, MSHA has used the defined term "mobile equipment" instead of haulage equipment because the hazard of spillage could be present at times other than during hauling. Other editorial changes have been made to clarify the intended application of the standard.

Section 56/57/9107 Safety procedures for towing.

Existing standard 55/56/57.9–70 establishes two requirements to assure safe towing of heavy equipment: use of a "substantially constructed" tow bar or other suitable means of control in conjunction with a "substantially constructed" safety chain or wire rope. To clarify the existing standard, the preproposal draft substituted the existing reference to other "suitable" means of control with a requirement that alternatives to a tow bar provide "equivalent" means of control.

Commenters pointed out that this standard was not intended to apply to rail-mounted equipment. MSHA agrees and the proposed rule would exempt rail equipment. Towing of rail equipment is addressed in proposed standard 56/57.9304 (movement of equipment on adjacent tracks). Commenters also noted that "equivalent" means of control could be interpreted to require rigid control devices, such as tow bars, which may be impractical or unnecessary in certain instances. MSHA agrees and the proposed standard would permit alternatives to tow bars that provide effective means of control.

It was also suggested that use of a safety chain or wire rope as an emergency control device was not necessary when an equipment operator is riding in the piece of equipment being towed if that operator has independent control of the steering and braking on the towed equipment. MSHA agrees, and the proposed rule reflects this change. The proposed rule also replaces the existing standard's reference to substantially constructed tow bars, safety chains, and wire ropes with performance criteria.

Section 56/57.9108 Securing movable parts.

The proposal would consolidate existing standards 55/56/57.9–31 and 55/56/57.9–32. Standard 55/56/57.9–31 requires that equipment be secured in its travel position during travel between work areas. The preproposal draft clarified the existing standard by indicating typical parts of equipment which need to be secured. Standard 55/56/57.9–32 requires dippers, buckets, scraper blades, and similar movable parts to be secured or lowered to the ground when these parts or the equipment are not in use. The preproposal draft clarified that the standard applies when the equipment is not in use.

The proposal also specifies that the standard would apply to "mobile equipment," and it includes examples of the types of movable parts on mobile equipment that are covered by the standard.

Some commenters questioned whether existing standard 55/56/57.9–31 would cover graders and dozer blades as well as such implements as stabilizers and outriggers. Other commenters asked whether the standard's reference to "secured" implied that some type of mechanical fastener was required. These commenters did not believe that mechanical fastening would be needed in all instances and suggested, as an alternative, that the standard require equipment to be in a "suitable or non-hazardous" travel mode.

MSHA believes that the term "secured" provides flexibility while still conveying that the intent of this standard is to prevent accidents that may occur when movable part on mobile equipment are not secured in a safe position during movement between working places. The extent to which a movable parts needs to be secured would depend upon the type of equipment involved. For example, in the case of a bulldozer, securing would involve lowering the blade or bucket to just above the ground, and no mechanical fastener would be needed.

Commenters on existing standard 55/56/57.9–32 pointed out that equipment may be in use, but unattended, and that the standard should extend its requirements to that situation because the equipment operator would not have control of the equipment. Fatalities have occurred when movable parts on unattended equipment have not been secured. One fatality involved an equipment operator who was preparing to add a 2-foot section of boom to a Link-Belt crane in order to use it as a dragline. The two-sectioned crane boom was placed in a horizontal position with the bottom of the boom raised 4 feet off the ground. The equipment operator did not block or secure the boom against movement and proceeded to knock out the pins which joined the two sections of the boom. As the last pin was removed, the boom collapsed and pinned him. The proposed rule would address the hazard of blocking or securing movable parts on equipment when the equipment is in use but the equipment operator has left the equipment.

Commenters also suggested that MSHA limit application of the standard to "functional" movable parts so that malfunctions that prevent securing or lowering of these parts until repairs are made would not constitute a violation. Standard 56/57.9108 covers equipment that is functioning properly. If an

operator has a malfunctioning part on a piece of equipment, it would be covered by standard 56/57.9100, safety defects. MSHA considers malfunctioning parts to be defective; therefore, the suggestion was not incorporated into the proposed standard.

Some commenters suggested that the standard should elaborate on the types of hazards for which securing is intended to provide protection. At this point in the rulemaking, however, MSHA believes that the performance language requiring securing or lowering provides adequate guidance without attempting to list each type of hazardous movement.

Section 56/57.9109 Parking procedure for unattended equipment.

Existing standards 55/56/57.9–36 and .9–37 address procedures to be followed to secure mobile equipment when it is left unattended or parked on a grade. The proposal consolidates these two standards, and includes changes to simplify and clarify the requirements of the existing standards. Under the proposal, when mobile equipment is left unattended, the controls are to be placed in the park position. If the equipment has a parking brake, it must also be set. Additional precautions are required when mobile equipment with wheels or tracks is parked on a grade. In that situation the equipment must be either chocked or turned into a bank or rib.

Commenters supported the concept of consolidating these standards. However, several commenters believed it unnecessary to require that all brakes be set, and that alternative use of "other effective devices" should be permitted in place of setting the parking brake. Other commenters suggested that the standard should not prescribe a specific procedure, but rather require only that unattended equipment be left "in such a manner as to prevent inadvertent movement." After considering the comments, MSHA believes that the more effective safety practice is to place controls in the park position and to set the parking brake when one is on the equipment. While MSHA is not aware of any "other effective devices" that could be used to secure mobile equipment that would be equivalent to using the park position and setting the parking brake, the Agency solicits comment on any specific techniques which might provide equivalent protection.

Commenters also believed that the term "master switch" was vague and that "chocking" should be required instead of "blocking" since the latter may not fully secure against movement. Questions were also raised as to whether this standard would prohibit the practice of idling equipment in wet weather or idling prior to the start of a shift. In response to these comments, MSHA has deleted the reference to "master switch" and replaced the term "blocked" with "chocked" to clarify the standard. As proposed, the standard would not prohibit the idling of equipment.

Section 56/57.9110 Blocking equipment in a raised position.

The proposal makes several changes to existing standard 55/56/57.14–30. Presently this standard prohibits persons from working on or from a piece of mobile equipment in a raised position unless it has been blocked in place securely. Equipment that is specifically designed for use as an elevated mobile work platform is excepted from the existing standard.

In response to commenters, the proposed rule would prohibit persons from working under, as well as on or from, a piece of mobile equipment in a raised position until it has been blocked or mechanically secured. The proposed rule also specifies that the standard addresses accidental lowering of raised equipment or a raised component, and also addresses rolling of the mobile equipment itself. The exception for specifically designed elevated mobile work platforms now expressly states that this type of equipment must be equipped with load-locking devices. If maintenance to or repair work of elevated mobile work platforms is being performed, they must be blocked or mechanically secured.

Commenters suggested that load-locking devices be permitted as an alternative to blocking. The proposed rule does not permit such use unless the equipment is specifically designed as a mobile work platform. Numerous fatalities have occurred when equipment in a raised position has not been blocked or mechanically secured. Fatalities have also occurred when pieces of equipment which have the primary purpose of transferring material, such as front-end loaders, have been used as make-shift elevated work platforms. Therefore, persons would not be permitted to work on, under, or from a front-end loader or bucket in a raised position even if that equipment has a load-locking device. The primary function of such equipment is to move material. The hydraulic controls on such equipment are designed for rapid movement of material. In contrast, equipment designed to function as an elevated mobile work platform is equipped with fine movement controls. These controls reduce the probability of persons being accidentally thrown off the elevated mobile work platform. This protection would not exist where an operator used a front-end loader as a makeshift elevated work platform because loader linkage designs emphasize rapid dumping action. In addition, equipment which is specifically designed as a mobile work platform would have a railing or enclosure and skid-resistant surfaces to protect persons working in it. This type of platform would not be subject to inadvertant tipping which could exist if a front-end loader were used as a make-shift elevated platform.

As long as maintenance of elevated mobile work platforms is not required, load-locking devices are practical for use for persons working from mobile work platforms, and they are also reflect current state-of-the-art technology for such applications. However, during maintenance of elevated work platforms, load-locking devices are not an effective substitute for blocking or otherwise mechanically securing hydraulically elevated components due to the possibility of these devices being inadvertently disconnected or removed. Also, seals and O-rings on hydraulic cylinders commonly lead to some degree. If a leak occurred while a person was working under an elevated component, the component could fall slowly and crush the person, despite the presence of a load-locking device.

Section 56/57.9111 Tire repair.

Existing standard 55/56/57.9–69 addresses the hazard of exploding wheel rims associated with tire repairs. The preproposal draft retained the existing requirement for deflation of tires before starting repairs and specifically listed a wheel cage as a means to prevent wheel locking rims from creating a hazard during tire inflation.

In response to commenters, the proposal includes a stand-off inflation device as a additional alternative for protecting against the hazards associated with wheel locking rims during inflation. This device allows a person to avoid the risk of injury by standing to the side of the wheel rim during tire inflation.

The proposal also adds that when a repair is necessary on either tire of a dual wheel, both tires are to be deflated before either tire is removed from the equipment. Comenters requested that MSHA include this safety practice in the standard because the locking rim of the wheel not under repair can fly off violently during removal of the tire being repaired.

Section 56/57.9112 Warning devices.

This proposal consolidates existing standards 55/56/57.9–68, .9–49, .9–60, and 57.9–104, which require warning devices for parked equipment, extended loads, and restricted clearances.

The proposal would delete the specific reference in existing standard 55/56/57.9–68 to use of lights or flares, but would retain the performance requirement that visible warning devices be used for parked mobile equipment where a hazard would be created to persons in vehicles.

The proposal would also exclude fork-lift trucks from its requirement for extended loads because those vehicles ordinarily carry loads that extend beyond the sides, but are operated in a manner which greatly reduces the hazards of extended loads. Commenters suggested that MSHA permit "other suitable warnings" for extended loads as an alternative to the existing requirements for a warning light in limited visibility and use of a warning flag under all other conditions. Extended loads pose a hazard because the loads projected significantly beyond the sides of the vehicle and may strike persons along travelways or in other vehicles. MSHA believes that the proposed warning devices alert persons to the hazards of extended loads. MSHA solicits specific examples of alternatives which would provide effective warnings in the case of extended loads.

As a result of this consolidation, the reference to "overhead" clearance in existing standards 55/56/57.9–60 has been deleted. The proposal would apply to all locations where restricted clearance creaters a hazards to persons traveling in mobile equipment regardless of the direction from which the restriciton originates. The standard would require that warning devices be installed in advance of areas of restricted clearance. These warning devices would alert persons traveling in mobile equipment that they are approaching a restricted clearance. In addition, there must also be conspicuous marking within the restricted area to alert persons traveling in mobile equipment. As proposed, the consolidated standards would apply to both underground and surface operations.

Some commenters believed that the standard should be limited to persons on mobile equipment since 30 CFR 55/56/57.11 (travelways) should address restricted clearances for situations that do not involve mobile equipment. MSHA agrees and the proposed rule reflects this change. However, since no standard in § .11 specifically addresses restricted clearances, MSHA is proposing a new standard, 55/56/57.11–8, to address restricted clearances along travelways since restricted clearances can also cause injury to persons traveling on foot. MSHA accident data reveals that employees have incurred injuries while walking in areas with restricted clearances. Several of these injuries resulted in lost work days. For example, in one instance an employee lost 13 work days after bumping his back on a low clearance kiln door. In another instance an employee struck his head after failing to notice a low overhead steel pipe. Conspicuous marking of these restrictions would help to reduce the frequency of this type of injury.

Another commenter questioned whether the Agency would be limited, by the language of the preproposal draft, to issuing citations only after an injury occurred. MSHA considers the language of the proposed standard, as well as the existing standard, to apply to all instances where clearance is restricted as long as there is an indication that persons could be exposed to hazards.

Section 57.9160 Supplies, materials, and tools on mantrips underground.

The proposal retains the requirements of existing standard 57.9–99 which prohibits transporting supplies, materials, and tools with persons in mantrip cars underground. It also requires that mantrips be operated independently of ore and supply trips.

Commenters suggested that existing standard 57.9–99 and proposed standard 56/57.9102 conflict since the latter standard would permit the transportation of persons in mobile equipment with tools, materials, and equipment when those items are secured. The distinction between the two standards is that proposed standard 57.9160 addresses the transportation of persons in mantrips whereas proposed standard 56/57.9102 addresses mobile equipment that does not have the primary function of transporting persons. To provide further clarification the proposed rule modifies the existing definition of "mantrip" (30 CFR 55/56/57.2) to emphasize that a mantrip has the primary purpose of transporting persons to and from a work area.

Self-Propelled Equipment

Section 56/57.9200 Inspection prior to use; recording of defects.

Existing standard 55/56/57.9–1 requires equipment operators to inspect self-propelled equipment that is to be used during a shift prior to placing the equipment in use. When an inspection reveals a defect that affects safety, the defect must be reported to the mine operator who must record the defect. The record of the defect must be retained for six months. In the preproposal, this retention period was reduced to 90 days.

The proposal makes several changes to the preproposal. The record retention period is proposed to be from the date the defect is recorded until the defect is corrected. Although several commenters supported the preproposal's reduction in the retention time for records, other commenters advocated a retention period that would run until the next MSHA inspection following the recording of the defect. Other commenters favored eliminating the recordkeeping requirement, keeping records only until the defect is corrected, or requiring equipment inspections on a daily basis instead of each shift. At this point in the rulemaking process, MSHA believes that a critical element in the recordkeeping requirement is the provision relating to correction of the defect. The important safety benefit to be derived from the recordkeeping provision is that mine management is aware of and attentive to the defect. For this reason, the Agency believes that the record only needs to be retained until the defect is corrected. MSHA solicits comment on the recordkeeping provision.

Commenters also suggested that the requirement to inspect self-propelled equipment should apply only to equipment that "is used during a shift" in contrast to the existing requirement to inspect "equipment to be used during a shift." MSHA has proposed to retain the existing requirement because limiting the scope of the standard to equipment "in use" during a shift would be contradictory to the concept of inspection prior to such use. Several commenters noted that these examinations are useful and constitute an important safety practice.

Commenters also suggested that the standard include a checklist of items to be inspected. MSHA believes the standard should not include a checklist of items to be examined nor be expanded to require inspection of all mobile equipment. Although MSHA recognizes the value of checklists, the Agency is concerned that this approach would not address the various components found on all types of self-propelled equipment.

Section 56/57.9201 Operators' stations.

Existing standard 55/56/57.9–10 addresses hazards created by equipping of modifying cabs in a manner that impairs operating visibility. Existing

standard 55/56/57.9–11 provides that cab windows are to be made of safety glass, or its equivalent, and that those windows are to be in good condition and clean. Existing standard 55/56/57.9–12 provides that cabs of mobile equipment are to be kept free of extraneous materials.

Since each of these standards relates to safety hazards associated with cabs of self-propelled equipment, MSHA has consolidated them into a single standard in the proposal.

Commenters pointed out that not all types of self-propelled equipment are provided with cabs. These commenters suggested that the Agency use the more inclusive term of "operators' stations." The proposed rule reflects this change.

As proposed, the standard would require that windows must not impair visibility. The proposal also provides that the windows must be replaced or removed if they are damaged to an extent that the operating visibility is impaired or the safety of the equipment operator is affected by broken or cracked glass. However, if removal of damaged window exposes the equipment operator to hazardous environmental conditions which would impair the operator's ability to safely operate the equipment, such as extreme cold or high concentrations of dust, the broken window must be replaced. Some commenters suggested that this environmental condition provision could be deleted on the basis that 30 CFR 55/56/57.5 (Air Quality standards) addresses environmental hazards. The air quality standards address air contaminants which affect health, while this proposal addresses environmental conditions that may impair the equipment operator's ability to safely operate the equipment.

With respect to the existing requirement that cabs of mobile equipment be kept free of extraneous materials, the proposal clarifies that this standard applies to materials in the operators' stations that may create a hazard to persons by impairing the safe operation of the equipment.

Section 56/57/9202 Brakes.

Existing standard 55/56/57.9–3 requires that powered mobile equipment be provided with "adequate brakes." In response to comments, MSHA attempted to clarify in the preproposal the performance requirements for adequate brakes on self-propelled equipment. The preproposal addressed all braking systems installed on self-propelled equipment, and required that each system be maintained in functional condition. In addition, performance requirements for parking brakes were established, as well as a test procedure and maximum stopping distances for service brakes. The stopping distances were derived from Society of Automotive Engineers (SAE) publication J 1152.

The proposal makes several significant changes to the preproposal. Under the proposal, field testing of brake performance and the maximum stopping distance table would be applicable to all self-propelled equipment capable of traveling at least 10 mph. The preproposal had limited field testing to vehicles manufactured after July 1976. However, MSHA has conducted field tests that indicate the proposed maximum stopping distances are an appropriate measure of brake performance regardless of the year in which the equipment was manufactured. The field tests also indicate that the tests are not difficult to conduct and involve only a brief interruption in production. Copies of the test results are available from the Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, VA 22203. MSHA will discuss commenters' viewpoints to these field tests in the notice scheduling public hearings for this proposal. Video tapes of the field tests have been made and will be available during the public hearings.

In response to commenters, the proposal clarifies two other aspects of the brake testing procedure. It permits the use of auxiliary retarders when they are simultaneously actuated by application of the service brake control. In addition, the proposal requires that the equipment's transmission be in the gear appropriate with the speed the equipment is traveling during the test.

Other changes in the proposal include a reduction in the range of speeds for equipment testing (Tables I and II). To be tested, vehicles must be capable of traveling at least 10 mph. In instances where equipment is not capable of traveling at least 10 mph and there is cause to believe that the service brake is not capable of stopping and holding the fully-loaded equipment on the maximum grade it travels, MSHA will rely upon other available evidence to assess the vehicle's braking capability. For example, disconnected brake lines or brake shoes with no lining remaining would be indicative of malfunctioning brakes. Testing speeds were reduced from the preproposal's range to 10–20 mph to increase the safety of the test procedure. The proposal also clarifies that in instances where equipment fails the initial stopping distance test, the mine operator has the option to have additional stopping distance tests conducted on the equipment. The proposal also specifically excludes rail equipment, since proposed standard 56/57.9300 addresses braking systems for railroad cars.

The performance requirement for the parking brake has also been simplified in the proposal. The preproposal required that the parking brake be able to hold the fully-loaded equipment on a 15 percent grade or the maximum grade it is required to travel. The proposal requires holding performance for the maximum grade the equipment may encounter. Although the proposal removes the preproposal's reference to contraction of brake parts or leakage in describing parking brake performance, the parking brake must be capable of holding the equipment despite any contraction of brake parts or leakage of any kind.

Commenters were primarily concerned with brake testing for service brakes. Questions were raised relating to the appropriateness, fairness, and safety of these tests. Many of the questions raised involving the appropriateness of the braking tests arose out of a misunderstanding concerning SAE J 1152. This publication formed the foundation for deriving the figures for the maximum stopping distances table. Several commenters believed that SAE J 1152 was intended only for testing of new equipment or that it applied only to a limited class of off-highway trucks described as large dumpers. Others interpreted SAE J 1152 to be intended only for use as design criteria and not for testing braking adequacy of in-service equipment under operating conditions. These commenters were concerned that the stopping distances were too rigorous for in-service self-propelled equipment. However, other commenters considered the distances to be too lenient since the preproposal draft's consolidation of the SAE J 1152 tables permitted longer stopping distances, in some instances, than the individual SAE tables.

Several important points need to be clarified about SAE J 1152. As stated in SAE J 1152, page 41.187, the stopping distances are intended for use in testing braking system performance for in-service equipment. The distances do not represent the optimal expected braking performance, but establish only the minimum acceptable in-service performance for this equipment. MSHA believes that the distances established in the MSHA stopping distance table will not result in vehicles with good brakes failing the braking tests but will identify those vehicles with brakes in need of repair.

Another issue relating to the appropriateness of the tests involved a concern that MSHA would routinely test all vehicles on mine property and thereby cause extended disruptions at operations. The proposal provides that testing will only be conducted when there is cause to believe that the service brake is not in functional condition. MSHA will not be conducting routine or random testing of vehicles. Examples of situations which may constitute cause for testing could include observation of a vehicle having difficulty stopping or physical evidence of a problem such as leaking grease seals at braking wheels.

As noted by some commenters, the distances in the preproposal draft's table are longer then those listed in SAE J 1152. MSHA's stopping distances were derived from the maximum acceptable distances set forth in the tables of SAE J 1152. As with the preproposal draft, the proposal includes a single stopping distance table which consolidates those in SAE J 1152. In some instances, consolidation of the tables resulted in longer permissible stopping distances than those listed in the SAE J 1152 tables because the longest stopping distance for each SAE J 1152 weight category is used as the maximum stopping distance in MSHA's consolidated table. The proposal's consolidated table also factors in a one-second operator response time in establishing the maximum acceptable stopping distances. Some commenters objected to inclusion of operator response time in the table since the test procedure involves an equipment operator who fully anticipates and is poised to apply the brakes at a specified point and because operator response time is not a measure of the braking system's adequacy. Operator response time is included in the proposed rule to assure fairness in utilizing the test procedure for this standard.

Some comments questioned whether the braking tests could be conducted safely and whether an adequate test course length could be found. Using the table in the proposal, even the heaviest vehicle, when tested at the maximum test speed of 20 mph, should stop in 148 feet or less. When this figure is added to a distance of 450 feet to allow for a vehicle to accelerate to testing speed together with the 100-foot course to establish the vehicle's test speed and an extra 148 feet as a margin of stopping safety, it can be seen that the longest course needed to safely conduct the tests would only be 846 feet, or less than ⅙ of a mile. MSHA believes that most mining operations will have an adequate course length to conduct the tests. However, if an MSHA inspector determines that an appropriate test site is not present at an operation, no tests will be conducted. In such cases, the Agency will rely upon other available evidence to establish whether the service brake is in functional condition.

Section 56/57.9203 Berms.

Existing standard 55/56/57.9–22 requires that berms or guards be provided on the outer bank of elevated roadways. The preproposal defined an elevated roadway as one where a drop-off existed of sufficient depth or grade to cause a vehicle to overturn or endanger persons. The preproposal draft would have required that the height of berms or guards be at least the height of the midaxle of the largest piece of equipment ordinarily traveling the roadway and would have permitted openings in berms to the extent necessary for drainage.

The proposed rule retains the preproposal's requirement, and excludes railbeds because the proposed defined term "self-propelled equipment" could imply that berms would be required for railbeds.

Commenters suggested that the Agency more clearly define the term "elevated roadway." Several of these commenters suggested that MSHA require berms where the slope adjacent to the roadway is 1:4 or greater. On the other hand, equipment manufacturers recommended berms if the slope is 1:10 or greater. However, MSHA believes that specific slope ratios do not take into consideration the length of the slope or the type of vehicles traveling the roadway. Where the drop-off is created by a body of water, the standard would apply. The proposed rule would permit an evaluation of these and other factors to determine if a berm is required. For example, large haulage vehicles with a high center of gravity and relatively narrow wheel track width are more susceptible to oveturning than small utility trucks.

Commenters also raised several questions regarding the determination of berm height according to the largest piece of self-propelled equipment "ordinarily traveling" the roadway. Some suggested alternative wording such as "normal or regular" use, but others pointed out that these terms could lead to difficulty in determining application of the standard. MSHA has evaluated these comments together with the recognition that elevated roadways would present a hazzard regardless of the frequency of use. However, MSHA does not believe that the height of a berm needs to be increased where a larger vehicle travels an elevated roadway infrequently or only in isolated instances, such as to make deliveries. For this reason, the proposal has been modified to require that the height of berms be set according to the mid-axle height of the largest piece of self-propelled equipment which usually travels the roadway. Consistent with this, it is the Agency's intent that the proposed berm requirement would be applicable to vehicles which usually travel the elevated roadway in the course of regular activities related to mining.

Commenters also raised issues concerning the definition for "berm." They considered the use of the term "restrain" to be unrealistic since the size of many types of self-propelled equipment would make it impossible to construct a berm that would be capable of "restraining a vehicle." MSHA agrees that some vehicles are so large that it would be extremely burdensome to construct a berm which would prevent them from passing beyond its boundaries. The Agency has amended the berm definition to clarify that it is "a pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway."

Section 56/57.9204 Dust control.

Existing standard 55/56/57.9–74 requires "suitable" control of dust at muck piles, material transfer points, crushers, and haulage roads when impaired visibility from dust may create hazards to persons. The preproposal draft changed the existing standard by requiring control measures to be taken only after a hazard creating impaired visibility was present. It also eliminated the reference to "suitable" control of dust.

Some commenters objected that the preproposal draft would require dust control only after it reached a level which impairs visibility to a hazardous degree. In their view, this would reduce the effectiveness of the standard. MSHA agrees, and the proposal would provide protection where hazards may be created as a result of impaired visibility. Under the proposal, dust control measures must be taken at known sources of dust production where hazards to persons may be created as a result of impaired visibility.

Section 56/57.9205 Operating speeds and control of equipment.

The proposal would consolidate existing standards 55/56/57.9—17, .9–23, .9–24 and 57.9–113. Each address control

and movement of self-propelled equipment.

Some commenters questioned whether this standard would conflict with the requirements for traffic rules in existing standard 55/56/57.9–71. MSHA does not agree because proposed standard 56/57.9205 pertains to the equipment operator's control of self-propelled equipment under varying road conditions, while existing standard 55/56/57.9–71 (proposed standard 56/57.9101), addresses general traffic rules.

Several commenters stated that it would be more appropriate to require that equipment operators "maintain control" of self-propelled equipment while it is in motion rather than "have full control" of such equipment. MSHA agrees and this change is reflected in the proposal.

Section 56/57.9206 Notification to the equipment operator.

The proposal clarifies existing standard 55/56/57.9–27 which requires persons to notify the operator of self-propelled equipment before getting on or off that equipment when the operator is present.

Section 56/57.9207 Movement of dippers, buckets, loading booms, or heavy suspended loads.

Existing standard 55/56/57.9–25 prohibits the swinging of dippers, buckets, loading booms, or heavy suspended loads over the cabs of haulage vehicles until the drivers are out of the vehicles and in a safe location. An exception to this requirement is provided if the equipment is specifically designed to protect the driver from falling material.

The preproposal draft made editorial clarifications to the existing standard. In response to commenters, the phrase "operators' stations of self-propelled equipment" replaces "cabs of haulage vehicles" in order to include equipment without cabs and to use the defined term "self-propelled equipment." The reference to protection from "falling material" has also been replaced by the term "falling objects" since the standard which provides protection from this hazard (56/57.9209) requires a "falling object protective structure."

Section 56/57.9208 Suspended loads.

The proposed rule retains the requirements of existing standard 55/56/57.9–30 which prohibits persons from working or passing under the buckets or booms of loaders in operation.

Section 56/57.9209 Falling object protective structures (FOPS).

Existing standard 55/56/57.14–13 requires substantial canopies to be provided on fork-lift trucks, front-end loaders, and bulldozers when it is necessary to protect the equipment operator from falling objects. These canopies are referred to as falling object protective structures (FOPS).

All of the commenters on this standard requested that MSHA more clearly define the requirements of the existing standard and suggested that the Agency delete the reference to "substantial canopies" because the term is subject to various interpretations. They suggested that the Agency incorporate by reference the consensus standards for the construction of FOPS which were developed by the Society of Automotive Engineers (SAE J 231, January 1981) and the American Society of Mechanical Engineers (ANSI B 56.1–1975).

Use of these ANSI and SAE standards for FOPS provides useful information on the construction of FOPS. The SAE and ANSI Standards are based upon actual testing of FOPS prototypes. FOPS constructed to these specifictions should provide reliable, consistent, and predictable performance.

Therefore, the proposal incorporates these ANSI and SAE publications by reference. However, under the proposal, all front-end loaders, bulldozers, and fork-lift trucks that are equipped with "substantially constructed" FOPS prior to the effective date of this standard would be considered in compliance with the requirements of this proposal. On the basis of MSHA's field experience, existing FOPS that are substantially constructed can be expected to provide the needed protection to equipment operators.

Although MSHA recognizes that the SAE and ANSI documents are revised periodically, in most cases these revisions only involve editorial or non-technical changes. However, in the event that major substantive changes are made or signficant revisions are issued, MSHA would review the revised SAE or ANSI documents and consider whether the existing standard needed to be updated. Any updating would be accomplished through the rulemaking process. Copies of the documents incorporated by reference in this standard are available from the Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Section 56/57.9230 Roll-over protective structures (ROPS) and seat belts.

Existing standard 55/56/57.9–88 requires roll-over protective structures (ROPS) and seat belts to be installed on certain classes of surface self-propelled equipment. The standard incorporates by reference several Federal, State, and the Society of Automotive Engineers (SAE) standards which contain detailed performance and technical specifications concerning the design, construction, and installation of ROPS and seat belts.

In the preproposal draft, the Agency attempted to address two major concerns expressed by commenters: the need to update the SAE references in the standard, and the need to simplify the existing requirements. The preproposal presented the requirements for ROPS and seat belts in performance-oriented language which the Agency extracted from the SAE publications presently incorporated in 55/56/57.9–88.

This standard received comment from ROPS equipment manufacturers, government agencies and private groups involved in ROPS research, and SAE subcommittee members. The majority of the commenters expressed a clear preference for updating and retaining the existing incorporation by reference. They were concerned that the Agency's performance-oriented approach was not adequate to assure proper design and construction of ROPS and that the draft standard would not have provided the necessary and specific technical performance requirements. Further, they stated that general performance criteria should not be substituted for the specific details contained within the existing standard. For example, commenters pointed out that the draft did not contain specific technical requirements for certifying the integrity of ROPS, nor did it contain explicit force and energy criteria for proper evaluation of ROPS.

After review of these comments, MSHA has determined that the incorporation by reference of the applicable SAE publications for ROPS and seat belts would best accomplish the desired objective of assuring the highest possible degree of protection in these situations. The incorporation by reference has been updated to reflect current SAE publications. In addition, the entire standard has been redrafted to more clearly state the requirements. Copies of these documents are available from the Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Towers #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

To aid in understanding the development of the publications referenced in existing 55/56/57.9–88 to the updated publications referenced is this proposal, a comparison table has been provided:

COMPARISON OF SAE PUBLICATIONS FOR ROPS AND SEAT BELTS

Proposed rule incorporation	Existing rule incorporation
J 386 (Seat Belts for Construction Equipment).	J 140a 1973. J 141. J 386 MAR 1968. J 33b (which superseded J 333a).
J 1194 (ROPS for Agricultural Tractors including Seat Belts).	
J 1040c (ROPS for Construction, Earthmoving, Forestry and Mining Machines).	J 1040, J 1040a, J 1040b, J 320, J 320a, J 320b, J 394, J 394a, J 395, J 395a, J 396, J 396a, J 333a (ASAE 305), J 334a (ASAE 306), J 1011.

The proposal uses SAE terminology to describe the range of equipment covered by the standard. These changes were made so that the vehicles described in the proposal would be consistent with those in the latest SAE ROPS publications. The following table compares the terminology:

NOMENCLATURE COMPARISON

Current SAE and proposed rule terminology	Existing standard terminology
Crawler tractors and crawler loaders.	Front-end loaders, tractors, and dozers.
Graders	Motor graders.
Wheel loaders and wheel tractors	Front-end loaders, tractors.
The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear dump wagons and towed fifth wheel attachments.	Self-propelled scrapers, off-road wheeled prime movers.
Skid-steer loaders	Front-end loaders.
Agricultural tractors	Agricultural tractors.

Some commenters suggested that the Agency should list the types of equipment that are not addressed by the standard. However, the Agency believes that the proposal, which lists specific types of equipment covered, appropriately conveys the intended scope of the standard.

The proposal also clarifies that MSHA will consider equipment which meets the requirements of the existing standard to be in compliance with the installation, performance, and labeling requirements of the proposal. However, such equipment would still have to satisfy the maintenance requirements of this proposal. The proposed rule would retain the existing ROPS labeling requirement because the label shows that a ROPS is designed for the specific piece of equipment on which it is installed. The label will aid in verifying that the ROPS meets the requirements of this proposal, and could also be of assistance to the mine operator in the event of a manufacturer's recall or modification.

Two important aspects of ROPS and seat belts that are not addressed in the existing standard are included in the proposed rule. The proposal would require seat belts to be worn by equipment operators. Although the existing standard requires seat belts, it does not require that they be worn. Accident and injury reports reveal that the overall effectiveness of ROPS is greatly reduced when seat belts are not worn. Equipment operators who were not secured by seat belts have been thrown from the equipment during a roll-over and have been crushed by the equipment and ROPS structure. In one study conducted by Woodward Associates, Inc. (November 1980, Contract # J0285022), for the Bureau of Mines, 102 accidents and 16 fatalities were reviewed to see if seat belt usage may have saved lives or lessened the severity of injury in ROPS roll-overs. The study found that 14.7 percent of these accidents resulted in fatalities, and concluded that 14 of the 16 fatalities may have resulted in equipment operator's lives being saved had they been wearing seat belts at the time of the roll-over.

Although some commenters believed it would be difficult for mine operators to enforce this requirement due to resistance from equipment operators, other commenters recognized its beneficial aspects and supported the requirement for seat belts to be worn. Those commenters opposed to the requirement were concerned that fines would be imposed on the mine operator rather than on the equipment operator who failed to wear the seat belt. MSHA considers that the requirement for seat belts is analogous to other provisions relating to personal protective equipment required to be worn by employees such as hard hats, safety glasses and steel-toed shoes. In some instances, employers have had to impose disciplinary action when employees have failed to follow the company's safety rules. MSHA believes that if management requires that seat belts be worn by equipment operators and, in conjunction with an educational awareness program, encourages their use, the safety benefits will be understood and accepted by employees. MSHA believes employees share in the responsibility to wear these devices. MSHA believes that wearing seat belts is essential to the reduction of injuries from equipment roll-over, and has retained the requirement in the proposal. However, the Agency solicits further comment on the proposed requirement that seat belts be worn by equipment operators.

The other aspect of ROPS and seat belts now addressed in the proposal is the requirement that seat belts be maintained in functional condition. The standard would require that seat belts be kept free from grease, oil, and other deteriorating agents since these agents damage the seat belts and discourage equipment operators from wearing them. The proposal requires repair and, in some instances, replacement of these devices when necessary to assure proper performance.

Section 56/57.9231 Horns and back-up alarms on surface equipment

The preproposal draft made several changes to existing standard 55/56/57.9–87 which pertains to audible warning devices and back-up alarms. The preproposal used the defined term "self-propelled equipment," and clarified that this surface equipment was required to have a manually-operated warning horn. It also pemitted the use of a strobe light at night as an alternative to a back-up alarm. The proposed rule retains these changes, permits "other audible warning devices" as alternatives to horns, and excludes rail equipment.

Some commenters considered back-up alarms to be unnecessary for track-mounted equipment, such as bulldozers, due to their slow reverse speed. MSHA's experience with accidents that involve backing up indicates that it is not the speed of the reverse movement that is the critical factor, but the obstructed view to the rear. Therefore, MSHA believes that track-mounted equipment should continue to be covered by the back-up alarm requirement where an obstructed view exists.

MSHA is also considering whether the standard should specifically allow wheel-mounted bell alarms as an acceptable alarm for highway-use vehicles with wheels no greater than size "1100–20" (11-inch width; 20-inch diameter). These bell alarms are activated by reverse movement. However, the alarm sound occurs at varying intervals, depending upon the vehicle's wheel size. MSHA believes that such alarms are inappropriate for large-wheeled off-highway vehicles because up to 12 feet of reverse movement could occur without the bell sounding. MSHA seeks further comment on this issue.

Rail Equipment

Section 56/57.9300 Brakes.

The preproposal draft modified existing standard 55/56/57.9–48 to require that all braking systems on railroad cars be maintained in functional condition. The proposed rule retains this requirement.

Some commenters considered the requirement that braking systems be in "functional condition" unclear and suggested that the standard provide that braking systems be kept in a "safe functional condition." Other commenters believed that the standard should only apply in instances where the braking system on a railroad car is "in use," stating that it may suffice to rely on the braking system of the control vehicle or braker cars.

MSHA has retained the phrase "functional condition" in the proposed rule because functional means that it is capable of performing its intended purpose. Although a train may be able to stop safely even though some of its cars have non-functioning braking systems, MSHA believes that the brake system should be required to be functioning on all cars to assure necessary braking capability under all circumstances. This approach affords a margin of safety to accommodate variations in the grade encountered, the number of railcars involved, and the size of the load carried. Therefore, the proposal would require that where a railroad car has a braking system, it must be maintained in functional condition.

Commenters believed that the general requirements of existing standard 55/56/57.18–2 to inspect working places eliminates the need for this standard, and that railroad cars with defective brakes may not present a hazard if wheels are properly chocked. MSHA does not believe that the requirements of standard 55/56/57.18–2 adequately address the specific hazards associated with non-functioning brakes on railroad cars since it refers only to examination of working places.

Section 56/57/.9301 Backpoling.

The proposal retains the substantive requirements of existing standard 55/56/57.9–46 which prohibits the practice of backpoling of trolleys unless it is unavoidable. Backpoling is hazardous because the trolley pole can jam and break, endangering the equipment operator. The proposal emphasizes that backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. In instances when it is required, backpoling is to be done only at the minimum tram speed of the trolley.

Section 56/57.9302 Securing parked railcars.

The proposed rule retains the existing requirement in standard 55/56/57.9–47 that parked railcars be blocked securely unless the cars are held effectively by brakes. A commenter suggested that the standard should add that the railcar must be held effectively by "functional" brakes. MSHA agrees and notes that proposed standard 56/57.9300 requires brakes on railroad cars to be maintained in functional condition.

Section 56/57.9303 Protection against moving or runaway equipment.

This proposal consolidates existing standards 55/56/57.9–20 and .9–56 which provide for the installation of safety devices to protect persons from moving or runaway railroad equipment. The proposal deletes as unnecessary the term "positive acting" which appeared in the preproposal draft as "positive acting stopblocks." Commenters supported the consolidation of these standards.

Section 56/57.9304 Movement of equipment on adjacent tracts.

Existing standard 55/56/57.9–66 requires the use of a "suitable" chain, cable, or drawbar when a locomotive on one track is used to move equipment on a different tract. The preproposal draft used the term "substantial construction" in place of "suitable" in order to more clearly convey the performance qualities required when a chain, cable, or drawbar is used for this purpose.

Commenters suggested that the standard delete any reference to the performance qualities of the chain, cable, or drawbar. MSHA believes that since the rail equipment being moved could present varying size and weight demands, the strength of the chain, cable, or drawbar must be able to meet those demands. Therefore, the proposal clarifies the "substantial construction" performance requirement by stating that these devices must be capable of meeting the loads to which they could be subjected.

Section 56/57.9305 Movement of independently operating equipment.

The proposal deletes the reference to "suitable" from existing standard 55/56/57.9–35. "Suitable" is used to describe the type of control needed when there is movement of two or more pieces of rail equipment operating independently on the same track. The proposal requires that rail equipment be controlled for safe operation.

Section 56/57.9306 Brakeman signals.

The proposal makes editorial changes but retains the substantive requirements of existing standard 55/56/57.9–52 which addresses situations where trains are operated under the direction of a brakeman. When the brakeman's signals cannot be clearly recognized by the train operator, the train must be brought to a stop.

Section 56/57.9307 Clearance on adjacent tracks.

Existing standard 55/56/57.9–50 prohibits leaving railcars on side tracks unless "ample" clearance is provided for traffic on adjacent tracts. The proposal deletes the reference to "ample" in describing the clearance required.

Although commenters suggested that this standard could be deleted as duplicative of existing standard 55/56/57.9–83, MSHA believes these standards do not overlap. This proposal addresses the hazard of collision of railcars on adjacent tracts while standard .9–83 (proposed standard 56.9330) pertains to clearances between rail equipment and its surroundings.

Section 56/57.9308 Going over, under, or between railcars.

The proposal retains the substantive requirements of existing standard 55/56/57.9–51 which establishes safety practices to be followed when persons intend to go over, under, or between railcars.

Some commenters suggested that the standard should also require that the train be "secured" against movement, and that it also prohibit persons from coming closer than ten feet to the end of the nearest railcar or train when crossing railroad tracks.

At this point in the rulemaking process, MSHA does not believe that these additional requirements are necessary if existing practices relating to movement of persons around railcars are followed.

Section 56/57.9309 Coupling or uncoupling cars.

This proposal consolidates existing standards 55/56/57.9–65 and 57.9–97 which address safety procedures for the manual coupling or uncoupling of railroad cars. Standard 55/56/57.9–65 prohibit these procedures from being performed from the inside of curves unless the railroad and cars are designed to eliminate any hazard from manual coupling or uncoupling. Standard 55/56/57.9–97 requires that the procedure be carried out only after the train is brought to a complete stop, and

then coupled or uncoupled with the cars being moved very slowly.

The proposal clarifies that these procedures are to be carried out at the minimum tram speed, and that the standard applies to both surface and underground mining operations.

Commenters asked whether this standard prohibited the practice of having railcars coast down a grade while under the control of a brake operator. This practice is referred to as car dropping and the proposal does not prohibit it, since railcars, having no motive power of their own, do not have a minimum tram speed. Proposed standard 56/57.9102(e) (transporting persons), specifically applies to the practice of car dropping. Although it was suggested that the standard indicate that the minimum tram speed is that necessary to accomplish coupling or uncoupling, MSHA believes that this is covered in the standard since a slower speed would not couple the cars.

Section 56/57.9310 Switch throws.

The preproposal draft revised existing standard 55/56/57.9–28 (installation of switch throws) to provide a clearer statement of the hazard involved and the performance to be achieved. The proposal retains the language of the preproposal which requires switch throws to be installed to provide clearance to protect switchmen from contact with moving trains.

Although comment was received that the standard should exclude remotely operated switches, MSHA believes these switches would, by their nature, protect switchmen from contact with moving trains, and therefore meet the requirements of the standard. However, where a switch can be either operated by remote control or manually operated at the track, the standard requires that the switch throw be installed to provide clearance to protect switchmen from contact with moving trains.

Section 56/57.9311 Design, installation, and maintenance of trackage.

This proposal makes only editorial changes to existing standard 55/56/57.9–16 which addresses the design, installation, and maintenance of trackage elements.

Section 56/57.9312 Train warnings.

The preproposal draft clarified the requirements of existing standard 55/56/57.9–9 which sets forth instances when train operators are to sound a warning. The preproposal draft specified that the warning must be audible above the surrounding noise level, and that it must be given: immediately prior to moving trains; when trains approach persons, crossings, or other trains on adjacent tracks; and any place where vision is obscured. In response to commenters, the proposed rule explicitly states that the standard applies when the train operator's vision is obscured.

Commenters also suggested that the standard should allow a visible warning or signal as an alternative to the audible warning. The Agency believes a visible warning may be ineffective if a person is not facing the train operator, and therefore has not included it as an alternative means of compliance.

Section 56/57.9313 Railroad crossings.

Except for deleting the reference in existing standard 55/56/57.9–59 to "public" railroad crossings, the proposal retains the existing requirements that permanent railroad crossings be posted with warning signs or signals or be guarded when trains pass. It also requires that these crossings be planked or filled between the rails to protect against loss of steering control for vehicles crossing the rails.

Section 56/57.9330 Clearance for surface equipment.

The proposal makes editorial changes to existing standard 55/56/57.9–83 which requires, where possible, at least 30 inches of continuous clearance from the farthest projection of moving railroad equipment on at least one side of railroad tracks at surface installations. The 30–inch clearance requirement is based upon the human engineering studies conducted by Henry Dreyfuss Associates in 1974. The study, entitled *Humanscale 1/2/3,* incorporates 30 years of research complied by experts who have studied the width needed for safe clearance of persons. However, MSHA recognizes that there may be places where it is not possible to provide the 30-inch clearance. In those instances, the areas must be conspicuously marked.

Section 57.9360 Transporting tools and materials on locomotives underground.

Existing standard 57.9–96 prohibits carrying tools or materials on top of locomotives used underground except for properly located and secured rerailing devices. The standard also prohibits tools and materials in the locomotive cab if they would interfere with operation of the locomotive.

Commenters stated that existing standard 55/56/57.9–12 (proposed standard 56/57.9201), which does not permit extraneous materials in cabs of mobile equipment, duplicates the provision in 55/56/57.9–96 concerning tools and materials in locomotive cabs. MSHA agrees and has deleted this requirement in the proposed rule for standard 57.9360 since it is addressed in proposed standard 56/57.9201.

Section 57.9361 Mantrip trollely wire hazards underground.

This proposal makes no substantive changes to existing standard 57/9–115 which requires underground mantrips to be covered if there is a danger of persons contacting the trolley wire.

Section 57.9362 Train movement during shift changes underground.

Existing standard 57.9–116 restricts the movement of rock or material trains during shift changes to areas where those trains would not present a hazard to persons changing shifts. The preproposal draft made editorial changes to the existing standard. Commenters stated that the preproposal wording could be interpreted as prohibiting the presence of these trains in areas where persons change shifts. MSHA has clarified the proposal to indicate that the standard would only restrict the movement of trains carrying rock or material during underground shift changes.

Section 57.9363 Shelter holes.

Existing standards 57.9–110 and 57.9–111 provide requirements for protecting persons in restricted passages from moving equipment or vehicles. In response to commenters, the proposal would combine these standards and clarify requirements for shelter holes along underground haulageways.

Commenters noted that existing standard 57.9–110 only requires shelter holes where the haulageway does not provide at least 30 inches of clearance from moving equipment. They suggested that MSHA reduce the clearance provided by the shelter hole from 40 to 30 inches. MSHA believes that the depth of the shelter hole should not be reduced to 30 inches because circumstances may require several persons to seek safety within a single shelter hole. MSHA notes that the required clearance is measured from the farthest projection of moving equipment. Therefore, in situations where there is 10 inches of track clearance from the farthest projection of moving equipment, the shelter hole depth would need to provide an additional 30 inches of clearance. In contrast, while no shelter holes are required where clearance is at least 30 inches, this exemption only applies if the clearance is continuous and would thus allow several persons along the haulageway to get safely out of the way of moving equipment.

Commenters objected to the preproposal's complete prohibition against using shelter holes for storage, since existing standard 57.9–111 permits storage as long as 40 inches of clearance exists beyond any space taken up by the storage items. However, MSHA's field experience has revealed that these shelter holes tend to fill up with stored items which reduces the required minimum clearance. Therefore the proposal would not permit shelter holes to be used for storage.

Section 57.9364 Makeshift couplings.

Existing standard 57.9–98 prohibits the use of makeshift couplings. The preproposal draft clarified that couplings used on haulage units must be designed for those units, but permitted the use of makeshift couplings for moving disabled cars for repairs if no hazards to persons are created.

In response to commenters, MSHA has clarified that the standard applies to all underground rail equipment by deleting the reference to haulage units in the proposed rule.

Section 57.9365 Trip lights.

This proposal makes no changes to existing standard 57.9–112 which requires that trip lights be used on the rear of pulled rail haulage trips and the front of pulled rail haulage trips and the front of pushed trips. Trip lights alert persons to an approaching train. This standard applies only to underground rail haulage.

Dumping Locations and Facilities

Section 56/57.9400 Construction of ramps and dumping facilities.

Existing standard 55/56/57.9–63 establishes construction criteria for ramps and dumping facilities by requiring that they be of substantial construction and provide suitable width, clearance, and headroom for the equipment using them. The preproposal draft deleted the word "suitable." A few commenters suggested that MSHA should qualify the standard's provision by requiring "adequate" construction and "sufficient" width, clearance, and headroom.

In the proposal, MSHA has included performance criteria for the construction of ramps and dumping facilities by requiring that they be made with materials capable of supporting the load to which they will be subjected. In response to comments, MSHA has also clarified that width, clearance, and headroom must be able to "safely" accommodate the equipment using the facilities.

Section 56/57.9401 Anchoring stationary sizing devices.

This proposal makes no changes to existing standard 55/56/57.9–57 which requires grizzlies, grates, and other stationary sizing devices to be securely anchored.

Commenters suggested that MSHA should require periodic inspection of these devices to check for secure anchoring, cracks, or wear. Other commenters believed that secure anchoring is necessary only where there would be a hazard to persons should the devices move. The proposal requires that these devices remain securely anchored because there is always a hazard to persons if grizzlies, grates, and other sizing devices are not securely anchored.

Section 56/57.9402 Restraining devices.

Existing standard 55/56/57.9–54 requires berms, bumper blocks, safety hooks, or "similar means" to be provided at dumping locations to prevent overtravel and overturning. In the preproposal draft the Agency attempted to clarify that "similar means" meant "similar physical means" capable of preventing overtravel and overturning.

Commenters believed that the phrase "similar physical means" would also create uncertainty as to whether persons or warning lights could be used to comply with this standard. In the proposed rule MSHA has clarified that alternatives to berms, bumper blocks, or safety hooks must be devices that perform a restraining function similar to the devices listed. Therefore, persons or warning lights would not satisfy the requirements of this standard because they would not be capable of physically restraining equipment from overtravel or overturning.

Other commenters stated that no device can absolutely prevent overtravel or overturning. The devices referred to in the preproposal draft are intended to impose an obstacle and hinder the occurrence of overtravel and overturning. Therefore, the language of the preproposal has been retained.

Section 56/57.9403 Truck spotters

This proposal clarifies existing standard 55/56/57.9–58 which establishes safety procedures to be followed when truck spotters are used for guiding trucks during dumping.

The existing standard requires that truck spotters be in the clear while trucks are backing up and dumping and that spotters direct trucks with a light at night. The preproposal draft added that lights must be used where visibility is limited. The proposed rule includes all these provisions and adds that if the truck operator is unable to clearly recognize the spotter's signals, the truck must be stopped.

Several commenters suggested that the standard should permit the use of horns, radios, or other suitable means as alternatives to signal lights. However, MSHA believes that these devices may not always offer an equivalent means of signaling truck operators in periods of limited visibility. Although horns or radios may be as effective as lights at times, in some instances they may not be heard above the surrounding noise level and could create confusion with the sound produced by back-up alarms. Similarly, radio reception may be interfered with by surrounding noise and could be susceptible to interference or conflicting radio communications from other radio users, including nearby spotters.

Section 56/57.9404 Unstable ground.

This proposal clarifies the provisions of existing standard 55/56/57.9–55 which applies to unstable ground at dumping locations. In response to commenters, the proposal uses the defined term "mobile equipment" in place of "vehicles." It also specifies that if unstable conditions exist which present a situation where the ground may fail to support the weight of the equipment, then loads must be dumped a safe distance back from the edge of the unstable area of the bank.

One commenter suggested that MSHA should require that the equipment operator examine the dumping area prior to dumping each load, and that a competent person examine these areas each day for indications of ground instability. The commenter also suggested that MSHA set a specific minimum dumping distance from the edge of the bank where there is evidence of instability.

The proposed rule would require periodic examination of dumping locations for signs of instability. However, the Agency has not included a specific dumping distance where this hazard exists since a specific distance may not be appropriate in all circumstances.

Section 56/57.9405 Trimming of stockpile and muckpile faces.

This proposal makes editorial changes to existing standard 55/56/57.9–61 which requires the trimming of stockpile and muckpile faces to prevent hazards to persons. Trimming is important because in the process of creating and

reducing these piles, mobile equipment may create hazardous overhangs.

Commenters suggested that MSHA expressly include gravel banks since fatalities have occurred at them. It was also suggested that the standard should only apply to sliding or falling material during a load-out and that hazardous stockpile or muckpile faces should be guarded or barricaded and posted until the hazard is corrected.

The proposed rule includes gravel banks because they are "stockpiles" of gravel. MSHA has not limited the scope of the standard to the load-out phase since work on and around these piles occurs at times other than during load-out. MSHA does not believe that it is necessary to require guards or barricades for stockpiles, since routine trimming will prevent the development of dangerous overhangs.

Chutes

Section 56/57.9500 Chute design.

This proposal retains the substantive requirements of existing standard 55/56/57.9-64 which requires that chute-loading installations be designed so that a person is not placed in a hazardous location while pulling a chute.

Commenters suggested that the hazard covered by this proposal is addressed by existing standard 55/56/57.14-11 which requires guards or shields to be provided in areas where flying or falling material presents a hazard to persons. MSHA believes that the design requirements of proposed standard 56/57.9500 addresses the specific hazards of chute-loading installations. Existing standard 55/56/57.14-11 has been modified in the proposed rule for Section .14 (49 FR 8368, 3/6/84). The standard now reads: ".14107 *Flying or Falling Materials.* In areas where flying or falling materials generated from the operation of screens, crushers, or conveyors, present a hazard, guards, shields, or other equivalent protection shall be provided to protect persons."

Section 56/57.9501 Chute hazards.

The proposal consolidates existing standards 55/56/57.9-72, 57.9-105, and 57.9-106. Each of these standards address hazards asociated with chutes. Since these hazards are common to both surface and underground mining locations, the standard has been designated "general" to apply to all areas of any mine.

Existing standard 55/56/57.9-72 requires that persons attempting to free hangups be "experienced" and understand the hazards involved. The proposal would delete the reference to "experienced" and clarify that such persons must use the proper tools in attempting to free hangups, and that they position themselves away from the hazard of falling material during this procedure.

Some commenters suggested that the standard require that a "competent person" perform this work. Other commenters believed that the standard duplicates the requirements of 30 CFR Part 48, Training and Retraining of Miners. MSHA believes that the proposal provides more specific guidance as to the tools and procedures to be used than would use of the term "competent person." MSHA does not consider this standard to be duplicative of the Part 48 training regulations since specific training is not an element in proposed standard 56/57.9501.

Existing standard 57.9-105 addresses the hazards created by flying rocks when broken rock or material is dumped into an empty chute. It requires either use of chute guards, or leaving sufficient material in the chute bottom to prevent flying rocks. The proposal would permit isolation of all persons from flying rocks or materials as an alternative to guarding the chute. Under the proposal, neither guarding nor isolation of persons would be required when sufficient material is left in the bottom of the chute.

Comment suggested that not all empty chutes would create flying rocks or material during chute-pulling operations and that posting or barricading the chute area would provide protection that is equivalent to guarding.

MSHA's experience has been that flying rocks are a major hazard during chute-pulling operations. Posting or barricading would not provide the necessary protection from this hazard since they do not isolate persons or confine the hazard.

Existing standard 57.9-106 requires ample warning to be given to persons who may be endangered by chute-pulling operations. The proposed rule clarifies "ample warning" by stating that persons who could be endangered must be warned and given time to clear the hazardous area.

Some commenters suggested that the standard should allow protective devices such as hand-held chains, safety lines and other devices as alternatives to warnings. However, MSHA believes that such devices do not offer a basis to alert persons that a chute is about to be pulled, nor do they provide protection from flying debris during chute-pulling.

Section 56/57.9502 Working around draw holes.

Existing standards 57.9-107 prohibits persons from standing over draw holes if there is a danger that the chute could be pulled unless platforms or safety lines are used. The preproposal draft clarified that the hazard associated with this practice is the risk of the material being bridged or withdrawn while someone is standing over the draw hole. The scope of this standard was also expanded from underground mining only to all mining operations because the hazard is present in all mining operations.

In response to commenters, MSHA has made several clarifying editorial changes in the proposed rule. Some commenters believe that this standard duplicates existing standard 55/56/57.16-2. However, at this point in the rulemaking process, MSHA believes these standards address separate hazards. Existing standard 55/56/57.16-2 addresses safety devices and practices for persons working in facilities such as bins and silos during material storage and handling activities whereas proposed standard 56/57.9502 involves working above a draw hole.

Section 57.9560 Draw holes.

Existing standards 57.9-103 requires that collars of open draw holes be kept free of muck and material. The standard is intended to protect against the hazard of falling materials striking persons below the hole. The preproposal draft clarified that this standard would not prohibit use of the draw hole during mucking operations nor the transfer of materials through the draw hole.

Commenters expressed concern that the working of the preproposal would permit collars of draw holes to be cluttered with muck or materials between shifts since mucking operations or material transfer could be viewed as and ongoing process. MSHA agrees and has changed the proposal to provide that collars of open draw holes must be free of muck or materials except during their transfer through the draw hole. When work around the collar stops, including brief stops between shifts, muck or material around the collar should be cleaned away to prevent hazards to persons by the inadvertent passage of material through the open draw hole. This standard is only applicable to underground operations.

Slushers

Section 56/57.9600 Backlash guards and securing.

This proposal makes only editorial changes to existing standard 55/56/57.9–15 which requires all slushers to be equipped with rollers and drum covers and to be securely anchored prior to use. It also requires backlash guards on slushers rated greater than 10 horsepower. These requirements provide protection for slusher cable snapping or becoming unsecured and by lessening the potential for injury that can be created by cable backlash.

Commenters were concerned that the standard could be misapplied to air tuggers that are not designed with rollers or cable guides. However, the standard would not apply to air tuggers, which is equipment having only one cable and one drum. These devices are not used for slushing operations and their low horsepower (10 hp or less) eliminates hazards associated with slushers.

Section 57.9660 Protection of signalmen underground.

Existing Standard 57.9–102 provides that signalmen used during slushing operations shall be positioned in a "safe place." The proposed rule clarifies that signalmen must be located away from possible contact with the cables, sheaves, or slusher buckets during slushing operations.

Some commenters suggested that movement of slushing materials should be addressed in the standard. Other commenters considered the existing requirements to be ambiguous. MSHA believes that the proposal clarifies these requirements by specifically listing the particular devices which could contact signalmen in a hazardous manner during slushing operations. MSHA agrees that slushing material movement could present a hazard to signalmen during these operations. However, the Agency believes that requiring signalmen to be located away from possible contact with the slusher's cables, sheaves, or buckets will also provide protection from the movement of material.

Safety Devices and Procedures

Section 56/57.9700 Air valves for pneumatic equipment.

Existing standard 55/56/57.9–26 requires a quick-close type air valve on each piece of pneumatic-powered loading, hauling, or dumping equipment. The valve must be set in the closed position except when the equipment is being operated. The proposed rule clarifies that the air valve must be a master manual-type valve which is required for all penumatic-powered equipment.

Some commenters suggested that the standard should apply only to self-propelled equipment. Other commenters requested retention of the existing standard's application to pneumatic equipment used for loading, hauling, and dumping. Commenters believed that the requirement to keep the valve in the closed position is unnecessary if the equipment is not connected to the air supply.

MSHA believes that a manual master quick-close type air valve is a necessary safety device for all types of peneumatic-powered equipment since they have a common method of operation, and present the same need for an emergency shut-off capability. This valve gives an equipment operator the capability to immediately shut down the equipment in the case of sudden or inadvertent movement. Agency field experience has found that equipment operators have been pinched and pinned against the rib when they have iandvertently hit the controls while disembarking from or performing tasks around equipment. The valve allows the equipment operator to maintain control of the equipment in these situations. MSHA believes that keeping the valve closed at all times avoids the potential for injury which may occur when an open valve is inadvertently connected to an open air supply thereby creating sudden movement of the pneumatic equipment.

Section 56/57.9701 Warnigs prior to starting or moving equipment.

Existing standard 55/56/57.9–5 requires operators to be certain, by the use of a signal or other means, that all persons are clear before starting or moving equipment. With the exception of clarifying that the standard would apply to "equipment operators," the preproposal draft retained the existing standard's wording.

The proposed rule specifies that a warning sound, which is audible above the surrounding noise level, or other effective means, must be used to warn persons in the vicinity that equipment is about to be started or moved. This change responds to the concern of several commenters regarding the existing standard's reference to operators being "certain" that persons are clear.

Although some commenters suggested that the standard should apply only to mobile equipment, MSHA believes that a start-up warning is necessary for other types of equipment involved in loading, hauling, or dumping, such as generators or crushers.

Derivation Table

The following derivation table lists: (1) The number of the proposed standard; (2) the number of the standard in the preproposal draft; and (3) the number of the existing standard.

Proposed number	Preproposal number	Existing number
56/57.9100	58.9–2	55/56/57.9–2
		55/56/57.9–73
56/57.9101	58.9–18	55/56/57.9–71
56/57.9102	58.9–13	55/56/57.9–40
		55/56/57.9–41
		55/56/57.9–67
		55/56/57.9–85
56/57.9103	58.9–14	55/56/57.9–39
56/57.9104	58.9–44	55/56/57.9–45
56/57.9105	58.9–42	55/56/57.9–62
56/57.9106	58.9–43	55/56/57.9–34
56/57.9107	58.9–69	55/56/57.9–70
56/57.9108	58.9–8	55/56/57.9–31
	58.9–9	55/56/57.9–32
56/57.9109	58.9–7	55/56/57.9–36
		55/56/57.9–37
56/57.9110	58.9–38	55/56/57.14–30
56/57.9111	58.9–86	55/56/57.9–69
56/57.9112	58.9–30	55/56/57.9–68
	58.9–31	55/56/57.9–49
	58.9–40	55/56/57.9–60
	58.9–22	55/56/57.9–104
57.9160	58.9–15	57.9–99
56/57.9200	58.9–1	55/56/57.9–1
56/57.9201	58.9–52	55/56/57.9–12
	58.9–53	55/56/57.9–10
	58.9–54	55/56/57.9–11
56/57.9202	58.9–3	55/56/57.9–3
56/57.9203	58.9–46	55/56/57.9–22
56/57.9204	58.9–32	55/56/57.9–74
56/57.9205	58.9–26	55/56/57.9–17
		55/56/57.9–23
		55/56/57.9–24
		57.9–113
56/57.9206	58.9–25	55/56/57.9–27
56/57.9207	58.9–36	55/56/57.9–25
56/57.9208	58.9–37	55/56/57.9–30
56/57.9209	58.9–87	55/56/57.14–13
56/57.9230	58.9–88	55/56/57.9–88
56/57.9231	58.9–20	55/56/57.9–87
56/57.9300	58.9–4	55/56/57.9–48
56/57.9301	58.9–60	55/56/57.9–46
56/57.9302	58.9–5	55/56/57.9–47
56/57.9303	58.9–66	55/56/57.9–20
		55/56/57.9–56
56/57.9304	58.9–68	55/56/57.9–66
56/57.9305	58.9–58	55/56/57.9–35
56/57.9306	58.9–28	55/56/57.9–52
56/57.9307	58.9–61	55/56/57.9–50
56/57.9308	58.9–27	55/56/57.9–51
56/57.9309	58.9–65	55/56/57.9–65
		57.9–97
56/57.9310	58.9–59	55/56/57.9–28
56/57.9311	58.9–62	55/56/57.9–16
56/57.9312	58.9–21	55/56/57.9–9
56/57.9313	58.9–34	55/56/57.9–59
56/57.9330	58.9–71	55/56/57.9–83
56.9360	58.9–16	57.9–96
56.9361	58.9–12	57.9–115
56.9362	58.9–57	57.9–116
57.9363	58.9–72	57.9–110
	58.9–73	57.9–111
57.9364	58.9–67	57.9–98
57.9365	58.9–33	57.9–112
56/57.9400	58.9–47	55/56/57.9–63
56/57.9401	58.9–75	55/56/57.9–57
56/57.9402	58.9–48	55/56/57.9–54
56/57.9403	58.9–50	55/56/57.9–58
56/57.9404	58.9–49	55/56/57.9–55
56/57.9405	58.9–76	55/56/57.9–61
56/57.9500	58.9–80	55/56/57.9–64

Proposed number	Preproposal number	Existing number
56/57.9501	58.9–78	55/56/57.9–72
	58.9–82	57.9–105
	58.9–79	57.9–106
56/57.9502	58.9–39	57.9–107
56/57.9560	58.9–77	57.9–103
56/57.9600	58.9–84	55/56/57.9–15
56/57.9660	58.9–81	57.9–102
56/57.9700	58.9–85	55/56/57.9–26
56/57.9701	58.9–24	55/56/57.9–5
Delete		55/56/57.9–19
Delete	58.9–63	55/56/57.9–42
Delete		55/56/57.9–53
Delete		57.9–114

Redesignation Table

For the convenience of the reader, the following redesignation table has been added as a cross-reference guide.

Existing Number	Proposed Number	
55/56/57.9–1	56.9200	57.9200
55/56/57.9–2	56.9100	57.9100
55/56/57.9–3	56.9202	57.9202
55/56/57.9–5	56.9701	57.9701
55/56/57.9–9	56.9312	57.9312
55/56/57.9–10	56.9201	57.9201
55/56/57.9–11	56.9201	57.9201
55/56/57.9–12	56.9201	57.9201
55/56/57.9–15	56.9600	57.9600
55/56/57.9–16	56.9311	57.9311
55/56/57.9–17	56.9205	57.9205
55/56/57.9–19		Remove
55/56/57.9–20	56.9303	57.9303
55/56/57.9–22	56.9203	57.9203
55/56/57.9–23	56.9205	57.9205
55/56/57.9–24	56.9205	57.9205
55/56/57.9–25	56.9207	57.9207
55/56/57.9–26	56.9700	57.9700
55/56/57.9–27	56.9206	57.9206
55/56/57.9–28	56.9310	57.9310
55/56/57.9–30	56.9208	57.9208
55/56/57.9–31	56.9108	57.9108
55/56/57.9–32	56.9108	57.9108
55/56/57.9–34	56.9106	57.9106
55/56/57.9–35	56.9305	57.9305
55/56/57.9–36	56.9109	57.9109
55/56/57.9–37	56.9109	57.9109
55/56/57.9–39	56.9103	57.9103
55/56/57.9–40	56.9102	57.9102
55/56/57.9–41	56.9102	57.9102
55/56/57.9–42		Remove
55/56/57.9–45	56.9104	57.9104
55/56/57.9–46	56.9301	57.9301
55/56/57.9–47	56.9302	57.9302
55/56/57.9–48	56.9300	57.9300
55/56/57.9–49	56.9112	57.9112
55/56/57.9–50	56.9307	57.9307
55/56/57.9–51	56.9308	57.9308
55/56/57.9–52	56.9306	57.9306
55/56/57.9–53		Remove
55/56/57.9–54	56.9402	57.9402
55/56/57.9–55	56.9404	57.9404
55/56/57.9–56	56.9303	57.9303
55/56/57.9–57	56.9401	57.9401
55/56/57.9–58	56.9403	57.9403
55/56/57.9–59	56.9313	57.9313
55/56/57.9–60	56.9112	57.9112
55/56/57.9–61	56.9405	57.9405
55/56/57.9–62	56.9105	57.9105
55/56/57.9–63	56.9400	57.9400
55/56/57.9–64	56.9500	57.9500
55/56/57.9–65	56.9309	57.9309
55/56/57.9–66	56.9304	57.9304
55/56/57.9–67	56.9102	57.9102
55/56/57.9–68	56.9112	57.9112
55/56/57.9–69	56.9111	57.9111
55/56/57.9–70	56.9107	57.9107
55/56/57.9–71	56.9101	57.9101
55/56/57.9–72	56.9501	57.9501
55/56/57.9–73	56.9100	57.9100
55/56/57.9–74	56.9204	57.9204
55/56/57.9–83	56.9330	57.9330
55/56/57.9–85	56.9102	57.9102
55/56/57.9–87	56.9231	57.9231
55/56/57.9–88	56.9230	57.9230
57.9–97	56.9309	57.9309
57.9–98		57.9364
57.9–99		57.9160
57.9–102		57.9660
57.9–103		57.9560
57.9–104	56.9112	57.9112
57.9–105	56.9501	57.9501
57.9–106	56.9501	57.9501
57.9–107	56.9502	57.9502
57.9–110		57.9363
57.9–111		57.9363
57.9–112		57.9365
57.9–113	56.9205	57.9205
57.9–114		Remove
57.9–115		57.9361
57.9–116		57.9362
55/56/57.14–13	56.9209	57.9209
55/56/57.14–30	56.9110	57.9110

III. Drafting Information

The principal persons responsible for preparing this proposed rule are: Thomas E. Anderson, Metal and Nonmetal Mine Safety and Health, MSHA; Brenda K. Smoak, Office of Standards, Regulations, and Variances, MSHA; and William B. Moran, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with the proposed revisions to its standards for loading, hauling, and dumping at metal and nonmetal mines. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act. In this analysis, which is summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100,000,000 or more on the economy. Since the rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses. A primary benefit of this proposal is that it would clarify compliance responsibilities and adopt performance-oriented standards. Clarified regulatory requirements should benefit both large and small mining operations. Performance-oriented standards maximize flexibility since they establish the safety objection without limiting the means to achieve it.

In the summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the proposed requirements with the costs of the existing requirements. A Copy of the full analysis is available upon request.

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. The proposed rule does not represent a significant economic impact on a substantial number of small businesses under the Regulatory Flexibility Act.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the requirements for labor, equipment purchase, and maintenance. In calculating the costs of the proposed rule, the Agency estimated one-time costs and annual recurring costs.

The proposed rule would affect approximately 13,200 mines. MSHA estimates that approximately 11,600 of these mines are small businesses. In the proposal, MSHA has reorganized, updated, and clarified existing provisions. The Agency also has proposed to delete duplicative provisions, and to modify the recordkeeping retention period for existing standard 55/56/57.9–1 (proposed standard 56/57.9200). There are 224 existing standards. MSHA's proposed rule reduces the total of 113 standards.

MSHA estimates that the total one-time costs associated with the existing requirements equal $39.7 million and that those associated with the proposed requirements equal $40.4 million. Continued compliance with the existing requirements costs an estimated $10.6 million on an annual recurring basis. Continued compliance with the proposed rule would cost an estimated $10.8 million on an annual recurring basis. MSHA's proposed rule would represent an increase in one-time costs of $774,000 over the existing requirements and an increase in annual recurring costs of $233,000.

Of the total one-time costs for both the existing and proposed requirements, approximately $9.0 million is attributable to costs associated with existing standard 55/56/57.9–74 (proposed standard 56/57.9204) which requires that dust be suitable controlled at mines where hazards to persons may be created as a result of impaired visibility. MSHA estimates annual recurring costs to be $1.8 million for vehicle and water tank maintenance.

Existing standard 55/56/57.9–22 (proposed standard 56/57.9203) requires that berms or guards be provided on the outer bank of elevated roadways. Total one-time costs for both the existing and proposed rule for industry compliance

with this standard are estimated to be $5.7 million. MSHA estimates annual recurring costs to be $600,000 for maintenance of existing berms and construction of new berms.

Existing standard 55/56/57.9–87 (proposed standard 56/57.9231) requires that heavy duty mobile equipment be provided with audible warning devices. Total one-time costs under both the existing and proposed rule are estimated to be $5.0 million. MSHA estimates that one-third of the warning devices would need to be replaced annually at a cost of $1.7 million.

Existing standard 55/56/57.9–88 (proposed standard 56/57.9230) requires roll-over protective structures (ROPS) for certain types of heavy duty self-propelled equipment. MSHA assumes that 90 percent of industry has ROPS which were placed on the equipment by the manufacturer; therefore, total one-time costs for both the existing and proposed rule are estimated to be $4.9 million for installation of ROPS at the remaining 10 percent of the mines. MSHA estimates no annual recurring costs for compliance with either the existing or proposed rule.

Existing standard 57.9–107 (proposed standard 56/57.9502) prohibits persons from standing on broken rock over draw points, if there is danger that the chute will be pulled, and requires that suitable platforms or safety lines be provided when work must be done in such situations. MSHA estimates that 50 percent of underground and surface operations would have draw points and need to use platforms or safety lines. MSHA has calculated costs for installed hook-up lines and for safety lines equipped with hook-up apparatus. No costs were assigned to platforms. Total one-time costs under both the existing and proposed rule are estmated to be $3.8 million. MSHA estimates annual recurring costs to be $1.1 million, which includes the cost of new hook-up lines installed in new drifts.

Existing standard 55/56/57.9–1 (proposd standard 56/57.9200) requires that self-propelled equipment that is to be used during a shift be inspected by the equipment operator before being placed in operation. MSHA estimates annual recurring costs for inspection of equipment and recording of defects to be $2.0 million under both the existing and proposed rule.

Existing standard 55/56/57.9–3 (proposed standard 56/57.9202) requires powered mobile equipment to be provided with adequate brakes. The Agency estimates annual recurring costs to be $1.3 million for both the existing and proposed rule.

Existing standard 55/56/57.14–13 (proposed standard 56/57.9209) requires that certain mobile equipment be provided with substantial canopies where flying or falling materials present a hazard to persons. MSHA estimates total one-time costs for compliance with the existing standard to be $397,000. Annual recurring costs for compliance with the existing standard are estimated to be $20,000. The proposed standard would require that equipment without substantially constructed canopies be equipped with a falling object protective structure (FOPS) which meets the specifications of the Society of Automotive Engineers or the American National Standards Institute. MSHA estimated one-time costs for compliance with the proposed standard to be $1.3 million. Annual recurring costs for compliance with the proposed standard would be $66,000.

Existing standard 55/56/57.9–63 (proposed standard 56/57.9400) requires that ramps and dumping facilities be of substantial construction and have suitable width, clearance, and head room to accommodate equipment using the facilities. MSHA estimates that five percent of the industry would need to modify dumping facilities. Total one-time costs under both the existing and proposed rule are estimated to be $1.3 million. MSHA estimates annual recurring costs for maintenance to be $132,000 under both the existing and proposed rule.

MSHA has estimated that there are no costs associated with existing standard 55/56/57.9–11 which requires that cab windows be of safety glass or equivalent. Proposed standard 56/57.9201 would require that windows be replaced in cabs when the cabs are originally equipped with windows, if non-replacement would expose the equipment operator to hazardous environmental conditions which would affect the operator's ability to safely operate the equipment. MSHA estimates annual recurring costs for compliance with the proposed rule to be $238,000.

In addition, there are 22 standards with nominal costs attached. MSHA estimates total one-time costs for industry compliance with these existing standards to be $6.3 million and annual recurring costs to be $2.0 million. One-time costs for industry compliance with these proposed standards are estimated to be $5.9 million and annual recurring costs are estimated to be $2.0 million, as tabulated below.

COST ANALYSIS SUMMARY

Existing rule			Proposed rule		
Existing standard	One-time cost [1]	Annual recurring cost [1]	Proposed standard	One-time cost [1]	Annual recurring cost [1]
.9–15	$48	$5	.9600	$48	$5
.9–20	212	21	.9303	212	21
.9–35	861	86	.9305	861	86
.9–48	199	20	.9300	199	20
.9–49	265	26	.9112	265	26
.9–54	636	518	.9402	636	518
.9–58	7	1	.9403	7	1
.9–59	331	33	.9313	331	33
.9–60	404	40	.9112	404	40
.9–61	424	424	.9405	424	424
.9–62	418	418	.9105	418	418
.9–64	132	13	.9500	132	13
.9–66	40	4	.9304	40	4
.9–69	828	83	.9111	166	17
.9–70	397	40	.9107	397	40
.9–71	596	60	.9101	596	60
.9–104	72	7	.9112	72	7
.9–105	80	80	.9501	80	80
.9–111	27	3	.9363	27	3
.9–112	294	147	.9365	294	147
.9–115	75	0	.9361	75	0
.14–30	0	0	.9110	238	12
Total	6,346	2,029		5,922	1,975
Million	(6.3)	(2.0)		(5.9)	(2.0)

[1] All cost estimates are in thousands (×1,000).

Fifty-six of the proposed standards have no expenditures or annual recurring costs to industry, but relate to common safe operating procedures.

The primary benefit of the proposed rule is the protection that the standards would provide to persons who could be endangered by hazards associated with mobile, self-propelled, and rail equipment. The Agency believes that compliance with the proposed standards would reduce the number of fatal mining accidents involving large mobile and self-propelled equipment. MSHA's fatality statistics reveal that for the years 1980 throught 1983, 154 of the 300 fatalities that occurred in the metal and nonmetal mining industry were attributable to powered haulage and machinery accidents. Non-fatal injuries for the same time period reflect that of the 47,000 injuries reported to MSHA, 10,000 involved powered haulage and machinery accidents. MSHA believes that this proposed rule will have a measurable effect in reducing mining injuries and fatalities associated with powered haulage accidents. For example, the proposed requirement for seat belts and the provision for stand-off tire inflation devices will have a significant effect in reducing the likelihood of serious injury. MSHA further believes that the clarifications in the proposal should result in a better understanding of the hazards involved and the performance required to address those hazards, thereby having a positive impact on injuries and fatalities. A decline in the number of mining injuries would reduce medical, disability and

insurance payments, as well as costs associated with lost productivity.

V. Paperwork Reduction Act

The retention provision of the existing recordkeeping requirement in existing standard 55/56/57.9-1 would be modified in the proposed rule to require that records of equipment defects affecting the safety of self-propelled equipment be retained from the date they are recorded until the defects are corrected. The recordkeeping burden itself has not been modified. Comments on the proposed paperwork provision in standard 56/57.9200 should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, 726 Jackson Place, NW., Washington, D.C. 20746, Attention: Desk Officer for MSHA.

VI. List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Metal and nonmetal mining, Loading, hauling, and dumping, and Travelways.

Dated: December 10, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

It is proposed to redesignate certain standards in Parts 55 and 56, Chapter I, Title 30 of the Code of Federal Regulations into Subpart H of Part 56 and to revise the redesignated standards.

1. It is proposed to remove the existing definition of "trip light" in §§ 55.2 and 56.2.

2. In §§ 55.9 and 56.9, it is proposed to remove existing standards 55.9-19, 55.9-42, 55.9-53, 56.9-19, 56.9-42, and 56.9-53.

3. In §§ 55.11 and 56.11, it is proposed to add new standards 55.11-8 and 56.11-8; the identical text to read as follows:

——— 11.8. Where restricted clearance creates a hazard to persons, the restricted area shall be conspicuously marked.

4. In §§ 55.14 and 56.14, it is proposed to redesignate standards 55.14-13 and 56.14-13 as § 56.9209, and redesignate standards 55.14-30 and 56.14-30 as § 56.9110. The text of these standards appears in new Subpart H below.

5. It is proposed to redesignate §§ 55.1 and 56.1 as § 56.1 in Subpart A of Part 56 and to revise the section to read as set forth below.

6. It is proposed to add a new § 56.9000 and to redesignate §§ 55.9 and 56.9 as Subpart H of Part 56 and to revise the sections to read as set forth below:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

Sec.

Authority: Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 (30 U.S.C. 811).

Subpart A—General

§ 56.1 Purpose and scope.

This Part 56 sets forth mandatory safety and health standards for each surface metal or nonmental mine subject to the Federal Mine Safety and Health Act of 1977. The purpose of these standards is the protection of life, promotion of health and safety, and ther prevention of accidents.

Subpart H—Loading, Hauling, and Dumping

§ 56.9000 Definitions.

The following definitions apply in this subpart:

Berm. A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

Mantrip. A trip having the primary purpose of transporting persons to and from a work area.

Mobile Equipment. Equipment capable of moving or being moved readily.

Self-propelled Equipment. Equipment capable of moving itself.

Mobile Equipment

§ 56.9100 Safety defects.

(a) Defects in mobile equipment that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(b) When a defect makes continued operations of mobile equipment hazardous to persons, the equipment shall be taken out of service. A tag or other effective method of marking the

defective equipment shall be used to prohibit further operation until the defect is corrected.

§ 56.9101 Traffic control.

(a) To control hazards associated with the movement of mobile equipment, rules governing speed, right-of-way, and direction of movement shall be established and posted at each mine.

(b) Visible signs or signals that provide limiting or warning information shall be placed at appropriate locations on roadways, and shall be uniform in size and shape for each purpose.

§ 56.9120 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets;

(b) In beds of mobile equipment or railcars unless seated and provisions are made for secure travel;

(c) On top of loaded mobile equipment;

(d) Outside equipment operators' stations and outside beds of mobile equipment except when necessary for maintenance, testing, or training purposes, if provisions are made for secure travel. This requirement does not apply to trains;

(e) Between cars of trains, on the leading end of trains, the leading end of a single railcar, or in other locations on trains and locomotives that expose persons to hazards from train movement;

(f) In mobile equipment with unloading devices unless means are provided to prevent accidental starting of the unloading devices;

(g) To and from work areas in overcrowed mobile equipment; or

(h) In mobile equipment with tools, materials, and equipment unless the items are secured.

§ 56.9103 Getting on or off moving equipment.

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen who are required to get on and off slowly moving trains in the performance of their work duties.

§ 56.9104 Loading, hauling, and unloading of equipment or supplies.

Equipment or supplies shall be loaded, secured during transport, and unloaded to prevent falling or shifting.

§ 56.9105 Loading and hauling large rocks.

Rocks shall be broken before loading if their size could endanger persons or affect the stability of mobile equipment.

§ 56.9106 Minimizing spillage.

Mobile equipment used for hauling of mined material shall be loaded to minimize spillage where a hazard to persons would be created.

§ 56.9107 Safety procedures for towing.

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a safety chain or wire rope capable of meeting the loads to which it could be subjected shall also be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

§ 56.9108 Securing movable parts.

(a) When moving between work places, booms, forks, buckets, beds, and similar movable parts on mobile equipment shall be secured in a safe travel position.

(b) When mobile equipment is unattended or not in use, dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground.

§ 56.9109 Parking procedure for unattended equipment.

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, mobile equipment with wheels or tracks shall be either chocked or turned into a bank or rib.

§ 56.9110 Blocking equipment in a raised position.

(a) Persons shall not work on, under, or from mobile equipment or a component of that equipment when the equipment or the component is in a raised position until the raised portion has been blocked or mechanically secured to prevent accidental lowering, and the mobile equipment has been blocked to prevent rolling.

(b) Equipment which is specifically designed as an elevated mobile work platform need not have the raised component blocked or mechanically secured during use as long as the raised component is equipped with load-locking devices. However, during repair or maintenance on such equipment, blocking or mechanical securing of the raised component is required.

§ 56.9111 Tire repair.

(a) Tires shall be deflated before repairs are started. When repair is necessary on either tire of a dual wheel, both tires shall be deflated before either is removed from the equipment.

(b) A wheel cage, restraining device, or stand-off inflation device, shall be used to prevent wheel locking rims from creating a hazard to persons during tire inflation.

§ 56.9112 Warning devices.

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in vehicles.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection.

(c) Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area. The restricted area shall also be conspicuously marked.

Self-Propelled Equipment

§ 56.9200 Inspection prior to use; recording of defects.

(a) Self-propelled equipment that is to be used during a shift shall be inspected by the equipment operator before being placed in operation. Defects affecting safety shall be reported to and recorded by the mine operator. Defects affecting safety which are discovered during operation of the equipment shall also be reported to and recorded by the mine operator.

(b) The records shall be kept at the mine or nearest mine office from the date the defects are recorded until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

§ 56.9201 Operator's stations.

(a) If windows are provided on operators' stations of self-propelled equipment, the windows shall be made of safety glass or equivalent. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure operating visibility or may injure the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if removal would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operators' stations of self-propelled equipment shall be free of materials that may create a hazard to persons by impairing the safe operation of the equipment.

(d) The operators' station of self-propelled equipment shall not be

equipped or modified in a manner that obscures operating visibility.

§ 56.9202 Brakes.

(a) *Minimum requirements.* (1) Self-propelled equipment shall be equipped with a service brake system capable of stopping and holding the fully-loaded equipment on the maximum grade it travels. This standard does not apply to rail equipment.

(2) If equipped on self-propelled equipment, parking brakes shall be capable of holding the fully-loaded equipment on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted when there is cause to believe that the service brake system does not function as required;

(2) The performance of the service brakes shall be evaluated according to Tables 1 and 2;

(3) The tests shall be conducted on equipment capable of traveling at least 10 miles per hour, and test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request four additional test runs with two runs to be conducted in each direction. The equipment shall not exceed the maximum stopping distance of at least three of the additional tests for the performance of the service brakes to be considered acceptable.

(4) Service brake tests shall be conducted under the direction of an MSHA inspector as follows:

(i) The equipment tested shall be fully-loaded;

(ii) The approach shall be of sufficient length and uniformity of grade so that a stable rate of speed can be maintained until application of the brakes. The ground shall be generally dry, level, and packed in the braking portion of the test course.

(iii) Auxiliary retarders shall not be used in the tests unless the retarder is simultaneously actuated by application of the service brake control.

(iv) The tests shall be conducted with the transmission in the gear appropriate to the speed the equipment is traveling.

(v) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopping position.

(5) Where there is not an appropriate test site at the mining operation or the equipment is not capable of traveling at least 10 miles per hour, service brake test will not be conducted. In such cases, MSHA will rely upon other available evidence to determine whether the service brake system meets the performance requirements of this standard.

TABLE 1 [1]

Gross vehicle weight (pounds)	Machine Speed (mph)										
	10	11	12	13	14	15	16	17	18	19	20
	Service Brake Maximum Stopping Distance (Feet)										
0 to 36,000	34	38	43	48	53	59	64	70	76	83	89
36,000 to 70,000	41	46	52	58	62	70	76	83	90	97	104
70,000 to 140,000	48	54	61	67	74	81	88	95	103	111	119
140,000 to 250,000	56	62	69	77	84	92	100	108	116	125	133
250,000 to 400,000	59	66	74	81	89	97	105	114	123	132	141
Over 400,000	63	71	78	86	94	103	111	120	129	139	148

[1] Stopping distances are computed using a constant deceleration of 9.66 FPS [2] and system response times of .5, 1, 1.5, 2, 2.25, and 2.5 seconds for each increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2

[The speed of a vehicle can be determined by clocking it through a 100-foot measured course at constant velocity using Table 2. When the service brakes are applied at the end of the course, stopping distance can be measured and compared to Table 1.]

	Miles Per Hour										
	10	11	12	13	14	15	16	17	18	19	20
Seconds required to travel 100 feet	6.8	6.2	5.7	5.2	4.9	4.5	4.3	4.0	3.8	3.6	3.4

§ 56.9203 Berms.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists on one or both sides which is of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) The berms or guards shall be at least mid-axle height of the largest self-propelled equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) This standard is not applicable to rail beds.

§ 56.9204 Dust control.

Where hazards to persons may be created as a result of impaired visibility, dust shall be controlled at muck piles, material transfer points, crushers, and on haulage roads.

§ 56.9205 Operating speeds and control of equipment.

Operators of self-propelled equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

§ 56.9206 Notification to the equipment operator.

Persons shall notify the equipment operator before getting on or off the equipment when an operator of self-propelled equipment is present.

§ 56.9207 Movement of dippers, buckets, loading booms, or suspended loads.

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This requirement is not applicable when the equipment is specifically

designed to protect the equipment operator from falling objects.

§ 56.9208 Suspended loads.

Persons shall not work or pass under the buckets or booms of loaders in operation.

§ 56.9209 Falling objects protective structures (FOPS).

(a) Where falling objects may create a hazard to the equipment operator, fork-lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures (FOPS).

(b) FOPS for front-end loaders and bulldozers shall meet the specifications of the Society of Automotive Engineers (SAE) publication J 231 (January 1981), which is incorporated by reference.

(c) FOPS for fork-lift trucks shall meet the specifications of American National Standards Institute (ANSI) standard B 56.1, Section 420—1975, published by the American Society of Mechanical Engineers, which is incorporated by reference.

(d) FOPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The FOPS model number; and

(3) The make and model number of the equipment for which the FOPS is designed.

(e) Front-end loaders, bulldozers and fork-lift trucks equipped with substantially constructed FOPS prior to [insert the effective date of the rule] are considered to be in compliance with this standard.

(f) Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 56.9230 Roll-over protective structures (ROPS) and seat belts.

(a) *Scope.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *Exclusions.* This standard does not apply to—

(1) Self-propelled equipment manufactured prior to July 1, 1969; or

(2) Over-the-road type tractors that pull trailers or vans on highways; or

(3) Equipment that is only operated by remote control.

(c) *Manufacturing performance requirements for seat belts.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of SAE J 386, "Seat Belts for Construction Machines," which is incorporated by reference.

(d) *Manufacturing performance requirements for ROPS.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of the following SAE publications, as applicable, which are incorporated by reference:

(1) SAE J 1040c, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines," or

(2) SAE J 1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors."

(e) *ROPS labeling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(f) *ROPS installation.* ROPS are to be installed on the equipment in accordance with the recommendations of the ROPS manufacturer. If the installation includes bolts and nuts, the bolts and nuts used to attach the ROPS to the equipment frame and to connect structural parts of the ROPS shall be SAE Grade 5 or 8 (SAE J 429, JAN80, "Mechanical and Material Requirements for Externally Threaded Fasteners," and SAE J 995, JUN79, "Mechnical and Material Requirements for Steel Nuts").

(g) *Requirements for ROPS manufactured prior to the effective date of this rule.* Self-propelled equipment manufactured prior to the effective date of this rule, and equipped with ROPS and seat belts that meet the installations, performance, and labeling requirements of 30 CFR 55.9–88, 56.9–88, and 57.9–88 (1983) are considered in compliance with paragraphs (c), (d), (e), and (f) of this section.

(h) *Maintenance and use.* (1) ROPS shall be maintained in a condition that meets the manufacturing performace requirements of this section.

(2) If the ROPS is subjected to a roll-over or abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the requirements of this section before it is returned to service.

(3) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the requirements of this section.

(i) *Seat belts.* (1) Seat belts shall be worn by the equipment operator.

(2) Seat belts shall be kept free from grease, oil, and other deteriorating agents, maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 56.9231 Horns and back-up alarms on surface equipment.

(a) Self-propelled equipment shall be provided with a manually-operated horn or other audible warning device, and

(b) When the operator has an obstructed view to the rear, the equipment shall have either:

(1) An automatic reverse-actuated signal alarm that is audible above the surrounding noise level; or

(2) An observer to signal when it is safe to back up.

(c) An automatic reverse-actuated strobe light may be used at night as a substitute for an audible reverse alarm.

(d) This standard is not applicable to rail equipment.

Rail Equipment

§ 56.9300 Brakes.

Braking systems on railroad cars shall be maintained in functional condition.

§ 56.9301 Backpoling.

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

§ 56.9302 Securing parked railcars.

Parked railcars shall be blocked securely unless held effectively by brakes.

§ 56.9303 Protection against moving or runaway equipment.

Stopblocks, bumper blocks, derail devices, track skates, or other equivalent devices, shall be in stalled wherever necessary to protect persons from moving or runaway railroad equipment.

§ 56.9304 Movement of equipment on adjacent tracks.

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall be used which is capable of meeting the loads to which it could be subjected.

§ 56.9305 Movement of independently operating equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

§ 56.9306 Brakeman signals.

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

§ 56.9307 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

§ 56.9308 Going over, under, or between railcars.

Persons shall not go over, under, or between railcars unless:

(a) The train is stopped; and

(b) The train operator, if present, is notified and the notice acknowledged.

§ 56.9309 Coupling or uncoupling cars.

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, then moved at the minimum tram speed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

§ 56.9310 Switch throws.

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

§ 56.9311 Design, installation, and maintenance of trackage.

Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the mine operator shall be designed, installed, and maintained to provide safe operation consistent with speed and type of haulage.

§ 56.9312 Train warnings.

A warning that is audible above the surrounding nose level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossings, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

§ 56.9313 Railroad crossings.

Permanent railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall also be planked or filled between the rails.

§ 56.9330 Clearance for surface equipment.

At least 30 inches of continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible. Places where it is not possible to provide a 30-inch clearance shall be marked conspicuously.

Dumping Locations and Facilities

§ 56.9400 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and dumping facilities shall provide width, clearance, and headroom to safely accommodate the equipment using the facilities.

§ 56.9401 Anchoring stationary sizing devices.

Grizzlies, grates, and other stationary sizing devices shall be securely anchored.

§ 56.9402 Restraining devices.

Berms, bumper blocks, safety hooks, or similar restraining devices shall be provided at dumping locations to prevent overtravel and overturning.

§ 56.9403 Truck spotters.

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall also use signal lights to direct trucks where visibility is limited.

(c) When the truck operator cannot clearly recognize the spotter's signals, the truck shall be brought to a stop.

§ 56.9404 Unstable ground.

Where there is evidence that the ground at a dumping location may fail to support the weight of mobile equipment, loads shall be dumped a safe distance from the edge of the unstable area of the bank.

§ 56.9405 Trimming of stockpile and muckpile faces.

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

Chutes

§ 56.9500 Chute design.

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

§ 56.9501 Chute hazards.

(a) Prior to chute-pulling, persons who may be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall use the proper tools to bar down material and shall locate themselves away from the hazard of falling material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be guarded or all persons shall be isolated from the hazard of flying rocks or material.

§ 56.9502 Working around drawholes.

Unless platforms or safety lines are used, persons shall not position themselves over draw holes if there is danger that broken rock or material may be withdrawn or bridged.

Slushers

§ 56.9600 Backlash guards and securing.

(a) Slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

Safety Devices and Procedures

§ 56.9700 Air valves for pneumatic equipment.

A manual master quick-close type air valve shall be installed on all pneumatic-powered equipment. The valve shall be closed except when the equipment is being operated.

§ 56.9701 Warnings prior to starting or moving equipment.

Before starting or moving equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons in the vicinity.

It is proposed to redesignate certain standards in Part 57, Chapter I, Title 30

of the Code of Federal Regulations into Subpart H of Part 57 and to revise the redesignated standards.

1. It is proposed to remove the existing definition of "trip light" in § 57.2.

2. In § 57.9, it is proposed to remove existing standards 57.9–19, 57.9–42, 57.9–53, and 57.9–114.

3. In § 57.11, it is proposed to add a new standard 57.11–8 to read as follows:

57.11–8. Where restricted clearance creates a hazard to persons, the restricted area shall be conspicuously marked.

4. In § 57.14, it is proposed to redesignate standard 57.14–13 as § 57.9209, and redesignate standard 57.14–30 as § 57.9110. The text of these standards appears in new Subpart H below.

5. It is proposed to redesignate § 57.1 as Subpart A of Part 57 and to revise the section to read as set forth below.

6. It is proposed to add a new § 57.9000 and to redesignate § 57.9 as Subpart H of new Part 57 and to revise the sections to read as set forth below:

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

Sec.

Subpart A—General

* * * * *

Subpart H—Loading, Hauling, and Dumping

Mobile Equipment

Self-Propelled Equipment

Rail Equipment

Dumping Locations and Facilities

Chutes

Slushers

Safety Devices and Procedures

Authority: Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811).

Subpart A—General

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Mobile Equipment. Equipment capable of moving or being moved readily.

Self-propelled Equipment. Equipment capable of moving itself.

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(b) When a defect makes continued operation of mobile equipment hazardous to persons, the equipment shall be taken out of service. A tag or other effective method of marking the defective equipment shall be used to prohibit further operation until the defect is corrected.

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(b) Visible signs or signals that provide limiting or warning information shall be placed at appropriate locations on roadways, and shall be uniform in size and shape for each purpose.

§ 57.9102 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets;

(b) In beds of mobile equipment or railcars unless seated and provisions are made for secure travel;

(c) On top of loaded mobile equipment;

(d) Outside equipment operator's stations and outside beds of mobile equipment except when necessary for maintenance, testing, or training purposes, if provisions are made for secure travel. This requirement does not apply to trains;

(e) Between cars of trains, on the leading end of trains, the leading end of a single railcar, or in other locations on trains and locomotives that expose persons to hazards from train movement;

(f) In mobile equipment with unloading devices unless means are provided to prevent accidental starting of the unloading devices;

(g) To and from work areas in overcrowded mobile equipment; or

(h) In mobile equipment with tools, materials, and equipment unless the items are secured.

§ 57.9103 Getting on or off moving equipment.

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen who are required to get on and off slowly moving trains in the performance of their work duties.

§ 57.9104 Loading, hauling, and unloading of equipment or supplies.

Equipment or supplies shall be loaded, secured during transport, and unloaded to prevent falling or shifting.

§ 57.9105 Loading and hauling large rocks.

Rocks shall be broken before loading if their size could endanger persons or affect the stability of mobile equipment.

§ 57.9106 Minimizing spillage.

Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons would be created.

§ 57.9107 Safety procedures for towing.

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a safety chain or wire rope capable of meeting the loads to which it could be subjected shall also be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

§ 57.9108 Securing movable parts.

(a) When moving between work places, booms, forks, buckets, beds, and similar movable parts on mobile equipment shall be secured in a safe travel position.

(b) When mobile equipment is unattended or not in use, dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground.

§ 57.9109 Parking procedure for unattended equipment.

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, mobile equipment with wheels or tracks shall be either chocked or turned into a bank or rib.

§ 57.9110 Blocking equipment in a raised position.

(a) Persons shall not work on, under, or from mobile equipment or a component of that equipment when the equipment or the component is in a raised position until the raised portion has been blocked or mechanically secured to prevent accidental lowering, and the mobile equipment has been blocked to prevent rolling.

(b) Equipment which is specifically designed as an elevated mobile work platform need not have the raised component blocked or mechanically secured during use as long as the raised component is equipped with load-locking devices. However, during repair or maintenance on such equipment, blocking or mechanical securing of the raised component is required.

§ 57.9111 Tire repair.

(a) Tires shall be deflated before repairs are started. When repair is necessary on either tire of a dual wheel, both tires shall be deflated before either is removed from the equipment.

(b) A wheel cage, restraining device, or stand-off inflation device, shall be used to prevent wheel locking rims from creating a hazard to persons during tire inflation.

§ 57.9112 Warning devices.

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in vehicles.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection.

(c) Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area. The restricted area shall also be conspicuously marked.

§ 57.9160 Supplies, materials, and tools on mantrips underground.

Supplies, materials, and tools other than small hand tools shall not be transported with persons in mantrips. Mantrips shall be operated independently of ore or supply trips.

Self-Propelled Equipment

§ 57.9200 Inspection prior to use; recording of defects.

(a) Self-propelled equipment that is to be used during a shift shall be inspected by the equipment operator before being placed in operation. Defects affecting safety shall be reported to and recorded by the mine operator. Defects affecting safety which are discovered during operation of the equipment shall also be reported to and recorded by the mine operator.

(b) The records shall be kept at the mine or nearest mine office from the date the defects are recorded until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

§ 57.9201 Operators' stations.

(a) If windows are provided on operators' stations of self-propelled equipment, the windows shall be made of safety glass or equivalent. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure operating visibility or may injure the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if removal would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operators' stations of self-propelled equipment shall be free of materials that may create a hazard to persons by impairing the safe operation of the equipment.

(d) The operators' stations of self-propelled equipment shall not be equipped or modified in a manner that obscures operating visibility.

§ 57.9202 Brakes

(a) *Minimum requirements.* (1) Self-propelled equipment shall be equipped with a service brake system capable of stopping and holding the fully-loaded equipment on the maximum grade it travels. This standard does not apply to rail equipment.

(2) If equipped on self-propelled equipment, parking brakes shall be capable of holding the fully-loaded

equipment on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted when there is cause to believe that the service brake system does not function as required.

(2) The performance of the service brakes shall be evaluated according to Tables 1 and 2;

(3) The tests shall be conducted on equipment capable of traveling at least 10 miles per hour, and test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request four additional test runs with two runs to be conducted in each direction. The equipment shall not exceed the maximum stopping distance on at least three of the additional tests for the performance of the service brakes to be considered acceptable.

(4) Service brake tests shall be conducted under the direction of an MSHA inspector as follows:

(i) The equipment tested shall be fully-loaded;

(ii) The approach shall be of sufficient length and uniformity of grade so that a stable rate of speed can be maintained until application of the brakes. The ground shall be generally dry, level and packed in the braking portion of the test course.

(iii) Auxiliary retarders shall not be used in the tests unless the retarder is simultaneously actuated by application of the service brake control.

(iv) The tests shall be conducted with the transmission in the gear appropriate to the speed the equipment is traveling.

(v) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopping position.

(5) Where there is not an appropriate test site at the mining operation or the equipment is not capable of traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, MSHA will rely upon other available evidence to determine whether the service brake system meets the performance requirements of this standard.

TABLE 1 [1]

Gross vehicle weight (pounds)	Machine Speed (mph)										
	10	11	12	13	14	15	16	17	18	19	20
	Service Brake Maximum Stopping Distance + (Feet)										
0 to 36,000	34	38	43	48	53	59	64	70	76	83	89
63,000 to 70,000	41	46	52	58	62	70	76	83	90	97	104
70,000 to 140,000	48	54	61	67	74	81	88	95	103	111	119
140,000 to 250,000	56	62	69	77	84	92	100	108	116	125	133
250,000 to 400,000	59	66	74	81	89	97	105	114	123	132	141
Over 400,000	63	71	78	86	94	103	111	120	129	139	148

[1] Stopping distances are computed using a constant deceleration of 9.66 FPS [2] and system response times of .5, 1, 1.5, 2, 2.25, and 2.5 seconds for each increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2

[The speed of a vehicle can be determined by clocking it through a 100-foot measured course at constant velocity using Table 2. When the service brakes are applied at the end of the course, stopping distance can be measured and compared to Table 1]

	Miles per hour										
	10	11	12	13	14	15	16	17	18	19	20
Seconds required to travel 100 feet	6.8	6.2	5.7	5.2	4.9	4.5	4.3	4.0	3.8	3.6	3.4

§ 57.9203 Berms.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists on one or both sides which is of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) The berms or guards shall be at least mid-axle height of the largest self-propelled equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) This standard is not applicable to railbeds.

§ 57.9204 Dust control.

Where hazards to persons may be created as a result of impaired visibility, dust shall be controlled at muck piles, material transfer points, and crushers, and on haulage roads.

§ 57.9205 Operating speeds and control of equipment.

Operators of self-propelled equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

§ 57.9206 Notification to the equipment operator.

Persons shall notify the equipment operator before getting on or off the equipment when an operator of self-propelled equipment is present.

§ 57.9207 Movement of dippers, buckets, loading booms, or suspended loads.

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This requirement is not applicable when the equipment is specifically designed to protect the equipment operator from falling objects.

§ 57.9208 Suspended loads.

Persons shall not work or pass under the buckets or booms of loaders in operation.

§ 57.9209 Falling object protective structures (FOPS).

(a) Where falling objects may create a hazard to the equipment operator, fork-

lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures (FOPS).

(b) FOPS for front-end loaders and bulldozers shall meet the specifications of the Society of Automotive Engineers (SAE) publication J 231 (January 1981), which is incorporated by reference.

(c) FOPS for fork-lift trucks shall meet the specifications of American National Standards Institute (ANSI) standard B 56.1, Section 420—1975, published by the American Society of Mechanical Engineers, which is in corporated by reference.

(d) FOPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The FOPS model number; and

(3) The make and model number of the equipment for which the FOPS is designed.

(e) Front-end loaders, bulldozers and fork-lift trucks equipped with substantially constructed FOPS prior to [insert the effective date of the rule] are considered to be in compliance with this standard.

(f) Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmental Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 57.9230 Roll-over protective structures (ROPS) and seat belts.

(a) *Scope.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *Exclusions.* This standard does not apply to—

(1) Self-propelled equipment manufactured prior to July 1, 1959; or

(2) Over-the-road type tractors that pull trailers or vans on highways; or

(3) Equipment that is only operated by remote control.

(c) *Manufacturing performance requirements for seat belts.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of SAE J 386, "Seat Belts for Construction Machines," which is incorporated by reference.

(d) *Manufacturing performance requirements for ROPS.* The self-propelled equipment listed in paragraph (a) of this section shall meet the requirements of the following SAE publications, as applicable, which are incorporated by reference:

(1) SAE J 1040c, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines," or

(2) SAE J 1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors."

(e) *ROPS labeling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(f) *ROPS installation.* ROPS are to be installed on the equipment in accordance with the recommendations of the ROPS manufacturer. If the installation includes bolts and nuts, the bolts and nuts used to attach the ROPS to the equipment frame and to connect structural parts of the ROPS shall be SAE Grade 5 or 8 (SAE J 429, JAN80, "Mechanical and Material Requirements for Externally Threaded Fasteners," and SAE J 995, JUN79, "Mechanical and Material Requirements for Steel Nuts").

(g) *Requirements for ROPS manufactured prior to the effective date of this rule.* Self-propelled equipment manufactured prior to the effective date of this rule, and equipped with ROPS and seat belts that meet the installation, performance, and labeling requirements of 30 CFR 55.9–88, 56.9–88, and 57.9–88 (1983) are considered in compliance with paragraphs (c), (d), (e), and (f) of this section.

(h) *Maintenance and use.* (1) ROPS shall be maintained in a condition that meets the manufacturing performance requirements of this section.

(2) If the ROPS is subjected to a roll-over or abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the requirements of this section before it is returned to service.

(3) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the requirements of this section.

(i) *Seat belts.* (1) Seat belts shall be worn by the equipment operator.

(2) Seat belts shall be kept free from grease, oil, and other deteriorating agents, maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section are available from the Administrator for Metal and Nonmetal Mine Safety and Health, 4015 Wilson Blvd., Arlington, Virginia 22203, and may also be examined at any Metal and Nonmetal District or Subdistrict Office.

§ 57.9231 Horns and back-up alarms on surface equipment.

(a) Self-propelled equipment shall be provided with a manually-operated horn or other audible warning device, and

(b) When the operator has an obstructed view to the rear, the equipment shall have either:

(1) An automatic reverse-actuated signal alarm that is audible above the surrounding noise level; or

(2) An observer to signal when it is safe to back up.

(c) An automatic reverse-actuated stroble light may be used at night as a substitute for an audible reverse alarm.

(d) This standard is not applicable to rail equipment.

Rail Equipment

§ 57.9300 Brakes.

Braking systems on railroad cars shall be maintained in functional condition.

§ 57.9301 Backpoling.

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

§ 57.9302 Securing parked railcars.

Parked railcars shall be blocked securely unless held effectively by brakes.

§ 57.9303 Protection against moving or runaway equipment.

Stockblocks, bumper blocks, derail devices, track skates, or other equivalent devices, shall be installed wherever necessary to protect persons from moving or runaway railroad equipment.

§ 57.9304 Movement of equipment on adjacent tracks.

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall

be used which is capable of meeting the loads to which it could be subjected.

§ 57.9305 Movement of independently operating equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

§ 57.9306 Brakeman signals.

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

§ 57.9307 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

§ 57.9308 Going over, under, or between railcars.

Persons shall not go over, under, or between railcars unless:

(a) The train is stopped; and

(b) The train operator, if present, is notified and the notice acknowledged.

§ 57.9309 Coupling or uncoupling cars.

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, then moved at the minimum tram speed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

§ 57.9310 Switch throws.

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

§ 57.9311 Design, installation, and maintenance of trackage.

Roadbeds, rails, joints, switches, frogs, and other trackage elements on railroads subject to the control of the mine operator shall be designed, installed, and maintained to provide safe operation consistent with speed and type of haulage.

§ 57.9312 Train warnings.

A warning that is audible above the surrounding noise level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossings, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

§ 57.9313 Railroad crossings.

Permanent railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall be also be planked or filled between the rails.

§ 57.9330 Clearance for surface equipment.

At least 30 inches of continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible. Places where it is not possible to provide a 30-inch clearance shall be marked conspicuously.

§ 57.9360 Transporting tools and materials on locomotives underground.

Tools or materials except for properly located and secured rerailing devices shall not be carried on top of locomotives.

§ 57.9361 Mantrip trolley wire hazards underground.

Mantrips shall be covered if there is danger of persons contacting the trolley wire.

§ 57.9362 Train movement during shift changes underground.

During shift changes, the movement of trains carrying rock or material shall be limited to areas where the trains do not present a hazard to persons changing shifts.

§ 57.9363 Shelter holes.

(a) Shelter holes shall be—

(1) Provided at intervals adequate to assure the safety of persons along underground haulageways where continuous clearance of at least 30 inches from the farthest projection of moving equipment on at least one side of the haulageway cannot be maintained; and

(2) At least four feet wide, marked conspicuously, and provide a minimum 40-inch clearance from the farthest projection of moving equipment.

(b) Shelter holes shall not be used for storage.

§ 57.9364 Makeshift couplings.

Couplings used on underground rail equipment must be designed for that equipment. However, if hazards to persons are not created, makeshift couplings may be used to move disabled rail equipment for repairs.

§ 57.9365 Trip lights.

On underground rail haulage, trip lights shall be used on the rear of pulled trips and on the front of pushed trips.

Dumping Locations and Facilities

§ 57.9400 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and dumping facilities shall provide width, clearance, and headroom to safely accommodate the equipment using the facilities.

§ 57.9401 Anchoring Stationary sizing devices.

Grizzlies, grates, and other stationary sizing devices shall be securely anchored.

§ 57.9402 Restraining devices.

Berms, bumper blocks, safety hooks, or similar restraining devices shall be provided at dumping locations to prevent overtravel and overturning.

§ 57.9403 Truck spotters.

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall also use signal lights to direct trucks where visibility is limited.

(c) When the truck operator cannot clearly recognize the spotter's signals, the truck shall be brought to a stop.

§ 57.9404 Unstable ground.

Where there is evidence that the ground at a dumping location may fail to support the weight of mobile equipment, loads shall be dumped a safe distance from the edge of the unstable area of the bank.

§ 57.9405 Trimming of stockpile and muckpile faces.

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

Chutes

§ 57.9500 Chute design.

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

§ 57.9501 Chute hazards.

(a) Prior to chute-pulling, persons who may be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall use the proper tools to bar down material and shall locate themselves away from the hazard of falling material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be guarded or all persons shall be isolated from the hazard of flying rocks or material.

§ 57.9502 Working around draw holes.

Unless platforms or safety lines are used, person shall not position themselves over draw holes if there is danger that broken rock or material may be withdrawn or bridged.

§ 57.9560 Draw holes.

To prevent hazards to persons underground, collars of open draw holes shall be free of muck or materials except during transfer of the muck or material through the draw hole.

Slushers

§ 57.9600 Backlash guards and securing.

(a) Slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

§ 57.9660 Protected of signalmen underground.

Signalmen used during slushing operations shall be located away from possible contact with cables, sheaves, and slusher buckets.

Safety Devices and Procedures

§ 57.9700 Air valves for pneumatic equipment.

A manual master quick-close type air valve shall be installed on all pneumatic-powered equipment. The valve shall be closed except when the equipment is being operated.

§ 57.9701 Warnings prior to starting or moving equipment.

Before starting or moving equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons in the vicinity.

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Tuesday
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Part III

Department of Health and Human Services

Office of Human Development Services

Head Start Program; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Head Start Program; Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice and request for comments on the proposed announcement of financial assistance to establish or expand Head Start projects.

SUMMARY: The Administration for Children, Youth and Families (ACYF) requests comments from the public on the proposed program announcement to establish new Head Start projects or to expand enrollment in current Head Start projects. Applications will be solicited when the announcement is published in final form.

DATE: Comments on this announcement must be received by January 17, 1985.

SUPPLEMENTARY INFORMATION:

.Attached is a proposed announcement of our intent to expand enrollment in the Head Start program.

We are requesting comments on this proposed announcement as required by Section 644(d) of the Head Start Act [42 U.S.C. 9839(d)], which states ". . . all rules, regulations, guidelines, instructions, and application forms shall be published in the **Federal Register** and shall be sent to each grantee with the notification that each grantee has the right to submit comments pertaining thereto prior to the final adoption thereof." The following proposed announcement is published here and will be mailed to grantees to comply with that requirement of the statute.

ADDRESS: In order to be considered, comments must be addressed to: Clennie H. Murphy, Jr., Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

(Catalog of Federal Domestic Assistance Program Number 13.600 Project Head Start)

Dated: November 29, 1984.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: December 12, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Proposed Head Start Program Expansion Announcement

A. Scope of This Program Announcement

This announcement solicits applications from local public and private non-profit organizations that wish to compete for $37,800,000 in grants that are available in Fiscal Year 1985 to establish new Head Start programs or to increase funding and enrollment for agencies that already operate Head Start programs. Funds totalling $33,800,000 will be distributed on the basis of a State allotment formula to applicants proposing the development or expansion of conventional Head Start program options including standard, variation in center attendance, double session and home-based programs. The remaining $4,000,000 will not be distributed on a formula basis, but will be awarded through a national competition to applicants which propose innovative methods for the delivery of Head Start services.

The goals of the expansion effort are:

- To provide Head Start services to as many additional children as possible. At least 18,000 additional children are to be served nationally.
- To serve children and families in areas of high need in programs that provide high quality, comprehensive child development services.
- To demonstrate innovative approaches to addressing the needs of Head Start children and families.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves 442,100 children through a network of more than 1,280 grantees.

While Head Start is targeted primarily on children whose families have incomes below the poverty line or are eligible for public assistance, ACYF policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. Head Start also requires that a minimum of 10 percent of enrollment opportunities be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-handicapped peers, and to receive needed special education and related services.

C. Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C 9831 et seq.

The relevant regulations are:

- 45 CFR Part 1301, Head Start Grant Administration.
- 45 CFR Part 1302, Policies and Procedures for Selection.
- 45 CFR Part 1303, Procedures for Appeal for Head Start Agencies.
- 45 CFR Part 1304, Performance Standards.
- 45 CFR Part 1305, Eligibility.
- 45 CFR Part 74, Grants Administration.

D. Eligible Applicants

Any local public or private non-profit agency or organization within a community, including an existing Head Start grantee, is eligible to apply for funding to establish a new Head Start project or, in the case of existing Head Start grantees, to expand a current project. Applicants may propose serving children in communities where no Head Start project exists or they may propose serving additional children in communities where some children are already being served by Head Start but a need exists for additional children to be served. Except for compelling reasons, to be explained by the applicant, Head Start does not expect to fund new grantees for an enrollment level of less than 60 children.

Eligibility for funding to provide Head Start services to children living on Federally recognized Indian reservations or in Alaskan Native villages is restricted to applicants that are governing bodies of an Indian tribe or Alaskan Native Village, or which are the designated representatives of these bodies.

To be eligible for funding, all applicants must meet the requirements of 45 CFR 1302.1–1302.2 which require evidence of an applicant's legal status and financial viability. Copies of relevant regulations will be included in

the application kit discussed in Section N of this announcement.

E. Grantee Sharee of the Project

Section 640(b) of the Head Start Act requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal Government. The non-Federal share may be in cash or in-kind, fairly evaluated, including facilities, equipment, or volunteer services.

F. Criteria for Competitive Review of Conventional Projects

Applicants proposing to be funded from the $33.8 million available for projects that provide comprehensive Head Start services through the standard model, variation in center attendance model, double session model or home-based model (as described in Appendix A to the Head Start Performance Standards—45 CFR 1304) will be reviewed and evaluated competitively against the following criteria:

The Need for Services (30 points). This criterion will measure the need for Head Start services in the community an applicant proposes to serve, compared to the need that exists in other communities in a State. It will help direct new Head Start resources to areas in a State that have a combination of the greatest numbers and the highest percentages of unserved children. This criterion will also measure the extent to which the applicant proposes to serve families and children who have the most serious need for Head Start services, such as the poorest families, or adolescent or single parents and their children.

To enable as many different children as possible to participate in Head Start, applicants should propose serving children for one year, unless multiple years of service are necessary to meet the special needs, of individual children. In such instances, applicants should justify the need for such services. Applicants should give priority to serving children for whom public school or other comprehensive developmental services are not available. For example, it is not expected that applicants would propose serving five-year-old children in communities were kindergarten is available for these children.

(a) Twenty points under this criterion will be based on a comparision of the need for Head Start services in different counties in a State. Using nationally consistent 1980 Census data, points will be assigned to each county based on its population of unserved children eligible for Head Start. The points assigned will consider both the absolute number of unserved childern in a county and the percentage of eligible children who are unserved in a county. Applicants will receive these points automatically, based on the county in which they propose to operate. As many as five additional points will be assigned to all counties in which there is currently no Head Start program. (Points for projects in more than one county will be prorated based on the number of children to be served in each county.)

This portion of the criterion will not be applied to Indian or migrant projects, or projects in the Virgin Islands and Outer Pacific Islands (i.e. Guam, American Samoa, the Trust Territories of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands). This will result in a maximum score for these projects, which compete only against similar projects (i.e. Indian projects against Indian projects), of 80 points.

(b) Ten points under this criterion will be determined by the extent to which the applicant proposes to target Head Start services on the towns, districts, or neighborhoods in a county (or other appropriate jurisdiction, such as a Federal Indian reservation) that have the greatest need for services, compared to other areas in a county. This also includes the extent to which the applicant proposes to serve families and childern who have the most serious need for Head Start services compared to other eligible families and children from the target area.

(2) Program Design (15 points). This criterion will assess how well the services to be provided by the proposed program meet the needs of the particular children, families and community the applicant proposes to serve. This includes the extent to which the proposed program is available and responsive to the needs of the community and group to be served. This would include elements such as establishing appropriate service hours and staffing patterns, selecting convenient locations, and providing appropriate transportation.

In proposing a program design, applicants must adhere to Head Start regulations concerning program options for the standard Head Start model, variations in center attendance, double sessions, and home-based models. (Appendix A to the Head Start Performance Standards—45 CFR Part 1304, options 1–4.) Applicants who propose to operate designs other than the standard, double session, variation in center attendance or home-based options are encouraged to apply for funding from the $4,000,000 reserved for innovative projects.

Presently, approximately 90% of the children is center-based Head Start programs are provided sevices for four or more days per week. It is expected that most projects funded through this announcement will also provide services four or more days per week. ACYF is establishing minimum periods of service for children served through this announcement to make sure that the contact between the program and the child is minimally sufficient to allow the time needed to provide the wide range of services that result in long-term benefits for Head Start enrollees. Applicants proposing to implement a standard Head Start model, double sessions or variation in center attendance option must provide a minimum of three and half hours of services for three days each week during a minimum of 34 weeks of operation or justify why these minimum are inappropriate for the population being served.

Programs implementing a home-based option must provide a minimum, of one 90 minute home visit each week and two socialization experiences, lasting at least three and a half hours, each month during a minimum of 34 weeks of operation or justify why these minimums are inappropriate for the population being served.

Applicants must explain the resources, both ACYF and non-ACYF, that will be available to carry out all facets of the program which has been proposed.

(3) Program Quality (20 points). This criterion will measure the extent to which the application shows a capacity and an intent to provide Head Start services which fully meet the Head Start Program Performance Standards (45 CFR Part 1304) and other Head Start regulations. This includes the provisions made for the direct participation of parents in the planning, conduct and administration of the program, provisions to adequately serve at least 10 percent handicapped children in a "mainstream" setting, the suitability and availability of facilities and equipment proposed to be utilized in carrying out the Head Start program, and provisions to develop and manage training and technical assistance activities which are adequate to meet the needs of the proposed program. (Costs of services to handicapped children should be included in applicants' proposed budgets.)

In addition to showing how they plan to meet these regulatory requirements, applicants must show that the levels of staffing they propose are conducive to sound child development. In developing

staffing patterns, applicants should consider the ages and special needs, such as handicapping conditions, of the children they propose to serve. ACYF will not fund applicants which propose to serve more than 20 childern per class.

Applicants must show budget support for the proposed level of program quality.

(4) *Experience and Capability (20 points).* This criterion will measure the qualifications and experience of the applicant agency and staff in planning, organizing, and providing comprehensive child development services as the community level. This would include: the applicant's potential, based on experience, for administering the program effectively and for exercising sound fiscal management; the extent of involvement of parents and other community members and organizations in the development and planning of the application; the degree of support evidenced from relevant community organizations, service providers and community members; the extent to which classroom teachers to be hired have received appropriate training or have experience in early childhood education; the extent to which staff will be hired whose ethnic or racial backgrounds are reflective of the communities being served, the opportunities to be provided for employment of residents from the service area, and career development and training opportunities for paraprofessional and other staff; and the adequacy of plans to begin providing new services in a timely manner.

(5) *Cost Efficiency (15 points).* This criterion will measure the cost of services in terms of ACYF Head Start funds to determine which applicants can operate most efficiently and thereby provide the most services to children. The points under this criterion will be based on the cost of proposed projects in terms of Federal Head Start dollars for the annual cost per child and the hourly cost per child. Points will be assigned using an automated data system by ranking the costs proposed by each applicant against those proposed by other applicants from the same State. Similarly, the costs of an Indian project will be compared to those of other Indian projects and a migrant project's costs compared to those of other migrant projects. Applicants that propose the lowest costs per child will receive the most points and those that propose the highest costs per child will receive the fewest points.

G. Innovative Projects

Four million dollars is available for applicants which propose innovative methods for the delivery of Head Start services. These projects are intended to serve additional children using program designs that are better suited to meet the needs of individual children and their families in an applicant's community than conventional Head Start designs would be. Innovative projects must conform to requirements in Appendix A of the Head Start Performance Standards concerning Locally Designed Options—45 CFR Part 1304. Innovative projects must adhere to the following guidelines:

(a) The proposed project must represent a more effective approach to meeting the needs of the local community than would be possible through the use of standard models, variation in center attendance, double sessions, or home base models. Such projects might include, for example, demonstrations of employment-based Head Start programs which would augment existing day care programs to provide or arrange for comprehensive services in cooperation with businesses and industries. This would enable Head Start eligible children to be served while their parents receive job training leading to subsequent employment.

(b) The proposed project must be consistent with good developmental practices.

(c) The proposed project must be consistent with Head Start Performance Standards and must ensure that all components of Head Start are effectively delivered, *except that if the proposed project is operated by a current grantee as an adjunct to a Head Start project which delivers comprehensive services,* the innovative design can represent a special thrust or limited effort such as:

- Demonstrations extending health services to additional children (i.e. siblings of Head Start enrollees or other preschool children of families who are income eligible). Examples of such projects could include extending comprehensive health care to low income families who are not eligible for Medicaid/Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) or other third party comprehensive health services or providing dental sealant to protect children's teeth from cavities or providing services in urban areas to homeless families.
- Demonstrations of hearing preservation and the prevention of speech handicaps. In communities where Otitis Media is prevalent, services could be developed to adequately screen and treat children with recurrent ear infections.
- Demonstrations by American Indian grantees which result in their becoming EPSDT providers for Head Start children and their siblings on a reservation.

H. Criteria for Competitive Review of Innovative Projects

Applications proposing to be funded as innovative projects will be reviewed and evaluated against the following criteria:

(1) *Need for Proposed Program (20 points).* This criterion will measure the need for the type of Head Start services that is proposed by the applicant. Applicants must indicate who the target population is, where it is located, and why that target population should be given preference over other eligible populations.

(2) *Innovative Program Design (25 points).* This criterion will assess how well the services to be provided by the proposed program meet the needs of the particular children, families and communtiy the applicant proposes to serve. This would include elements such as establishing appropriate service hours and staffing patterns, selecting convenient locations, and providing appropriate transportation.

In proposing a program design, applicants must adhere to Head Start regulations on locally designed options (Part 1304, Appendix A, number 5).

(3) *Beneficial Impact (25 points).* This criterion will measure if the services to be provided or the knowledge or methods to be developed can be expected to impact beneficially on the target population. In measuring beneficial impact, applicants will also be assessed on the degree to which provisions have been made for the direct participation of parents in the planning, conduct, and administration of the program and the suitability and availability of facilities and equipment proposed to be utilized in carrying out the Head Start program. Applicants proposing comprehensive Head Start programs (as opposed to adjunct services to a comprehensive program) must fully meet Head Start Program Performance Standards (45 CFR Part 1304), including the provison to adequately serve at least 10% handicapped children in a mainstream setting.

(4) *Experience and Capability (20 points).* This criterion will measure the qualifications and experience of the applicant agency and staff in planning, organizing, and providing comprehensive child development services at the community level. This would include: the applicant's potential, based on experience, for administering

the program effectively and for exercising sound fiscal management; the extent of involvement of parents and other community members and organizations in the development and planning of the application; the degree of support evidenced from relevant community organizations, service providers and community members; the extent to which classroom teachers to be hired have received appropriate training or have experience in early childhood education; the extent to which staff will be hired whose ethnic or racial backgrounds are reflective of the communities being served, the opportunities to be provided for employment of residents from the service area, and career development and training opportunities for paraprofessional and other staff; and the adequacy of plans to begin providing new services in a timely manner.

(5) *Resonableness of Proposed Cost (10 points).* This criterion will measure if the cost of the proposed project is commensurate with the anticipated outcomes of the project (i.e. the cost per unit of service is reasonable). The extent to which other organizations are contributing funds for the project will also be considered.

I. Available Funds

In Fiscal Year 1985 Head Start proposes that $37,800,000 be used to expand Head Start enrollment. Assuming that acceptable applications are received, ACYF expects to award all of these funds to successful applicants responding to this announcement.

The following distribution of $33,800,000 in expansion funds for conventional projects is an estimate based primarily on the allotment formula contained in Section 640 of the Head Start Act. The estimated amounts in clude the mandatory allotments required by the statute plus, in most cases, funds from the Secretary's reserve portion of the Head Start budget which were distributed by using the population factors contained in the statutory formula. Where necessary, funds from the Secretary's reserve were added to enable States to receive a minimum of $50,000 with the exception of Mississippi. Funds for the American Indian and migrant programs and programs in the Virgin Islands and the Outer Pacific Islands were computed by giving each of these areas a pro rata share of the expansion funds, based on their FY 1984 funding level as a percent of the total FY 1984 Head Start funding level. Assuming satisfactory programmatic and fiscal performance, ACYF expects to continue to fund successful applicants in future years.

Not included in the funds allotted to States and other jurisdictions is $4,000,000 in discretionary funds from the Secretary's reserve. This money will be used to fund projects that are particularly innovative (See Section G of this announcement) in their proposed approach to providing Head Start services and without regard to the State in which an applicant is proposing to provide services. ACYF expects to fund successful applicants for innovative projects on an annual basis for a period not to exceed two years, assuming satisfactory programmatic and fiscal performance.

The table below shows the amount of funds ACYF estimates will be allotted for expansion in each State, for Indian and migrant projects, and for the Virgin Islands and Outer Pacific Islands.

	Estimated funds for expansion in fiscal year 1985
Region I:	
Connecticut	$50,000
Maine	50,000
Massachusetts	50,000
New Hampshire	53,000
Rhode Island	74,000
Vermont	50,000
Region II:	
New Jersey	692,000
New York	3,437,000
Purerto Rico	2,074,000
Region III:	
Delaware	692,000
Dist. of Columbia	50,000
Maryland	374,000
Pennsylvania	1,320,000
Virginia	474,000
West Virginia	180,000
Region IV:	
Alabama	485,000
Florida	1,363,000
Georgia	970,000
Kentucky	50,000
Mississippi	0
North Carolina	50,000
South Carolina	539,000
Tennessee	531,000
Region V:	
Illinois	2,228,000
Indiana	552,000
Michigan	1,547,000
Minnesota	170,000
Ohio	1,877,000
Wisconsin	757,000
Region VI:	
Arkansas	314,000
Louisiana	797,000
New Mexico	207,000
Oklahoma	181,000
Texas	1,662,000
Region VII:	
Iowa	254,000
Kansas	214,000
Missouri	476,000
Nebraska	132,000
Region VIII:	
Colorado	222,000
Montana	73,000
North Dakota	82,000
South Dakota	82,000
Utah	169,000
Wyoming	50,000
Region IX:	
Arizona	490,000
California	4,752,000
Hawaii	164,000
Nevada	72,000
Region X:	
Alaska	50,000
Idaho	91,000
Oregon	189,000
Washington	65,000
Virgin Islands and outer Pacific Islands	122,000
Total, State funds	31,026,000
American Indian progarms and migrant progarms	2,574,000
To be allocated	200,000
Total for conventional projects	33,800,000
Innovative projects	4,000,000
Total Funds for Expansion	$37,800,000

J. The Application Process

1. *Submission of Application.* Agencies and organizations interested in applying for funds may request application kits from Robert Foster, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

In order to be considered for a Head Start grant, an application must be submitted on the forms and in the manner required by the Administration for Children, Youth and Families (See Appendix B for Supplemental Instructions).

The applications must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in the announcement and the instructions in the application kit.

An applicant may submit only one application for expansion funds for conventional projects for each of the three funding categories: (1) State funds, (2) American Indian funds, and (3) migrant funds. To compete for funds allocated to innovative programs, a separate applicaton must be sumitted. All applications must indicate the appropriate funding category.

One signed original and two copies of the grant application, including all attachments, are required. ACYF encourages the submission of an additional four copies to facilitate the review porcess. Applicants are encouraged to limit the length of their proposals. Completed applications must be sent to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201. The program announcement number (13.600 ———) Must be clearly identified on the application.

To help with the ACYF review process, we also request that you send one copy to the ACYF regional office official responsible for your State, or, if appropriate, to the Director of the American Indian or Migrant Programs Branch. The addresses of these officials are shown in Appendix A of this announcement.

2. *Executive Order 12372—Notification Process.* This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." State Processes or directly affected State, area-wide, regional, and local officials and entities have 60 days to comment on the application, starting from the deadline date for application submission to HDS. Each State has established a State Single Point of Contact (SPOC) to fulfill the requirements of E.O. 12372. Applicants must submit required material to their SPOCs so HDS can obtain comments from the SPOCs as part of the award process. (Applications for programs to be administered directly by Federally recognized Indian tribes are exempt from the requirements of E.O. 12372.) Applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive specific instructions regarding the process. Required material should be sent to the SPOC as early as possible. SPOCs will submit their comments directly to Clennie H. Murphy, Jr., Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013. HDS will notify the State of any application received which has no indication that the State Process has had an opportunity for review.

K. Priority for Funding

Section 641 of the Head Start Act requires that, in selecting applicants that are to receive expansion funding, priority be given in certain instances to Head Start grantees who were receiving Head Start funds on October 30, 1984, the date the Head Start Act was reauthorized. An applicant that is a current Head Start grantee would receive priority over a non-Head Start applicant in instances where both propose to serve the same community or geographic area and both score comparably in the competitive review (i.e., within 5 points of each other), unless ACYF makes a finding that the current Head Start grantee fails to meet Head Start program and fiscal requirements.

L. Selection of Successful Applicants

Applicants will be scored against the criteria explained above. The review will be conducted in Washington, D.C. Reviewers will be persons knowledgeable about Head Start and early childhood education and development, including parents of Head Start children (from States other than the one being reviewed), Federal staff, and other experts, such as university staff or staff of child development projects.

Once applications have been scored, they will compete with other applications from the State where services will be provided or, in the case of American Indian projects or migrant projects, against other American Indian or migrant projects. The number of grant awards within each State will depend on the State's allocation and on the number and characteristics of acceptable applications.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of applicants to be funded. Applications may be funded in whole or in part depending on relative need, applicant ranking and funds available. The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services. For example, this might apply to an applicant which has had large, chronic balances of unspent funds due to poor management, or one that has failed to serve children with programs of adequate quality or in agreed upon numbers. Another example might be an applicant whose past operations indicate that it would not be able or willing to effectively involve parents in the program. It may also be decided not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment.

Successful appplicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

M. Closing Date for Receipt of Applications

The closing date for receipt of applications will be 45 days after the final announcement. Applications may be mailed or hand delivered to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date at the HDS Grants and Contracts Management Office, or

2. Sent on or before the deadline date and receives by the granting agency in time for submission to the independent review group to be considered during the competitive review and evaluation process. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercal carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Hand Delivered Applications: Hand delivered applications are accepted at the Office of Human Development Services, Grants and Contract Management Division, North Building, Room 1740, 330 Independnce Avenue, SW., Washington, D.C., during the normal working hours of 8:30 A.M. to 5:00 P.M., Monday through Friday.

N. Availability of Application Forms and Additional Information

Application kits which contain the prescribed application forms and additional instructions for the applicant may be obtained by writing to Robert Foster, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington D.C. 20013

Appendix A—Regional Program Directors

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Mr. Richard Stirling, Regional Program Director, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203, (617) 223–6450

Region II: New Jersey, New York, Puerto Rico, Virgin Islands
Mr. Dennis Coughlin, Regional

Program Director, Office of Human Services, 26 Federal Plaza, Room 4249, New York, New York (212) 264–2974

Region III: Delaware, Dist. of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Mr. Alvin Pearis, Regional Program Director, Office of Human Development Services, 3535 Market Street, P.O. Box 13716, Philadelphia, Pennsylvania 19101 (215) 596–0356

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Mr. John Jordan, Regional Program Director, Office of Human Development Services, 101 Marietta Towers, Suite 903, Atlanta, Georgia, 30323 (404) 242–2134

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Mr. German White, Regional Program Director, Office of Human Development Services, 300 South Wacker Drive, 13th Floor, Chicago, IL 80806 (312) 353–6503

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Mr. Tommy Sullivan, Regional Program Director, Office of Human Development Services, 1200 Main Tower, Room 2040, Dallas, Texas 75202 (214) 729–2976

Region VII: Iowa, Kansas, Missouri, Nebraska

Mr. Hilton Baines, Regional Program Director, Office Human Development Services, Room 284, 601 East 12th Street, Kansas City, Missouri 64106 (816) 758–5401

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Mr. David Chapa, Regional Program Director, Office of Human Development Services, Federal Office Building, Room 908, Denver, Colorado 80294 (303) 837–3972

Region IX: Arizona, California, Hawaii, Nevada, Outer Pacific Islands

Mr. Roy Fleischer, Regional Program Director, Office of Human Development Services, 50 United Nations Plaza, Room 445, San Francisco, California 94102, (415) 556–6153

Region X: Alaska, Idaho, Oregon, Washington

Mr. William Hayden, Regional Program Director, Office of Human Development Services, 2901 Third Avenue, Mail Stop 413, Seattle, Washington 98121 (206) 442–0838

American Indian and Migrant Programs Branches

Mr. Robert Foster, Director, Program Operations Division, P.O. Box 1182 Washington, D.C. 20013 (202) 755–7480

BILLING CODE 4130-10-M

APPENDIX B -- Proposed Supplemental Instructions for Completion of an Application for Head Start Expansion Funds

The supplemental instructions below expand on the basic instructions found in the OHDS booklet entitled "Instructions for Applying for Federal Assistance for HDS Programs." (Section I is for applications for conventional Head Start projects and Section II is for applications for Innovative Head Start projects.)

I. APPLICATION TO EXPAND OR INITIATE CONVENTIONAL HEAD START PROJECTS

Program Narrative (Part IV of Application)

Indicate by checking in the appropriate space if applicant is proposing to serve children in State program _____, American Indian program _____, migrant program _____. Applicants may submit only one application for each category.

(1) Need for Service

A. List proposed counties of service and number of children proposed to be served in each county.

	COUNTY	NO. OF CHILDREN
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

B. Discuss why proposed areas of service in counties listed above were chosen. Discuss which of the eligible children and families in these areas will be served and why these families will be given priority. Indicate number of children that will be enrolled in each service area. Explain why these areas have the greatest need for Head Start services compared to other areas in each county. Include letters of support from the community. (Enclose, as a separate document, a map of the county or counties you propose to serve, indicating the areas from which you plan to recruit children, and the sites at which centers will be located. Applicants that already serve children should show current service areas and sites in these counties.)

(2) Program Design

Indicate number of children you are proposing to serve for each Head Start delivery option listed below. Enter zero where option is not proposed. (LDOs will be funded using the $4 million for innovative projects.)

	NO. OF CHILDREN
Standard Option - Full Day	
Standard Option - Part Day	
Variations in Center Attendance	
Double Session	
Home Based	

For each proposed option, indicate below the number of hours per day, the number of days per week, and the number of days per year each child is in class (or socialization group). In computing the number of days per year exclude holidays, vacation days or other days when children are not expected to attend the program. If applicant is proposing to use the same option but with different hours/day or days/year for different groups of children, indicate appropriate hours and days in space below for each variation (A, B, and C). For Home-Based programs, count the annual number of socializaton experiences which take place and their duration.

	HOURS/DAYS			DAYS/WEEK			DAYS/YEAR		
	A	B	C	A	B	C	A	B	C
Standard - Full Day									
Standard - Part Day									
Variations in Center Attendance									
Double Session									
Home Based									

For each proposed option, indicate below the number of planned home visits per year made by a teacher or home visitor to each child's home. Also, indicate average time of each home visit. Follow above instructions if programs for different groups of children have different number or duration of home visits.

	NUMBER OF HOME VISITS PER YEAR			AVERAGE TIME OF HOME VISIT		
	A	B	C	A	B	C
Standard - Full Day						
Standard - Part Day						
Variations in Center Attendance						
Double Session						
Home Based						

For center based options, indicate the proposed number of classes.

Discuss the reasons for your proposed program design. Be sure to explain why this design(s) best serves the needs of the community. Discuss how proposed budget levels support the proposed program design(s).

(3) Program Quality

Discuss the basic objectives of your proposed program in terms of providing quality services to Head Start children.

Explain how services will be provided in the following areas:

- Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.
- Dental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.
- Mental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.
- Social Services: Include type of agencies with which Head Start will be networking and types of services planned, etc.
- Nutrition: Include plans to educate children and parents in proper nutritional habits. Indicate how children will be assured of receiving nutritious meals, including whether meals will be catered or cooked on premises.
- Parent Involvement: Discuss proposed role of parents in planning, conduct, and administration of Head Start program.
- Handicapped: Discuss number of handicapped children to be enrolled, types of handicapping conditions, what kind of special services will be provided, by whom, where, etc.
- Discuss the role of the Policy Council in administering the proposed program.
- If proposing to serve bi-cultural children, explain what types of special services will be provided to these children and their families.
- Discuss proposed plans for use of volunteers; i.e., number, positions, etc.
- Discuss how proposed budget levels support program quality.

(4) Experience and Capability

List staff on budget sheets that follow. Discuss responsibilities and qualifications of proposed staff. On a separate page include resumes for Head Start Director, Component Coordinators, and Education staff positions.

- Discuss plans to provide employment opportunities in the Head Start program to parents and other community residents.
- Discuss training and career development opportunities that will be made available to program staff.
- Discuss previous organizational experience which would suggest capability of carrying out a child development program.
- Discuss organizational experience which shows ability to exercise sound fiscal management and effective program administration.
- Indicate if program will be administered by applicant or delegated to another organization. If delegated, provide reasons the applicant has decided to delegate and provide a list of the proposed delegate(s).
- Discuss the suitability of the proposed facilities and equipment to be utilized in carrying out the Head Start program.

(5) Reasonableness of Proposed Cost

Fill out Twelve Month Operating Budget and Start-up Cost Budget and provide justification for costs, as indicated in Section F, page 10, of the HDS Application Instructions.

Indicate what efforts were made to secure non-ACYF funds to supplement proposed program.

II. APPLICATION TO PROVIDE EXPANSION SERVICES UNDER AN INNOVATIVE DESIGN

Program Narrative (Part IV of Application)

Indicate by checking in the appropriate space if applicant is proposing to provide: comprehensive services provided in an innovative manner _____; or partial sevices as an adjunct to a current grantee providing comprehensive Head Start services _____.

(1) Need for Proposed Program

A. List proposed counties of service and number of children proposed to be served in each county.

	COUNTY	NO. OF CHILDREN
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

B. Discuss why proposed areas of service in counties listed above were chosen. Discuss which of the eligible children and families in these areas will be served and why these families will be given priority. Indicate number of children that will be enrolled in each service area. Explain why these areas have the greatest need for Head Start services compared to other areas in each county. Include letters of support from the community. (Enclose, as a separate document, a map of the county or counties you propose to serve, indicating the areas from which you plan to recruit children, and the sites at which centers will be located. Applicants that already serve children should show current service areas and sites in these counties.)

(2) Innovative Design

Indicate number of children you are proposing to serve for each Head Start delivery option you are proposing. Give a brief description of each proposed option (i.e. supplemental health services to siblings).

	OPTION (Describe)	NO. OF CHILDREN
A.	_____	_____
B	_____	_____
C.	_____	_____
D.	_____	_____
E.	_____	_____

For each proposed option, indicate below the number of hours per day, days per week, and days per year each child is in class. Also indicate the proposed number of home visits per year and the average time of each home visit. If proposed delivery options do not lend themselves to the following format, discuss in space below estimated number of child contact hours per day (per child) and indicate briefly what types of services will be provided during these contact hours.

OPTION	HOURS/DAY	HOURS/WEEK	DAYS/YEAR
A			
B			
C			
D			
E			

OPTION	HOME VISITS/YEAR	AVERAGE TIME OF HOME VISIT
A		
B		
C		
D		
E		

Discuss the enrollment criteria you propose to use (including ages of children). Explain the process by which children will be recruited and selected to participate in program.

Discuss the reasons for your proposed program design. Be sure to explain why this design(s) best serves the needs of the community.

Discuss how proposed budgets levels support the proposed program design(s).

(3) Beneficial Impact

Discuss the basic objectives of your proposed program in terms of providing quality services to Head Start children.

Explain how services will be provided in the following areas:

(Applicants who are proposing a less than comprehensive Head Start program as an adjunct to a current program are to complete only

those sections which are relevant to the applicant's proposed program design. For example, an applicant proposing to provide health services to the siblings of Head Start children would not be expected to complete the section on, for example, social services, unless the applicant's proposed program design was such that the provision of social services was essential to meeting the proposed objectives of the program.)

- Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.

- Dental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.

- Mental Health: Include type of services to be provided, from whom services will be secured, where services will be provided, who will pay for services, etc.

- Social Services: Include type of agencies with which Head Start will be networking and types of services planned, etc.

- Nutrition: Include plans to educate children and parents in proper nutritional habits. Indicate how children will be assured of receiving nutritious meals, including whether meals will be catered or cooked on premises.

- Parent Involvement: Discuss proposed role of parents in planning, conduct, and administration of Head Start program.

- Handicapped: Discuss number of handicapped children to be enrolled, types of handicapping conditions, what kind of special services will be provided, by whom, where, etc.

- Discuss the role of the Policy Council in administering the proposed program

- If proposing to serve bi-cultural children, explain what types of special services will be provided to these children and their families.

- Discuss proposed plans for use of volunteers; i.e., number, positions, etc.

- Discuss how proposed budget levels support program quality.

(4) Experience and Capability

- o List staff on budget sheets that follow. Discuss responsibilities and qualifications of proposed staff. On a separate page include resumes for Head Start Director, Component Coordinators, and Education staff positions.
- o Discuss plans to provide employment opportunities in the Head Start program to parents and other community residents.
- o Discuss training and career development opportunities that will be made available to program staff.
- o Discuss previous organizational experience which would suggest capability of carrying out a child development program.
- o Discuss organizational experience which shows ability to exercise sound fiscal management and effective program administration.
- o Indicate if program will be administered by applicant or why delegated to another organization. If delegated, provide reasons applicant has decided to delegate and provide a list of the proposed delegate(s).
- o Discuss the suitability of the proposed facilities and equipment to be utilized in carrying out the Head Start program.

(5) Cost Effectiveness

Fill out Twelve Month Operating Budget and Start-up Cost Budget and provide justification for costs, as indicated in Section F, page 10, of the HDS Application Instructions.

Indicate what efforts were made to secure non-ACYF funds to supplement proposed program.

TWELVE MONTH OPERATING BUDGET

Check one: Applicant Budget: ___
Delegate Budget Agency: ___

References in parentheses next to budget items refer to the object class category into which the cost must be placed in Part III, Section B, Column of the application form.

If the applicant proposes to fund delegate agencies, a separate twelve month budget must be completed by each delegate agency using a copy of this form. Applicants should also fill out a separate form and should include delegate agency costs on Line 12. Use of this form is not required for start-up costs.

1. PERSONNEL (object class category 6.a.)

ADMINISTRATIVE STAFF	NUMBER OF POSITIONS	AVERAGE NO. WKS. EMPLOYED PER YEAR	AVERAGE NO. HRS. EMPLOYED PER WEEK	ACYF BUDGET COST
Executive Director				$
Fiscal Officer/Accountant				
Head Start Director				
Bookkeeper				
Secretary				
Center Director				
_____				
_____				
COMPONENT STAFF				
Health Coordinator				
Nurse				
Handicap Services Coordinator				
Education Coordinator				
Teacher				
Teacher Assistant/Aide				
Home Visitor				
Social Service Coordinator				
Social Worker				
Parent Involvement Coordinator				
Cook				
Bus Driver				
_____				
_____				

1. TOTAL PERSONNEL: _____

	ACYF BUDGET COST
2. TOTAL FRINGE BENEFITS: (6.b)	
3. OCCUPANCY (6.h.)*	
Rent	
Utilities	
Telephone	
Bonding and Insurance	
Maintenance and Repair	
Other	
TOTAL OCCUPANCY:	
4. CHILD TRAVEL (6.h)	
Bus/Van Lease/Rental	
Vehicle Insurance	
Field Trips	
Vehicle Maintenance/Repair	
Other	
TOTAL CHILD TRAVEL:	
5. STAFF TRAVEL	
Out of Town (6.c.)	
Local (6.h)	
TOTAL STAFF TRAVEL	
6. FOOD (6.h)	
Children (Do not include food paid for by USDA)	
Staff	
Parent	
TOTAL FOOD:	

* If these services are provided through a contract, enter these costs on line 6.f.

ACYF BUDGET COST

7. FURNITURE AND EQUIPMENT (6.d)

Office	_____
Vehicle Purchase	_____
Classroom	_____
Playground	_____
Kitchen	_____
Other_____	_____
_____	_____
TOTAL FURNITURE/EQUIPMENT:	_____

8. SUPPLIES (6.e)

Office	_____
Cleaning	_____
Classroom	_____
Medical/Dental	_____
Kitchen	_____
Other_____	_____
_____	_____
TOTAL SUPPLIES:	_____

9. OTHER CHILD SERVICES (6.h)*

Medical Screening/Care	_____
Dental Exams/Care	_____
Mental Health Assessment/Care	_____
Nutrition Consultant	_____
Speech Therapy	_____
Other_____	_____
_____	_____
TOTAL OTHER CHILD SERVICES	_____

* If these services are provided by an individual who is not an employee, enter these costs on line 6.h. If these costs are provided by a firm through a contract, enter these costs on line 6.f.

	ACYF BUDGET COST
10. OTHER PARENT SERVICES	
Parent Activities (6.h)	_____
Parent Travel	
Out of town (6.c)	_____
Local (6.h)	_____
TOTAL OTHER PARENT SERVICES:	_____
11. OTHER	
Audit*	_____
Legal*	_____
Payroll/Accounting*	_____
Publications/Subscriptions	_____
Printing/Advertising	_____
Employee Medical Exams	_____
Staff Training/Technical Assistance	_____
Other_____	_____
_____	_____
TOTAL OTHER:	_____
12. TOTAL DELEGATE AGENCY BUDGET (6.f)**	_____
13. TOTAL INDIRECT COSTS (6.j)***	_____
GRAND TOTAL: (Enter on Worksheet C, Section 1, Line f)	*_____

* If these services are provided by an individual who is not an employee, enter these cost on line 6.h. If these costs are provided by a firm through a contract, enter these costs on line 6.f.

**If this line is applicable, attach a budget for each delegate agency.

***If this line is applicable, provide documentation on approved indirect cost rate.

APPENDIX C -- CHECKLIST OF MATERIALS AND FORMS REQUIRED FOR AN APPLICATION FOR HEAD START EXPANSION FUNDS

The following is a checklist of the items to be submitted in the expansion application. Make sure that each application is complete and all instructions are followed.

- Part I (Standard Form 424)
- Part II, Project Approval Information
- Part III, Budget Information (Twelve Month Line Item Budget) (Start-up Budget)
- Part IV, Program Narrative (Need for Service, Program Design, Program Quality, Experience and Capability, and Cost Effectiveness)
- Part V, Assurances
- Civil Rights Compliance Form (HHS-441)
- Rehabilitation Act Compliance Form (HHS-641)
- Protection of Human Subjects Form (HHS-596)
- Certification of Head Start Administration Costs Form
- New Grantee Fiscal Certification Form (only for applicants who are not currently receiving HDS grant funds)

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Tuesday
December 18, 1984

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 4700

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Revision of Existing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Revision of Existing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking revises the provisions on wild free-roaming horses and burros in Part 4700 to reduce the regulatory burden on the public, to clarify the management procedures of the Bureau of Land Management as they affect the public, to remove unnecessary self-regulating provisions, and to arrange the regulations by subject.

DATE: Comment period expires February 19, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, (202) 653–9215.

SUPPLEMENTARY INFORMATION: This proposed rulemaking completely revises Part 4700 of Title 43 of the Code of Federal Regulations. The regulations are completely reorganized to group provisions on the same subject into the same subpart. Redundant sections, obsolete definitions and provisions, and terms or provisions not authorized by law have been removed. Changes have been made to ease cumbersome and burdensome requirements on the public as much as possible, and provisions not affecting the public have been removed, to be included in the Manual of the Bureau of Land Management (BLM) where appropriate.

In the proposed rulemaking, §§ 4700.0–1, 4700.0–2 and 4700.0–6 have been rewritten to describe purpose, objectives and policy more specifically, and to inform the public of the bases for procedures and requirements contained in the regulations. The proposed rulemaking states as a matter of policy that the authorized officer, in administering the program, shall consult with Federal and State wildlife agencies and all other affected interests. Because this policy applies to all aspects of the wild free-roaming horse and burro program, the requirement for consultation has been removed from all other sections of the proposed rulemaking as a needless duplication. Amendments are proposed in the Definitions, § 4700.0–5, to clarify the meaning of some terms used in the regulations, to remove definitions that duplicate text contained elsewhere in the Part, and to remove terms whose use is obsolete or not authorized, or that are self-explanatory. The term "free-roaming" has been removed from several definitions and other provisions referring to "wild horses and burros," and is used in this proposed rulemaking to refer only to animals remaining at large and not in private maintenance.

The proposed rulemaking removes provisions that give procedural guidance and instruction to BLM personnel and do not affect the public. Any such provisions that contain information that may be useful to the public have been incorporated in the proposed rulemaking in the appropriate sections. Pertinent removed provisions will be included in the BLM Manual.

The proposed rulemaking amends existing Subpart 4730 as new Subpart 4710 to link the management of wild free-roaming horses and burros with the Bureau's planning system; to identify precisely the lands that will be considered for wild horse and burro management; to require that hard management area plans be prepared for all herd management areas; to allow the authorized officer to protect wild horses and burros and their habitat by closing certain lands to all or particular kinds of livestock grazing or by removing unauthorized livestock; to require that public lands inhabited by wild horses and burros be closed to grazing by domestic horses and burros; and to allow private landowners to maintain wild horses and burros on their land, so long as the animals are not enticed or removed to such land and are not detained there.

Subpart 4720 of the proposed rulemaking states the circumstances under which straying or excess wild horses and burros are to be removed from public and private lands, and the procedures for removing them.

The proposed regulations are reorganized and consolidated by subject matter. Although four new subparts—Destruction of Wild Horses and Burros, and Disposal of Carcasses (Subpart 4730), Motor Vehicles and Aircraft (Subpart 4740), Private Maintenance (Subpart 4750), and Compliance (Subpart 4760)—have been added, consolidation of the regulations and the elimination of unnecessary, unauthorized and obsolete provisions have reduced the length and complexity of the regulations. The new subparts incorporate the existing rules to the extent that they remain applicable, and add language where necessary to clarify requirements. For example, in Subpart 4740, explicit standards for vehicles are set forth to ensure the safe transport of wild horses and burros both by BLM personnel and by members of the public obtaining the animals for private maintenance.

New Subpart 4750 expands the existing regulations to incorporate all the requirements for private maintenance and adoption of wild horses and burros, including the requirement for adoption fees, qualification standards, conditions for the care and treatment of animals being maintained privately, and the replacement, under certain conditions, of animals that die during private maintenance.

Proposed Subpart 4730 consolidates the existing regulations on destruction of certain wild horses and burros and makes clear the limitations on methods of destruction. Section 4730.2, Disposal of Carcasses, is designed to avoid conflicts between Federal practices and State or local sanitation laws. The provision prohibiting receipt of compensation by a person disposing of a carcass is not intended to prohibit the sale of horse products by rendering plants, but rather only to prohibit the sale of animals to such plants and to discourage their slaughter for consumptive use.

The proposed regulations are written to alleviate regulatory burdens on persons who privately maintain wild horses and burros. The existing regulations, at § 4740.4–2(f), require the adopter to obtain a written statement from a veterinarian within 7 days of the death of an adopted animal. The proposed rulemaking would require only that the adopter notify the authorized officer within 7 days of the discovery of the death, escape or theft of an animal. The authorized officer then has discretion to investigate the circumstances of death and is required to investigate escape or theft. This modified provision will be less costly to the adopter and will encourage the adopter to report problems promptly. By starting the notification period on the date of discovery, the proposed rulemaking adds flexibility to cover cases where the problem is not discovered within 7 days of its occurrence, for whatever reason.

Section 4740.5(a) of the existing regulations limits the transfer of title to four animals per year per applicant. Section 4750.5(a) of the proposed rulemaking allows adopters credit for humane treatment of animals during the years before title was first offered in 1980. By accumulating credit for care at the rate of four horses or burros per year, an adopter can obtain title to more than four animals in the current year based on proper care of animals maintained privately during the 1970's. The limit is four animals for each year of such care.

Section 4740.5(b) of the proposed rulemaking modifies the requirement in § 4740.5(b) of the existing regulations for a veterinarian's certification that privately maintained horses and burros are receiving proper care and treatment. It allows such certification to be made by any qualified person, such as a cooperative extension agent, humane officer or the authorized officer of the Bureau of Land Management. Such officials are equally capable of providing the necessary certificate, and may be more familiar with the individual animal. The new process may be more convenient and less expensive for the adopter.

The proposed rulemaking deletes certain requirements not supported by law. References to "problem animals," a requirement that slaughterhouses retain title for 1 year after slaughtering, a prohibition of accepting an animal for slaughter without a Certificate of Title, and a provision that a private landowner may request that the BLM remove wild horses and burros only from fenced land, have all been eliminated. There is no reference in the law to "problem animals"; there is no legal justification for Federal control of animals once title passes; and a Federal District Court in Oregon has ruled that the requirement that animals shall be removed by the Federal Government only from fenced private land is unsupported by law, and that slaughterhouses need not obtain a Certificate of Title.

The principal author of this proposed rulemaking is John S. Boyles, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it 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.). A limited number of veterinarians, cooperative extension agents and human officials may be insignificantly affected by the rulemaking. The certification required for adopters to receive title is needed on a nonrecurring basis. The changes allow adopters flexibility in choosing the official from whom they obtain a certification, resulting in some cost-savings. Adopters are required to pay a fee to obtain the animals and to provide information to show their ability to provide humane transport, facilities and care for the animals. An insignificant number of individuals may be deterred from participating by the fee or qualification standards for humane care.

Information collection requirements for Applications for Adoption of Wild Horse(s) or Burro(s) and for Applications for Title to Wild Horse(s) and Burro(s) have been approved by the Office of Management and Budget and assigned clearance numbers 1004–0042 and 1004–0046, respectively. Additional information collection requirements contained in this proposed rulemaking, relating to requests for removal of strayed animals from private land (§ 4720.2–1), and applications for private maintenance of 4 or more wild horses or burros (§ 4750.3–3), have been submitted to the Office of Management and Budget for review.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the provisions of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Act of June 28, 1934, as amended (43 U.S.C. 315), it is proposed to amend Part 4700, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

GROUP 4700—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

Subpart 4700— General

Sec.

Subpart 4710—Management Considerations

Subpart 4720—Removal

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Carcasses

Subpart 4740—Motor Vehicle and Aircraft

Subpart 4750—Private Maintenance

Sec.

Subpart 4760—Compliance

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340). Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315).

§ 4700.0–1 Purpose.

The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.

§ 4700.0–2 Objectives.

The objectives of these regulations are management of wild horses and burros as recognized components of the public lands under the principle of multiple use; protection of wild horses and burros from unauthorized capture, branding, harassment or death; and humane care and treatment of wild horses and burros.

§ 4700.0–3 Authority.

The Act of September 8, 1959 (18 U.S.C. 47); the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712, and 1734); the Act of June 28, 1934, as amended (43 U.S.C. 315); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, and 4341–4347).

§ 4700.0–5 Definitions.

As used in this part, the term:

(a) "Act" means the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), commonly referred to as the Wild Free-Roaming Horse and Burro Act.

(b) "Appropriate management level" means the median number of wild horses or burros 2 years old or older to be maintained on a herd management area

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(d) "Band" means either a group of wild horses or burros running together, or a lone wild horse or burro.

(e) "Commercial exploitation" means using a wild horse or burro because of its characteristics of wildness for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Use as saddle or pack stock and other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(f) "Excess wild horses or burros" means wild horses or burros (1) which have been removed from an area by the unauthorized officer pursuant to applicable law, or (2) which must be removed from an area in order to attain the appropriate management level.

(g) "Herd" means one or more bands using the same general area.

(h) "Humane treatment" means kind and merciful handling compatible with standard animal husbandry practices, without causing unnecessary stress or suffering to a wild horse or burro.

(i) "Inhumane treatment" means any intentional action or failure to act that causes stress, injury, or death to a wild horse or burro and is not compatible with standard animal husbandry practices.

(j) "Lame wild horse or burro" means a wild horse or burro with malfunctioning limbs that permanently impair its freedom of movement.

(k) "Old wild horse or burro" means a wild horse or burro characterized because of age by its physical deterioration, inability to fend for itself, suffering, or closeness to death.

(l) "Private maintenance" means the provision of proper care and humane treatment to excess wild horses and burros by qualified individuals under the terms and conditions specified in a Private Maintenance and Care Agreement.

(m) "Public lands" means any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management.

(n) "Sick wild horse or burro" means a wild horse or burro with failing health, infirmity or disease from which there is little chance of recovery.

(o) "Wild horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act.

§ 4700.0–6 Policy.

(a) Wild horses and burros and their habitat shall be managed to maintain vigorous populations of healthy animals in balance with the productive capacity of the public lands.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

(d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

(e) Healthy excess wild horses and burros for which an adoption demand by qualified individuals exists shall be made available at adoption centers nationwide for private maintenance and care.

(f) Fees shall be required from qualified individuals adopting excess wild horses and burros to defray part of the costs of the adoption program.

Subpart 4710—Management Considerations

§ 4710.1 Land use planning.

Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be compatible with approved land use plans prepared pursuant to Part 1600 of this title.

§ 4710.2 Inventory and monitoring.

The authorized officer shall maintain a record of the herd areas that existed in 1971, and a current inventory of the numbers of animals and their areas of use. When management areas are established, the authorized officer shall also inventory and monitor herd and habitat characteristics, including, but not limited to, habitat condition and trend, the age, sex and social structure of bands and herds, and the condition and physical characteristics of the animals.

§ 4710.3 Management areas.

§ 4710.3–1 Herd management areas.

The authorized officer shall establish herd management areas for the maintenance and management of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, and the relationships with other uses of the public lands. The authorized officer shall prepare a herd

management area plan, which may cover one or more herd management areas.

§ 4710.3-2 Wild horse and burro ranges.

Herd management areas may also be designated by the authorized officer as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

§ 4710.4 Constraints on management.

Management of wild horses and burros shall be confined to areas used by herds as yearlong habitat in 1971. Management of wild horses and burros shall be at the minimum level necessary to obtain the objectives identified in approved land use plans and herd management area plans.

§ 4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing by domestic horses and burros.

(c) Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions in full force and effect on the date specified in the notice or decision, regardless of appeal.

§ 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock in areas adjacent to or within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros. Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title.

§ 4710.7 Maintainance of wild horses and burros on unfenced privately controlled lands.

Individuals controlling unfenced lands within areas occupied by wild horses and burros may allow wild horses or burros to use these lands. Individuals who maintain wild free-roaming horses and burros on their lands shall notify the authorized officer and shall supply a reasonable estimate of the number of such animals so maintained. Individuals shall not remove or entice wild horses or burros from the public lands or detain them on private lands.

Subpart 4720—Removal

§ 4720.1 Removal of excess animals from public lands.

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order:

(a) Old, sick, or lame animals shall be destroyed in accordance with Subpart 4730 of this title;

(b) Additional excess animals for which an adoption demand by qualified individuals exists shall be captured and made available for private maintenance in accordance with Subpart 4750 of this title; and

(c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with Subpart 4730 of this title.

§ 4720.2 Removal of strayed or excess animals from private lands.

§ 4720.2-1 Removal of strayed animals from private lands.

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request should indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

§ 4720.2-2 Removal of excess animals from private lands.

If the authorized officer determines that proper management requires the removal of wild horses and burros from private lands, the authorized officer shall obtain the written consent of the private owner before entering or using such lands.

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Carcasses

§ 4730.1 Destruction.

Except as an act of mercy, no wild horse or burro shall be destroyed without the authorization of the authorized officer. Wild horses and burros shall be destroyed in the most humane and cost efficient manner possible.

§ 4730.2 Disposal of carcasses.

Carcasses of wild horses or burros shall be disposed of in accordance with State or local sanitation laws. No compensation of any kind shall be received by any agency or individual disposing of a carcass.

Subpart 4740—Motor Vehicles and Aircraft

§ 4740.1 Use of motor vehicles or aircraft.

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction.

(b) Before using helicopters in the capture of wild horses or burros or motor vehicles for their transport to adoption processing facilities, the authorized officer shall conduct a public hearing in the State where wild horses or burros are to be gathered.

§ 4740.2 Standards for vehicles used for transport of wild horses and burros.

(a) Use of motor vehicles for transport of wild horses or burros shall be in accordance with appropriate local, State and Federal laws and regulations applicable to the humane transportation of horses and burros, and shall include, but not be limited to, the following standards:

(1) The interior of enclosures shall be free from protrusions that could injure animals;

(2) Equipment shall be in safe conditions and of sufficient strength to withstand the rigors of transportation.

(3) Enclosures shall have ample head room to allow animals to stand normally;

(4) Enclosures for transporting two or more animals shall have partitions to separate them by age and sex as deemed necessary by the authorized officer;

(5) Floors of enclosures shall be covered with nonskid material;

(6) Enclosures shall be adequately ventilated and offer sufficient protection to animals from inclement weather and temperature extremes; and

(7) Unless otherwise approved by the authorized officer, transportation shall be limited in sequence to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

(b) The authorized officer shall not load wild horses or burros if he/she determines that the vehicle to be used for transporting the wild horses or

burros is not satisfactory for that purpose.

Subpart 4750—Private Maintenance

§ 4750.1 Private maintenance.

The authorized officer shall make available for private maintenance all healthy excess wild horses or burros for which an adoption demand by qualified individuals exists.

§ 4750.2 Health, identification, and inspection requirements.

§ 4750.2-1 Health and identification requirements.

(a) An individual determined to be qualified by the authorized officer shall verify each excess animal's soundness and good health, determine its age and sex, and administer tests for communicable diseases, immunizations and worming compounds.

(b) Documentation conforming compliance with State health inspection and immunization requirements for each wild horse or burro shall be provided to each adopter by the authorized officer.

(c) Each animal offered for private maintenance, including orphan and unweaned foals, shall be individually identified by the authorized officer with a permanent freeze mark of alpha numeric symbols on the left side of its neck. The freeze mark identifies the animal as Federal property subject to the provisions of the Act and these regulations by a patented symbol, the animal's year of birth, and its individual identification number. The authorized officer shall record the freeze mark on the documentation of health and immunizations. For purposes of this subpart, a freeze mark applied by the authorized officer is not considered a brand.

§ 4750.2-2 Brand inspection.

The authorized officer shall make arrangements on behalf of an adopter for State inspection of brands, where applicable, for each animal to be transported across the State where the adoption center is located only. The adopter shall be responsible for obtaining inspections for brands required by other States to or through which the animal may be transported.

§ 4750.3 Application requirements for private maintenance.

§ 4750.3-1 Application for private maintenance of wild horses and burros.

An individual applying for a wild horse or burro shall file an application with the Bureau of Land Management on a form aproved by the Director. The application shall be accompained by a nonrefundable graranteed remittance of $25 (cashier's check, money order, bank draft, or any other form of remittance other than personal, company or payroll checks). If the application is approved by the authorized officer, the remittance shall be applied against the adoption fee required by § 4750.4-2 of this subpart.

§ 4750.3-2 Qualification standards for private maintenance.

(a) To qualify to receive a wild horse or burro for private maintenance, an individual shall:

(1) Be of legal age for entering contracts as determined by the law of the State or United States trust territory where the individual is a resident;

(2) Have no prior conviction for inhumane treatment of animals or for violation of the Act or these regulations;

(3) Have adequate feed, water, shelter, space, and transport equipment to provide humane care and treatment to the number of animals requested; and

(4) Have obtained no more than 4 wild horses and burros within the preceding 12-month period, unless specifically authorized in writing by the authorized officer.

(b) The authorized officer shall determine an individual's qualifications based upon information provided in the application form required by § 4750.3-1 of this subpart and Bureau of Land Management records of any previous private maintenance by the individual under the Act.

§ 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

(a) An individual applying for more than 4 wild horses or burros within a 12-month period, or an individual or group of individuals requesting to maintain more than 4 wild horses or burros at a single location, shall provide written certification that the applicant's facilities and capabilities appear adequate to maintain and care for the number of animals requested. This certification shall be obtained from a veterinarian, local humane official, cooperative extension agent or similarly qualified person approved by the authorized officer.

(1) The certification shall assert that the facilities satisfy Bureau of Land Management requirements, shall contain a description of the facilities, including corral size, pasture size and shelter, barn or stall dimensions, and shall note discrepancies between the facilities inspected and representations made in the application form.

(2) When an applicant requests 25 or more animals or when more than 24 animals will be maintained at any single location regardless of the number of applicants, the facilities for maintaining the adopted animals shall be inspected by the authorized officer.

(b) Any individual or group requesting to maintain more than 4 wild horses or burros at a single location shall also provide the following information:

(1) A summary of the age, sex, and number of wild free-roaming horses or burrow requested by species;

(2) Requested adoption date and center location;

(3) If applicable, names, addresses and telephone numbers of all applicants represented by any power of attorney submitted with the request;

(4) A transportation plan that describes the transport vehicle and any rest-stops;

(5) A distribution plan for delivering the animals to their assigned adopters;

(6) Names, addresses, and a concise background of the experience of the individuals who will handle the adopted animals during transportation and distribution; and

(7) When the adopted animals will be maintained at a single location or where the applicants have been solicited by the holder of their power of attorney, a concise statement outlining the arrangements, including duties and responsibilities of the parties, for maintaining the animals.

§ 4750.3-4 Approval or disapproval of applications.

If an application is approved, the authorized officer shall offer the individual an opportunity to select the appropriate number, sex, age and species of animals from those available. If the authorized officer disapproves an application for private maintenance because the applicant lacks adequate facilities or transport, the individual may correct the shortcoming and file a new application.

§ 4750.4 Private maintenance of wild horses and burros.

§ 4750.4-1 Private Maintenance and Care Agreement.

To obtain a wild horse or burro, a qualified applicant shall execute a Private Maintenance and Care Agreement and agree to abide by its terms and conditions, including but not limited to the following:

(a) Title to wild horses and burros covered by the agreement shall remain in the Federal Government for at least 1 year after the Private Maintenance and Care Agreement is executed and until a Cerificate of Title is issued by the authorized officer;

(b) Wild horses and burros covered by the agreement shall not be destroyed,

except as an act of mercy, without the prior approval of the authorized officer;

(c) Wild horses and burros covered by the agreement shall not be sold or otherwise exploited commercially, neglected, abandoned, inhumanely treated, branded or otherwise marked permanently, or used for bucking stock;

(d) Freeze marks identifying wild horses and burros covered by the agreement shall not be altered or destroyed;

(e) Wild horses and burros covered by the agreement shall not be transferred permanently to another location or to the care of another individual without the prior approval of the authorized officer;

(f) Wild horses and burros covered by the agreement shall be made available for physical inspection upon written request by the authorized officer;

(g) The authorized officer shall be notified within 7 days of discovery of the death, theft or escape of wild horses and burros covered by the agreement; and

(h) Maintaining and properly caring for wild horses and burros covered by the agreement shall be the responsibility of the adopter.

§ 4750.4–2 Adoption fee.

(a) An individual obtaining wild horses and burros shall pay the Bureau of Land Management an adoption fee of $125 per horse and $75 per burro, except that no fee shall be paid for an orphan foal under the age of 6 months or an unweaned foal under the age of 6 months accompanying its mother. The authorized officer shall credit the advance payment required by § 4750.3–1 of this subpart to the total adoption fee and collect the remaining adoption fee from the individual when the Private Maintenance and Care Agreement is executed.

(b) The Director may adjust or waive the adoption fee on determining that wild horses or burros in the custody of the Bureau of Land Management are unadoptable when the full adoption fee is required, and that it is in the public interest to adjust or waive the adoption fee stated in paragraph (a) of this section. The adjustment or waiver shall extend only to those persons who are willing to maintain such animals privately, who demonstrate the ability to care for them properly, and who agree to comply with all rules and regulations relating to wild horses and burros.

§ 4750.4–3 Request to terminate Private Maintenance and Care Agreement.

An adopter may request to terminate his/her responsibility for an animal by submitting a written relinquishment of the Private Maintenance and Care Agreement for that animal. The authorized officer shall take possession of the animal upon receipt of the written relinquishment.

§ 4750.4–4 Replacement animals.

The authorized officer shall replace an animal, upon request by the adopter, if (a) within 60 days of the execution of the Private Maintenance and Care Agreement the animal dies or is required to be destroyed due to a condition that existed at the time of placement with the adopter; and (b) the adopter provides, within a reasonable time, a statement by a veterinarian certifying that reasonable care and treatment would not have corrected the condition. Transportation costs of the replacement animal shall be paid by the adopter.

§ 4750.5 Application for title to wild horses and burros.

(a) An adopter who has abided by the terms and conditions of the Private Maintenance and Care Agreement for 12 months may apply for title to the wild horse(s) and burro(s) covered by the agreement. A qualified adopter may be granted title to no more than 4 animals per 12-month period of proper private maintenance. This credit may be accumulated from year to year if not used.

(b) An adopter applying for title shall file an application with the Bureau of Land Management. The adopter shall submit with the application a statement from a veterinarian, cooperative extension agent, local humane official, or similarly qualified individual approved by the authorized officer certifying that he/she has inspected the animal for which title is requested and that the animal is receiving proper care and treatment. The adopter shall certify that he/she has provided care and treatment in accordance with the Private Maintenance and Care Agreement.

(c) If the application for title is approved, the authorized officer shall issue a Certificate of Title for each animal. Effective the date of issuance of the Certificate of Title, Federal ownership of the wild horse or burro ceases and the animal loses its status as a wild horse or burro and is no longer under the protection of the Act or regulations under this title.

Subpart 4760—Compliance

§ 4760.1 Compliance with the Private Maintenance and Care Agreement.

(a) An adopter shall comply with the terms and conditions of the Private Maintenance and Care Agreement and these regulations. The authorized officer may verify compliance by visits to an adopter, physical inspections of the animals, and inspections of the facilities and conditions in which the animals are being maintained. The authorized officer may authorize a cooperative extension agent, local humane official or similarly qualified individual to verify compliance.

(b) The authorized officer shall conduct an investigation when a complaint concerning the care, treatment, or use of a wild horse or burro is received by the Bureau of Land Management.

(c) The authorized officer may require, as a condition for continuation of a Private Maintenance and Care Agreement, that an adopter take specific corrective actions if the authorized officer determines that an animal is not receiving proper care of is being maintained in unsatisfactory conditions. The adopter shall be given reasonable time to complete the required corrective actions.

Subpart 4470—Prohibited Acts, Administrative Remedies, and Penalties

§ 4770.1 Prohibited acts.

The following acts are prohibited:

(a) Maliciously injuring or harassing a wild horse or burro;

(b) Removing or attempting or remove a wild horse or burro from the public lands without authorization from the authorized officer;

(c) Destroying a wild horse or burro without authorization from the authorized officer except as an act of mercy;

(d) Selling or attemping to sell, directly or indirectly, a wild horse or burro;

(e) Commercially exploiting a wild horse or burro;

(f) Treating a wild horse or burro inhumanely;

(g) Using a wild horse or burro for bucking stock;

(h) Violating a term or condition of the Private Maintenance and Care Agreement;

(i) Applying a brand;

(j) Removing or altering a freeze mark.

§ 4770.2 Civil penalties.

(a) A grazing permittee or lessee who has been convicted or otherwise found in violation of any of these regulations may be subject to suspension or cancellation of the grazing permit or lease and of the grazing preference, as provide in § 4170.1–1 of this title.

(b) An adopter's failure to comply with the terms and conditions of the Private Maintenance and Care

Agreement may result in the cancellation of the agreement, repossession of wild horses and burros included in the agreement, and disapproval of requests by the adopter for additional excess wild horses and burros.

§ 4770.3 Administrative remedies.

Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal in accordance with 43 CFR 4.4 within 30 days of receipt of the written decision.

§ 4770.4 Arrest.

The Director of the Bureau of Land Management may authorize an employee who witnesses a violation of the Act or these regulations to arrest without warrant any person committing the violation, and to take the person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so authorized shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisons of the Act of these regulations.

§ 4770.5 Criminal penalties.

Any person who commits any act prohibited in section 4770.1 of these regulations shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both, for each violation. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States Commissioner or magistrate, designated for that purpose by the court by which he/she was appointed, in the same manner and subject to the same conditions as provided in 18 U.S.C. 3401.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

August 15, 1984.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 150

Airport Noise Compatibility Planning; Development and Submission of Airport Operator's Noise Exposure Map and Noise Compatibility Planning Program; Final Rule and Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 18691; Amdt. No. 11-25; Revision of Part 150]

14 CFR Parts 11 and 150

Airport Noise Compatibility Planning; Development and Submission of Airport Operator's Noise Exposure Map and Noise Compatibility Planning Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule revises and makes final the FAA's interim rule that prescribes requirements for airport operators who choose to submit noise exposure maps and develop airport noise compatibility planning programs to the FAA. This regulation is needed to implement portions of the Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 *et seq.*). It amends the interim rule adopted on January 19, 1981 (46 FR 8316). The revisions reflect, in part, comments invited and received following promulgation of the interim rule.

DATES: Effective date of this amendment is January 18, 1985. Comments must be received on or before June 14, 1985.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 18691, 800 Independence Avenue, SW., Washington, D.C. 20591;

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket, weekdays except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION: The purpose of these regulations is to implement portions of Title I of the Aviation Safety and Noise Abatement Act of 1979 as amended (49 U.S.C. 2101 *et seq.*, the "ASNA Act"). These final regulations amend and make final the interim regulations promulgated January 19, 1981 (published in 46 FR 8316, January 26, 1981). That interim rule was issued in order to meet the statutory deadline to prescribe regulations by February 28, 1981. Although the interim rule was based largely on Notice No. 76-24 (41 FR 51522), full implementation of the statutory dictates required certain provisions in the rule that varied in some respects from those proposed in the notice. Accordingly, comments were invited on the interim rule based on the rule text and experience under the rule. A number of interested persons submitted written comments to the public regulatory docket. All comments received have been reviewed and considerd in the issuance of this final rule. They are discussed below.

Comments Invited

The FAA has determined that it is approprite to adopt this revision of Part 150 without additional public notice and comment on the text thereof. In view of the fact that the FAA has already received comments on the interim rule and that, except for a shift of certain review functions within the FAA, the changes in Part 150 are all either editorial or clarifying in nature, notice and public procedure are unnecessary. In addition, the FAA has been ordered by the United States Court of Appeals for the District of Columbia Circuit (*People of the State of Illinois* v. *Langhorne Bond*, No. 81-1317, September term, 1983) to promulgate final regulations governing airport noise abatement planning and noise assessment methodology no later than December 18, 1984.

DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on regulations, even when not required to do so be statute. The DOT policy further provides that prior notice may be foregone when it can reasonably be anticipated that such action will not result in the receipt of useful information. In such a case the initiating office, nevertheless, is to provide notice and opportunity to comment subsequent to the final regulation. This procedure will assure that continued public participation is allowed and also permit the FAA to assure compliance with the Judicial deadlines. Accordingly, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this amendment. Communications should identify the regulatory docket and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this amendment must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 18691." All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Synopsis of the Final Rule

As provided under the ASNA Act, these regulations apply to any "public use airport" as defined by Section 502(17) of the Airport and Airway Improvement Act of 1982. It should be noted that, although Part 150 specifies requirements that must be met when submitting noise exposure maps and airport noise compatibility planning programs to the FAA, the submission of these maps and programs is completely voluntary.

These proposed amendments also incorporate changes required by amendments to the ASNA Act, Docket comments received during the February 28, 1981 through December 31, 1981 comment period, and the practical experience gained by the FAA in implementing the program. FAA's internal processing of Part 150 submissions are modified to simplify the airport operator's procedural requirements and to place primary review responsibility in the FAA's regional offices.

Overview of the Changes

As required by the Act, the regulations as revised establish a single system of measuring aircraft noise and a single system for determining the exposure of individuals to noise in the vicinity of airports. The regulations as revised also establish a standardized airport noise compatibility planning program, including: (1) Voluntary development and submission to the FAA of noise exposure maps and noise compatibility programs by airport operators; (2) standard noise methodologies and units; (3) identification of land uses that are normally compatible (or noncompatible) with various levels of noise around airports; and (4) the procedures and criteria for preparation and submission of noise exposure maps and noise compatibility programs.

This rule changes the administrative process to be followed by the FAA when it receives a noise exposure map or airport noise compatibility program (or their revisions) from an airport operator in accordance with the ASNA

Act. Airport operators volunteering to participate in the program submit five copies of their noise exposure maps, noise compatibility programs, and their revisions to the Director of the FAA Regional Office having jurisdiction over the area in which the airport is located. If the submission conforms to the applicable requirements, it is received by the FAA and a notice of receipt is published in the **Federal Register**. Submissions which do not conform, will be returned by the Regional Director to the airport operator for further consideration and development to comply with Part 150.

The Regional Director (or designee) conducts the necessary evaluations of noise compatibility programs and, within the prescribed time period, recommends to the Administrator whether to approve or disapprove the program. The region is provided broad discretion to conduct the evaluation and to follow the necessary procedures to ensure that the decision will be made efficiently and on a well-informed and reasoned basis. Some of the evaluation criteria are prescribed under section 104 of the ASNA Act, but in other situations, such as those relating to flight procedures or affecting the safe and efficient use of the navigable airspace, the FAA will apply appropriate policy and program criteria to the matters presented by the program. The FAA considers only one program at a time for any specific airport; if a program is already under review, it will have to be revised or withdrawn by the applicant before the FAA will review another program. Except for specific situations, each revised program will be considered under the proposed rule as a new program. Under prescribed conditions, an approval may be revoked or modified for cause after notice to the airport operator. Determinations became effective upon issuance and continue until revoked or modified.

In framing the ASNA Act, the Congress reaffirmed the FAA's responsibilities to review local actions for flight safety and for economic burden. Under ASNA, the proposal of restrictions or other actions under a noise compatibility program is entirely discretionary on the part of the airport operator; however, review of the operator's proposal by the FAA for safety and economic burden is not optional. Once submitted to the FAA, each noise compatibility program must be scrutinized and be approved or disapproved under all of the criteria in section 104 of the ASNA Act.

Administrative Process

This rule describes the revised administrative process the FAA will follow when it receives a noise exposure map or airport noise compatibility program (and their revisions) in accordance with the requirements of the ASNA Act. As previously indicated, the Director of the FAA Region in which the airport is situated has, through delegation from the Administrator, the primary responsibility for administering the Part 150 airport noise compatibility planning program. The FAA Region will evaluate the submission and will coordinate any aspects of the noise program affecting other agency programs.

The process provides for notice to the public of the receipt of each airport "noise exposure map" and "noise compatibility program" by publication in the **Federal Register** when, based on a preliminary review, the requirements for those submissions are satisfied. It provides a means for timely and thorough evaluation by the FAA of the measures presented in each program to ensure an informed and reasoned determination on whether that program should be approved. That decision is based on the program itself, information presented or developed during the evaluation, and other information available to the agency.

The administrative process does not include adversary pleadings or proceedings in which interested persons submit their complaints, evidence, or arguments for a "record" of hearing as the sole basis upon which the Administrator's determination on a program will be made. Instead, Section 103(a)(1) of the ASNA Act provides that, before a Noise Exposure Map is submitted to the FAA, it be prepared "in consultation with any public agencies and planning agencies in the area surrounding the airport." FAA's role is then simply to approve or disapprove a subsequent program within the 180-day time set by Congress. Section 104(b) of the ASNA Act requires the Administrator to approve or disapprove each program submitted in accordance with the Act (except those measures relating to flight procedures) within 180 days after it is received or, upon failure to do so, the program is "deemed" to be approved. Except for those measures relating to flight procedures, the Administrator must approve a program if the measures to be undertaken under the program: (1) Would not create an undue burden on interstate or foreign commerce, (2) are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, and (3) the program provides for its revision made necessary by a revised noise exposure map. Clearly, those decisions do not preempt local authority or responsibility for land use decisions.

Program measures relating to proposals for revised flight procedures for noise control or abatement purposes were treated separately from other measures under the ASNA Act, and the interim regulation, in view of their potential impact on air safety and on the efficient and prudent management of the Nation's air transportation system. As specified herein, FAA determinations relating to the use of flight procedures for noise control purposes may be issued either in connection with the decisions made on other portions of the program or they may be issued separately. The FAA recognizes that a proposal concerning flight procedures may be an integral part of a noise compatibility program so that it would be difficult to approve the program if the flight procedures are considered separately. Consequently, the FAA intends to conduct its evaluation of flight procedures together with, and at the same time as, its evaluation of the rest of the program and to issue its determinations at the same time within the 180 days, whenever possible. It is only when further extensive evaluation may be necessary relative to flight procedures which cannot be accomplished within the 180 days allowed for program approval or disapproval that the FAA will issue a separate determination. A separate determination on flight procedures will then be made within an indefinite, but reasonable, time after receipt of the program.

Section 104(a) of the ASNA Act specifically excludes (from the 180-day rule) those portions of a program that "relate to" flight procedures, not just the flight procedures themselves.

An airport operator may revise or withdraw a noise compatibility program at any time before a determination is issued on that program by the Administrator; in addition, the Regional Director may terminate evaluation of the program immediately upon notice of the intent to revise or withdraw a program. A revised program will be treated as a new program and a new 180-day review period will begin unless the Regional Director finds that, in light of the overall program, the modifications can be evaluated separately and integrated into the unmodified portions of the program without exceeding the 180-day review period or creating an undue workload or

expense to the Government. The FAA will evaluate only one program at a time for any one airport.

Discussion of Comments on the Interim Rule

As previously stated, interested persons have been afforded the opportunity to participate in development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed December 31, 1981. All comments received have been reviewed and considered in the issuance of this final rule.

Twenty public comments were received in response to the notice contained in the interim rule (Docket No. 16729); about half supported the interim rule as published, while the others contained specific suggestions and recommendations for change. In addition to comments directly on the rule, several commenters took the opportunity to comment on other aspects of the ASNA Act.

The assignment of specific responsibilities for local airport noise control planning and implementation to the local airport proprietor, users' groups, planning agencies, and the FAA received considerable discussion. The general consensus among those responding in support of the interim rule procedures was that, without a regulation, many airport noise problems will be overlooked until they are beyond the point of simple or effective solution. Although a majority of individuals responding to the docket were in agreement that the development of noise plans by airport proprietors was a desirable goal, many specific and significant objections to individual sections of the interim rule were raised. The primary objections were with those sections dealing with the interactions between groups and the consultations required as a condition of approval by the FAA. While the commenters seldom agreed on what should be required, it was possible to discern a consensus that the provisions of the interim rule were too vague and indistinct to be really useful guidance.

The comments received in public Docket No. 16729 are discussed below. They are grouped by broad categories of issues.

Safety Reviews

One commenter was concerned with the scope of safety reviews of actions that may be proposed by airport proprietors under FAR Part 150. A trade association of U.S. airlines asserted that the present text restricts the safety reviews to "flight procedures." It was suggested that safety involves other areas, such as displaced thresholds, reverse thrust usage, and glide slopes.

The FAA certainly agrees that the matters listed by the commenter are deserving of safety reviews if and when such actions are proposed for implementation. However, it should be noted that they are already included in FAR Part 150. The definition of flight procedures in § 150.7 includes "any requirements, limitations, or other actions affecting the operation of aircraft in the air or on the ground." This final rule continues the use of the general definition of flight procedures in order to avoid inserting a list of specific actions. Such lists tend to be exclusionary and need more frequent revision.

Aircraft Operational Controls vs. Land Use Controls

This docket received several comments regarding the emphasis that should be placed on aircraft operational controls or limitations relative to emphasis on land use controls. One commenter stated that "greater emphasis should be placed on flight procedures which diminish aircraft noise at its source or lessen its impact on noise sensitive areas." Another commenter stated that land use controls and off-airport construction techniques with limited aircraft operational modifications would be acceptable but remained opposed to aircraft noise restrictions beyond those already required by FAR Part 36. The commenter continued that "it would be serious error on the part of FAA to adopt a policy that encourages local airport operators to establish additional noise restrictions and thus adversely impact the fleet transition process." This final rule will not limit, in any way, FAA's close review of proposed operating restrictions with respect to the impact of such proposals or the fleet transition process.

It is not the intent of the FAA through FAR Part 150 to encourage one noise abatement alternative over another but through the very process set forth in Part 150 to provide a reasonable planning and implementation approach to ensure that maximum noise abatement benefits are derived in a manner that does not place an undue burden on air commerce, is not discriminatory, and does not adversely affect the safe and efficient use of airspace. The Part 150 process provides a voluntary avenue for airport proprietors to gain Federal approval of noise abatement proposals.

Level of Federal Involvement in Local Planning

One commenter observed that most airports serving air transportation have been in existence for a long time with known incompatible land uses in the airport environs. The commenter believes that there are few situations where political, social, and financial conditions would permit conversion of these uses to compatible ones. Two commenters expressed concern about the degree of Federal involvement as stated in the interim regulation and the effect it may have on diminishing local responsibilities relative to noise controls. One of these, the American Association of Airport Executives, complained that attempts by local proprietors to protect the citizens from noise have run afoul of Federal action through the courts or otherwise citing restraint of trade or discrimination. On the other hand, the Air Transport Association (ATA) argued for the establishment of its proposed national aircraft noise abatement program which would preclude FAA approval of plans which unduly affect interstate commerce, jeopardize safety, unjustly discriminate or interfere with safe and efficient use of airspace. ATA's proposal would allow for local involvement by initiation of a plan by the local proprietor and opportunity for public review.

FAA proposes to support the ATA position with respect to factors which should not be allowed and has provided for them in the Program Standards section of Appendix B and in paragraph 150.35(b) on program approval.

Voluntary vs. Mandatory Planning

Nine comments were received on whether or not Part 150 should *require* at least some airport proprietors to submit noise exposure maps and noise compatability programs. For instance, the city of Chamblee, Georgia, stated that all airports with an Airport Operating Certificate should be required to submit their noise maps and programs as a condition for their certification, that any airport with noncompatible uses should be required to hold advertised public hearings during the plan development process, and should receive Federal assistance with respect to the costs incurred in developing these plans. The Attorney General of the State of Illinois went further and suggested that Part 150 should be revised to allow citizens and communities that are severely noise impacted to require the airport operator to engage in the noise abatement planning programs. FAA

encourages all affected communities to participate in the land use and related compatibility planning process, but does not wish to interfere in local decisions concerning which local government body should exercise legal jurisdiction over such planning.

On the other hand, the City of Syracuse, New York, and agencies of several states (Alaska, Arizona, and Maryland) supported voluntary participation in the Part 150 process. They felt that a uniform national requirement for the preparation and submission of noise maps and programs, whether or not the airport had a demonstrable noise problem, would be burdensome and unnecessary. The FAA agrees with this position. Further, the ASNA Act requires that the process be voluntary. Therefore, that principle is maintained in the final rule.

The Department of Law of the State of New York, however, expressed concern that the voluntary nature of Part 150 could lead to noncompliance and to subsequent undermining of the purpose and intent of the rule. They urged some strengthening of sanctions, either positive or negative, to encourage wider use of the Part 150 process. The FAA shares the expressed concern and believes the New York suggestion to be appropriate. Nothing in the ASNA Act or other statutes prohibits the government from encouraging airport operators to participate. In fact, the ASNA Act, itself, provides that certain legal protections exist for those airport operators submitting maps, and authorizes grants of funds for airport noise compatibility planning and for projects to carry out approved noise compatibility programs.

Of particular concern are those airport operators who, in the name of noise abatement, consider only some of the alternatives and some of the economic impacts of those alternatives, and then proceed with a particular course of action without full and public consultation with the FAA and other affected parties. In this regard the ATA suggested that noise program submissions should not be approved without demonstrations of attempts to balance noise mitigation with burden on interstate commerce, promotion of competition, energy conservation, undue discrimination, efficient use of airspace, cost benefits, and other trades. The FAA believes that, as currently adopted, the Part 150 process permits this. The final rule does not limit FAA's ability to consider these factors.

Review of Existing Local Noise Control and Planning Actions

Several commenters had questions or made statements regarding the relationship between existing local plans or actions regarding noise abatement and how they would relate to or fit in with the Part 150 program objectives.

Part 150 submissions of compatibility can be logical extensions to existing local plans and programs. Separate from this proposal, the FAA has funded and otherwise participated in airport noise abatement and land use compatibility planning under the ADAP Planning Grant Program. Many of these planning efforts are conducted in such a manner that, with minor modifications, the resultant plans would qualify for submission under Part 150. There are provisions in this rule to waive certain requirements of the rule for those locations which began their studies prior to the end of the fiscal year in which the interim rule was issued.

In summary, the ASNA Act and Part 150 set forth an appropriate means of defining the noise problem, determining the wide range of affected interests, ensuring broad public and aeronautical participation, and, finally, balancing all of these interests to assure a reasonable, nonarbitrary, and nondiscriminatory result. That result must be consistent with the airport proprietor's broad duties under the constitution and its specific duties under applicable airport development grants.

Relation to Airport Proprietor's Responsibility

As stated above, Part 150, like the ASNA Act itself, does not place a duty on airport operators to submit noise compatibility programs to the FAA, or to refrain from implementing programs unless they are approved by the FAA. In this sense, the provisions of Part 150 are not mandatory. However, the FAA believes that the provisions of Part 150, like those in the ASNA Act, are essential to the attainment of an adequate weighing and balancing of air transportation and air commerce objectives against the myriad of social, community, and other real interests that may be affected by airport noise. In addition, it is clear from the legislative history of the Act that the Congress intended to establish a standardized framework for ensuring that localized airport noise restrictions are based on a broad base of information and are thus reasonable, fair, and responsive to the needs of both air commerce and the community.

The FAA, therefore, views Part 150, or a process similar to it (whether or not the process is approved by the FAA), as setting forth the kind of rational decision-making procedure that is appropriate to meet the test of reasonableness set forth by the United States Court of Appeals for the Second Circuit in *British Airways Board, et al.* v. *Port Authority of New York and New Jersey*, 558 F.2d 2075 (1977). In that case, the Court noted that the Federal government conceded that it may not preempt airport proprietors from promulgating their own noise regulations (as is also stated in Part 150), but then went on to consider what limits, if any, apply to the airport proprietor who seeks to restrict the use of its airport for noise purposes. The Court noted the pervasive scheme of FAA regulation of aircraft operation and noise abatement, and set the stage for its conclusion as follows: "Implicit in the Federal scheme of noise regulations, which accords to local airport proprietors the critical responsibility for controlling permissible noise levels in the vicinity of their airports, is the assumption that their responsibility will be exercised in a fair, reasonable and nondiscriminatory manner." (558 F.2d 82). The Court considered both the airport proprietor's liability for noise damages flowing from *Griggs* v. *Allegheny County*, 369 U.S. 84 (1962) and the wide range of air commerce responsibility and activities that are covered by the protective mantle of preemption (citing *City of Burbank* v. *Lockheed Air Terminal, Inc.*, 411 U.S. 624, (1973)), and then struck a reasoned accommodation between each of these conflicting interests. Accordingly, the Court held that the Port Authority "* * * is vested only with the power to promulgate reasonable, nonarbitrary and nondiscriminatory regulations that establish acceptable noise levels for the airport and its immediate environs. Any other conduct by an airport proprietor would frustrate the (aviation) statutory scheme and unconstitutionally burden the commerce Congress sought to foster." (588 F.2d 84).

The Court also noted that the duty to act reasonably is further stated in Federal airport development grants which, pursuant to 49 U.S.C. 1718(a)(1), provide that the Federally funded airport will be "available for public use on fair and reasonable terms and without unjust discrimination" (558 F.2d 84).

In summary, the ASNA Act and Part 150 set forth an appropriate means of defining the noise problem, determining the wide range of affected interests,

ensuring broad public and aeronautical participation, and, finally, balancing all of these interests in a manner that is needed to assure a reasonable, nonarbitrary, and nondiscriminatory result that is consistent with the airport proprietor's broad duties under the constitution and its specific duties under applicable airport development grants.

This duty is carried forward, without change under the Airport and Airway Improvement Act of 1982 (at 49 U.S.C. 2210).

Public Involvement

Two commenters proposed that proponents actively seek public involvement in the review of noise compatibility programs rather than merely passively await public comment. Another commenter recommended that the rule emphasize that a "critically important purpose of noise compatibility planning" is to provide for direct involvement in the planning process; it was stated that successful efforts require a thorough understanding of the legal responsibilities (and limits) of the parties involved. It was further recommended that this involvement take place early in the process when there is still opportunity to develop mutually acceptable plans and that more explicit instructions be given regarding citizen participation generally. FAA agrees with these comments and has revised § 150.23(d) accordingly.

One commenter proposed that a formal docket be established upon receipt of a noise exposure map to provide a means for filing written comments and assuring adequate consideration and that all comments received should be included in submissions of noise compatibility programs. This commenter suggested that a summary could be substituted, but only if the commenters (to the noise exposure map docket) agreed that it was fair representation of their comments. Since the responsibility for local coordination of draft noise exposure maps and draft noise compatibility programs rests with the airport operator and with local public and planning agencies (See Sections 103 and 104 of the ASNA Act), FAA does not agree that an FAA or other Federal docket is appropriate. The proposed rule does require, for both the submission of noise exposure maps and noise compatibility programs, a signed statement by the airport operator stating that full coordination with responsible local public agencies has been accomplished (See § 150.23 (d) and (e)). The procedures set forth for evaluation of the program in § 150.33 include ample provision for FAA to confer with affected parties and otherwise ascertain the validity of the material submitted. Nothing in the rule would prevent any party from pointing out to FAA any aspects of the program he or she feels should have a bearing on final disposition.

In response to comments recommending that the FAA specify the form and nature of consultation and mandate public meetings at critical stages during development of a plan, FAA believes that the methods for ensuring proper coordination at the local level should be left entirely to local government. Accordingly, these comments are not accepted.

One commenter suggested that "states" be specifically included as among the public agencies with whom airport operators consult in the process of developing noise exposure maps and compatibility programs. FAA agrees and proposes to revise §§ 150.21(b) and 150.23(c) accordingly.

Internal Review and Approval Processes Within FAA

The FAA agrees with the recommendation of several commenters that more authority be given to FAA regional offices in the review and approval process. The proposed rule reflects changes which give the FAA Regional Directors primary responsibility for program review and approval with FAA Regional Airports Divisions having a central role in coordination of FAA's review of noise exposure maps and compatibility programs. However, specific overview is to be retained in FAA headquarters and approvals by the Administrator.

The Air Transport Association (ATA) has recommended specific changes in Subpart C regarding the internal review process and factors to be considered. For the most part, FAA agrees with these suggestions and has made changes accordingly. FAA cannot accept ATA's recommendation relative to limiting automatic approval, after the 180-day review period, only to those options strictly under local control. The final regulation reflects the provisions in the law as regards those items which are exempt from the automatic approval provisions (i.e., items related to flight procedures).

Funding Availability for Noise Planning

Several commenters indicated the strong need for noise abatement funding. One respondent made the point that a positive step of encouragement of sponsor participation in the Part 150 program would be the attractiveness or probability of funding through the Federal grant program. Another commenter said that, without the good prospect of funding, many of these plans would be counterproductive and even frustrating to the public. This would include loss of credibility to the aviation industry because of the real possibility that the Part 150 process would generate public expectations of noise relief with no guarantees of the funding to implement the measures that would produce that relief.

There is no commitment within Part 150 to provide for the funding of particular projects, nor is there any guarantee that any part of an approved compatibility program will be funded on the Federal level. There is nothing in Part 150 that prohibits local or state funding of projects recommended in approved compatibility programs.

Land Use Compatibility Table

One commenter stated a belief that land uses are not inherently incompatible with specific noise levels. It should be noted that there is no intent to preempt local determinations concerning land use compatibility for noise purposes. We believe that the Land Use Compatibility Table used in the interim regulation, and retained in the final rule, is fair, that it represents the best available information on the subject, and that it fully meets the requirements of the ASNA Act. Like other parts of the rule, it is not intended to replace site specific determinations by local authorities or to supplant other appropriate criteria for use in local programs. Instead, the Table identifies consistent national guidelines for the resolution of airport noise compatibility problems and for needs arising out of the ASNA Act.

The FAA appreciates the intent of another commenter's suggestion that certain changes be made to Part 150 Land Use Compatibility Guidelines to make them more consistent with the Federal Interagency Committee on Urban Noise Guidelines. Specifically, the commenter requested that the Table pick up a note in the Guidelines that states in part that "although local conditions may require residential use, it is discouraged (between L_{dn} 65 and 70 dB) and strongly discouraged (between L_{dn} 70 and 75 dB)." While it is FAA policy to advise against new residential development within the L_{dn} 65 dB contour, the purpose of the Table is to set a clear unambiguous national guidance for the purpose of potential funding of subsequent projects. Since the proposed language would make it less clear as to which situations meet the guidelines and which do not, the note has not been accepted.

Background Noise

Two comments were received on the impact of other (nonairport) noise sources on airport noise compatibility programs. The Arizona Department of Transportation expressed the view that where other noise sources are causing problems in conjunction with airport noise, the airport noise compatibility program should take this into account. They point out that some land uses are incompatible with major arterial streets or with certain industries, as well as with some airport noise levels. In the FAA's opinion, this fact is, or should be, a major consideration in the development of any airport noise compatibility program. No airport is conceived in a vacuum or operated in isolation. Rather, each airport is designed and operated to serve the unique needs of the communities around it. This is historically a major goal of responsible noise planning. Instead, such planning ideally seeks to integrate the airport with its environs by employing land uses that complement airport activities but which are not disturbed by normal airport operations. Obviously, at some airports compatible land uses could include areas for high-noise industrial activities and might also include transportation corridors. Thus, the FAA agrees with the comment that noise compatibility programs should take into account ambient noise levels. However, it is also apparent that there are many airports and communities where it would be unnecessary for the Federal Government to require precise measurements or estimates of ambient noise. Therefore, the FAA maintains the policy that, for purposes of FAR Part 150 maps and programs, no land use shall be identified as noncompatible where the self-generated cumulative noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the cumulative noise from aircraft and airport sources.

The second comment concerning background noise levels expressed the opinon that it would be difficult to determine such ambient noise levels without noise monitoring systems, since the Integrated Noise Model and other computer models do not generally estimate nonaircraft noise. In part, the FAA agrees but does not propose to make noise monitoring systems mandatory.

During the drafting of the interim FAR Part 150, the FAA carefully considered use of a method proposed by the U.S. Environmental Protection Agency (EPA). The EPA proposal included among other things methods for measuring or computing what they called the "community background noise level." While the FAA rejected the proposal to require the use of this method, nothing in the interim FAR Part 150 or in this final rule precludes an airport proprietor from using it in appropriate situations. Another accepted quick handbook method of estimating ambient noise due to other transportation sources such as railway or roadway is the Department of Housing and Urban Development (HUD) "Interim Noise Assessment Guidelines." This is a worksheet method that gives a close approximation of probable noise due to other sources. However, the FAA agrees with the commenter that it is generally more accurate to determine background noise levels by measurement. This does not mean that the FAA endorses or recommends for this purpose permanently installed noise monitoring systems at fixed points throughout each community surrounding every airport. Certainly such systems serve a valued function in many communities. For instance, the FAA maintains a system for the two federally-owned airports in the Washington, D.C. area. From this and other experience, the FAA believes that small portable systems, possibly even sound level meters, are more appropriate for the determination of nonaircraft levels in broad areas.

Alternative Contour Methods

One commenter suggested that smaller general aviation airports should be allowed to develop noise exposure contours by using simplified procedures. Specifically, the suggestion was to use procedures published by the FAA several years ago in Report No. FAA–AS–75–1 entitled, *Developing Noise Exposure Contours for General Aviation Airports.*

The FAA agrees in part with the suggestion. The interim text of Sec. A150.103 required the use of an approved computer program, such as the FAA's Integrated Noise Model (INM). After consideration of the suggestion, it now appears that this language was too restrictive in requiring the use of only computer programs. Accordingly, the text of Sec. A150.1 is broadened to include any approved equivalent. It should be noted that approval of any proposed equivalent will be contingent upon its capability to produce essentially the same results (contours) as the INM computer program, from standardized technical information input about the airport, its operations, and environs. Generally, the burden to demonstrate equivalency to the FAA will be with the applicant. However, the FAA will maintain a list of programs and other methods that have been already approved.

Report No. FAA–AS–75–1 has been examined to see whether it produces equivalent results to the INM. Report FAA–AS–75–1 was developed a number of years ago with the intent that it be used to provide a simplified method to estimate noise for purposes of depicting impacts associated with an environmental assessment for proposed airport development at non air carrier airports. The latest FAA guidance on environmental impact threshold criteria allows the report to be used as a rought estimate to determine if there is the potential for serious noise impacts, and, if not, to produce contours for general aviation airports. The method lacks flexibility and is overly conservative (i.e., tends to overpredict impact). Because of the flexibility which is required to analyze noise abatement procedures fully and the degree of accuracy desired under Part 150, use of this particular handbook method would not be acceptable as an equivalent.

Another commenter noted that the interim rule does not recognize that there may be prior local or state requirements that conflict with the new regulation. He cited the example of one state that required the preparation of DNL noise contours for certain airports. According to the commenter, these maps "have been developed using a variety of methods more-or-less different from the INM of the rule." He suggested that FAR Part 150 should be amended to allow for continued use of these other methods for consistency.

The FAA disagrees with this suggestion and believes that continued use of methods which do not reflect the state-of-the-art in noise prediction is undesirable and would work to the airport operator's detriment since older models tend to overpredict noise contours when compared to newer models. However, the FAA recognizes the burden involved in requiring work to be redone as new models come on line and, therefore, proposes to accept as an "FAA-approved equivalent" the use of a noise methodology which represented an equivalent to the INM state-of-the-art at the time the noise exposure maps and noise compatibility programs were prepared, provided that the contours are shown using DNL. One of the primary thrusts of Title I of the ASNA Act was to require the FAA to standardize the methodology used in the reporting and evaluation of aircraft and airport noise. Although participation in the FAR Part 150 noise compatibility planning process is, under ASNA, voluntary on the part of airport proprietors, the establishment of

"a single system for determining the exposure of individuals to noise which results from the operations of an airport" is not discretionary for the FAA. Instead, the FAA is required to establish this single system by regulation for the purpose of approval of noise compatability proposals, even though no person is required to apply for, or have, such approval. Thus, the requirement is not just to compute or calculate contours in standardized units of L_{dn} but to compute or calculate those contours in a consistent and uniform manner and to compare the land uses within those contours against a national guideline.

Revision of Noise Exposure Map

Several commenters expressed confusion regarding the contents of the submittal documentation of the noise exposure map, especially the 1985 or 5-year map. They further indicated that it was unclear when a map must be revised. A primary point of confusion was in the definition of "substantial new noncompatible land use" in Section 103 of ASNA and that of "significant" in Section 107 of the same Act. The FAA agrees that these points were unclear and need further explanation.

As indicated in Section 103 of ASNA, a noise exposure map is required to be revised when any change in airport operation would create any substantial new noncompatible use in any area surrounding the airport. "Substantial new noncompatible use" is now defined in Section 150.21(d). Another comment questioned whether the requirement for revision applies to the current map, the 1985 or 5-year map, or both. Section 150.21(d) indicates that, so long as the change in airport operation does not exceed the 1985 or 5-year forecast map to the extent that it would create a substantial new noncompatible use (as defined therein) with respect to that map, no revision is necessary. The 1985 or 5-year map remains in submitted status even after the year 1985 or subsequent year has passed, until it is required to be revised because of a substantial new noncompatible use with respect to that map.

Sections 150.21 (g) and (h) have been added to clarify the relationship of Section 107 of ASNA to the process described in Part 150. The term "significant" in Section 107(a) of ASNA is defined in relationship to the revision of the noise exposure map.

Other Comments

In addition to the comment already noted, the Attorney General of the State of Illinois made other comments related to matters in litigation that were not comments on the substance of the interim rule.

SECTION-BY-SECTION ANALYSIS OF THE CHANGES TO THE RULE

The final rule establishing the FAA's "Airport Noise Control and Abatement Planning" program is a revision of the interim Part 150 to the Federal Aviation Regulations (14 CFR Part 150). This part, as revised, consists of three subparts and two technical appendixes described as follows:

Subpart A—General Provisions

Section 150.1 Is Entitled "Scope and Purpose"

The applicability of Part 150 is specified in § 150.3. As prescribed in the amended ASNA Act, it now covers the airport noise compatibility planning activities of operators of all public use airports not used exclusively by helicopters, as defined in the amended ASNA Act; e.g., any public airport, any privately owned reliever airport, and any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft which is used or to be used for public purposes. The FAA will receive and evaluate submissions of noise programs from any of the covered airports in order to provide the benefits of the planning, evaluation, and FAA advice to those airport operators wishing to participate. By so doing, the rule covers approximately 2,800 airports.

Section 150.5 specifies the limitations of Part 150. Subsections (a), (b), and (c) have nonsubstantive changes made for clarification. A new subsection (d) is added to clarify that responsibility for the interpretation of the effects and placement of noise contours upon specific subjacent land uses lies with appropriate local governments rather than with the FAA.

Section 150.7 prescribes the definitions of certain terms used in Part 150. Other special usages of terms are provided in those appendixes in which the term appears.

The word "airport" is now defined to cover all public use airports not used exclusively by helicopters, as defined in Section 101(1) of the ASNA Act as amended.

A Part 150 "airport operator" is changed to comply with the amended ASNA Act.

"Noise exposure maps," has the unnecessary requirement for topographic data deleted, and has other changes for clarification.

"Noncompatible land use," also has minor changes for clarification.

Section 150.9 contains the designation of standardized noise systems prescribed under section 102 of the ASNA Act. "Uses of land which are normally compatible * * *," has been moved to a new § 150.11 and changed for clarification. References to FAA approved equivalents in subsections (a) and (b) have been moved to a new subsection (c) and expanded for clarification.

Section 150.11 incorporations by reference, has been renumbered, § 150.13. Minor changes have been made for clarification and the addresses in subsection (e) have been updated.

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

Subpart B of Part 150 prescribes the substantive and procedural standards for airport operators wishing to develop original or revised noise exposure maps (and the related descriptions of projected airport operations) and proposed noise compatibility programs. It also describes the response of FAA Regional Directors in receiving submissions and in publishing notices in the **Federal Register.**

Section 150.21 covers noise exposure maps and the related documentation under § 103 of the ASNA Act. Section (b) is changed to reflect the new administrative procedures by directing that all copies of airport operator submissions be sent to the FAA Regional Directors.

Section (a)(1) is changed to reflect the passing of the 1982 calendar year and now requires the future data forecast for the fifth calendar year beginning after the date of submission. Additional technical changes are made to both subsections (1) and (2) to clarify the information actually needed.

Section 150.21(b) is changed to clarify the existing requirements for consultation in the preparation of noise exposure maps and to require submission of basic documentation of that consultation. Some of these requirements were previously included in subsection 150.21(e).

Section 150.21(c) is changed to reflect the new administrative procedures and for clarification.

Section 150.21(d), which indicates the circumstances under which an acceptable map must be revised because of changes in airport operations that would create any substantial, new noncompatible land uses, has been expanded to more clearly delineate these circumstances.

For purposes of Part 150, a change in airport operation which creates a

substantial new noncompatible use is an increase in the yearly day-night average sound level of L_{dn} 1.5 dB or greater as a result of aircraft operations which either cause a land area to become noncompatible for the first time or increases the noncompatibility of a previous noncompatible area. The requirement in § 150.21(d) for revision of the noise exposure map is related to the definition of "significant" changes in Section 107(a) of ASNA. When an airport realizes a "significant" change in the type or frequency of aircraft operations, in airport layout, in flight patterns, or in nighttime operations which either individually or cumulatively results in a L_{dn} 1.5 dB increase in noncompatibility, that change would create a "substantial new noncompatible use" and triggers this need for a map revision. This, of course, leaves the responsibility for monitoring these factors on the airport operator.

A revised map is not required if the changes increase the contours of the existing map but are still within the parameters of either the 1985 or 5-year forecast map so that, while the contours may be larger than or different from the map of existing conditions, they are not larger than or different from the forecast conditions. The FAA believes that this situation reflects the fact that the noise contours are changing just as the airport operator had forecast and that this forecast map has been available for public review; therefore, no revision is necessary. It is only when changes in airport operations (i.e., type and/or frequency of aircraft operations, number of nighttime operations, flight patterns, or airport layout) would cause the noise contours to increase in a way that is larger than or different from the forecast conditions and on an order of magnitude that would create a "substantial", (again, defined as an increase of L_{dn} 1.5 dB or more) new noncompatible use as defined in Part 150 definitions that a revised map is required. Changes in land uses or demographics in the area around the airport do not automatically require the submission of a revised map. At some point in the future, when the forecast year has been reached or passed, no revised map is necessary until changes in airport operations create substantial, new noncompatible uses. Comments are invited on whether revised noise exposure maps should be required when local ambient noise levels are substantially changed or the changes result in new noncompatible uses. The FAA will review comments on this issue and will consider further action, if appropriate. Revised noise exposure maps are treated the same, both substantively and procedurally, under Part 150 as initial submissions of maps.

Section 150.21(f) has been renumbered § 150.21(e).

Section 150.21(f) has been added to reflect Section 107 of ASNA which deals with circumstances under which a person who acquires a property interest in an area surrounding an airport for which a noise exposure map has been submitted shall be entitled to recover damages with respect to noise attributable to the airport.

In new § 150.21(g) the term "significant", in Section 107(a) of ASNA is defined for Part 150 in relation to a change or increase that would result in a substantial, new noncompatible use. This serves to tie together the requirement to revise the noise exposure map with the significant circumstances expressed in Section 107(a) so that the two will occur in unison.

Section 150.23 governs Part 150 noise compatibility programs and their revisions, pursuant to portions of section 104 of the ASNA Act. Any Part 150 airport operator, who has submitted a noise exposure map, may submit to the FAA a "noise compatibility program."

Section 150.23(a) has been revised to reflect the new administrative procedures.

Section 150.23(b) has been renumbered as (c) and a new paragraph (b) inserted to clarify acceptance and review sequence when a map and a program are submitted together. The FAA will not begin the 180-day formal review period for the program until after the FAA has had an opportunity to review the map and has found it in compliance with the applicable requirements.

Section 150.23(c), which gives requirements for developing and preparing noise compatibility programs, is expanded to include the requirements for an FAA-approved equivalent. These requirements are also delineated in Appendix B under Sec. B150.9 and are further described in this preamble under the analysis of that section.

As with the noise exposure maps, it is the FAA's intention to require as little modification as possible of documents prepared under previously funded or approved programs for acceptance under Part 150, where consistent with the need to ensure full equivalency.

Section 150.23(d) is renumbered (e) and a new (d) is added. It covers opportunity for public involvement and is in response to the comments received. FAA will not intervene in the consultative process used by local government.

Section 150.23(e) contains a description of the minimum content of a noise compatibility program. Subsection (1) is simplified for clarity. Subsection (4) is changed to place additional emphasis on citizen participation in response to the comments received. Other changes are made for additional clarity. Subsection (5) is changed to clarify the need to prevent the introduction of additional noncompatible uses from future airport operations. Subsection (7) is changed to clarify the documentation requirements for public comments. Subsection (8) is changed to add the estimated costs of proposals as a requirement. Subsection (9) is changed to clarify the requirements for revision of the program.

Subpart C—Evaluation and Determination of Effects of Noise Compatibility Programs

Subpart C of Part 150 describes the procedure followed and general criteria applied by the FAA to determine the pertinent effects of proposed noise compatibility programs and whether the proposed program should be approved or disapproved.

Section 150.31 prescribes the procedure and initial response of the FAA when it receives (from a Part 150 airport operator) a noise compatibility program. Section 150.31(a) is changed so that the Regional Director acknowledges to the airport operator receipt of five copies of the program and conducts a preliminary review of the submission. Section 150.31(b) is renumbered (c) and a new (b) is added. If based on the preliminary review the Regional Director finds that it does not conform to the application requirements of Part 150, it will be returned to the airport operator for reconsideration.

Section 150.31(c), which covers acceptable programs and the FAA's requirements for publication of a **Federal Register** notice is clarified, is brought into conformance with the revised administrative procedures, and reduced in bulk.

Section 150.31(d) has been added to clarify the starting date of the mandated 180-day approval period.

Section 150.33 describes the process for evaluation of the programs. It is clarified, brought into conformance with the revised administrative procedures, and reduced in bulk. In conducting the evaluation, the Regional Director (or designee) will take the lead and have the primary responsibility. It is expected that the FAA Regional Airports Divisions will have a central role in the program reviews since they maintain

basic working relationships with airport operators, have experience with airport noise planning studies done prior to Part 150, and have responsibility for the airport grant program which may provide funding for noise planning and noise projects. The region will send two copies of each program which has been accepted on the basis of preliminary review to FAA headquarters. Detailed internal FAA guidance or orders will be issued to the regional offices establishing criteria for approval of noise compatibility programs. Specific overview is to be retained by FAA headquarters offices to assure overall quality and uniformity of the reviews and a uniform high quality for approved programs. Approval of a program must be by the Administrator (Section 150.35(b)). Any headquarters comments will be sent to the region to incorporate in its review. The Regional Director (or designee) may, to the extent considered necessary, confer with other officials, persons, and agencies which may have responsibilities or information pertinent to the issues.

Section 150.35 governs the issuance of determinations on noise compatibility programs. Section 150.35(a) now includes the provision that no conditional approvals be given and clarifies the program items which are not subject to the 180-day rule. Section 150.35(d) clarifies the criteria for revision of a program. It also incorporates former § 150.23(c). Sections 150.35 (d) through (f) are renumbered. Section 150.35(d) is changed to add two conditions under which an FAA approval of a program or a portion thereof may be rescinded: when a term or condition of the program or its approval is violated, and when a flight procedure or other FAA action upon which the approved program is dependent is subsequently disapproved or rescinded by the FAA. Section 150.35(e) is revised for clarification.

Appendix A—Noise Exposure Map Development

Appendix A to Part 150 contains the technical description and standards constituting the methodology for developing acceptable airport noise exposure maps. Section A150.5(b) and its accompanying Table 1, "Tolerances Allowed on the A-Weighting Characteristics for Type 2 Meters," were redundant and have been deleted. Section A150.5(c) has been renumbered (b) and technical corrections have been made. This section is also changed to clarify that the computer based noise prediction program used must be either the FAA's Integrated Noise Model (INM) or an FAA approved equivalent. Additional technical corrections have been made to Sections A150.1(b) and A150.3(b). Section A150.5(a) is changed to clarify the types of sound measuring equipment which must be used.

Section A150.101 prescribes the content requirements for noise exposure maps, while Sections A150.101 (a) and (b) have technical corrections. Section A150.101(c) is changed for clarification. Section A150.101(e) is changed for clarification, subsection (8) which was redundant is deleted, and subsection (9) is renumbered. A new subsection (9) has been added to clarify the scale and graphic quality of the maps. Location of historic preservation sites, which had been previously overlooked, has been added to the items in subsection (6).

New section A150.101(f) excepts noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and commenced before October 1, 1981, from having to be modified in certain specific respects to comply with Part 150. Such studies include Airport Noise Control and Land Use Compatibility (ANCLUC) studies, airport master plans, site selection studies, and environmental impact statements and findings of no significant impact. The date October 1, 1981, reflects the FAA's intention to apply this exception to studies begun before the end of the fiscal year in which the interim Part 150 was issued.

As previously noted, Appendix A, Table 1, identifies the land uses which are normally compatible with the various exposure levels of individuals to noise. The table has been changed to give schools their own subcategory, to recognize their usual close relationship to residential areas and to not appear to encourage their location in a noisier environment than for residential. The footnote to Table 1 has been changed to clarify the local responsibility in determining the relationship between specific properties and specific noise contours. Technical changes have been made to the key and notes to the table for clarification.

Section A150.105 has been simplified for clarity.

Appendix B—Airport Noise Compatibility Program Development

Appendix B to Part 150 prescribes the content and technical methodology for developing airport noise compatibility programs. Those programs set forth the specific measures the airport operator (or other person or agency responsible) has taken, or proposes to take, in light of the noise exposure map for that airport, to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible uses.

Section B150.1(b), which states the purposes of a noise compatibility program, has been rewritten for additional clarity and to state better the purpose as defined by the ASNA Act.

Section B150.3 has been rewritten to indicate clearly the need for an accurate and complete noise exposure map as the basis for determining the need for a noise compatibility program and for developing a responsive compatibility program.

Section B150.5(a) is revised to include reduction of the probability of the establishment of additional noncompatible uses.

Section B150.5 (e), (f), and (g) are added to comply fully with the requirements of the ASNA Act.

Sections B150.7 (a) and (b) have been reorganized for increased clarity. Section B150.7(c) has been added to require clear identification of the agencies responsible for implementing the program and the agreed upon schedule.

New Section B150.9 is similar, but not identical, to Section A150.10(f). Section B150.9 excepts noise compatibility programs prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, from having to be modified in certain specific respects to comply with Part 150. The list of exceptions is somewhat different from and shorter than the list of exceptions for noise exposure maps. Ambient noise levels and estimates of numbers of people impacted are considered by the FAA to be more critical for program purposes than for maps, and so these have not been excepted from programs. Airport operators may submit to the FAA previously prepared programs with adequate supplemental documentation for those items not excepted to meet the requirements of Part 150.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all changes to Part 150. FAA determined that this rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. This rule imposes no additional costs on the Federal Government.

The amendments in this rule will provide benefits in the aggregate to the aviation industry and the general public. These amendments provide benefits to

aviation by deleting unnecesary requirements, updating and clarifying the text, and relaxing certain documentation requirements. The regulations are more concise and easier to understand. In addition, the final Part 150 is expected to provide several other benefits to the general public, including: commonality and a more logical progression of the rules, reduced complexity and streamlining of the approval process for maps and programs. These changes provide a regulation that is easier to read and understand. Additionally, it reduces the amount of study time for persons who are responsible for knowing and complying with the regulation. No additional costs result from the rule changes.

Regulatory Flexibility Determination

As detailed in the evaluation, all but one of the changes to Part 150 are editorial or clarifying changes. This one would shift primary responsibility for review of maps and programs from FAA headquarters to the Regional Directors. This change results in improved governmental efficiency.

Therefore, it is certified that the revised rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.ID), a Finding of No Significant Impact has been made. The changes incorporated in this final rule (which are primarily organizational, administrative, and clarifying), do not significantly affect the quality of the human environment.

Paperwork Reduction Act

Information collection requirements contained in this regulation (sections 9d, 12, and 20) 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 2120–0517.

Conclusion

All but one of these amendments are either editorial or clarifying in nature. One amendment is administrative and shifts responsibility for certain review functions within the FAA. For these reasons the FAA has determined that this document involves a regulation which is not major under Executive Order 12291. However, since this document concerns a matter on which there is substantial public interest, it is considered to be significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since the amendments are editorial, clarifying and administrative, resulting in no substantial costs or cost savings, it is certified that under the criteria of the Regulatory Flexibility Act this final rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation may be examined in the regulatory docket or obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 11

Reporting and recordkeeping requirements.

14 CFR Part 150

Airports, Noise control.

The Final Rule

Accordingly, the Federal Aviation Regulations (14 CFR Parts 11 and 150) are amended, effective January 18, 1985, as follows:

PART 11—[AMENDED]

1. By amending § 11.101 of Part 11 by adding at the end of the table in paragraph (b) the following:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control No.
Section 150.21 and 150.23	2120-0517

2. By revising Part 150 to read as follows:

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

Subpart A—General Provisions

Sec.
150.1 Scope and purpose.
150.3 Applicability.
150.5 Limitations of this part.
150.7 Definitions.
150.9 Designation of noise systems.
150.11 Identification of land uses.
150.13 Incorporations by reference.

Subpart B—Submission of Noise Exposure Maps and Noise Compatibility Programs

150.21 Noise exposure maps and descriptions of projected operations.
150.23 Noise compatibility programs.

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

Sec.
150.31 Preliminary review; acknowledgments.
150.33 Evaluation of programs.
150.35 Determinations; publications; effectivity.

Appendix A—Noise Exposure Maps
Appendix B—Noise Compatibility Programs

Authority: Secs. 301(a), 307, 313(a), 601, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. 1341(a), 1348, 1354(a), 1421, and 1431); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Secs. 101, 102, 103(a), and 104 (a) and (b), Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b)); 49 CFR 1.47(m); and Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 et seq.).

Subpart A—General Provisions

§ 150.1 Scope and purpose.

This part prescribes the procedures, standards, and methodology governing the development, submission, and review of airport noise exposure maps and airport noise compatibility programs, including the process for evaluating and approving or disapproving those programs. It prescribes single systems for— (a) measuring noise at airports and surrounding areas that generally provides a highly reliable relationship between projected noise exposure and surveyed reaction of people to noise; and (b) determining exposure of individuals to noise that results from the operations of an airport. This part also identifies those land uses which are normally compatible with various levels of exposure to noise by individuals. It provides technical assistance to airport operators, in conjunction with other local, State, and Federal authorities, to prepare and execute appropriate noise compatibility planning and implementation programs.

§ 150.3 Applicability.

This part applies to the airport noise compatibility planning activities of the operators of "public use airports," not used exclusively by helicopters, as that term is used in Section 101(1) of the ASNA Act as amended (49 U.S.C. 2101) and as defined in section 503(17) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2202).

§ 150.5 Limitations of this part.

(a) Pursuant to the ASNA Act (49 U.S.C. 2101 et seq.), this part provides for airport noise compatibility planning and land use programs necessary to the purposes of those provisions. No submittal of a map, or approval or disapproval, in whole or part, of any

map or program submitted under this part is a determination concerning the acceptability or unacceptability of that land use under Federal, State, or local law.

(b) Approval of a noise compatibility program under this part is neither a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

(c) Approval of a noise compatibility program under this part does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action, pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and applicable regulations, directives, and guidelines.

(d) Acceptance of a noise exposure map does not constitute an FAA determination that any specific parcel of land lies within a particular noise contour. Responsibility for interpretation of the effects of noise contours upon subjacent land uses, including the relationship between noise contours and specific properties, rests with the sponsor or with other state or local government.

§ 150.7 Definitions.

As used in this part, unless the context requires otherwise, the following terms have the following meanings.

"Airport" means any public use airport, not exclusively used by helicopters, as defined by the ASNA Act, including: (a) Any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned; (b) any privately owned reliever airport; and (c) any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft, which is used or to be used for public purposes.

"Airport noise compatibility program" and "program" mean that program, and all revisions thereto, reflected in documents (and revised documents) developed in accordance with Appendix B of this part, including the measures proposed or taken by the airport operator to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible land uses within the area.

"Airport Operator" means, the operator of an airport as defined in the ASNA Act.

"ASNA Act" means the Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 et seq.).

"Average sound level" means the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.

"Compatible land use" means the use of land that is identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under Appendix A (Table 1) of this part.

"Day-night average sound level" (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time." The symbol for DNL is L_{dn}.

"Noise exposure map" means a scaled, geographic depiction of an airport, its noise contours, and surrounding area developed in accordance with section A150.101 of Appendix A of this part, including the accompanying documentation setting forth the required descriptions of forecast aircraft operations at that airport during the fifth calendar year beginning after submission of the map, together with the ways, if any, those operations will affect the map (including noise contours and the forecast land uses).

"Noise level reduction" (NLR) means the amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.

"Noncompatible land use" means the use of land that is identified under this part as normally not compatible with the outdoor noise environment (or an adequately attenuated noise reduction level for the indoor activities involved at the location) because the yearly day-night average sound level is above that identified for that or similar use under Appendix A (Table 1) of this part.

"Regional Director" means the Director of the FAA Region having responsibility for the geographic area in which the airport in question is located.

'Restriction affecting flight procedures" means any requirement, limitation, or other action affecting the operation of aircraft, in the air or on the ground.

"Sound exposure level" means the level, in decibels, of the time integral of squared A-weighted sound pressure during a specified period or event, with reference to the square of the standard reference sound pressure of 20 micropascals and a duration of one second.

"Yearly day-night average sound level" (YDNL) means the 365-day average, in decibels, day-night average sound level. The symbol for YDNL is also L_{dn}.

§ 150.9 Designation of noise systems.

For purposes of this part, the following designations apply:

(a) The noise at an airport and surrounding areas covered by a noise exposure map must be measured in A-weighted sound pressure level (L_A) in units of decibels (dBA) in accordance with the specifications and methods prescribed under Appendix A of this part.

(b) The exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day-night average sound level (YDNL) calculated in accordance with the specifications and methods prescribed under Appendix A of this part.

(c) Uses of computer models to create noise contours must be in accordance with the criteria prescribed under Appendix A of this part.

§ 150.11 Identification of land uses.

For the purposes of this part, uses of land which are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of this part. Determination of land use must be based on professional planning criteria and procedures utilizing comprehensive, or master, land use planning, zoning, and building and site designing, as appropriate. If more than one current or future land use is permissible, determination of compatibility must be based on that use most adversely affected by noise.

§ 150.13 Incorporations by reference.

(a) *General.* This part prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated by reference and were approved for incorporation by reference by the Director of the Federal

Register under 5 U.S.C. 552(a) and 1 CFR Part 51.

(b) *Changes to incorporated matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that affects compliance with standards and procedures of this part will be made under 14 CFR Part 11 and 1 CFR Part 51.

(c) *Identification statement.* The complete title or description which identifies each published matter incorporated by reference in this part is as follows:

International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters," dated 1973.

(d) *Availability for purchase.* Published material incorporated by reference in this part may be purchased at the price established by the publisher or distributor at the following mailing addresses.

IEC publications:

(1) The Bureau Central de la Commission Electrotechnique, Internationale, 1, rue de Varembe, Geneva, Switzerland.

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018.

(e) *Availability for inspection.* A copy of each publication incorporated by reference in this part is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591.

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591.

(3) The respective Regional Offices of the Federal Aviation Administration as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts 01803.

(ii) Eastern Regional Office, Federal Building, John F. Kennedy (JFK) International Airport, Jamaica, New York 11430.

(iii) Southern Regional Office, 3400 Norman Berry Drive, East Point, Georgia (P.O. Box 20636, Atlanta, Georgia) 30320.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois 60018.

(v) Central Regional Office, 601 East 12th Street, Kansas City, Missouri 64106.

(vi) Southwest Regional Office, 4400 Blue Mound Road, (P.O. Box 1689), Fort Worth, Texas 76101.

(vii) Northwest Mountain Regional Office, 17900 Pacific Highway, South, C-68966, Seattle, Washington 98168.

(viii) Western Pacific Regional Office, 15000 Aviation Boulevard, Hawthorne, California (P.O. Box 92007, Worldway Postal Center, Los Angeles) 90009.

(ix) Alaskan Regional Office, 701 "C" Street, Box 14, Anchorage, Alaska 99513.

(xi) European Office, 15, Rue de la Loi (3rd Floor) B1040 Brussels, Belgium.

(4) The Office of the Federal Register, Room 8401, 1100 "L" Street, NW., Washington, D.C.

Subpart B—Development of Noise Exposure Maps and Noise Compatibility Programs

§ 150.21 Noise exposure maps and related descriptions.

(a) Each airport operator may after completion of the consultations and public procedure specified under paragraph (b) of this section submit to the Regional Director five copies of the noise exposure map (or revised map) which identifies each noncompatible land use in each area depicted on the map, as of the date of submission, and five copies of a map each with accompanying documentation setting forth—

(1) The noise exposure based on forecast aircraft operations at the airport for the fifth calendar year beginning after the date of submission (based on reasonable assumptions concerning future type and frequency of aircraft operations, number of nightime operations, flight patterns, airport layout including any planned airport development, planned land use changes, and demographic changes in the surrounding areas); and

(2) The nature and extent, if any, to which those forecast operations will affect the compatibility and land uses depicted on the map.

(b) Each map, and related documentation submitted under this section must be developed and prepared in accordance with Appendix A of this part, or an FAA approved equivalent, and in consultation with states, and public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction is within the L_{dn} 65 dB contour depicted on the map, FAA regional officials, and other Federal officials having local responsibility for land uses depicted on the map. This consultation must include regular aeronautical users of the airport. The airport operator shall certify that it has afforded interested persons adequate opportunity to submit their views, data, and comments concerning the correctness and adequacy of the draft noise exposure map and descriptions of forecast aircraft operations. Each map and revised map must be accompanied by documentation describing the consultation accomplished under this paragraph and the opportunities afforded the public to review and comment during the development of map. One copy of all written comments received during consultation shall also be filed with the Regional Director.

(c) The Regional Director acknowledges receipt of noise exposure maps and descriptions and indicates whether they are in compliance with the applicable requirements. The Regional Director publishes in the **Federal Register** a notice of compliance for each such noise exposure map and description, identifying the airport involved. Such notice includes information as to when and where the map and related documentation are available for public inspection.

(d) If, after submission of a noise exposure map under paragraph (a) of this section, any change in the operation of the airport would create any "substantial, new noncompatible use" in any area depicted on the map beyond that which is forecast for the fifth calendar year after the date of submission, the airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map. A change in the operation of an airport creates a substantial new noncompatible use if that change results in an increase in the yearly day-night average sound level of 1.5 dB or greater in either a land area which was formerly compatible but is thereby made noncompatible under Appendix A (Table 1), or in a land area which was previously determined to be noncompatible under that Table and whose noncompatibility is now significantly increased. Such updating of the map shall include a reassessment of those areas excluded under Sec. A150.101(e)(5) of Appendix A because of high ambient noise levels. If the five-year forecast map is based on assumptions involving recommendations in a noise compatibility program which are subsequently disapproved by the FAA, a revised map must be submitted if revised assumptions would create a substantial, new noncompatible use not indicated on the initial five-year map. Revised noise exposure maps are subject to the same requirements and procedures as initial submissions of noise exposure maps under this Part.

(e) Each map, or revised map, and description of consultation and opportunity for public comment, submitted to the FAA, must be certified

as true and complete under penalty of 18 U.S.C. 1001.

(f) (1) The ASNA Act provides, in Section 107(a) (49 U.S.C. 2107(a)), that: no person who acquires property or an interest therein after the date of enactment of the Act in an area surrounding an airport with respect to which a noise exposure map has been submitted under Section 103 of the Act shall be entitled to recover damages with respect to the noise attributable to such airport if such person had actual or constructive knowledge of the existence of such noise exposure map unless, in addition to any other elements for recovery of damages, such person can show that—

(i) A significant change in the type or frequency of aircraft operations at the airport; or

(ii) A significant change in the airport layout; or

(iii) A significant change in the flight patterns; or

(iv) A significant increase in nighttime operations; occurred after the date of the acquisition of such property or interest therein and that the damages for which recovery is sought have resulted from any such change or increase."

(2) The Act further provides in Section 107(b), (49 U.S.C. 2107(b)): That for this purpose, "constructive knowledge" shall be imputed, at a minimum, to any person who acquires property or an interest therein in an area surrounding an airport after the date of enactment of the Act if—

(i) Prior to the date of such acquisition, notice of the existence of a noise exposure map for such area was published at least three times in a newspaper of general circulation in the county in which such property is located; or

(ii) A copy of such noise exposure map is furnished to such person at the time of such acquisition.

(g) For this purpose, the term "significant" in paragraph (f) of this section means that change or increase in one or more of the four factors which results in a "substantial new noncompatible use" as defined in § 150.21(d), affecting the property is issue. Responsibility for applying or interpreting this provision with respect to specific properties rests with local government.

§ 150.23 Noise compatibility programs.

(a) Any airport operator who has submitted an acceptable noise exposure map under § 150.21 may, after FAA notice of acceptability and other consultation and public procedure specified under paragraphs (b) and (c) of this section, as applicable, submit to the Regional Director five copies of a noise compatibility program.

(b) An airport operator may submit the noise compatibility program at the same time as the noise exposure map. In this case, the Regional Director will not begin the statutory 180-day review period (for the program) until after FAA reviews the noise of the applicable requirements.

(c) Each noise compatibility program must be developed and prepared in accordance with Appendix B of this part, or an FAA approved equivalent, and in consultation with FAA regional officials, the officials of the state and of any public agencies and planning agencies whose area, or any portion or whose area, of jurisdiction within the L_{dn} 65 dB noise contours is depicted on the noise exposure map, and other Federal officials having local responsibility of land uses depicted on the map. Consultation with FAA regional officials shall include, to the extent practicable, informal agreement from FAA on proposed new or modified flight procedures. For air carrier airports, consultation must include any air carriers and, to the extent practicable, other aircraft operators using the airport. For other airports, consultation must include, to the extent practicable, aircraft operators using the airport.

(d) Prior to and during the development of a program, and prior to submission of the resulting draft program to the FAA, the airport operator shall afford adequate opportunity for the active and direct participation of the states, public agencies and planning agencies in the areas surrounding the airport, aeronautical users of the airport, and the general public to submit their views, data, and comments on the formulation and adequacy of that program.

(e) Each noise compatibility program submitted to the FAA must consist of at least the following:

(1) A copy of the noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c).

(2) A description and analysis of the alternative measures considered by the airport operator in developing the program, together with a discussion of why each rejected measure was not included in the program.

(3) Program measures proposed to reduce or eliminate present and future noncompatible land uses and a description of the relative contribution of each of the proposed measures to the overall effectiveness of the program.

(4) A description of public participation and the consultation with officials of public agencies and planning agencies in areas surrounding the airport, FAA regional officials and other Federal officials having local responsibility for land uses depicted on th map, any air carriers and other users of the airport.

(5) The actual or anticipated effect of the program on reducing noise exposure to individuals and noncompatible land uses and preventing the introduction of additional noncompatible uses within the area covered by the noise exposure map. The effects must be based on expressed assumptions concerning the type and frequency of aircraft operations, number of nighttime operations, flight patterns, airport layout including planned airport development, planned land use changes, and demographic changes within the L_{dn} 65 dB noise contours.

(6) A description of how the proposed future actions may change any noise control or compatibility plans or actions previously adopted by the airport proprietor.

(7) A summary of the comments at any public hearing on the program and a copy of all written material submitted to the operator under paragraphs (c) and (d) of this section, together with the operator's response and disposition of those comments and materials to demonstrate the program is feasible and reasonably consistent with obtaining the objectives of airport noise compatibility planning under this part.

(8) The period covered by the program, the schedule for implementation of the program, the persons responsible for implementation of each measure in the program, and, for each measure, documentation supporting the feasibility of implementation, including any essential governmental actions, costs, and anticipated sources of funding, that will demonstrate that the program is reasonably consistent with achieving the goals of airport noise compatibility planning under this part.

(9) Provision for revising the program if made necessary by revision of the noise exposure map.

Subpart C—Evaluations and Determinations of Effects of Noise Compatibility Programs

§ 150.31 Preliminary review: acknowledgments.

(a) Upon receipt of a noise compatibility program submitted under § 150.23, the Regional Director acknowledges to the airport operator

receipt of the program and conducts a preliminary review of the submission.

(b) If, based on the preliminary review, the Regional Director finds that the submission does not conform to the requirements of this part, he disapproves and returns the unacceptable program to the airport operator for reconsideration and development of a program in accordance with this Part.

(c) If, based on the preliminary review, the Regional Director finds that the program conforms to the requirements of this part, the Regional Director publishes in the **Federal Register** a notice of receipt of the program for comment which indicates the following:

(1) The airport covered by the program, and the date of receipt.

(2) The availability of the program for examination in the offices of the Regional Director and the airport operator.

(3) That comments on the program are invited and, will be considered by the FAA.

(d) The date of signature of the published notice of receipt starts the 180-day approval period for the program.

§ 150.33 Evaluation of programs.

(a) The FAA conducts an evaluation of each noise compatibility program and, based on that evaluation, either approves or disapproves the program. The evaluation includes consideration of proposed measures to determine whether they—

(1) May create an undue burden on interstate or foreign commerce (including unjust discrimination);

(2) Are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and

(3) Include the use of new or modified flight procedures to control the operation of aircraft for purposes of noise control, or affect flight procedures in any way.

(b) The evaluation may also include an evaluation of those proposed measures to determine whether they may adversely affect the exercise of the authority and responsibilities of the Administrator under the Federal Aviation Act of 1958, as amended.

(c) To the extent considered necessary, the FAA may—

(1) Confer with the airport operator and other persons known to have information and views material to the evaluation;

(2) Explore the objectives of the program and the measures, and any alternative measures, for achieving the objectives.

(3) Examine the program for developing a range of alternatives that would eliminate the reasons, if any, for disapproving the program.

(4) Convene an informal meeting with the airport operator and other persons involved in developing or implementing the program for the purposes of gathering all facts relevant to the determination of approval or disapproval of the program and of discussing any needs to accommodate or modify the program as submitted.

(d) If requested by the FAA, the airport operator shall furnish all information needed to complete FAA's review under (c).

(e) An airport operator may, at any time before approval or disapproval of a program, withdraw or revise the program. If the airport operator withdraws or revises the program or indicates to the Regional Director, in writing, the intention to revise the program, the Regional Director terminates the evaluation and notifies the airport operator of that action. That termination cancels the 180-day review period. The FAA does not evaluate a second program for any airport until any previously submitted program has been withdrawn or a determination on it is issued. A new evaluation is commenced upon receipt of a revised program, and a new 180-day approval period is begun, unless the Regional Director finds that the modification made, in light of the overall revised program, can be integrated into the unmodified portions of the revised program without exceeding the original 180-day approval period or causing undue expense to the government.

§ 150.35 Determinations; publications; effectivity.

(a) The FAA issues a determination approving or disapproving each airport noise compatibility program (and revised program). Portions of a program may be individually approved or disapproved. No conditional approvals will be issued. A determination on a program acceptable under this part is issued within 180 days after the program is received under § 150.23 of this part or it may be considered approved, except that this time period may be exceeded for any portion of a program relating to the use of flight procedures for noise control purposes. A determination on portions of a program covered by the exceptions to the 180-day review period for approval will be issued within a reasonable time after receipt of the program. Determinations relating to the use of any flight procedure for noise control purposes may be issued either in connection with the determination on other portions of the program or separately. Except as provided by this paragraph, no approval of any noise compatibility program, or any portion of a program, may be implied in the absence of the FAA's express approval.

(b) The Administrator approves programs under this part, if—

(1) It is found that the program measures to be implemented would not create an undue burden on interstate or foreign commerce (including any unjust discrimination) and are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses;

(2) The program provides for revision if made necessary by the revision of the noise map; and

(3) Those aspects of programs relating to the use of flight procedures for noise control can be implemented within the period covered by the program and without—

(i) Reducing the level of aviation safety provided;

(ii) Derogating the requisite level of protection for aircraft, their occupants and persons and property on the ground;

(iii) Adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems; or

(iv) Adversely affecting any other powers and responsibilities of the Administrator prescribed by law or any other program, standard, or requirement established in accordance with law.

(c) When a determination is issued, the Regional Director notifies the airport operator and publishes a notice of approval or disapproval in the **Federal Register** identifying the nature and extent of the determination.

(d) Approvals issued under this part for a program or portion thereof become effective as specified therein and may be withdrawn when one of the following occurs:

(1) The program or portion thereof is required to be revised under this part or under its own terms, and is not so revised;

(2) If a revision has been submitted for approval, a determination is issued on the revised program or portion thereof, that is inconsistent with the prior approval.

(3) A term or condition of the program, or portion thereof, or its approval is violated by the responsible government body.

(4) A flight procedure or other FAA action upon which the approved

program or portion thereof is dependent is subsequently disapproved, significantly altered, or rescinded by the FAA.

(5) The airport operator requests rescission of the approval.

(6) Impacts on flight procedures, air traffic management, or air commerce occur which could not be foreseen at the time of approval.

A determination may be sooner rescinded or modified for cause with at least 30 days written notice to the airport operator of the FAA's intention to rescind or modify the determination for the reasons stated in the notice. The airport operator may, during the 30-day period, submit to the Regional Director for consideration any reasons and circumstances why the determination should not be rescinded or modified on the basis stated in the notice of intent. Thereafter, the FAA either rescinds or modifies the determination consistent with the notice or withdraws the notice of intent and terminates the action.

(e) Determinations may contain conditions which must be satisfied prior to implementation of any portion of the program relating to flight procedures affecting airport or aircraft operations.

(f) Noise exposure maps for current and five year forecast conditions that are submitted and approved with noise compatibility programs are considered to be the new FAA accepted noise exposure maps for purposes of Part 150.

Appendix A—Noise Exposure Maps

Part A—General

Part B—Noise Exposure Map Development

Part C—Mathematical Descriptions

Part A—General

Sec. A150. Purpose.

(a) This appendix establishes a uniform methodology for the development and preparation of airport noise exposure maps. That methodology includes a single system of measuring noise at airports for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise along with a separate single system for determining the exposure of individuals to noise. it also identifies land uses which, for the purpose of this part are considered to be compatible with various exposures of individuals to noise around airports.

(b) This appendix provides for the use of the FAA's Integrated Noise Model (INM) or an FAA approved equivalent, for developing standardized noise exposure maps and predicting noise impacts. Noise monitoring may be utilized by airport operators for data acquisition and data refinement, but is not required by this part for the development of noise exposure maps or airport noise compatibility programs. Whenever noise monitoring is used, under this part, it should be accomplished in accordance with Sec. A150.5 of this appendix.

Sec. A150.3 Noise descriptors.

(a) *Airport Noise Measurement.* The A-Weighted Sound Level, measured, filtered and recorded in accordance with Sec. A150.5 of this appendix, must be employed as the unit for the measurement of single event noise at airports and in the areas surrounding the airports.

(b) *Airport Noise Exposure.* The yearly day-night average sound level (YDNL) must be employed for the analysis and characterization of multiple aircraft noise events and for determining the cumulative exposure of individuals to noise around airports.

Sec. A150.5 Noise measurement procedures and equipment.

(a) Sound levels must be measured or analyzed with equipment having the "A" frequency weighting, filter characteristics, and the "slow response" characteristics as defined in International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters" as incorporated by reference in Part 150 under § 150.11. For purposes of this part, the tolerances allowed for general purpose, type 2 sound level meters in IEU 179, are acceptable.

(b) Noise measurements and documentation must be in accordance with accepted acoustical measurement methodology, such as those described in American National Standards Institute publication ANSI 51.13, dated 1971 as revised 1979, entitled "ANS—Methods for the Measurement of Sound Pressure Levels"; ARP No. 796, dated 1969, entitled "Measurement of Aircraft Exterior Noise in the Field"; "Handbook of Noise Measurement," Ninth Ed. 1980, by Arnold P.G. Peterson; or "Acoustic Noise Measurement," dated Jan., 1979, by J.R. Hassell and K. Zaveri. For purposes of this part, measurements intended for comparison to a State or local standard or with another transportation noise source (including other aircraft) must be reported in maximum A-weighted sound levels (L_{AM}); for computation or validation of the yearly day-night average level (L_{dn}), measurements must be reported in sound exposure level (L_{AE}); as defined in Sec. A150.205 of this appendix.

Part B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land uses.

(a) To determine the extent of the noise impact around an airport, airport proprietors developing noise exposure maps in accordance with this part must develop L_{dn} contours. Continuous contours must be developed for YDNL levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where YDNL values are 65 YDNL or greater, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 1 of this appendix describes compatible land use information for several land uses as a function of YDNL values. The ranges of YDNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured YDNL values at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

(c) Compatibility designations in Table 1 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted by local government at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) For the purpose of compliance with this part, all land uses are considered to be compatible with noise levels less than L_{dn} 65 dB. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) Except as provided in (f) below, the noise exposure maps must also contain and indentify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of L_{dn} 65, 70, and 75 dB resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the L_{dn} 65 dB contours. (No land use has to be identified as noncompatible if the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places.

(7) Locations of any aircraft noise monitoring sites utilized for data acquisition and refinement procedures.

(8) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

(9) Depiction of the required noise contours over a land use map of a sufficient scale and quality to discern streets and other identifiable geographic features.

(f) Notwithstanding any other provision of this Part, noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks depicted on the map.

(2) Use of ambient noise to determine land use compatibility.

(3) The L_{dn} 70 dB noise contour and data related to L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 differ between L_{dn} 65–70 dB and the L_{dn} 70–75 dB, determinations should either use the more conservative L_{dn} 70–75 dB column or reflect determinations based on local needs and values.

(4) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

TABLE 1.—LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land use	Yearly day-night average sound level (L_{dn}) in decibels					
	Below 65	65–70	70–75	75–80	80–85	Over 85
Residential						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
Public Use						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
Commercial Use						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
Manufacturing and Production						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
Recreational						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM = Standard Land Use Coding Manual.
Y (Yes) = Land Use and related structures compatible without restrictions.
N (No) = Land Use and related structures are not compatible and should be prohibited.
NLR = Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

(8) Residential buildings not permitted.

Sec. A150.103 Use of computer prediction model.

(a) The airport operator shall acquire the aviation operations data necessary to develop noise exposure contours using an FAA approved methodology or computer program, such as the Integrated Noise Model (INM). In considering approval of a methodology or computer program, key factors include the demonstrated capability to produce the required output and the public availability of the program or methodology to provide interested parties the opportunity to substantiate the results.

(b) The following information must be obtained for input to the calculation of noise exposure contours:

(1) A map of the airport and its environs at an adequately detailed scale (not less than 1 inch to 8,000 feet) indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 30,000 feet from the end of each runway.

(2) Airport activity levels and operational data which will indicate, on an annual average-daily-basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the standard daytime (0700–2200 hours local) and nighttime (2200–0700 hours local) periods for both landings and takeoffs.

(3) For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles along with the engine power levels needed to fly that approach profile.

(4) For takeoffs—the flight profile which is the relationship of altitude to distance from start-of-roll along with the engine power levels needed to fly that takeoff profile; these data must reflect the use of noise abatement departure procedures and, if applicable, the

takeoff weight of the aircraft or some proxy for weight such as stage length.

(5) Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

(6) The government furnished data depicting aircraft noise characteristics (if not already a part of the computer program's stored data bank).

(7) Airport elevation and average temperature.

Sec. A150.105 Identification of public agencies and planning agencies.

(a) The airport proprietor shall identify each public agency and planning agency whose jurisdiction or responsibility is either wholly or partially within the L_{dn} 65 dB boundary.

(b) For those agencies identified in (a) that have land use planning and control authority, the supporting documentation shall identify their geographic areas of jurisdiction.

Part C—Mathematical Descriptions

Sec. A150.201 General.

The following mathematical descriptions provide the most precise definition of the yearly day-night average sound level (L_{dn}), the data necessary for its calculation, and the methods for computing it.

Sec. A150.203 Symbols.

The following symbols are used in the computation of L_{dn}:

Measure (in dB)	Symbol
Average Sound Level, During Time T	L_T
Day-Night Average Sound Level (individual day)	L_{dnl}
Yearly Day-Night Average Sound Level	L_{dn}
Sound Exposure Level	L_{AE}

Sec. A150.205 Mathematical computations.

(a) Average sound level must be computed in accordance with the following formula:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\int_0^T 10^{L_A(t)/10}\,dt\right] \quad (1)$$

where T is the length of the time period, in seconds, during which the average is taken; $L_A(t)$ is the instantaneous time varying A-weighted sound level during the time period T.

(1) Note: When a noise environment is caused by a number of identifiable noise events, such as aircraft flyovers, average sound level may be conveniently calculated from the sound exposure levels of the individual events occurring within a time period T:

$$L_T = 10 \log_{10}\left[\frac{1}{T}\sum_{i=1}^{n} 10^{L_{AEi}/10}\right] \quad (2)$$

where L_{AEi} is the sound exposure level of the i-th event, in a series of n events in time period T, in seconds.

(2) Note: When T is one hour, L_T is referred to as one-hour average sound level.

(b) Day-night average sound level (individual day) must be computed in accordance with the following formula:

$$L_{dn}=10\log_{10}\left[\frac{1}{86400}\left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10}\,dt + \int_{0700}^{2100} 10^{L_A(t)/10}\,dt + \int_{2100}^{2400} 10^{[L_A(t)+10]/10}\,dt\right)\right] \quad (3)$$

Time is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. It is often convenient to compute day-night average sound level from the one-hour average sound levels obtained during successive hours.

(c) Yearly day-night average sound level must be computed in accordance with the following formula:

$$L_{dn} = 10\log_{10}\frac{1}{365}\sum_{i=1}^{365} 10^{L_{dni}/10} \quad (4)$$

where L_{dni} is the day-night average sound level for the i-th day out of one year.

(d) Sound exposure level must be computed in accordance with the following formula:

$$L_{AE} = 10\log_{10}\left(\frac{1}{t_o}\int_{t_1}^{t_2} 10^{L_A(t)/10}\,dt\right) \quad (5)$$

where t_o is one second and $L_A(t)$ is the time-varying A-weighted sound level in the time interval t_1 to t_2.

The time interval should be sufficiently large that it encompasses all the significant sound of a designated event.

The requisite integral may be approximated with sufficient accuracy by integrating $L_A(t)$ over the time interval during which $L_A(t)$ lies within 10 decibels of its maximum value, before and after the maximum occurs.

Appendix B—Noise Compatibility Programs

Sec. B150.1 Scope and purpose.

(a) This appendix prescribes the content and the methods for developing noise compatibility programs authorized under this part. Each program must set forth the measures which the airport operator (or other person or agency responsible) has taken, or proposes to take, for the reduction of existing noncompatible land uses and the prevention of the introduction of additional noncompatible land uses within the area covered by the noise exposure map submitted by the operator.

(b) The purpose of a noise compatibility program is:

(1) To promote a planning process through which the airport operator can examine and analyze the noise impact created by the operation of an airport, as well as the costs and benefits associated with various alternative noise reduction techniques, and the responsible impacted land use control jurisdictions can examine existing and forecast areas of noncompatibility and consider actions to reduce noncompatible uses.

(2) To bring together through public participation, agency coordination, and overall cooperation, all interested parties with their respective authorities and obligations, thereby facilitating the creation of an agreed upon noise abatement plan especially suited to the individual airport location while at the same time not unduly affecting the national air transportation system.

(3) To develop comprehensive and implementable noise reduction techniques and land use controls which, to the maximum extent feasible, will confine severe aircraft YDNL values of L_{dn} 75 dB or greater to areas included within the airport boundary and will establish and maintain compatible land uses in the areas affected by noise between the L_{dn} 65 and 75 dB contours.

Sec. B150.3 Requirement for noise map.

(a) It is required that a current and complete noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c) be included in each noise compatibility program.

(1) To identify existing and future noncompatible land uses, based on airport operation and off-airport land uses, which have generated the need to develop a program.

(2) To identify changes in noncompatible uses to be derived from proposed program measures.

(b) If the proposed noise compatibility program would yield maps differing from those previously submitted to FAA, the program shall be accompanied by appropriately revised maps. Such revisions must be prepared in accordance with the requirements of Sec. A 150.101(e) of Appendix A and will be accepted by FAA in accordance with § 150.35(f).

Sec. B150.5 Program standards.

Based upon the airport noise exposure and noncompatible land uses identified in the map, the airport operator shall evaluate the several alternative noise control actions and develop a noise compatibility program which—

(a) Reduces existing noncompatible uses and prevents or reduces the probability of the establishment of additional noncompatible uses;

(b) Does not impose undue burden on interstate and foreign commerce;

(c) Provides for revision in accordance with § 150.23 of this part.

(d) Is not unjustly discriminatory.

(e) Does not derogate safety or adversely affect the safe and efficient use of airspace.

(f) To the extent practicable, meets both local needs and needs of the national air transportation system, considering tradeoffs between economic benefits derived from the airport and the noise impact.

(g) Can be implemented in a manner consistent with all of the powers and duties of the Administrator of FAA.

Sec. B150.7 Analysis of program alternatives.

(a) Noise control alternatives must be considered and presented according to the following categories:

(1) Noise abatement alternatives for which the airport operator has adequate implementation authority.

(2) Noise abatement alternatives for which the requisite implementation authority is vested in a local agency or political subdivision governing body, or a state agency or political subdivision governing body.

(3) Noise abatement options for which requisite authority is vested in the FAA or other Federal agency.

(b) At a minimum, the operator shall analyze and report on the following alternatives, subject to the constraints that the strategies are appropriate to the specific airport (for example, an evaluation of night curfews is not appropriate if there are no night flights and none are forecast):

(1) Acquisition of land and interests therein, including, but not limited to air rights, easements, and development rights, to ensure the use of property for purposes which are compatible with airport operations.

(2) The construction of barriers and acoustical shielding, including the soundproofing of public buildings.

(3) The implementation of a preferential runway system.

(4) The use of flight procedures (including the modifications of flight tracks) to control the operation of aircraft to reduce exposure of individuals (or specific noise sensitive areas) to noise in the area around the airport.

(5) The implementation of any restriction on the use of airport by any type or class of aircraft based on the noise characteristics of those aircraft. Such restrictions may include, but are not limited to—

(i) Denial of use of the airport to aircraft types or classes which do not meet Federal noise standards;

(ii) Capacity limitations based on the relative noisiness of different types of aircraft;

(iii) Requirement that aircraft using the airport must use noise abatement takeoff or approach procedures previously approved as safe by the FAA;

(iv) Landing fees based on FAA certificated or estimated noise emission levels or on time of arrival; and

(v) Partial or complete curfews.

(6) Other actions or combinations of actions which would have a beneficial noise control or abatement impact on the public.

(7) Other actions recommended for analysis by the FAA for the specific airport.

(c) For those alternatives selected for implementation, the program must identify the agency or agencies responsible for such implementation, whether those agencies have agreed to the implementation, and the approximate schedule agreed upon.

Sec. B150.9 Equivalent Programs.

(a) Notwithstanding any other provision of this Part, noise compatibility programs prepared in connection with studies which were either Federally funded or Federally approved and commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks.

(2) A noise contour of L_{dn} 70 dB resulting from aircraft operations and data related to the L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 of Appendix A differ between L_{dn} 65–70 dB and L_{dn} 70–75 dB, the determinations should either use the more conservative L_{dn} 70–75 dB column or reflect determinations based on local needs and values.

(3) The categorization of alternatives pursuant to Sec. B150.7(a), although the persons responsible for implementation of each measure in the program must still be identified in accordance with § 150.23(e)(8).

(4) Use of ambient noise to determine land use compatibility.

(b) Previously prepared noise compatibility program documentation may be supplemented to include these and other program requirements which have not been excepted.

(Secs. 301(a), 307, 313(a), 601, and 611, Federal Aviation Act of 1958, as amended (49 U.S.C. 1341(a), 1348, 1354(a), 1421, and 1431); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Secs. 101, 102, 103(a), and 104 (a) and (b), Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b)); 49 CFR 1.47(m); and Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 et seq.))

Issued in Washington, DC, on December 13, 1984.

Donald D. Engen,

Administrator.

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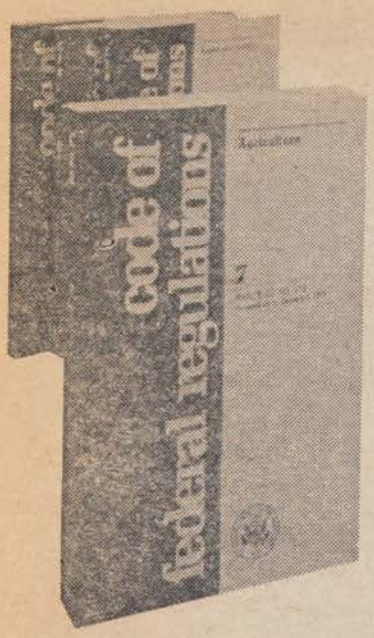

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	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		