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Federal Register

Friday
October 25, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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

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

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

ATLANTA, GA

WHEN: Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)

WHERE: Room I.P-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.

RESERVATIONS: Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Presidential Determination No. 85–18

Military Assistance for El Salvador

Memorandum for the Honorable George P. Shultz, the Secretary of State

By virtue of the authority vested in me by Section 614(a)(1) of the Foreign Assistance Act of 1961, as amended ("the Act"), I hereby:

(1) determine that the furnishing of up to an additional $13 million for El Salvador under Chapter 2 of Part II of the Act, without regard to the limitations and restrictions on such assistance contained in P.L. 98–473, is important to the security interests of the United States; and

(2) authorize the furnishing of such assistance.

Such assistance shall be in addition to amounts otherwise available for El Salvador.

You are requested to report this determination to the Congress immediately, and none of the assistance provided for herein shall be furnished until after such report has been made.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, September 28, 1985.

cc: The Honorable Caspar W. Weinberger, the Secretary of Defense

[FR Doc. 85-25657
Filed 10-23-85; 4:23 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Feed Grain, Rice, Cotton, and Wheat Programs for 1985 and Subsequent Crop Years

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as final rule, an interim rule which was published in the **Federal Register** on June 21, 1985 (50 FR 25691). The interim rule amended the regulations at 7 CFR Part 713 which set forth the requirements of the commodity programs established for the 1985 crops of feed grain, rice, cotton, and wheat. Included in these changes are amendments with respect to: (1) The adjustment of considered planted acreage in determining farm acreage bases; (2) the definition of a crop acreage base; (3) the manner in which yields are determined for irrigated acreages and acreages with abnormal yield history; (4) certain requirements involving conservation practices; (5) the designation and maintenance of acreage conservation reserve; and (6) the computation of interest which is to be assessed for unearned advance diversion and deficiency payments. Implementation of the changes made by this final rule will improve the effectiveness of commodity programs.

EFFECTIVE DATE: October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Sandy Nelson, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. (202) 382–9878.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Program to which this final rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

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

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071 have been assigned.

Interim Rule

An interim rule amending 7 CFR Part 713 was published in the **Federal Register** on June 21, 1985 (50 FR 25691). The interim rule made several amendments with respect to the terms and conditions of the 1985 feed grain, rice, upland and extra long staple cotton, and wheat programs. The changes which were included in the interim rule were the result of experience with the acreage reduction, diversion and payment-in-kind programs effective for crop years 1982 through 1984.

The interim rule amended the regulations at 7 CFR Part 713 by: (1) Revising the manner in which farm yields are established and planted and considered planted acreage is used to determine crop acreage bases in order to establish bases and yields which are reflective of the farm's productivity; (2) providing that acreages grown for experimental purposes shall not be included in crop acreage bases; (3) providing that State ASC committees shall determine approved cover crops and conservation practices after consulting with the State Conservationist of the Soil Conservation Service; (4) providing that acreage conservation reserve may not be grazed during the 5 principal growing months as determined by the county ASC committee; (5) removing vineyards as land which is eligible to be designated as acreage conservation reserve; and (6) simplifying the manner in which interest is assessed with respect to unearned advance diversion and deficiency payments.

No comments were received with respect to provisions of the interim rule. After reviewing the provisions of that rule, it has been determined that it should be adopted as a final rule without changes.

List of Subjects in 7 CFR Part 713

Acreage allotments, Cotton, Feed grains, Price support programs, Wheat, and Rice.

Final Rule

Accordingly, the interim rule published at 50 FR 25691, which amended 7 CFR Part 713, is hereby adopted as a final rule without change.

Authority: Secs. 101(i), 103(g), 105B, 107B, 107C, 109, 113, and 1001; 95 Stat. 1242, as amended, 1234, as amended, 1227, as amended, 1221, as amended, 96 Stat. 766, 91 Stat. 950, as amended, 95 Stat. 1264, 91 Stat. 917, as amended; 7 U.S.C. 1441, 1444, 1444d, 1445b–1, 1445b–2, 1445d, 1445h, 1309.

Signed at Washington, DC, on October 21, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-25502 Filed 10-24-85; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding loans and grants for Community Facility projects. This action is being taken by FmHA to comply with Public Law (Pub. L.) 99-88. Part of Pub. L. 99-88 gives certain FmHA water and waste disposal (WWD) and community facility (CF) borrowers a choice of the interest rate on their loans. The law applies to WWD and CF loans closed or approved after November 12, 1983. Therefore, the intended effect of this action is to bring existing regulations into compliance with Pub. L. 99-88.

EFFECTIVE DATE: October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382-9589 or Wayne Stansbery, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6308, Washington, DC 20250, telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Water Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

This action amends FmHA's policies for making loans and development grants. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with Pub. L. 99-88 and any delay would be contrary to the public interest.

Pub. L. 99-88 requires that effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by FmHA to WWD and CF borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing and any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval.

Under current regulations WWD and CF borrowers do not have a choice of the interest rate on their loans. The interest rate is presently established on the date of the loan approval and the loan closed at that rate.

FmHA amends Subparts A and H of Part 1942 by authorizing that WWD and CF borrowers shall have a choice as to the interest rate charged on their loans. This action will bring existing FmHA Community Facility regulations into compliance with Pub. L. 99-88.

FmHA amends Subpart A of Part 1942 as follows:

1. Section 1942.5(a)(1)(ii) is revised to require in each letter of conditions a statement notifying applicants that they may choose the interest rate on their loan at the lower of the rate in effect at loan approval or at loan closing and they may make that choice in writing 30 calendar days before loan closing.

2. Section 1942.5(d)(7) is revised to clarify that the date the applicant is notified of loan approval establishes the interest rate of loan approval and that this interest rate will be recorded on Form FmHA 1940-1.

3. Section 1942.17(f)(1) is revised to authorize that upon request of the borrower, the interest rate for each loan will be the lower of the rate in effect at the time of loan approval or closing.

FmHA amends Subpart H of Part 1942 as follows:

Section 1942.363(a) is revised to clarify that the amount of grant assistance shall be based on the FmHA interest rate in effect at the time of grant approval and will not change, even though an FmHA loan associated with the grant is closed at a lower rate.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1927A; 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. In § 1842.5, paragraphs (a)(1)(ii) and (d)(7) are revised to read as follows:

§ 1942.5 Application review and approval.

(a) * * *

(1) * * *

* * * * *

(ii) Each letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in the project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $———.

If FmHA makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA 1940–1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to FmHA as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form FmHA 442–46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

* * * * *

(d) * * *

(7) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant on the obligation date a copy of Form FmHA 1940–1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date the interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at that time on the original of Form FmHA 1940–1 and include it as a permanent part of the District Office project file with a copy placed in the State Office file. The District Director will notify the County Supervisor that the applicant has been notified of approval.

* * * * *

3. Section 1942.17 paragraph (f)(1) is revised to read as follows:

§ 1942.17 Community facilities.

* * * * *

(f) * * *

(1) *General.* Each loan will bear interest at the rate prescribed in FmHA Instruction 440.1, Exhibit B (available in any FmHA office). The interest rates will be set by FmHA at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one per centum. For each loan, the basis for determining what interest rate is appropriate will be completely documented on Form FmHA 1942–43, "Project Summary—Community Facilities, (Other than Utility-Type Projects)," or Form FmHA 1942–45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects." The applicant may submit a written request prior to loan closing that the interest rate charged on the loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of FmHA funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

4. Section 1942.363 is amended by revising paragraph (a) to read as follows:

§ 1942.363 Determining the need for development grants.

(a) FmHA District Directors are responsible for determining applicant's eligibility for grants and the amount of such grants. The amount of grant assistance shall be based on the FmHA interest rate in effect at the time of grant approval. If an FmHA loan is associated with the grant and the loan is closed at a lower rate, no change will be made in the amount of grant assistance. Form FmHA 1942–51, "Water and Waste Disposal Grant Determination," will be used to determine the amount of FmHA grant assistance for which the applicant qualifies. A separate form will be used to record the determination of FmHA grant assistant for each water, sewer collection and treatment, solid waste, and storm drainage project.

* * * * *

Dated: October 2, 1985.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 85–25555 Filed 10–24–85; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 84–ANM–28]

Alteration and Establishment of Jet Routes; Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Jet Routes J–60, J–80 and J–28 so that air navigation is based on the newly commissioned Red Table, CO, very high frequency omni-directional range/distance measuring equipment (VOR/DME). It also establishes Jet Route J–206 based on that navigational aid. Both actions will enhance instrument flight rule (IFR) flight planning in the affected area.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On December 6, 1984, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Routes J–60, J–80 and J–28 so that air navigation is based on the newly commissioned Red Table, CO, VOR/DME (49 FR 47621). Jet Route J–206 is also established based on that navigational aid. 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. Except for editorial changes and a corrected description of J–60, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated Janury 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations amends segments of Jet Routes J–60, J–80 and J–28 and establishes Jet Route J–206. This action is due to the commissioning of the Red Table, CO, VOR/DME. Both actions will enhance IFR flight planning in the

affected area. J-60 will not be going over Grand Junction, CO, as shown in the proposal, because the correct new alignment of J-60 is over Red Table, CO, VOR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 75

Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

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

2. Section 75.100 is amended as follows:

J-60 [Amended]

By removing the words "Hanksville, UT; Grand Junction, CO;" and substituting the words "Hanksville, UT; Red Table, CO;"

J-80 [Amended]

By removing the words "Grand Junction, CO; Denver, CO;" and substituting the words "Grand Junction, CO; Red Table, CO; Denver, CO;"

J-28 [Amended]

By removing the words "From Pueblo, CO, via Garden City, KS." and substituting the words "From Milford, UT, via Hanksville, UT; Gunnison CO; Pueblo, CO, to Garden City, KS."

J-206 [New]

From Alamosa, CO; via Gunnison, CO; Red Table, CO; to Rock Springs, WY.

Issued in Washington, DC, on October 18, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-25460 Filed 10-24-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24810; Amdt. No. 1306]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

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

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

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

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

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

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

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Aviation safety.

Issued in Washington, DC, on October 18, 1985.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

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

PART 97—[AMENDED]

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

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

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

Effective December 19, 1985

East St. Louis, IL—St. Louis Downtown—Parks, VOR/DME-A, Amdt. 7, Cancelled
Shelbyville, IL—Shelby County, NDB Rwy 36, Amdt. 4, Cancelled
Shelbyville, IL—Shelby County, NDB-A, Orig.
Flint, MI—Bishop, NDB Rwy 9, Amdt. 23
Flint, MI—Bishop, ILS Rwy 9, Amdt. 18
Owosso, MI—Owosso Community, VOR Rwy 28, Amdt. 4
Port Huron, MI—St Clair County Intl, VOR/DME-A, Amdt. 5
Port Huron, MI—St Clair County Intl, NDB Rwy 4, Amdt. 9
Port Huron, MI—St Clair County Intl, RNAV Rwy 4, Orig.
Port Huron, MI—St Clair County Intl, RNAV Rwy 22, Orig.
Humbolt, NE—Humbolt Muni, VOR/DME-A, Amdt. 1
Humbolt, NE—Humbolt Muni, RNAV-B, Amdt. 1, Cancelled
Brookings, SD—Brookings Muni, VOR Rwy 12, Amdt. 6
Fond du Lac, WI—Fond du Lac County, VOR/DME Rwy 18, Amdt. 5
Fond du Lac, WI—Fond du Lac County, VOR/DME Rwy 36, Amdt. 5
Fond du Lac, WI—Fond du Lac County, SDF Rwy 36, Amdt. 4
Fond du Lac, WI—Fond du Lac County, NDB Rwy 9, Amdt. 4
Green Bay, WI—Austin Straubel Field, VOR Rwy 12, Amdt. 17
Green Bay, WI—Austin Straubel Field, VOR/DME or TACAN Rwy 36, Amdt. 3
Green Bay, WI—Austin Straubel Field, LOC BC Rwy 24L, Amdt. 16
Green Bay, WI—Austin Straubel Field, NDB Rwy 6R, Amdt. 15
Green Bay, WI—Austin Straubel Field, ILS Rwy 6R, Amdt. 19
Green Bay, WI—Austin Straubel Field, ILS Rwy 36, Amdt. 3
Lone Rock, WI—Tri-County, VOR-A, Amdt. 5
Lone Rock, WI—Tri-County, RNAV Rwy 27, Amdt. 5
Monroe, WI—Monroe Muni, VOR/DME Rwy 29, Amdt. 5

Effective November 21, 1985

Lubbock, TX—Lubbock Intl, LOC BC Rwy 35L, Amdt. 12

Effective October 10, 1985

Devine, TX—Devine Muni, NDB Rwy 35, Amdt. 1
Hondo, TX—Hondo Muni, NDB Rwy 35R, Amdt. 1
Kerrville, TX—Kerrville Muni (Louis Schreiner Field), LOC Rwy 30, Amdt. 1
Kerrville, TX—Kerrville Muni (Louis Schreiner Field), NDB Rwy 30, Amdt. 1

Effective October 8, 1985

Grand Haven, MI—Grand Haven Meml Airpark, VOR-A, Amdt. 13

[FR Doc. 85-25459 Filed 10-24-85; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM84-15-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

October 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Update to Benchmark Rate of Return on Common Equity for Public Utilities.

SUMMARY: In accordance with § 37.5, the Commission issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period November 1985 through January 1986. This rate is set at 13.68 percent, a reduction of 28 basis points from the current benchmark of 13.96 percent.

EFFECTIVE DATE: November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8015

SUPPLEMENTARY INFORMATION:

Notice of Update to Benchmark Rate of Return on Common Equity for Public Utilities

October 22, 1985.

On May 20, 1985, the Commission issued a final rule establishing an "advisory" benchmark rate of return on common equity of 14.46 percent applicable to rate filings made during July 1985 and a procedure for updating the advisory benchmark quarterly through January of 1986. In July, the Commission noticed an updated benchmark of 13.96 percent applicable to rate filings made during the period August through October 1985.

This notice provides the second quarterly update to the benchmark rate of return. This rate, applicable to rate filings during the period November 1985 through January 1986, is set at 13.68 percent.

As provided in § 37.9, the quarterly updates are based on changes in the median dividend yield for a sample of 100 utilities. This median dividend yield is applied to a formula with fixed adjustment factors (determined in the annual proceeding) and subject to a 50

basis point cap on the quarter-to-quarter changes.[1]

The median dividend yield for the sample of utilities for the third calendar quarter of 1985 is 9.14 percent.[2] Applying this yield to the formula for estimating the cost of common equity, and subject to the 50 basis point cap, the benchmark rate of return applicable to rate filings made from November 1, 1985 through January 31, 1986 is 13.68 percent. The attached appendix provides the underlying data on dividends and market prices supporting this update.

In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective November 1, 1985.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Rates of return.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 37—[AMENDED]

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16, U.S.C. 791a–825r (1982); Department of Energy Organization Act 42 U.S.C. 7101–7352 (1982).

2. The "Table of Quarterly Benchmark Rates or Return" of § 37.9(d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure.

* * * * *

(d) * * *

Benchmark applicability period (i)	First adjustment factor (a)	Second adjustment factor (b)	Current dividend yield (y_i)	Cost of common equity (k_c)	Benchmark rate of return
July 1, 1985 to July 31, 1985	1.02	4.36	9.88	14.44	14.44
Aug. 1, 1985 to Oct. 31, 1985	1.02	4.36	9.11	13.65	13.96
Nov. 1, 1985 to Jan. 31, 1986	1.02	4.36	9.14	13.68	13.68

Appendix

Exhibit No. and title

1. Initial sample of utlities.
2. Utilities excluded from the sample for the indicated quarter due to either zero dividends or a cut in dividends for this quarter or the prior three quarters.
3. Quarterly dividend yields for the indicated quarter for utilities retained in the sample.

SOURCE OF DATA: Standard and Poor's Compustat Services Inc., Utility COMPUSTAT® II Quarterly Data Base.

INITIAL SAMPLE OF UTILITIES

[12:46, Sunday, October 6, 1985]

Utility	Ticker symbol
Allegheny Power System	AYP
American Electric Power	AEP
Atlantic City Electric	ATE
AZP Group Inc	AZP
Baltimore Gas & Electric	BGE
Black Hills Power & Light Co	BHP
Boston Edison Co	BSE
Carolina Power & Light	CPL
Central & South West Corp	CSR
Central Hudson Gas & Elec	CNH
Central Ill Public Service	CIP
Central Louisiana Electric	CNL
Central Maine Power Co	CTP
Central Vermont Pub Serv	CV
Cilcorp Inc	CER
Cincinnati Gas & Electric	CIN
Cleveland Electric Illum	CVX
Commonwealth Edison	CWE
Commonwealth Energy System	CES
Consolidated Edison of NY	ED
Consumers Power Co	CMS
Dayton Power & Light	DPL
Delmarva Power & Light	DEW
Detroit Edison Co	DTE
Dominion Resources Inc-VA	D
Duke Power Co	DUK
Duquesne Light Co	DQU
Eastern Utilities Assoc	EUA
Empire District Electric Co	EDE
Fitchburg Gas & Elec Light	FGE
Florida Progress Corp	FPC
FPL Group Inc	FPL
General Public Utilities	GPU
Green Mountain Power Corp	GMP
Gulf States Utilities Co	GSU
Hawaiian Electric Inds	HE
Hudson Industries Inc	HOU
Idaho Power Co	IDA
Illinois Power Co	IPC
Interstate Power Co	IPW
Iowa Electric Light & Pwr	IEL
Iowa Resources Inc	IOR
Iowa-Illinois Gas & Elec	IWG
Ipalco Enterprises Inc	IPL
Kansas City Power & Light	KLT
Kansas Gas & Electric	KGE
Kansas Power & Light	KAN
Kentucky Utilities Co	KU
Long Island Lighting	LIL
Louisville Gas & Electric	LOU
Maine Public Service	MAP
Middle South Utilities	MSU
Midwest Energy Co	MWE

INITIAL SAMPLE OF UTILITIES—Continued

[12:46, Sunday, October 6, 1985]

Utility	Ticker symbol
Minnesota Power & Light	MPL
Montana Power Co	MTP
Nevada Power Co	NVP
New England Electric System	NES
New York State Elec & Gas	NGE
Newport Electric Corp	NPT
Niagara Mohawk Power	NMK
Northeast Utilities	NU
Northern Indiana Public Serv	NI
Northern States Power-MN	NSP
Ohio Edison Co	OEC
Oklahoma Gas & Electric	OGE
Orange & Rockland Utilities	ORU
Pacific Gas & Electric	PCG
Pacificorp	PPW
Pennsylvania Power & Light	PPL
Philadelphia Electric Co	PE
Portland General Electric Co	PGN
Potomac Electric Power	POM
Public Service Co of Colo	PSR
Public Service Co of Ind	PIN
Public Service Co of NH	PNH
Public Service Co of N Mex	PNM
Public Service Elec & Gas	PEG
Puget Sound Power & Light	PSD
Rochester Gas & Electric	RGS
San Diego Gas & Electric	SDO
Savannah Elec & Power	SAV
Scana Corp	SCG
Sierra Pacific Resources	SRP
Southern Calif Edison Co	SCE
Southern Co	SO
Southern Indiana Gas & Elec	SIG
St Joseph Light & Power	SAJ
Teco Energy Inc	TE
Texas Utilities Co	TXU
TNP Enterprises Inc	TNP
Toledo Edison Co	TED
Tucson Electric Power Co	TEP
Union Electric Co	UEP
United Illuminating Co	UIL
Utah Power & Light	UTP
Utilicorp United Inc	UCU
Washington Water Power	WWP
Wisconsin Electric Power	WPC
Wisconsin Power & Light	WPL
Wisconsin Public Service	WPS

UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year 1985, Quarter 3, 12:46, Sunday, Oct. 6, 1985]

Ticker symbol	Utility	Reason for exclusion
CMS	Consumers Power Co.	Dividend rate was zero for the quarter ending 09/30/85.
CTP	Central Maine Power Co.	Dividend rate reduced in the quarter ending 12/31/84.
FGE	Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending 09/30/85.
GPU	General Public Utilities.	Do.
LIL	Long Island Lighting.	Do.

[1] For a more detailed explanation for the method for determining the quarterly updates, *see* Generic Determination of Rate of Return on Common Equity for Public Utilities, 50 FR 21802 (May 29, 1985) (Docket No. RM84–15–000) (Final Rule) (Order No. 420) (issued May 20, 1985).

[2] The data base relied on by the Commission contained an error for the second calendar quarter of 1985. The data base indicated that Consumers Power paid a dividend when in fact it had not. The effect was an error in the cost of common equity value indicated in the last update. However, because of the working of the 50 basis point cap, this error had no effect on the benchmark value for the quarter. The Notice of Update indicated a median dividend yield of 9.08 percent for the second calendar quarter of 1985 when it should have indicated 9.11 percent. In turn, the indicated cost of common equity estimate should have been 13.65 percent rather than the 13.62 percent reported. This error was discovered by the Edison Electric Institute and confirmed by Staff.

Staff also found an error in its computer program which affects the benchmark rate applicable to rate filings made in July 1985. United Illuminating Company should have been excluded from the sample used to compute the dividend yield for that benchmark. Correction for this error reduces that benchmark from 14.46 percent to 14.44 percent.

These changes are indicated in the revised Table of § 37.9(d). Staff has also placed its corrected computer program and results in the public file.

UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year 1985, Quarter 3, 12:46, Sunday, Oct. 6, 1985]

Ticker symbol	Utility	Reason for exclusion
MAP	Maine Public Service.	Do.
MSU	Middle South Utilities.	Do.

UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year 1985, Quarter 3, 12:46, Sunday, Oct. 6, 1985]

Ticker symbol	Utility	Reason for exclusion
MTP	Montana Power Co.	Dividend rate reduced in the quarter ending 03/31/85.
PNH	Public Service Co of NH.	Dividend rate was zero for the quarter ending 09/30/85.
N-9	.....	

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

[Year 1985, quarters 3, 12:46, Sunday, Oct. 6, 1985]

Ticker symbol	Price, 1st month of qtr—High	Price, 1st month of qtr—Low	Price, 2nd month of qtr—High	Price, 2nd month of qtr—Low	Price, 3rd month of qtr—High	Price, 3rd month of qtr—Low	Dividends annual rate	Annualized dividend yield
AEP	24.875	22.250	23.500	21.250	21.875	19.875	2.260	10.148
ATE	29.250	25.750	27.375	26.000	26.500	25.625	2.580	9.526
AYP	34.000	29.000	31.000	29.125	31.250	28.125	2.700	8.877
AZP	28.125	25.000	25.250	23.875	24.875	22.625	2.720	10.898
BGE	23.313	20.188	22.125	20.000	25.500	20.625	1.700	7.922
BHP	34.875	32.625	34.750	32.125	36.250	33.750	1.920	5.637
BSE	44.125	38.000	40.250	37.000	40.375	38.250	3.240	8.237
CER	27.250	23.250	25.000	23.375	24.875	22.250	2.220	9.123
CES	30.625	26.750	28.625	26.375	29.000	26.500	2.520	9.007
CIN	19.375	17.000	18.375	17.000	18.625	16.500	2.160	12.126
CIP	21.500	18.875	19.500	18.500	19.750	17.500	1.640	8.510
CNH	31.250	28.000	29.750	28.375	28.750	24.000	2.960	10.439
CNL	29.125	24.125	25.750	24.375	26.500	23.750	2.080	8.124
CPL	30.000	26.125	27.125	26.000	27.125	25.625	2.600	9.630
CSR	27.000	23.000	26.000	22.750	25.875	23.375	2.020	8.189
CV	21.750	18.125	21.125	18.625	21.125	19.250	1.900	9.500
CVX	23.875	21.750	23.375	21.250	23.000	21.250	2.520	11.242
CWE	32.875	29.625	31.500	29.000	31.000	28.250	3.000	9.877
D	34.125	26.625	31.375	29.250	31.125	28.375	2.720	8.924
DEW	26.625	22.750	24.625	23.125	24.875	22.750	1.920	7.958
DPL	20.250	17.750	18.500	17.250	18.750	16.750	2.000	10.964
DQU	17.500	16.125	17.250	16.125	16.500	14.375	2.060	12.628
DTE	17.875	15.750	16.750	15.125	16.500	14.000	1.680	10.500
DUK	35.875	30.750	32.625	30.625	32.875	30.000	2.600	8.093
ED	38.000	32.750	35.000	33.000	34.750	32.125	2.400	7.003
EDE	22.500	21.125	21.875	20.375	21.500	20.375	1.760	8.266
EUA	23.750	20.500	23.125	21.000	22.125	18.375	2.060	9.591
FPC	29.125	25.750	27.875	26.500	27.000	24.000	2.160	8.087
FPL	28.000	23.375	25.625	23.625	24.750	22.625	1.960	7.946
GMP	20.000	17.000	19.625	17.750	19.750	17.250	1.760	9.481
GSU	16.500	14.625	14.750	12.750	13.875	11.625	1.640	11.697
HE	25.375	22.125	22.875	20.250	22.125	20.250	1.640	7.396
HOU	29.500	27.000	26.000	26.750	27.750	25.000	2.640	9.659
IDA	24.500	20.000	21.375	20.000	21.875	20.125	1.720	8.070
IEL	21.500	18.625	21.000	19.000	21.000	18.750	1.900	9.510
IOR	37.750	33.000	34.500	33.000	34.250	32.250	3.080	9.026
IPC	27.500	23.375	25.625	23.250	24.750	22.375	2.640	10.785
IPL	40.000	33.375	36.250	33.625	36.128	32.750	3.040	8.599
IPW	22.750	19.625	20.750	19.750	20.250	19.000	1.900	9.335
IWG	35.000	30.250	31.625	29.875	31.500	29.875	2.740	8.739
KAN	41.375	34.500	38.125	35.250	37.000	33.875	2.960	8.068
KGE	19.125	17.375	18.500	14.375	15.375	10.250	2.360	14.905
KLT	24.500	22.375	23.500	20.000	22.375	18.000	2.360	10.830
KU	29.875	26.500	28.125	26.500	28.125	26.000	2.440	8.866
LOU	30.875	26.125	28.750	26.500	29.125	25.750	2.520	9.047
MPL	39.250	33.750	35.875	33.875	36.750	33.375	2.760	7.779
MWE	32.250	27.750	30.125	26.750	30.875	28.000	2.760	9.422
NES	46.500	41.750	44.625	42.125	44.500	40.375	3.600	8.312
NGE	29.250	24.875	26.500	24.875	26.250	23.750	2.560	9.878
NI	12.875	11.375	12.125	11.125	12.500	10.625	1.560	13.253
NMK	21.875	19.500	20.500	18.875	20.000	17.500	2.080	10.554
NPT	17.375	16.375	17.125	15.625	16.500	15.500	1.500	9.137
NSP	51.875	46.125	48.250	45.750	48.875	44.875	3.520	7.391
NU	18.000	16.500	17.875	16.000	17.000	14.500	1.580	9.492
NVP	33.500	28.750	30.875	29.125	31.000	29.250	2.840	9.337
OEC	16.000	15.000	16.125	15.125	16.125	14.375	1.880	12.162
OGE	26.250	22.250	23.375	21.625	24.375	21.500	2.000	8.610
ORU	29.000	24.375	26.750	25.125	27.250	25.125	2.140	8.146
PCG	20.000	17.875	19.000	17.375	19.250	17.250	1.840	9.968
PE	16.625	15.250	16.500	14.750	15.000	14.000	2.200	14.328
PEG	32.375	27.750	31.000	28.000	30.875	26.625	2.840	9.648
PGN	21.625	18.625	20.125	19.125	20.375	17.875	1.900	9.662
PIN	10.125	8.250	9.250	8.625	9.250	8.625	1.000	11.065

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year 1985, quarters 3, 12:46, Sunday, Oct. 6, 1985]

Ticker symbol	Price, 1st month of qrtr—High	Price, 1st month of qrtr—Low	Price, 2nd month of qrtr—High	Price, 2nd month of qrtr—Low	Price, 3rd month of qrtr—High	Price, 3rd month of qrtr—Low	* Dividends: annual rate	Annualized dividend yield
PNM	29.500	25.500	27.375	26.000	27.875	26.250	2.880	10.634
POM	34.000	28.000	32.125	29.125	31.375	27.500	2.160	7.116
PPL	27.875	24.500	26.250	24.375	26.375	23.500	2.560	10.047
PPW	31.625	27.000	29.500	27.250	29.750	27.375	2.320	8.070
PSD	17.000	14.875	15.750	14.500	14.875	13.000	1.760	11.733
PSR	24.125	20.250	22.250	20.375	22.125	20.375	2.000	9.266
RGS	24.875	21.500	23.000	21.750	22.875	19.750	2.200	9.869
SAJ	23.000	20.000	21.625	19.500	20.750	19.000	1.720	8.331
SAV	21.750	18.750	20.375	18.875	20.375	19.250	1.600	8.042
SCE	27.625	23.000	26.000	23.375	25.625	22.750	2.160	8.735
SCG	28.125	24.750	26.500	24.250	26.250	23.375	2.160	8.457
SDO	27.500	24.125	26.750	25.000	27.000	24.750	2.240	8.664
SIG	26.625	22.875	24.000	22.750	25.000	23.500	1.800	7.461
SO	23.125	20.375	21.250	19.750	20.500	18.875	1.920	9.300
SRP	19.875	17.000	18.500	17.375	18.125	17.375	1.660	9.201
TE	36.625	30.625	32.375	29.875	32.500	30.625	2.360	7.351
TED	21.250	19.125	20.875	19.125	20.750	19.125	2.520	12.574
TEP	43.625	36.875	40.625	37.250	40.125	37.000	3.000	7.643
TNP	21.625	18.125	19.875	16.625	18.250	15.750	1.250	6.803
TXU	31.875	28.000	29.875	28.375	29.000	25.875	2.520	8.740
UCU	27.000	24.375	25.000	24.000	24.750	21.875	1.400	5.714
UEP	19.750	18.125	19.625	17.750	19.375	16.875	1.840	9.901
UIL	22.625	18.500	21.875	20.375	22.125	20.250	2.000	9.543
UTP	26.875	23.250	25.500	23.750	24.250	22.750	2.320	9.510
WPC	40.500	34.375	36.250	33.500	37.000	33.875	2.480	6.905
WPL	40.375	35.375	37.625	34.375	36.625	34.500	2.760	7.568
WPS	39.250	36.125	39.000	37.000	38.875	35.750	2.860	7.593
WWP	24.500	22.125	23.500	21.750	22.125	21.000	2.480	11.022
N=91								

[FR Doc. 85-25557 Filed 10-24-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436, 440, and 455

[Docket No. 85N-0173]

Antibiotic Drugs; Sterile Ticarcillin Disodium and Clavulanate Potassium

Correction

In FR Doc. 85-19673, beginning on page 33516 in the issue of Tuesday, August 20, 1985, make the following corrections:

1. On page 33517, in the third column, in § 436.355, the equation in paragraph (c)(2) should read:

$$n = 5.545\left[\frac{t_R}{w_h}\right]^2$$

2. On the same page, in the same column, section, and paragraph, in the last line of the definition of terms immediately following the equation, W_h should read w_h.

3. On page 33518, in the first column, in § 436.355, in the equation in paragraph (c)(3) and in the third line of the definition of terms immediately following the equation, W should read w wherever it appears.

4. On the same page, in the first column, in § 436.355, the equation in paragraph (c)(4) should read:

$$S_R = \frac{100}{\bar{X}}\left[\frac{\sum_{i=1}^{N}(X_i-\bar{X})^2}{N-1}\right]^{1/2}$$

5. On the same page, in the middle column, in § 440.290b, paragraph (a)(1), the last word in the nineteenth line of the column should read "clavulanate".

BILLING CODE 1505-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Meclofenamic Acid 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 new animal drug application (NADA) filed by Parke-Davis, Division of Warner-Lambert Co., providing for use of 10- and 20-milligram meclofenamic acid tablets for dogs for relief of signs and symptoms of chronic inflammatory disease involving the musculoskeletal system.

EFFECTIVE DATE: October 25, 1985.

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: Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950, filed NADA 110-201 providing for use of 10- and 20-milligram Arquel® (meclofenamic acid) tablets for dogs for relief of signs and symptoms of chronic inflammatory disease involving the musculoskeletal system. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

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

2. By adding new § 520.1331 to read as follows:

§ 520.1331 Meclofenamic acid tablets.

(a) *Specifications.* Each tablet contains either 10 or 20 milligrams of meclofenamic acid.

(b) *Sponsor.* See No. 000071 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 1.1 milligrams per kilogram (0.5 milligram per pound) daily for 5 to 7 days.

(2) *Indications for use.* For the relief of signs and symptoms of chronic inflammatory disease involving the musculoskeletal system.

(3) *Limitations.* For oral use only. Should not be administered to animals with congestive heart failure or active gastrointestinal, hepatic, or renal disease. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 17, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-25463 Filed 10-24-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 0

[Order No. 1111-85]

Organization of the Department of Justice

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: Final rule.

SUMMARY: 28 CFR Part 0 is amended by revising §§ 0.90–0.94. 28 CFR Part 0 is being amended to comply with the nomenclature changes made by the Justice Assistance Act of 1984, Title II, Chapter VI, Division I, of Pub. L. 98–473, 98 Stat. 1837 (Oct. 12, 1984). The Justice Assistance Act established the Office of Justice Programs in place of the Office of Justice Assistance, Research, and Statistics. The Act also eliminated the Law Enforcement Assistance Administration as a statutory agency and established a new organization within the Department of Justice called the Bureau of Justice Assistance which is headed by a Director appointed by the Attorney General. Accordingly, references to "Law Enforcement Assistance Administration" or "Administration" have been replaced by the term "Bureau of Justice Assistance", "Bureau" or "BJA" to reflect the statutory change in the administering organization.

EFFECTIVE DATE: Effective on October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Charles A. Lauer, General Counsel, Office of Justice Programs, 202/724-7792.

SUPPLEMENTARY INFORMATION: The Justice Assistance Act of 1984 established a new Office of Justice Programs within the Department of Justice under the general authority of the Attorney General. The Office of Justice Programs is headed by an Assistant Attorney General. The Assistant Attorney General provides staff support to and coordinates the activities of the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Assistance and the Office for Victims of Crime.

The Justice Assistance Act also established within the Department of Justice, under the general authority of the Attorney General, a new Bureau of Justice Assistance. The Bureau assists States and units of local government in carrying out specific grant assistance programs which offer a high probability of improving the functioning of the criminal justice system with special emphasis on violent crime and serious offenders.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 0—[AMENDED]

For reasons set out in the preamble Subpart P-1 of Part 0 of Title 28 CFR is revised as follows:

Subpart P-1—Office of Justice Programs and Related Agencies

Sec.

Authority: 28 U.S.C. 509, 510, and 5 U.S.C. 301; Pub. L. 98-473, Title II, Chap. VI, Div. I and Chap. XIV.

Subpart P-1—Office of Justice Programs and Related Agencies

§ 0.90 Office of Justice Programs.

The Office of Justice Programs is headed by an Assistant Attorney General appointed by the President. Under the general authority of the Attorney General, the Assistant Attorney General maintains liaison with the provides information to Federal, State, local, and private agencies and organizations on criminal justice matters, and provides staff support to and coordinates the activities of the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Assistance. The Office includes the Office for Victims of Crime.

§ 0.91 Office for Victims of Crime.

The Office for Victims of Crime is headed by a Director appointed by the Assistant Attorney General, Office of Justice Programs. Under a delegation by the Attorney General (DOJ Order No. 1079-84, Dec. 14, 1984), the Assistant Attorney General and the Director are responsible for providing national leadership to encourage improved

treatment of victims by implementing the recommendations of the President's Task Force on Victims of Crime and the Attorney General's Task Force on Family Violence, and by administering the Crime Victims Fund and the Federal Crime Victim Assistance Program, established under the Victims of Crime Act of 1984, Title II, Chapter XIV, of Pub. L. 98-473, 42 U.S.C. 10601 et seq., 98 Stat. 2170 (Oct. 12, 1984).

§ 0.92 National Institute of Justice.

The National Institute of Justice is headed by a Director appointed by the President. Under the general authority of the Attorney General and reporting through the Assistant Attorney General, Office of Justice Programs, the Director performs functions and administers programs, including provision of financial assistance, under 42 U.S.C. 3721-3723 to support basic and applied research into justice issues.

§ 0.93 Bureau of Justice Statistics.

The Bureau of Justice Statistics is headed by a Director appointed by the President. Under the general authority of the Attorney General and reporting through the Assistant Attorney General, Office of Justice Programs, the Director performs functions and administers programs, including provision of financial assistance, under 42 U.S.C. 3731-3734, to provide a variety of statistical services for the criminal justice community.

§ 0.94 Office of Juvenile Justice and Delinquency Prevention.

The Office of Juvenile Justice and Delinquency Prevention is headed by an Administrator appointed by the President. Under the general authority of the Attorney General and reporting through the Assistant Attorney General, Office of Justice Programs, the Administrator performs functions and administers programs, including provision of financial assistance, under 42 U.S.C. 5601 *et seq.*, relating to juvenile delinquency, the improvement of juvenile justice systems and missing children.

§ 0.95 Bureau of Justice Assistance.

(a) The Bureau of Justice Assistance is headed by a Director appointed by the Attorney General. Under the general authority of the Attorney General and reporting through the Assistant Attorney General, Office of Justice Programs, the Director performs functions and administers programs, including provision of financial assistance, under 42 U.S.C. 3741-3748; 3761-3764; and 3769, relating to the administration of State and local criminal justice systems. The Director also administers the Public Safety Officers' Death Benefits Program under 42 U.S.C. 3796, *et seq.*.

(b) Subject to the authority and direction of the Attorney General, the Director of the Bureau of Justice Assistance is authorized to exercise the power and authority vested in the Attorney General by Executive Order No. 11755 of December 29, 1973, 39 FR 779, with respect to certification and revoking certification of work-release laws or regulations.

Dated: October 4, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-25419 Filed 10-24-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CG09-85-10]

Special Anchorage Area; Niagara River, Youngstown, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard, at the request of public and private interests in the town of Youngstown, New York, is expanding an existing Special Anchorage Area in the Niagara River adjacent to Youngstown, New York. Increasing boater traffic and the lack of suitable mooring space within the River necessitates the expansion of this area.

The expansion of this area will provide the needed space to accommodate boating interests in a safe manner.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns III, Marine Port and Environmental Safety Branch, 1240 East Ninth St., Cleveland, OH 44199, (216) 522-3919.

SUPPLEMENTARY INFORMATION: On Friday, July 5, 1985, the Coast Guard published a Notice of Proposed Rule Making in the **Federal Register** for these regulations (50 CFR 27624). Interested persons were requested to submit comments and three comments were received.

Drafting Information

The drafters of these regulations are Ensign George H. Burns III, Marine Port and Environmental Safety Branch, project officer and Lieutenant Raymond A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

Three comments were received on the Proposed Rule. Two of the commenters, who are adjacent landowners, objected to the proposal, while one commenter supported it. The reasons given by those who object to the proposal include: losing the right to use the River adjacent to their property; loss of privacy; devaluation of real estate; increased noise from horns, slapping halyards, people; and an objection to the proposed administration of the area.

All comments were carefully evaluated. Due to the physical characteristics of the shoreline in this area, i.e. all dwellings are separated from the anchorage by a public highway and a high tree covered embankment that hides the Special Anchorage Area from the dwellings, it is not believed that loss of privacy, devaluation of real estate, or noise are significant issues. In order to accommodate the navigational needs of adjacent land owners, this rulemaking does provide for a 100' separation between the shore and the boundary of the Special Anchorage Area. This separation should provide more than enough space for landowners to use the River adjacent to their property.

The last objection concerning the administration of this area is premature. Administration will be conducted by a public Harbor Commission headed by the Mayor of Youngstown. The final rules and procedures have not yet been established for the Harbor Commission but are ultimately and properly subject to the control of the citizens of Youngstown, N.Y.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. There is, in fact, potential for a modest economic benefit to the area as a result of the increased capability to accommodate more of the boating public. This rulemaking will not require any expenditures on the part of the boating public.

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2033, 2071, 49 CFR 1.46 and 33 CFR 1.05–1(g).

§ 110.85 [Amended]

2. Section 110.85 is amended by revising paragraph (a) and adding a note to the end of the section to read as follows:

(a) *Area 1.* Beginning at a point at the intersection of the south line of Swain Street extended with the east shoreline of the Niagara River at latitude 43°14'33" N, longitude 79°03'7.5" W; thence westerly to a point at latitude 43°14'33" N, longitude 79°03'9.5" W; thence Southerly to a point at latitude 43°14'15.5" N, longitude 79°03'10" W; thence Westerly to a point at latitude 43°14'15.5" N, longitude 79°03'17" W; thence northerly to a point at latitude 43°14'54.5" N, longitude 79°03'14" W; thence southeasterly to a point at latitude 43°14'52.3" N, longitude 73°03'09" W; thence southerly to a point at latitude 43°14'51.4" N, longitude 73°03'09" W; thence easterly to a point at latitude 43°14'51.5" N; longitude 79°03'6.5" W; thence along the shoreline to the point of beginning.

* * * * *

Note.—The Youngstown Harbor Commission controls the location, type, and assignment of moorings placed in the special anchorage areas in this section.

Dated: October 21, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander Ninth Coast Guard District.

[FR Doc. 85–25432 Filed 10–24–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 85–42]

Drawbridge Operation Regulations; Corrections and Miscellaneous Amendments

Correction

In FR Doc 85–15605 beginning on page 26710 in the issue of Friday, June 28, 1985, make the following correction: On page 26711, in the third column, in § 177.219(c)(2), in the first line, "9 a.m." should read "9 p.m."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Ozark National Scenic Riverways, Missouri Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On June 28, 1985, the National Park Service, Department of the Interior, published in the **Federal Register** (50 FR 26809) a proposed rule to permit the continued taking of turtles and crayfish at Ozark National Scenic Riverways, consistent with the provisions of the Wildlife Code of the Missouri Department of Conservation. This proposal was made available for public review and comment for a period of thirty (30) days following publication in the **Federal Register**, and ending on July 29, 1985. No comments, however, were received. As a result, a final regulation, unchanged from the proposed rule, is published to permit a level of public use and enjoyment of park resources consistent with the establishment of Ozark National Scenic Riverways to provide for both preservation and recreational use.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur E. Eck, Assistant Superintendent, Ozark National Scenic Riverways, Van Buren, Missouri 63965, Telephone: (314) 323–4236.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1982, the National Park Service published in the **Federal Register** (47 FR 11598) a proposed rule revising the General Regulations for Areas Administered by the National Park Service (36 CFR Parts 1–7, 12). The proposed rule included a provision authorizing fishing and the taking of aquatic wildlife in accordance with State law. Aquatic wildlife was defined to include frogs, turtles, crabs, clams, mussels, crayfish, and lobsters.

In response to public comments to the proposed rule, the National Park Service determined that a broad interpretation of fishing was inconsistent with past administrative practice and policy to conserve and protect park resources and wildlife. Consequently, the final rule published June 30, 1983 (48 FR 30276) narrowed the definitions of "fishing" and "fish" to taking or attempting to take bony fish, sharks, salt water mollusks or crustaceans.

On December 27, 1983, further proposed amendments to the general regulations codified in 36 CFR were published (48 FR 46971). One component of this proposal was a regulation to authorize all fishing methods at Ozark Riverways permitted under Missouri law, as appropriate. The final rule, published April 30, 1984 (49 FR 18451) provided that at Ozark National Scenic Riverways, unless otherwise designated, fishing in a manner authorized under applicable State law is allowed (36 CFR 7.83). Specific provisions were made in the final rule for the digging of bait for personal use and for the taking of frogs.

As published in the **Federal Register** on April 30, 1984 (49 FR 18451), the special regulations for Ozark Riverways made no provisions for the taking of turtles and crayfish. A recommendation from Ozark National Scenic Riverways on January 23, 1984, to further amend 36 CFR 7.83 to include such authority, reflected local sentiment and an effort to reconcile traditional activities with the new regulations. Since a special regulation to accommodate the taking of turtles and crayfish was not part of the proposed rule published December 27, 1983, and therefore not subject to public involvement, action on the recommendation was deferred until the present rulemaking.

The designation process specified in 36 CFR 1.5, gives superintendents limited discretion in allowing activities within park areas provided they are not contrary to Federal statutory law or in derogation of park values. However, except in an emergency, such designation which is of a nature, magnitude and duration to result in a significant change in public use patterns, or adversely affects the park's natural or cultural values, or deemed to be of a highly controversial nature, shall be published in the **Federal Register** (36 CFR 1.6). Because the traditional public use of Ozark National Scenic Riverways has included the taking of turtles and crayfish; and as this is an activity consistent with the fishing regulations of the State of Missouri; and as differences between Park Service regulations and State regulations have prompted several public meeting and correspondence; a proposed rule was published June 28, 1985, in the **Federal Register** (50 FR 26809). Specifically, it was proposed to amend 36 CFR 7.83 to authorize the superintendent at Ozark Riverways to designate conditions under which turtles and crayfish may be taken, consistent with State law.

There have been no changes in the final rule from the proposed rule published June 28, 1985. During the 30-day comment period that expired July 29, 1985, no comments from

organizations, agencies or private citizens were received. Consequently, the rule promulgated here is the same as the one proposed.

An environmental assessment of the effects of this proposed regulation was prepared and submitted to the Director of the Midwest Region, National Park Service, on December 14, 1984. A statement of a "Finding of No Significant Impact," in accordance with the National Environmental Policy Act (42 U.S.C. 4332), was prepared in conjunction with the environmental assessment.

The stability of the affected animal populations will continue to be monitored. No designation will be made except upon the written determination that the taking of turtles and/or crayfish at Ozark National Scenic Riverways will not be detrimental to park wildlife or their reproductive potential, have an adverse effect on the park ecosystem, or be incompatible with the purposes for which the area was established.

Drafting Information

The following persons participated in the writing of these regulations: Arthur E. Eck, Assistant Superintendant; James M. Simpson, Resources Management Specialist, both of Ozark National Scenic Riverways.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This conclusion is based on the fact that the taking of turtles and crayfish at Ozark National Scenic Riverways is a minor recreational use. The rule will contribute in some part to the local tourism of communities in the vicinity of the Current and Jack Fork Rivers by assuring the continued availability of the range of recreational activities that have been available to park users in the past.

As noted previously, pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an environmental assessment on this special regulation which is available at the address noted above.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. In § 7.83, by revising paragraph (e)(1) introductory text to read as follows:

§ 7.83 Ozark National Scenic Riverways.

* * * * *

(e) *Frogs, turtles and crayfish.* (1) The superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and/or crayfish upon a written determination that the taking of frogs, turtles and/or crayfish:

* * * * *

Dated: September 20, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-25536 Filed 10-24-85; 8:45 am]

BILLING CODE 4310-70-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM85-2; Order No. 640]

Rules of Practice and Procedure Governing Workpapers and Computer-Generated Evidence

Issued: October 21, 1985.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting the revisions to its Rules of Practice that it previously noticed for comment on July 2, 1985 (50 FR 27308-27313) substantially as they were originally proposed. These revisions include adding explanatory detail to Rules 54(o)(4), 64(g)(4), and 92(l)(4), which relate to workpapers submitted by the participants in our proceedings, and making certain refinements to Rules 31(k)(3)(i) and 54(h)(5), which relate to computer-generated evidence submitted by participants. Some related revisions to our Rules that the public proposes in its comments on our Notice of July 2, 1985, are being severed from this docket and noticed for comment in Docket No. RM86-1 published in the Proposed Rules Section of this **Federal Register**.

EFFECTIVE DATE: October 25, 1985.

ADDRESSES: Correspondence relating to this Notice of Rulemaking should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On June 18, 1985, the Commission issued a Notice of Proposed Rulemaking (50 FR 27,308, Tuesday, July 2, 1985) proposing a number of revisions to our Rules of Practice designed to expedite the conduct of our formal rate and classification hearings. Comments were received from Time, Inc., Dow Jones and Company, Inc., and the Postal Service.

The comments received preponderantly supported our proposed revisions, viewing them as reasonable requirements that are appropriately tailored to the goal of expediting the conduct of our formal hearings. Several of the comments that we received proposed amendments to our Rules that are not directly derived from the proposals made in our Notice of Proposed Rulemaking of June 18, 1985. We have concluded that it is advantageous to consider those proposals in a separate docket—Docket No. RM86-1. This will afford the public an opportunity to respond to them without delaying the adoption of the Commission's proposals.

In our Notice of Proposed Rulemaking, we proposed refinements to the language of Rule 54(o)(4) concerning workpapers. The proposed refinements were intended to make clear that numbers used in testimony must be cross-referenced to other testimony, cited to published documents, or cited to primary data sources. We accompanied our proposed refinements with illustrations of what these sourcing and referencing requirements entail. Comments on these refinements from Time, Inc., and Dow Jones & Company, Inc., were favorable. The Postal Service felt that these clarified requirements were unnecessarily burdensome.

The Postal Service objected on three grounds to the citational requirements of proposed Rule 54(o)(4). First, the Postal Service objected that the requirement would force its cost-forecasting or "roll-forward" witness to provide a citation for every number used in the "roll-forward" computer program (*i.e.*, one citation for each number). The Service stated that such a requirement could only be satisfied by writing citations by hand, thus eliminating any possibility of

using computer data-processing techniques to prepare its workpapers. Postal Service Comments at 6–8. Second, the Service objected that the citational requirements would approximately double the effort required to prepare its "roll-forward" presentation. *Id.* at 7. Third, the Service pointed out that with respect to the "roll-forward" workpapers, providing citations for each page of the workpapers would entail a great deal of needless repetition. *Id.* at 11.

The first objection can be dealth with most easily. It is apparently based on a misunderstanding of the proposed rule. Rule 54(o)(4) has always required citations. The revised language is designed to make the mandatory nature of this long-standing requirement unmistakable and unambiguous. Our Notice of Proposed Rulemaking included an example of a satisfactory workpaper. That example did not provide a citation for every number in the workpaper on a one-to-one basis. Rather, that example provided citations on a column-by-column basis except for the last three numbers of each column. There was thus no basis for the Service's inference that the proposed rule would require appending a footnote to every number in a workpaper.

What the proposed rule would require, as the existing rule now does, is that workpapers be "sufficient" in their citations to allow each number to be traced. This allows for citations in workpapers to be generalized, or representatives, to the degree that numbers can still be traced. With respect to the required level of specificity in citations, what is new in the revised language of the workpaper rule is the requirement that citations appear with a certain frequency, *i.e.*, on each page of the workpaper. It is possible, therefore, to comply with the proposed workpaper rule with a single citation on each page of a workpaper, if that single citation is sufficiently representative of the sources of all of the numbers on that page to allow an analyst to trace them all. This frequency requirement is a modest additional requirement that balances the need for streamline workpaper organization with the need to shorten the analyst's hunt for the sources of numbers.

The objection that the citations required by the workpaper rule would have to be provided by hand requires more complex analysis, but seems also to be misplaced. All of the citations in the example workpaper provided in the Notice of Proposed Rulemaking can be divided into three classes, none of which needs to be provided by hand.

The first class of citations consists of citations to columns of the base-year cost matrix, all of which can be standardized, and, therefore, automated. The second class of citations consists of arithmetical operations, of which there are a small number in the entire "roll-forward" computer program. The Postal Service has already automated these types of citations in Library Reference D–40, although the format in which these citations is presented is not conducive to rapid comprehension, as the Service acknowledges. Postal Service Comments at 9.

The third type of citation refers to blow-up factors or total dollar amounts provided to the "roll-forward" witness by the revenue-requirement witness. These factors and amounts are provided to the "roll-forward" program as manual data entries. If citations were provided at the same time as the manual entries were made, and if each manual entry were associated with its corresponding citation at the time of original entry, little additional time would be required to generate the citations at the appropriate locations in the workpapers.[1] The only significant burden that the citational requirements appear to entail is a one-time reprogramming of that portion of the "roll-forward" procedure related to manual data entry. It is worth noting that the Service did not object to similar one-time reprogramming burdens in another context of this rulemaking. *See* Postal Service Comments at 13.

The Postal Service's comments have persuaded us that it will be beneficial to make what is currently implicit in the workpaper citation rule explicit. Where workpapers are repetitive in terms of the sources of the numbers used in calculations, there is no need to require the production of voluminous citations if the presentation of a few representative examples will enable a reviewer to trace any number within a workpaper by analogy. Accordingly, we have redrafted the language of those portions of rule 54 relating to citations in workpapers so as to make it clear that repetitive citations need not be provided. The redrafted workpaper rule makes it clear that where a reviewer can deduce the source of a number by reference to a representative workpaper that meets the requirements of rule 54(o)(4), further citations will not be required at the time of filing. Any witness, however, will remain responsible for explaining the derivation of any numbers in his testimony, exhibits, workpapers, or library references upon the request of a participant, the presiding officer, or the Commission. *Cf.* 39 CFR 3001.31(k)(3)(ii), 3001.54(a)(3)–(4).

The Postal Service's comments emphasize the need for our workpaper citation rule to make allowance for the repetitive nature of the "roll-forward" workpapers. We agree that this problem warrants special consideration. Determining which aspects of those workpapers are truly repetitive is involved and somewhat complex. Accordingly we believe that it will be beneficial to adopt a rule that shows how the citational principles set forth in Rule 54(o)(4) should apply specifically to "roll-forward" workpapers. That application is expressed in amended rule 54(h)(5)(iv) which appears below, and is self-explanatory.

Rule 54(o)(4) applies to workpapers submitted with a Postal Service request for changes in rates. There should be a conforming change made to the corresponding rule that applies to Postal Service requests for changes in mail classification. That conforming change appears in amended rule 64(g)(4) set forth below. Dow Jones & Company, Inc., comments that these requirements should apply equally to workpapers supporting the direct evidence of hearing participants other than the Postal Service. Comments on Behalf of Dow Jones & Company, Inc., filed August 9, 1985, (hereafter "Dow Jones Comments") at 2. We agree, and adopt conforming language for Rule 92(1)(4), which is the corresponding rule covering other hearing participants.

In our Notice of Proposed Rulemaking, we proposed certain amendments to Rule 31(k)(3)(i), which sets forth the documentation necessary to lay a foundation for computer-generated evidence. The intent of this Rule is to make sufficient information and documentation available to the participants at the outset of the discovery period to authenticate the computer program used, allow participants to independently replicate that program's output, and, if a computer model is involved, to validate that model. The objective of this Rule is to achieve authentication, replication, and validation of computer programs early enough in the discovery period so that sufficient time remains to analyze, test, and evaluate such programs before

[1] It should be noted that once the citations have been entered and associated with a particular location or address within the computer memory and data files, the number associated with the citation can be changed as often as necessary without changing the citation. For example, if a citation in the cost-forecasting witness's workpapers refers to a column of the base-year cost matrix, the numbers in that column can be revised without revising the citation; only the numbers will have changed, not their source.

witnesses sponsoring such computer-based evidence are scheduled for cross-examination.

Dow Jones comments that the objective of Rule 31(k)(3)(i), in addition to that described above, should be to have such information and documentation provided in time to allow participants to prepare rebuttal testimony. We agree. Dow Jones then states that "[c]ritical analysis of a party's technical testimony afforded by prefiled rebuttal testimony can reduce oral cross-examination at the hearing and save time for all parties and the Commissioners." Dow Jones Comments at 2. It is not entirely clear to us what Dow Jones means by "prefiled rebuttal testimony." If it simply means rebuttal testimony filed before the normal deadline for rebuttal testimony, affording other parties additional time to analyze such testimony, this is a laudable goal and we welcome all efforts to make this possible.

In our Notice of Proposed Rulemaking, we observed that in some circumstances, such as when a complex computer model is involved, traditional discovery procedures may be too cumbersome to elicit the technical information necessary to establish a foundation for computer-generated evidence within the normal discovery period. We therefore proposed that we add to the presumptively necessary foundation requirements of our rules, a requirement that an expert on the design and operation of the computer program relied on be made available, in an informal conference setting, at the beginning of the discovery period, to answer the questions of participants that are necessary to establish a foundation. 50 FR 27310.

Dow Jones endorses this revision. Its comments focus on the procedures that would apply to the technical conference proposed. It emphasizes the importance of transcribing the technical conference proceedings, even though such transcripts would not be included in the hearing record without first undergoing the same procedural steps that any other information must to be received into the hearing record. Dow Jones also asks us to make it clear that the protective procedures that are currently provided in Rule 31(k)(3)(iv) for proprietary information required by section 31(k)(3) apply to proposed Rule 31(k)(3)(i)(*l*). We agree that it is desirable to acknowledge that the protective measures of Rule 31(k)(3)(iv) are available to those participating in the proposed technical conference procedure. We think, however, that the current wording of Rule 31(k)(3)(iv), which by its terms applies to all of paragraph 31(k)(3), is adequate to indicate that its safeguards for proprietary information apply to the proposed technical conference procedure as well.

Time, Inc. proposes that we revise our proposed rule 31(k)(3)(i)(*l*) requiring an expert on the design and operation of a computer program to be made available for an informal technical conference. It suggests that the requirement not be limited to only one person, "but should include all experts required to address pertinent issues." Time, Inc. Comments at 4. The Rule, as proposed in our Notice of Proposed Rulemaking, requires that an expert be provided who is competent to answer all questions on the design and operation of the program that are necessary to lay a foundation for the results of the computer program offered in evidence. By the terms of the proposed rule, it is the duty of the expert provided to make himself competent to answer all such questions. It is up to him to determine how best to do this, whether by sufficient self-preparation, or by arranging for other experts to be on hand to assist him. We do not think that this aspect of procedure need be specified by the proposed rule.

The Postal Service comments that proposed Rule 31(k)(3)(i)(*l*) is unnecessary. It contends that technical conferences covering this area will be freely available and need not be provided for by explicit rule. Postal Service Comments at 16. We are gratified to learn that such conferences will be made freely available in the future by the Postal Service. The standardized requirement that a technical conference be made available on request is nevertheless appropriate for several reasons.

One is that the need for this procedure with respect to computer-generated evidence is more likely and more critical than it is for evidence generally. Another reason is that Rule 31 applies to all participants, not just the Postal Service. Therefore, even if the Postal Service's comments constitute an informal commitment to accommodate such procedures in the future, the rule still has applicability to other participants.

Finally, the history of the Postal Service accommodating requests for technical conferences, while generally good, is nevertheless mixed. In Docket No. R80-1 the Postal Service accommodated a Commission request to provide a technical conference with respect to the "roll-forward" computer program that it employed in that docket. In Docket No. R84-1, however, it declined to participate in another such conference on the Mail Processing Cost Model even though it was to be conducted under ground rules identical to those followed in Docket No. R80-1. See PRC Op. Docket No. R84-1, ¶¶ 3187-90.

The Postal Service comments that in Docket No. R84-1, with respect to the Mail Processing Cost Model, informal discovery was "available but underutilized" and that "all technical questions posed at the Merewitz technical conference were answered, orally or in writing, and no further conference was requested . . ."

While this observation might be technically accurate, it does not support the generalization that effective informal discovery was offered but not accepted. While witness Merewitz did give answers to technical questions, most were the equivalent of "I don't know". Witness Merewitz conceded that he did not develop, and had little acquaintance with the technical underpinnings of his testimony. This is why the parties shifted their efforts to formal written discovery. When this, and oral cross-examination, proved similarly ineffective, for the same reason, an attempt was made by the Commission to arrange a technical conference with a Postal Service representative who was involved with the development of the simulation model underlying the Merewitz testimony and could answer technical questions about it.

At that technical conference, the participants made no attempts to ask technical or substantive questions of the Postal Service's expert, after the Postal Service announced that it would insist as a precondition that the answers not be used a basis for further discovery, stipulations, or anything else that might ultimately have a direct or indirect effect on the hearing record. *ID.* at ¶ 3188. The Postal Service also recently declined requests for technical conferences in Docket No. R83-1, although computer-generated evidence was not the proposed topic. It therefore appears helpful to regularize the requirement that a technical conference be made available, in the manner proposed in Rule 31(k)(3)(i)(*l*).

The Postal Service expresses concern that to transcribe the remarks made at a technical conference would rob such a conference of its informality and its nonadversarial character, and therefore its usefulness. It reasons that transcribed remarks "can easily be transferred into the record of the formal proceeding" or that they can be used to impeach a witness in the formal proceeding. But the Postal Service's

fears in this regard are groundless. The Commission has never allowed technical conferences to be used this way in the past, does not propose to allow such use as part of Rule 31(k)(3)(i)(*f*), and does not intend to allow such use in the future. The ground rules that the Postal Service considers necessary for technical conferences to succeed are stated in footnote 1, page 21 of its comments:

> The only ways for such information to enter the record are by stipulation or if provided in response to normal discovery mechanisms which do not cite statements or representations made during the technical conference. For example, questions asked in the technical conference may be asked again in interrogatories.

These are the ground rules that have in the past, and will in the future, govern Commission technical conferences, including the technical conferences conducted under proposed Rule 13(k)(3)(i)(*f*).

Because these are the ground rules that will apply, the Postal Service's fears that keeping a transcript of remarks made at the technical conference will have a "chilling effect" on participants should be allayed. The technical conference on the "roll-forward" program in Docket No. R80–1 was conducted without such "chilling effects", even though a transcript of participants' remarks was kept. The transcript considerably enhanced the usefulness of the conference, because it provided much needed precision and certainty as to the information that was obtained, when it came time to review and digest the information obtained at the conference. The Postal Service recognizes that precision and certainty are special problems in conferences of this highly technical nature, when it comments that a court reporter might find it too difficult to keep a technically precise transcript of such conferences. Postal Service Comments at 19.

Because transcribing remarks made at a technical conference need not have a significant "chilling effect" under the groundrules that we have described, and because precision is at a premium in conferences of this type, we will keep open the option of transcribing such conferences.

Perhaps part of the anxiety expressed by the Postal Service over this proposed technical conference provision arose from its misreading of our narrative in our June 18 Notice of Proposed Rulemaking explaining the proposal. The Postal Service states at page 19 of its comments that

> [t]the Commission is incorrect when it states that the recordation and subsequent inclusion in the record of technical conferences conforms with "the normal ground rules for technical conferences generally in Commission proceedings."

The Postal Service contends that page 11 of our June 18 Notice makes this assertion. No such assertion is made in that Notice at page 11, or elsewhere. That Notice does not say that normal ground rules allow technical conference transcripts to be included in the record. Our June 18 Notice says that normal ground rules do not allow information disclosed at such conferences to be admitted as record evidence unless such information first clears precisely those procedural hurdles that the Postal Service agrees, in its footnote quoted above, that they must clear, *i.e.*, unless the information disclosed at a technical conference is voluntarily disclosed again in a subsequent answer to an interrogatory or in a stipulation. There is no hint in the Commission's Notice that information disclosed at a technical conference may be included in the formal hearing record unless the information clears one of a variety of subsequent procedural hurdles, none of which can be cleared without the cooperation of the party disclosing the information at the technical conference.

The Postal Service's comments indicate that it is reasonably comfortable with the technical conference requirement in proposed Rule 31(k)(3)(i)(*f*) if such conferences are conducted under the procedures followed in Docket No. R80–1. Postal Service Comments at 20. Because those procedures will apply, we think that it is appropriate to adopt proposed Rule 31(k)(3)(i)(*f*) as it was initially proposed in our June 18 Notice.

Our June 18 Notice proposed to add to Rule 31(k)(3)(i) a requirement that machine-readable tapes provided in response to Rule 31(k)(3) be accompanied by a hard-copy listing and description of each data or program file, and hard-copy instructions for executing such files. In that Notice, we also proposed a requirement that text-format data or program files be accompanied by hard-copy intructions for printing them out. 50 FR 27310. Comments on these proposals were generally favorable.

The Postal Service expressed concern that these proposals contain a redundant requirement that both a hard-copy listing, and instructions for printing a hard-copy listing, of text format files be provided. Postal Service Comments at 22. This was not intended, although the language of the proposed amendment is capable of such a construction. Only hard-copy instructions for printing out such files are required. Accordingly, the revised language for Rule 31(k)(3)(i) that we adopt here rules out such a misconstruction.

Our Notice of Proposed Rulemaking proposed to standardize the documentation required for the cost-projection or "roll-forward" computer program that accompanies the Postal Service's Request. The standardized documentation proposed included an annotated glossary of input data files (50 FR 27311), mathematical descriptions of "roll-forward" subroutines, and the base-year cost matrix on an MS–DOS diskette (50 FR 27312). No negative comments on these proposals were received. Accordingly we are adopting these requirements as proposed.

Time, Inc. proposed in its comments that we amend Rule 31(k)(3)(i) to convert the list of documentation items contained therein from one that are presumptively necessary to establish a foundation for computer-generated evidence into ones that are mandatory, to be provided at the time testimony is filed. Comments of Time, Inc., filed August 2, 1985, (hereafter "Time, Inc. Comments") at 4.

We believe that the current structure of the Rule is preferable. Such thorough documentation will not always be needed. Not all items on the list will be necessary, for example, to document standard, commercially available software. Where such software is used in preparing testimony, the current rule gives other participants the flexibility of requesting only those documentation items on the list that are needed for such software.

The comments of Time, Inc., concede that the full list of documentation items in the Rule will likely not be needed for commercially available software. It proposes that for such software, "programs *per se* should not be required but a listing of formulas, files and glossary should be provided and duplicate disks should be made available." Time, Inc., Comments at 4. Time, Inc., is apparently proposing that we restructure the Rule to make all of the itemized documentation mandatory for all software with the exception of "standard" or "commercially available" software.

Some delay might be avoided by this proposed restructuring in instances where the parties do desire all of the documentation itemized in the Rule. It is likely, however, that the parties would not deem all of the documentation itemized in the Rule necessary even for some nonstandard software. In such instances, the restructuring of the Rule as Time, Inc., proposes would be

counterproductive. We think that the current, more flexible structure of the Rule is a better balance of the need for early availability of foundational documentation, and the need to avoid the burden of unnecessary documentation of computer software. Accordingly, we will not adopt the restructuring that Time, Inc., urges.

Time, Inc., and Dow Jones, have both proposed revisions to our Rules that are not derived specifically from the changes that we proposed in our Notice of Proposed Rulemaking of June 18, 1985. Among them is Time, Inc.'s proposal to add to the list of presumptively necessary software documentation in current Rule 31(k)(3)(i), an additional item relating to testing and validation of computer simulation models. Time, Inc., Comments at 2. Dow Jones proposes revisions that relate to the legibility of workpapers, mandatory documentation of statistical studies, certain revisions to Rule 54(h)(4) regarding information that the Postal Service must file concerning the methods it uses to attribute and assign costs, and technical revisions to Rule 54(f)(3)(iii). Dow Jones Comments at 2, 5, 6. Because these proposals would benefit from an opportunity for responsive comments from the public, we are deferring these proposals for consideration in Docket No. RM86–1, instituted today.

Impact of Proposed Changes

The Commission finds that these rule changes do not, individually or collectively, constitute a major rule. They affect only rules of practice governing hearing procedures and their economic impact will be negligible, including their impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, these rule changes will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that these rule changes do not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. Section 3001.31 is amended by revising paragraph (k)(3)(i) introductory text, removing the undesignated text following (k)(3)(i)(*h*), and by adding (k)(3)(i)(*i*) as follows:

§ 3001.31 Evidence.

* * * * *

(k) *Introduction and reliance upon studies and analyses—*

* * * * *

(3) *Computer analyses.* (i) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a listing of the input and output data and source codes (or a showing pursuant to section (k)(3)(iii) of this section as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

* * * * *

(*i*) an expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output.

Paragraphs (*d*) and (*f*) shall be provided either in the form of magnetic tape or through access to a time-sharing service, at the option of the provider. Any machine-readable data file or program file so provided must be identified and described in accompanying hard-copy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hard-copy instructions for executing them

* * * * *

2. In § 3001.54, paragraph (h)(5)(iv) is revised; paragraph (h)(5)(v) is added; and paragraph (o)(4) is revised to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(h) *Separation, attribution, and assignment of certain costs.*

* * * * *

(5) The cost forecasting or "roll forward" model shall be provided. It shall include the following items:

* * * * *

(iv) Workpapers showing the application of the forecasting factors and procedures to each cost segment component for each time period used in the forecasting process. Such workpapers shall include the quantification, and distribution to mail class, subclass, rate category, and service, of each cost segment component, separating the short-run from the longer-run portions. Such workpapers shall conform to the requirements of paragraph (o) of this section. Compliance with the citation requirements of paragraph (o)(4) of this section shall be achieved by providing citations in "roll-forward" workpapers in the following cases:

(*a*) Workpapers showing the application of the forecasting factors and computational procedures (i.e., computer subroutines described in paragraph (h)(5)(iv)(*b*) of this section) to representative short-run cost segment components and to representative longer run cost segment components for representative time periods used in the forecasting process.

(*b*) Workpapers showing the application of a computational procedure to a cost segment component, if the application of a forecasting factor or computational procedure to a particular cost segment component deviates from the application of that forecasting factor or computational procedure as presented in the workpapers required by paragraph (h)(5)(iv)(*a*) of this section.

(v) If the "roll forward" model is submitted in the form of a computer-generated model, it shall include:

(*a*) An annotated glossary of input data files, to include, for each time period.

(*1*) the name of each input data file,

(*2*) a general description of each file in relation to the "roll forward" process,

(*3*) the format for each kind of data record in the file,

(*4*) for each distinct format type used in the file, a brief description of each data item included in the format.

(*b*) A hard-copy description, in the form of a mathematical equation, of each subroutine in the program.

(*c*) A copy of the Base Year attibutable cost matrix on a 5-inch floppy diskette in MS–DOS format.

* * * * *

(o) *Workpapers.*

* * * * *

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

* * * * *

Section 3001.64 is amended by revising paragraph (g)(4) as follows:

§ 3001.64 Contents of formal requests.

* * * * *

(g) * * *

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

Section 3001.92 is amended by revising paragraph (l)(4) as follows:

§ 3001.92 Submissions by intervenors.

* * * * *

(l) *Workpapers* * * *

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85-25478 Filed 10-24-85; 8:45 am]

BILLING CODE 7715-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 85-17]

Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Final rule; corrections.

SUMMARY: This document corrects administrative errors resulting in two incorrect citations in a final rule on financial reports of vessel operating common carriers in the domestic offshore trades that appeared at page 32068 in the **Federal Register** of Thursday, August 8, 1985 (50 FR 32068). This document also revises two corresponding references to the corrected citations which were not included in this rulemaking due to administrative oversight.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

The following corrections are made in FR Doc. 85-18513 appearing on page 32068 in the issue of August 8, 1985:

1. On page 32069, on lines 4, 5 and 6 of column three: "(9) *Capitalization of Interest During Construction (Schedules A-VII and A-IX(A).*" is corrected to read "(9) *Capitalization of Interest During Construction (Schedules A-VI and A-IX(A)".*

2. On page 32069, column three, paragraph (b)(10) of § 552.6 is corrected to read:

"(10) *Capitalization of Leases (Schedules A-VII and A-X (A)).* Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A-VII or A-X(A), 'Capitalization of Leases', shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization schedule. Allocations to the Trade shall follow the requirements of paragraphs (b)(1) and (b)(4) of this section."

3. Add the following amendatory item:

"5. In § 552.6, paragraph (b)(9)(iii) is revised to read as follows:

§ 552.6 Forms.

* * * * *

(b) * * *

(9) * * *

(iii) A detailed description of the interest calculations shall be submitted for each capital asset included in the rate base of the carrier in the first year of its inclusion. Such description shall be set forth on Schedule A-VI or A-IX(A), 'Capitalization of Interest During Construction'. Capitalized interest shall be included in the rate base when the asset is included in the rate base, in accordance with paragraph (b) of this section, and in the same allocable amounts as the asset. A schedule shall be provided each time a rate base statement is submitted, setting forth the year in which an interest calculation statement was submitted for each asset which included capitalized construction interest in the rate base.

* * * * *

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-25542 Filed 10-24-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-200; RM-4943]

FM Broadcast Station in Key West and Hialeah, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Channel 223C1 for Channel 222 (Station WFYN-FM), Key West, Florida, in response to a petition filed by the licensee, Florida Keys Broadcasting Corporation. This action also substitutes Channel 222C2 for Channel 221A (Station WCMQ-FM), Hialeah, Florida, at the request of the licensee, Great Joy, Inc. The licenses for both stations are modified to specify the new channel.

EFFECTIVE DATE: November 27, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Key West and Hialeah, Florida); MM Docket 85–200, RM–4943.

Adopted: October 15, 1985.
Released: October 21, 1985.

By the Chief, Policy and Rules Division:

1. The commission has before it for consideration, the *Proposed Rule Making*, 50 FR 26229, published June 25, 1985, issued in response to a petition filed by Florida Keys Broadcasting Corporation ("WFYN"), licensee of Station WFYN–FM, Key West, Florida, requesting the substitution of Channel 223Cl for Channel 222 at Key West, and modification of its license accordingly. Additionally, the *Notice* proposed to substitute Channel 222C2 for Channel 221A at Hialeah, Florida, and modification of the license for Station WCMQ–FM to specify the new channel, at the request of the licensee Great Joy, Inc. In response to the *Notice*, both licensees filed comments restating their interest in the requested channel.

2. As stated in the *Notice*, the Commission in a previous action (Docket 81–487 and 81–818, 48 FR 19879, published May 3, 1983) substituted Channel 222 for Channel 223 at Key West, to provide for the allotment of Channel 224A at Marco, Florida. This proposed substitution at Key West, herein, was based on the fact that no party had applied for use of Channel 224A at Marco,[1] and as a result, WFYN–FM had not been required to modify its facilities and remains operational on Channel 223. The allotment of Channel 223Cl to Key West would not affect the sites for any of the Marco applicants.

[1]Since the issuance of the Notice, 19 applications have been received for Channel 224A at Marco, Florida.

3. We find that the public interest would benefit from the petitioner's proposal to substitute Channel 223Cl for Channel 222 at Key West. Channel 223Cl at Key West is not subject to the filing of applications by other parties, as the allotment does not involve an upgrade in the class of channel, and as previously stated, WFYN–FM is presently operating on Channel 223. We also concluded that the public interest would be served by the adoption of the proposed channel substitution at Hialeah in order to provide an increase in coverage by petitioner's station. The transmitter site is restricted to 0.8 kilometers (0.5 miles) south of the city to avoid short spacing to Station WNGS (FM), Channel 221A, West Palm Beach, Florida. Because the proposed transmitter site for Station WCMQ–FM is located within 80 kilometers (with ERP of more than 25 kw) of the Federal Communications Commission's monitoring station at Fort Lauderdale, Florida, the licensee should be aware of the provisions of § 73.1030(c) the Rules governing Protection of Federal Communications Monitoring Stations. Since Great Joy was the only party to file an expression of interest in the Hialeah channel, it is appropriate to modify its license to specify operation on Channel 222C2. See, *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916, published August 28, 1984.

PART 73—[AMENDED]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 204(b), and 0.239 of the Commission's Rules, it is ordered, That effective November 27, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below:

City	Channel No.
Key West, FL	223C1, 254, 258, 296A, and 300C1.
Hialeah, FL	222C2

5. It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Great Joy, Inc. for Station WCMQ–FM, Hialeah, Florida, is Modified to specify operation on Channel 222C2 in lieu of Channel 221A, subject to the following conditions:

(a) At least 30 days before operating on Channel 222C2, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

6. It is Further Ordered, That the license of Florida Keys Broadcasting Corporation for Station WFYN–FM, Key West, Florida, is modified to specify operation on Channel 223Cl in lieu of Channel 222, subject to the following conditions:

(a) At least 30 days before operating on Channel 223C1, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.301 of the Commission's Rules.

7. It is further ordered, That the Secretary shall send a copy of the *Report and Order* by Certified Mail, Return Receipt Requested, to:

Howard J. Braun, Fly, Shuebruk, Caguine, Boras, Schulkind and Braun, 1211 Connecticut Avenue, NW., Washington, D.C. 20036 (Counsel for Florida Keys Broadcasting Corporation)

James M. Weitzman, Shrinsky, Weitzman and Eisen, 1120 Connecticut Avenue—Suite 270, Washington, D.C. 20036 (Counsel for Great Joy, Inc.)

Station WFYN–FM, Florida Keys Broadcasting, Post Office Box 2515, Key West, Florida 33040

Great Joy, Inc., Station WCMQ–FM, 1411 Coral Way, Miami, Florida 33145

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85–25530 Filed 10–24–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85-68; RM-4859]

TV Broadcast Station in Killeen, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 62 to Killeen, Texas, as that community's first television service, at the request of C. Joe Evans.

EFFECTIVE DATE: November 29, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Killeen, Texas); MM Docket No. 85-68, RM-4859.

Adopted: October 15, 1985.
Released: October 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 14954, published April 16, 1985, proposing the assignment of UHF Television Channel 62 to Killeen, Texas, as that community's first television channel. The *Notice* was issued in response to a petition filed by C. Joe Evans ("petitioner"). Late-filed comments were received from the petitioner reiterating his intention to apply for the channel.[1] The channel can be assigned in compliance with §§ 73.610 and 73.698 of the Commission's Rules.

2. Killeen (population 46,296),[2] in Bell County (population 157,889), is located in central Texas, approximately 95 kilometers (60 miles) north of Austin, Texas.

PART 73—[AMENDED]

3. We believe the public interest would be served by the assignment of Channel 62 to Killeen in order to provide that community with its first television service. Accordingly, pursuant to the authority contained in section 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 29, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Killeen, Texas	62

4. It is further ordered, That this proceeding is Terminated.

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-25535 Filed 10-24-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner's comments were not timely filed but were accompanied by a motion for acceptance. They will be accepted for the purpose of permitting the petitioner to reaffirm his interest in the proposal.

[2] Population figures were extracted from the 1980 U.S. Census.

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[GSAR AC-85-3, Supplement 1]

Restrictions on Procurement of Hand and Measuring Tools

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation Acquisition Circular AC-85-3 extends the expiration date to April 18, 1986. The intended effect is to extend the policies and procedures as established by AC-85-3, which implemented the procurement restrictions in the GSA and DOD Appropriation Acts on the acquisition of hand and measuring tools.

DATES: Effective: October 18, 1985. Expiration: April 18, 1986, unless canceled earlier.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4754.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC-85-3 was originally issued, the General Services Administration certified under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) that the document would not have a significant economic effect on a substantial number of small entities. Therefore, no regulatory analysis was prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

Authority: 40 U.S.C. 486(c).

In 48 CFR Chapter 5, the following supplement to Acquisition Circular AC-85-3 reads as follows:

General Services Administration Acquisition Regulation Acquisition Circular AC-85-3; Supplement 1

October 18, 1985.

To: All GSA contracting activities.

Subject: Restrictions on Procurement of Hand and Measuring Tools.

1. *Purpose.* This supplement extends the expiration date of General Services Administration Acquisition Regulation Acquisition Circular AC-85-3.

2. *Effective date.* October 18, 1985.

3. *Expiration date.* Acquisition Circular AC-85-3 and this supplement will expire on April 18, 1986, unless canceled earlier.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85-25551 Filed 10-24-85; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1135 and 1312

[Ex Parte No. 290 (Sub-2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The petition by the Association of American Railroads for a revision of the notice period is granted by changing the current ten-day notice period to 1) Five days when the Rail Cost Adjustment Factor originally proposed by AAR is modified by the Commission, and 2) One day for rate reduction supplements filed before the effective date of the quarterly RCCR tariff. The petition of the National Industrial Transportation League supporting the five-day notice period and requesting that the one-day notice period for reductions be limited to the period following the filing of the tariff but prior to the first day of the quarter is granted. The purpose of the current cost recovery procedures is to provide the railroads with timely rate increases and to provide shippers with sufficient notice of rate changes. To delay the effective date of a rate change past the first day of the quarter to which an RCAF applies could deprive the railroad industry of substantial revenues. Petitions by various shipper groups to reopen the proceeding for alleged material error concerning additional public access to index data and for revision of certain portions of the indexing methodology are denied.

DATES: These rules will be effective on November 25, 1985.

FOR FURTHER INFORMATION CONTACT:

William T. Bono, (202) 275–7354, or Robert C. Hasek, (202) 275–0938 or (202) 275–7354.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

List of Subjects

49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1312

Railroads.

The following portions of Title 49, Parts 1135 and 1312 are amended as follows:

PART 1135—[AMENDED]

1. The Authority citation for Part 1135, which follows § 1135.1, continues to read as follows.

[49 U.S.C. 10321 and 10707; 5 U.S.C. 559]

2. Section 1135.1 is amended by revising paragraph (d) to read as follows:

§ 1135.1 Quarterly adjustment of rates.

* * * * *

(d) Tariffs containing adjustments under the provisions of this rule may be filed to become effective on not less than ten days notice when the Rail Cost Adjustment Factor adopted by the Commission does not differ from that proposed by the Association of American Railroads. When the Rail Cost Adjustment Factor adopted by the Commission differs from that proposed by the Association of American Railroads the notice period shall be not less than five days. Reductions to rates published in the initial RCCR tariff may be published on one day's notice during the period between the publication of the tariff and the first day of the calendar quarter for which that tariff applies.

* * * * *

PART 1312—[AMENDED]

3. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

4. Section 1312.17 is amended by revising paragraph (k) to read as follows:

§ 1312.17 Amendments.

* * * * *

(k) *Rail Cost Recovery Increases.*

(1) Rail carriers or their agents may publish cost recovery tariffs in master tariff format to provide increases in rail rates and charges as authorized by the Commission under Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The increases may apply to joint rates and single-line traffic to the extent adopted by individual carriers. A connecting-link, blanket, other supplement or general tariff item shall connect the affected tariffs to the master tariffs. Annual, accumulated master tariffs may be published to expire no later than September 30 of the second calendar year following the year in which the tariff became effective, by which date all increases shall be transferred to the base tariffs. Extension of any expiration dates may, however, be requested. The terms of § 1312.18 as to supplemental volume are waived. Blanket supplements shall conform to the terms of § 1312.18(h).

(2) Tariffs containing adjustments under the provisions of this rule may be filed to become effective on not less than ten days' notice when the Rail Cost Adjustment Factor adopted by the Commission does not differ from that proposed by the Association of American Railroads. When the Rail Cost Adjustment Factor adopted by the Commission differs from that proposed by the Association of American Railroads the notice period shall be not less than five days. Reductions to rates published in the initial RCCR tariff may be published on one day's notice during the period between the publication of the tariff and the first day of the calendar quarter for which that tariff applies.

* * * * *

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify the former rate publication procedures.

Decided: September 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–25317 Filed 10–24–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50329–5115]

Atlantic Tuna Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend existing rules by adding several word definitions and phrases addressing interpretations of the rules. These changes address the need to maintain integrity of the catch limit system, eliminate potential loopholes for circumventing the rules, and for clarification purposes. The intended effect is to eliminate any possible misinterpretation of the implementing rules.

EFFECTIVE DATE: November 25, 1985.

ADDRESS: The environmental assessment and final regulatory flexibility analysis referred to in this rule, as well as other previously published reports, are available from NMFS, Northeast Region, Service Division, P.O. Box 1109, Gloucester, MA 01931–1109.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, ext. 325; or David S. Crestin, 617–281–3600, ext. 253.

SUPPLEMENTARY INFORMATION: A complete discussion of the action is found in the proposed rule at 50 FR 11215 (March 20, 1985) and is not repeated here. Public comment on the proposed rule was invited initially for a 15-day period which ended on April 4, 1985. NOAA informed the public of the comment period on March 15, 1985, by mailing copies of the proposed rule to key industry and media representatives and to those individuals who had requested to be placed on this mailing list, and by mailing on March 20, 1985, a general news release to all Atlantic bluefin tuna permit holders. Due to constituency interest, the comment period was extended 14 days to April 18, 1985 (50 FR 13256). A mailing similar to that described above was made on March 27, 1985, advising constituents of the comment period extension.

During the comment period, NOAA received 117 letters of comment. Commenters both in favor and opposed to NOAA's proposed prohibition of buy-boat operations suggested that observers placed aboard buy-boats could alleviate certain problems in the fishery. In considering public comment and after analyzing all information submitted during the comment period, NOAA will not implement any revisions to the existing rules governing buy-boat operations in the fishery at this time. Instead, NOAA intends to use the provisions of § 285.28(1) to place observers aboard buy-boats.

In response to numerous public requests, NOAA republishes the complete final rule to include all amendments made since the last complete publication of the rule 1982.

Miscellaneous Comments

(1) One commenter recommended that if a vessel is registered as a buy-boat, it should be required to remain in that category for the entire season.

Response. The rules in §285.22(1) do not allow NOAA to issue a dealer permit to any vessel which has a valid Atlantic bluefin tuna fishing permit. The rules, however, presently allow a vessel operator to cancel a fishing permit and repermit the vessel as a buy-boat at any time during the season; the reverse situation also is allowed. NOAA believes that these permitting options allow vessel owners reasonable flexibilty for adjusting to inseason regulatory changes such as single or multiple catch limits in the General category. This flexibility does not compromise fishery management capabilities; thus NOAA does not foresee any benefits accruing to the overall fishery should this recommendation be implemented. NOAA, therefore, rejects the recommendation.

(2) A representative of the American Tunaboat Association supported NOAA's proposal to add Atlantic bonito to the definition of the word tuna in § 285.2.

(3) One commenter expressed concern that Atlantic bluefin tuna possibly are threatened with extinction and proposed a closed season, or at a minimum an open season in alternate years only, to provide the species adequate protection.

Response. The International Commission for the Conservation of Atlantic Tunas monitors the status of the Atlantic bluefin tuna stocks, on a continuing basis. Harvest levels currently in effect for the northwest Atlantic will not reduce stock abundance; in fact, they are designed to provide for stock rebuilding over the long term. NOAA, therefore, rejects the recommendation as unfounded.

(4) A number of comments were received objecting to the quota allocation for purse seine vessels under § 285.22 (c) and (d).

Response. These comments are not relevant to this rulemaking and will not be responded to here. This issue was addressed in the preamble to the rules published on June 11, 1982 (47 FR 25350), and June 17, 1983 (48 FR 27755), in response to comments received both at public hearings and in writing during the comment periods in the spring of 1982 and 1983.

(5) Several individuals commented on the daily catch limit. One favored a daily catch limit of one giant Atlantic bluefin tuna per day per vessel throughout the season and another recommends two giants per day per vessel. One commenter recommended a catch limit of five giants per vessel per week, all of which could be taken in one day.

Response. These comments are not relevant to this rulemaking and will not be responded to here. The issue of daily catch limits was addressed in the preamble to the rules published on June 17, 1983 (48 FR 27755), and July 24, 1984 (49 FR 29797), in response to comments received at public hearings in 1983 and in writing during the comment periods in the spring of 1983 and 1984.

(6) The notification procedure which NOAA utilized to inform participants in the Atlantic bluefin tuna fishery of this proposed rulemaking was criticized by one commenter. Specifically, this individual stated that without public hearings, numerous fishermen were denied the opportunity for reasonable comment.

Response. NOAA went beyond the formal requirement of publishing the proposed rule in the **Federal Register** by mailing a news release to all 15,000 registered Atlantic bluefin tuna permit holders. After concern was expressed regarding the length of the comment period, NOAA extended the period for an additional 14 days. The number of comments received pertinent to the rulemaking was comparable to that received in prior years when the proposed changes to the rules were far more extensive. NOAA believes that the constituency had ample opportunity to express their views on the proposed rulemaking, and in fact, did so.

Changes Made in the Rules

The final rule differs from the proposed rule as follows:

Section 285.23

Paragraph (f) has been revised to eliminate the words "taken and" from the phrase "taken and landed." NOAA has determined that the proposed wording would have made the rules difficult to enforce. Use of the word "landed" remains in the rule and eliminates any difficulty of enforcement while still eliminating the loophole anticipated in the proposed rules.

Section 285.29

The words "must offload daily" were not added to the first sentence of paragraph (e) because NOAA has decided not to implement any revisions to the rules governing buy-boat operations at this time.

Section 285.31

A new paragraph (o) was not added because NOAA has decided not to implement any revisions to the rules governing buy-boat operations at this time.

Classification

The Administrator of NOAA has determined that these rules are not major under Executive Order 12291. Additionally, it was determined that this action is not significant under the Regulatory Flexibility Act; and because this rule does not change the intent of previously adopted rules, it is categorically excluded from requirements of the National Environmental Protection Act and no environmental assessment or environmental impact statement was prepared. Copies of all previously published reports may be obtained from

the NMFS Northeast Region (see addresses).

The information collection requirements for this Act, previously approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0097, –0031, and –0013, will not be affected by any of these changes. This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) at § 285.25(d). The collection of this information has been approved by OMB Control Number 0648–0161.

This final rulemaking clarifies the intent of the current rules and there are no expected impacts associated with these rules which were not discussed or anticipated in the 1983 Environmental Assessment, or in the 1982 regulatory flexibility analysis/regulatory impact review (RFA/RIR), or in the previous rules.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements.

Dated: October 21, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service

For the reasons set forth in the preamble, 50 CFR Part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Subparts A and B of Part 285 are revised in their entirety to read as follows:

PART 285—ATLANTIC TUNA FISHERIES

Subpart A—General

Sec.

Subpart B—Atlantic Bluefin Tuna (Thunnus thynnus thynnus).

Subpart A—General

§ 285.1 Purpose and scope.

(a) The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971–971h) authorizes the Secretary to implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Secretary's authority under the Act has been delegated to the Assistant Administrator.

(b) This part implements the ICCAT recommendations for persons and vessels subject to the jurisdiction of the United States.

(c) This part does not apply to any person or vessel authorized by the Commission, the Regional Director, the Director of the Southeast Fisheries Center, or any State upon approval by the Regional Director, to engage in fishing for research purposes.

(d) Under section 9(d) of the act, determinations made by the Assistant Administrator that the provisions of this part apply within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Texas, Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Rhode Island, Massachusetts, New Hampshire, and the Commonwealths of Puerto Rico and the Virgin Islands, and, with the exceptions of §§ 285.22(c) and (d), 285.23(a) and (b) and 285.25 within the territorial sea of the United States adjacent to, and within the boundaries of, the State of Maine, continue in effect.

§ 285.2 Definitions.

The terms used in this part have the following meanings (definitions in the Act are repeated here to aid understanding of the rules):

Act means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

Albacore means the fish species *Thunnus alalunga.*

Angling means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line which is hand held or by rod and reel made for this purpose.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic bluefin tuna means the fish species *Thunnus thynnus thynnus.* Size classes for Atlantic bluefin tuna are defined in § 285.26.

Atlantic bonito means the fish species *Sarda chiliensis* or *Sarda sarda.*

Authorized Officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement agent or Special Agent of the NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bigeye tuna means the fish species *Thunnus obesus.*

Buy-boat means any vessel used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for any tuna.

Cargo vessel means any fishing vessel used for transporting fish or fish products.

Commercial activity means any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species and activities conducted for the purpose of facilitating such buying and selling.

Commission means the International Commission for the Conservation of Atlantic Tunas established under Article III of the Convention.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Dealer means any person who engage in a commercial activity with respect to a regulated species or parts thereof.

Dressed weight means the weight of a fish after it has been gilled, gutted, beheaded, and definned.

Fish or *fishing* means the catching or fishing for, or the attempted catching or fishing for, any species of fish covered by the Convention, or any activities in support of fishing.

Fishing trip means the time period between when a fishing vessel departs from port to carry out fishing operations and the time such vessel returns to port or offloads any of its catch.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing week means a period of time beginning at 0001 hours local time on

Sunday, and ending at 2400 hours local time on the following Saturday.

Fork length means a measurement of the length of Atlantic bluefin tuna taken in a straight line along the middle of the lateral surface from the tip of the snout to the fork of the tail.

Handgear means handline, harpoon, or rod and reel.

Handline or *handline gear* means fishing gear which is released by hand and consists of one main line of variable length to which is attached one or two leaders and hooks. Handlines are retrieved only by hand, and not by mechanical means.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick which is propelled only by hand, and not by mechanical means.

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Longline or *longline gear* means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or groundline with three or more gangions and hooks. A longline may be retrieved by hand or mechanical means.

Metal tag means the flexible, selflocking ribbon of metal issued by the NMFS for the identification of Atlantic bluefin tuna under § 285.30.

Metric ton (mt) means 2204.6 pounds (1000 kilograms).

NMFS means the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce.

Owner means, with respect to any vessel

(a) Any person who owns that vessel in whole or part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Person means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

Plastic tag means the plastic or combination plastic and metal marker issued for the tag and release program under § 285.27

Purse seining means fishing for or catching a regulated species by means of an encircling net and associated gear.

Regional Director means

(a) For purposes of Atlantic bluefin tuna, the Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799; and

(b) For purposes of yellowfin tuna, the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Regulated species means albacore, Atlantic bluefin tuna, bigeye tuna, skipjack tuna, or yellowfin tuna.

Regulatory area means all waters of the Atlantic Ocean including adjacent seas, except the waters over which the individual States exercise fishery management jurisdiction unless the Assistant Administrator has determined otherwise in accordance with this part, as noted in § 285.1(d).

Reporting week means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time the following Saturday.

Round or *round weight* means a fish or the weight of a fish before gilling, gutting, beheading, and definning.

Secretary means the Secretary of Commerce or an individual to whom appropriate authority has been delegated.

Short ton (st) means 2,000 pounds (907 kilograms).

Skipjack tuna means the fish species *Katsuwonus (Euthynnus) pelamis.*

State means any State of the United States, the District of Columbia, the Commonwealths of Puerto Rico and the Virgin Islands, and territories and possessions of the United States.

Tuna means albacore, Atlantic bluefin tuna, Atlantic bonito, bigeye tuna, skipjack tuna or yellowfin tuna.

Yellowfin tuna means the fish species *Thunnus albacares.*

§ 285.3 Prohibitions.

It is unlawful.

(a) For any person in charge of a fishing vessel or for any fishing vessel subject to the jurisdiction of the United States to engage in fishing or to land any tuna in violation of these rules.

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which the person knows, or should have known, was taken or retained contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel which took the fish.

(c) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish reports required by this part.

(d) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to obstruct or to refuse to allow any authorized officer to enter the dealer's premises or to board the fishing vessel to search or inspect its catch, equipment, books, documents, records, or other articles, or to question the persons in the dealer's premises or aboard the fishing vessel under the provisions of this part.

(e) For any person to import from any country any regulated species in any form subject to regulation under a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry under this part.

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, or with the head removed.

§ 285.4 Enforcement.

(a) The Secretary, the Secretary of the Department in which the U.S. Coast Guard is operating, and the U.S. Customs Service will enforce jointly this part and the provisions of the Act.

(b) Enforcement Agents of the NMFS will enforce provisions of this part and the Act on behalf of the Secretary and may take any actions authorized with respect to enforcement. By agreement, the Secretary may utilize the personnel, services, and facilities of any other Federal Agency to enforce these rules and the Act. By agreement, the Secretary also may designate personnel of a State to enforce these rules and the Act.

(c) The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Act and this part.

(d) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be

employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *Prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(e) *Boarding.* The operator of a vessel directed to stop must

(1) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(f) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.-.-) [1], is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.— -.-. -.—) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —.- ...—) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[1] Period (.) means a short flash of light; dash (-) means a long flash of light.

§ 285.5 Civil procedures.

(a) The method for assessment of civil penalties for violation of these rules or the Act must be in accordance with the procedures set forth in 15 CFR Part 904.

(b) In view of the perishable nature of tuna when not processed otherwise than by chilling or freezing, authorized officers may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen tunas that may be siezed and forfeited under the Act and this part.

(c) The purchaser must remit the proceeds of any sale made under paragraph (b) of this section to the Regional Director. The Regional Director will deposit and retain the proceeds in the Suspense Account of the NMFS (Account No. DO 6875—Phase 19) after deducting the reasonable cost of the sale, if any, pending judgement of the court or other disposition of the case.

§ 285.6 Civil penalities.

Any person who:

(a) Violates any provision of § 285.3 (a) or (b) of this part will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for any subsequent violation;

(b) Violates any provision of § 285.3 (c) or (d) of this part will be assessed a civil penalty of not more than $1,000 for a first violation and a civil penalty of not more than $5,000 for any subsequent violation; or

(c) Violates any provision of § 285.3(e) will be assessed a civil penalty of not more than $100,000.

Subpart B—Atlantic Bluefin Tuna (Thunnus thynnus thynnus)

§ 285.20 Fishing seasons.

(a) *Commencement.* Fishing in the regulatory area for Atlantic bluefin tuna will begin

(1) On January 1 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(d),

(ii) For anglers fishing for young school, school, and medium Atlantic bluefin tuna under the quota specified in § 285.22(e),

(iii) For vessels permitted in the Incidental Catch category fishing under the quota specified in § 285.22(f), and

(iv) For anglers participating in the tag and release program under § 285.27.

(2) On June 1 of each year:

(i) For vessels permitted in the General category fishing under the quota specified in § 285.22(a), and

(ii) For vessels permitted in the Harpoon Boat category fishing under the quota specified in § 285.22(b).

(3) On August 15 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(c).

(ii) (Reserved).

(4) Consistent with the Convention, the Act and this part, the Assistant Administrator may change the commencement data under this section for any vessel permit category or person (angler) if the Assistant Administrator determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being caught, based upon historical catch data or other relevant information. The Assistant Administrator will publish a notice in the **Federal Register** of any change in the commencement date(s) for fishing under this section at least 60 days before commencement of the affected fishery.

(b) *Closure.* (1) The Assistant Administrator will monitor catch and landing statistics of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22, and will publish a notice in the **Federal Register** stating that fishing for or retaining Atlantic bluefin tuna under that quota must cease on that date at a specified hour.

(2) Angling for Atlantic bluefin tuna under a tag and release program under § 285.27 may continue even after fishing for a quota has ceased.

(3) Any vessels permitted in the Purse Seine category may fish under the quotas specified in § 285.22(c) and § 285.22(d) only until the allocation(s) assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation for a particular size class of Atlantic bluefin tuna, a vessel will be deemed to have been given notice that the fishery for such tuna is closed to that vessel.

(c) *State actions.* Nothing in this section may be construed to invalidate any more restrictive commencement or

closure date established by any State in waters under its jurisdiction.

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel which fishes for or takes Atlantic bluefin tuna, except vessels being used by anglers fishing for young school, school, or medium Atlantic bluefin tuna under § 285.24(c), must have an appropriate permit issued under this section.

(b) *Categories of permits.* The Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. Anglers also may fish for young school, school, and medium Atlantic bluefin tuna from a vessel that has a permit for other types of fishing, but anglers will remain subject to provisions of this subpart applicable to angling. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22 (c) and (d) only to owners of those purse seine vessels, or their replacements, which were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel which was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the length of the vessel, the tonnage (if known), the area to be fished, and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year regardless of any change in the vessel's ownership.

(d) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under this section remains valid until it is suspended, revoked, or expires. Except with respect to purse seine permits, a permit issued under this section expires when the owner or name of the vessel changes.

(f) *Alteration.* A permit issued under this section which is substantially altered, erased, or mutilated is invalid.

(g) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(h) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the vessel and/or owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried aboard the vessel at all times. The permit must be displayed for inspection upon request of any authorized officer or any employee of the NMFS designated by the Regional Director for such purpose.

(j) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit issued under this section.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing to the Regional Director.

[Approved by the Office of Management and Budget under OMB control number 0648–0097]

§ 285.22 Quotas.

The total annual amount of Atlantic bluefin tuna which may be caught and retained by persons and vessels subject to U.S. jurisdiction in the regulatory area is 1,529 st (1,387 mt), subdivided as follows:

(a) *General.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the General category under § 285.21(b) is 650 st (590 mt). If the Assistant Administrator determines (based on dealer reports, availability of giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 50 st or the maximum reported landings in the identified area in any of the preceding three years. The daily catch limit for the identified area will be set at one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator will publish a notice of any allocation and its basis in the **Federal Register.**

(b) *Harpoon-boat.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 60 st (54 mt).

(c) *Purse Seine—Giants.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 325 st (295 mt).

(d) *Purse Seine—Young School and School fish.* The total amount of Atlantic bluefin tuna less than 120 cm fork length (47 inches) which may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 100 st (91 mt). See § 285.23(b) for further clarification.

(e) *Angling.* The total amount of young school, school, and medium Atlantic bluefin tuna which may be caught and retained in the regulatory area by anglers is 139 st (126 mt). No more than 89 st (81 mt) of this quota may be fish less than 120 cm (47 inches) fork length.

(f) *Incidental.* The total amount of Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 151 st (137 mt). This quota is further subdivided as follows:

(1) 145 st (132 mt) for longline vessels. No more than 115 st (104 mt) may be taken in the area south of 36°00′ N. latitude.

(2) 6 st (5 mt) for vessels fishing for species of fish other than tuna.

(g) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna which will be held in reserve for inseason adjustments is 104 st (94 mt).

The Assistant Administrator may allocate any portion (from zero to 100 percent) of this amount to any segment or segments of the fishery. The Assistant Administrator will publish a notice of allocation of any inseason adjustment amount in the **Federal Register** before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular gear segment of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(h) The catching or retention of young school, school, or medium Atlantic bluefin tuna is prohibited except as allowed by paragraphs (d), (e), and (f) of this section.

§ 285.23 Incidental catch.

(a) Subject to the quota in § 285.22(c), purse seine vessels permitted in the purse seine category under § 285.21 and fishing for giant Atlantic bluefin tuna may catch incidentally, during any fishing trip, Atlantic bluefin tuna with a fork length less than 77 inches, provided that the total amount of such tuna taken does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna aboard the vessel at the end of each fishing trip.

(b) Subject to the quota in § 285.22(d) and individual vessel allocations, purse seine vessels permitted in the purse seine category under § 285.21 and fishing for tunas other than Atlantic bluefin tuna may catch incidentally and retain, during any fishing trip, Atlantic bluefin tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 10 percent by weight of all other tuna species aboard the vessel at the end of each fishing trip. Any vessel that has not taken its allocation under § 285.22(d) at the seasonal termination of the vessel's fishing for species of tuna other than Atlantic bluefin tuna, may add the remainder of its allocation to the vessel's allocation of giant Atlantic bluefin tuna under § 285.22(c).

(c) *Attribution.* Atlantic bluefin tuna caught incidentally by purse seine vessels fishing for an allocation of a particular size class of Atlantic bluefin tuna will be attributed to that vessel's allocation for such size class Atlantic bluefin tuna.

(d) *Herring, mackerel, and menhaden purse seine vessels and vessels using fixed gear other than longlines or traps (pounds, weirs, and gill-nets).* Subject to the quotas in § 285.22, any person operating a vessel fishing with these types of gear principally for species of fish other than tuna and possessing an Incidental Catch permit issued under § 285.21 may catch, during any fishing trip, Atlantic bluefin tuna of any size class, provided that, the total amount of Atlantic bluefin tuna taken does not exceed two percent, by weight, of all other fish aboard the vessel at the end of each fishing trip.

(e) *Traps.* Subject to the quotas in § 285.22, any person operating a vessel possessing an Incidental Catch permit issued under § 285.21 which catches Atlantic bluefin tuna incidentally while fishing with traps, may retain Atlantic bluefin tuna, provided, that such tuna do not exceed two percent, by weight, of the total amount of all other fish species caught within the preceding 30-day period.

(f) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may land Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna landed may not exceed:

(1) Two fish per vessel per trip landed south of 36°00′ N. latitude, and

(2) Two percent by weight of all other fish onboard the vessel at the end of each fishing trip, landed north of 36°00′ N. latitude.

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear in the Gulf of Mexico and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report within 24 hours of landing any giant Atlantic bluefin tuna to the nearest NMFS enforcement office, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

§ 285.24 Catch limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b), may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator, on or about September 1, may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit in effect at that time.

(b) Vessels permitted in the Harpoon Boat category are not restricted in their catch limit of giant Atlantic bluefin tuna.

(c) Persons angling in the regulatory area may catch and retain no more than four Atlantic bluefin tuna other than giant Atlantic bluefin tuna each day, only one of which may be a medium; provided that no more than four medium Atlantic bluefin tuna per day may be caught and retained per vessel for vessels having four or more anglers aboard.

§ 285.25 Purse seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a vessel with a permit issued under § 285.21(b) conducting a directed fishery for Atlantic bluefin tuna with nets, other than a trap net, must use a purse seine net with a mesh size equal to or smaller than 4.5 inches in the main body (stretched when wet) and which has at least 24-count thread throughout the net.

(b) *Exemption.* The Regional Director may exempt any person from the mesh restrictions in paragraph (a) of this section if it is determined that the net sought to be exempted will not result in significant injury or mortality to Atlantic bluefin tuna which are encircled by the net but manage to escape.

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of the NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or offloading by calling 617–281–3600 extension 252; or 617–563–5721. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the

information recorded on the appropriate forms at the time of offloading and prior to transport from the area of offloading.

(d) *Vessel allocations.* (1) Purse seine vessel permit holders must apply for an allocation of Atlantic bluefin tuna from the quotas specified in § 285.22 (c) and (d). The permit holder must apply for this allocation in writing to the Regional Director by April 15. The permit holder must specify the particular size class or classes of Atlantic bluefin tuna for which the vessel will fish. The owner must supply documentation of the vessel's stockholders, owners, partners, or association structure.

(2) The Regional Director will review these applications for allocations of Atlantic bluefin tuna on or about May 1, and will make equal allocations of the available size classes of Atlantic bluefin tuna among the vessels permitted under § 285.21(b). Such allocations are freely transferrable among purse seine vessel permit holders. Any purse seine vessel permit holder intending to fish for more than one allocation in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their allocation to another purse seine vessel permit holder must not fish their permitted vessel in any fishery in which Atlantic bluefin tuna might be caught.

(Approved by the Office of Management and Budget Under OMB Control No. 0648-0161)

§ 285.26 Size classes.

For any Atlantic bluefin tuna which is landed with the head removed, it is a rebuttable presumption for purposes of this subpart that the tuna, when caught, fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from the forwardmost part of the beheaded fish to the fork of the tail. The fork length measurement will be the sole criterion for determining the size class of an individual Atlantic bluefin tuna. Approximate round weights are given for illustrative purposes only.

Original size class (Fork length)	Approximate round weights	Length with head off
Young school tuna: Less than 26 inches (66 cm)	Less than 14 pounds	Less than 18 inches (46 cm).
School tuna: Equal to 26 inches (66 cm) but less than 57 inches (145 cm)	From 14 pounds but less than 135 pounds	18 inches (46 cm) but less than 40 inches (102 cm).
Medium tuna: Equal to 57 inches (145 cm) but less than 77 inches (196 cm).	From 135 pounds but less than 310 pounds	40 inches (102 cm) but less than 54 inches (137 cm).
Giant tuna: 77 inches (196 cm) or more	310 pounds or more	54 inches (137 cm) or more.

§ 285.27 Tag and release program.

Notwithstanding other provisions of these rules, an angler may fish for Atlantic bluefin tuna under a tag and release program, provided the angler tags all Atlantic bluefin tuna so caught with plastic tags issued under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. To participate in this program, an angler must obtain plastic tags, reporting cards, and detailed instructions for their use by writing to the Cooperative Game Fish Tagging Program, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149-1099.

(Approved by the Office of Management and Budget under OMB control number 0648-0031)

§ 285.28 Dealer permits.

(a) *General.* A dealer purchasing or receiving Atlantic bluefin tuna from any person or vessel which catches such tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (l) of this section.

(b) *Application.* An applicant must apply for a dealer permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address, and telephone number of the applicant.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of the NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR Part 904.

(j) *Fees.* No fee is required for any permit issued under this section.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Buy-boats.* Each buy-boat must have a dealer permit issued under this section. The Regional Director will not issue a dealer permit under this section for a buy-boat operation to any vessel which has a valid fishing permit issued under § 285.21. The Regional Director will not issue a dealer permit to a buy-boat unless the owner or operator of the buy-boat agrees in writing to allow an individual authorized by the Regional Director to accompany the buy-boat on any trip to observe operations. The Regional Director will provide reasonable notice to the owner or operator of any buy-boat that an individual will be placed aboard. Failure to allow an authorized individual to be placed aboard following reasonable notice shall void the permit. The Regional Director will reimburse the owner of any buy-boat for any expenses which the Regional Director determines to be reasonable and which are related directly to the placement of an individual aboard that buy-boat.

(Approved by the Office of Management and Budget under OMB control number 0648-0097.)

§ 285.29 Dealer recordkeeping and reporting

Any person issued a dealer permit under § 285.28:

(a) Must submit to the Regional Director a daily report on a reporting card provided by the NMFS, within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by the NMFS, within two days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: the number of tuna purchased or received; location where each tuna was caught; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); date; metal tag numbers (where applicable); round or dressed weight and fork length (by individual tuna); and any other information requested by the Regional Drector. Also, dealers using buy-boats, in addition to the information required above, must include the precise time when any tuna were received aboard the buy-boat;

(c) Must allow an authorized officer, or any employee of the NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic bluefin tuna;

(d) Must retain in his/her possession a copy of each weekly report for a period of two years from the date on which it was submitted to the Regional Director.

(e) Each operator of a buy-boat, in addition to the above must notify the Regional Director of any offloading, and must request a vessel inspection at least six hours before such offloading by calling 617–281–3600, extension 252, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 617–992–7711. In making the request for inspection, the owner or operator of the buy-boat or a designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(Approved by the Office of Management and Budget under OMB control number 0648–0013)

§ 285.30 Metal tags.

(a) *Issuance of tags.* The Regional Director will issue numbered metal tags to each person receiving a dealer's permit under § 285.28.

(b) *Transfer of tags.* Tags issued under this section are not transferable.

(c) *Affixing tags.* (1) A dealer or agent must affix a metal tag to each medium or giant Atlantic bluefin tuna immediately upon its offloading from a vessel. The metal tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are Portland, Maine (207–780–3241); Otis Air Force Base, Massachusetts (617–563–5721); Upton, New York (516–282–3267); Miami, Florida (305–350–4132); St. Petersburg, Florida (813–893–3841); New Orleans, Louisiana (504–589–4538); or Corpus Christi, Texas (512–888–3360).

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag must be attached to the outside of the package or container and the tag number must be written legibly and indelibly on the outside of any package or container.

§ 285.31 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Fish for or catch Atlantic bluefin tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for or catch Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

(3) Fish for, catch, or possess Atlantic bluefin tuna in excess of the quotas specified in § 285.22 except under the provisions of § 285.27;

(4) Fish for, catch, or possess Atlantic bluefin tuna in excess of the catch limits specified in § 285.24 except under the provisions of § 285.27;

(5) Fish for or catch Atlantic bluefin tuna in excess of any vessel allocation made under § 285.25(d);

(6) Fish for or catch Atlantic bluefin tuna in a directed fishery with purse seine nets without an allocation made under § 285.25(d);

(7) Fish for or catch Atlantic bluefin tuna in a directed fishery with nets other than those specified in § 285.25;

(8) Fish for or catch Atlantic bluefin tuna within 100 yards (91.5 meters) of the cork line of a purse seine net used by a vessel conducting scientific research operations authorized by the NMFS;

(9) Catch and retain Atlantic bluefin tuna in excess of the incidental catch provisions under § 285.23;

(10) Land any Atlantic bluefin tuna in forms other than round, or other than with the head removed;

(11) Retain any Atlantic bluefin tuna caught under the tag and release program allowed under § 285.27;

(12) Purchase, receive, or transfer Atlantic bluefin tuna from any person or vessel without a valid dealer permit issued under § 285.28(a);

(13) Purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 285.28;

(14) Sell, offer for sale, or tranfer any Atlantic bluefin tuna to any person or vessel other than to a person or vessel with a permit issued under § 285.28;

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally in the Gulf of Mexico with rod and reel gear under § 285.23(g);

(16) Engage in fishing with a vessel holding a permit under § 285.21 unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings under control (secured to the catching vessel or abroad) any Atlantic bluefin tuna with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

(17) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna which will not be retained;

(18) Fail to affix immediately to any medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered metal tag when the tuna has been received or purchased by that person for a commercial purpose from any person or vessel having caught such tuna;

(19) Remove any metal tag affixed to an Atlantic bluefin tuna under § 285.30 before removal is allowed under that section, or fail to write the tag number on the shipping package or container as prescribed by that section;

(20) Purchase or transport with a buy-boat any Atlantic bluefin tuna captured incidentally by longlines;

(21) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic bluefin tuna without first requesting an inspection of the vessel in accordance with § 285.25;

(22) Fail to report the catching of any Atlantic bluefin tuna to which a plastic tag has been affixed under a tag and release program conducted by the NMFS or any other scientific organization;

(23) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(24) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic bluefin tuna required by this subpart;

(25) Make any false statement, oral or writtten, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic bluefin tuna;

(26) Fish for or catch Atlantic bluefin tuna with longline gear except as provided in § 285.23(f);

(27) Fish for or catch Atlantic bluefin tuna with longline gear, or while having longline gear on board, if the vessel is permitted in the General or Harpoon Boat category under § 285.21;

(28) Fish for or catch young school, school, and medium-sized Atlantic bluefin tuna with gear other than hook and line, which is hand held or rod and reel made for this purpose or except as allowed by § 285.23 (a) through (f); or

(29) Use or possess handline or harpoon flotation gear which is not marked in accordance with § 285.33, or is marked with the Atlantic bluefin tuna permit number of another vessel.

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this subpart, the Act, or any other rules promulgated under the Act

§ 285.32 Civil penalties.

(a) Any person who violates § 285.31(a) (1) through (21) inclusive, or (a) (24) through (29), inclusive, will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(b) Any person who violates § 285.31(a) (22) or (23) will be assessed a civil penalty of not more than $1,000, and a civil penalty of not more than $5,000 for a subsequent violation.

(c) Any person who violates § 285.31(b) will be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

§ 285.33 Gear identification.

Any flotation device attached to handline or harpoon gear must be marked with the Atlantic bluefin tuna permit number of the vessel from which it is used. The required markings must be permanently affixed and at least one inch in height in block Arabic numerals of a color that contrasts with the background color of the flotation device.

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BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 207
Friday, October 25, 1985

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-383]

Browntail Moth; Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Gypsy Moth and Browntail Moth quarantine and regulations (7 CFR 301.45 *et seq.*) by removing the provisions therein relating to the browntail moth. It appears that these provisions are no longer necessary to prevent the spread of the browntail moth.

DATE: Written comments concerning this proposed rule must be received on or before December 24, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Room 728, 6505 Belcrest Road, Hyattsville, Maryland 20782. Comments should state that they are in response to Docket Number 85-383. Written comments may be inspected at Room 728, Federal Building between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782 (301) 436-8295.

SUPPLEMENTARY INFORMATION: .

Background

This document proposes use original Gypsy Moth and Browntail Moth quarantine and regulations (contained in 7 CFR 301.45 *et seq.*, and referred to below as the regulations) by removing those provisions relating to the browntail moth, *Euproctis chrysorrhoea (Linnaeus)* [1].

The regulations as they relate to browntail moth, quarantine the States of Maine and Massachusetts, and restrict the interstate movement of the following browntail moth regulated articles: "deciduous trees, and shrubs with persistent woody stems, and parts of such trees and shrubs, with leaves attached".

The following areas in Maine are currently designated as regulated areas because of the browntail moth:

Cumberland County. The towns of Brunswick, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gary, Gorham, Harpswell, North Yarmouth, Pownal, Scarboro, Windham, and Yarmouth; the cities of Portland, South Portland, and Westbrook; and the offshore islands within the Casco Bay area of Cumberland County.

Sagadahoc County. The towns of Arrowsic, Georgetown, Phippsburg, West Bath, and Woolwich; the city of Bath; and the offshore islands within the Casco Bay area of Sagadahoc County.

York County. The entire county.

Also, the following areas in Massachusetts are currently designated as regulated areas because of the browntail moth:

Barnstable County. The towns of Barnstable, Brewster, Chatham, Dennis, Eastham, Harwich, Orleans, Provincetown, Truro, Wellfleet, and Yarmouth.

Based on surveys conducted by the Department, it now appears that the browntail moth has been eradicated from these areas except for areas in Barnstable County in Massachusetts and the offshore islands within the Casco Bay area of Cumberland and Sagadahoc Counties in Maine.

The browntail moth has been found to destroy leaves of apple trees, cherry trees, pear trees, plum trees, oak trees, willow trees, and other deciduous trees and shrubs. It now appears that the browntail moth has been eradicated from such trees and shrubs except for beach plum trees and shrubs (*Prunus maritima*) growing as wild plants, and multiflora rose shrubs (*Rosa rugosa*) growing as wild plants.

Further, it appears that any remaining significant risk of spreading the browntail moth would be limited to the movement of such valid beach plum trees and shrubs, and such wild multiflora rose shurbs. However, such wild plants do not appear to present a significant risk of spread of the browntail moth. It appears that such wild plants are not used for ornamental or commercial purposes and are not likely to be moved from place to place.

In the past, action was taken to control or eradicate the browntail moth with the use of pesticides. However, under the laws administered by the Environmental Protection Agency, there are no longer any effective pesticides which are allowed to be used for controlling or eradicating the browntail moth. But even without the use of pesticides, it appears that the browntail moth is not spreading.

The sole purpose of the provisions relating to the browntail moth is to restrict the movement of regulated articles in order to prevent the artificial spread of browntail moths. Under the circumstances referred to above, it appears that these provisions are no longer necessary for this purpose.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information complied by the Department, it has been determined that this action would have an effect on the economy of less than 100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or

[1] In previous documents published in the *Federal Register*, "*Nygmia phaeorrhoea* (Donovan)" was listed as the scientific name for browntail moth; however, in this document it has been changed to "*Euproctis chrysorrhoea* (Linnaeus)" to reflect the scientific name currently accepted by the scientific community for the browntail moth.

on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

It appears that there is little, if any, interstate movement for commercial purposes of the articles designated as browntail moth regulated articles.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This Program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

Paperwork Reduction Act

The proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Browntail moth, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 would be amended as follows:

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In Subpart—Gypsy Moth and Browntail Moth (7 CFR 301.45 *et seq.*) the provisions therein relating to browntail moth would be removed.

Done at Washington, DC., this 22nd day of October, 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-25501 Filed 10-24-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-10]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: The dates for the informal airspace meetings for the Tampa International Airport, FL, Airport Radar Service Area (ARSA), as published on page 39833 of the **Federal Register** on September 30, 1985 (50 CFR 39822) have been changed. The date of the meeting on page 39833 at the University of South Florida, Bayborough Campus, St. Petersburg, FL, is changed from "December 17, 1985" to "December 18, 1985." The date of the meeting at the Hillsboro High School, Tampa, FL, is changed from "December 18, 1985" to "December 19, 1985."

FOR FURTHER INFORMATION CONTACT: Paul Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

Issued in Washington, DC, on October 18, 1985.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-25461 Filed 10-24-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Proposed Premerger Notification Rules; Extension of Time for Filing Comments

AGENCY: Federal Trade Commission.

ACTION: Proposed rulemaking; extension of time.

SUMMARY: On September 24, 1985 the Federal Trade Commission published proposed changes to its premerger notification rules (50 FR 38742). The Federal Trade Commission requested comments on the proposed changes on or before October 24, 1985. The Federal Trade Commission believes an extended period for such comments could provide valuable additional information and is therefore extending the deadline for comments on the proposed changes by thirty-six days, or until November 29, 1985.

DATE: Comments on the proposed rule changes must now be received on or before November 29, 1985.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, or Kenneth M. Davidson, Attorney, Evaluation Office, Bureau of Competition, Room 392, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 523-3404.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-25632 Filed 10-24-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-246 (Oklahoma-7)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

Issued: October 18, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for

designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Oklahoma that the Upper Marchand Sand of the Hoxbar Group be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on December 2, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 4, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357–9114, or C.W. Gray, Jr., (202) 357–8731.

SUPPLEMENTARY INFORMATION:

I. Background

On September 24, 1985, the State of Oklahoma Corporation Commission, (Oklahoma) submitted to the Commission on recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Upper Marchand Sand of the Hoxbar Group located in Comanche County, Oklahoma, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Oklahoma's recommendation that the Upper Marchand Sand of the Hoxbar Group be designated a tight formation should be adopted. Oklahoma's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Oklahoma has recommended that the Upper Marchand Sand of the Hoxbar Group in Section 11, Township 3 North, Range 9 West, in Comanche County be designated as a tight formation. The Upper Marchand Sand is an early Pennsylvanian lenticular marine deposit. The recommended zone consists of the upper half of the Marchand Sand. Within the recommended area, the Marchand Sand is defined as that interval lying below the Medrano Sandstone and above the Culp-Melton Zone.

The average net thickness of the Upper Marchand Sand is 50 feet. The depth of the top of the recommended interval is 9976 feet.

III. Discussion of Recommendation

Oklahoma claims in its submission that evidence gathered through information and testimony presented at a public hearing in Oklahoma City, Oklahoma convened by Oklahoma on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Oklahoma further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Oklahoma that the Upper Marchand Sand of the Hoxbar Group, as described and delineated in Oklahoma's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before December 2, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–246 (Oklahoma–7) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC, during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than November 4, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Oklahoma's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Part 271 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(213) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(193) through (212) [RESERVED].

(213) Upper marchand Sand of the Hoxbar Group in Oklahoma. RM79–76–246 (Oklahoma–7).

(i) *Delineation of formation.* The Upper Marchand Sand of the Hoxbar Group is found in Section 11, Township 3 North, Range 9 West, in Comanche County, Oklahoma.

(ii) *Depth.* The depth to the top of the Upper Marchand Sand is 9976 feet. The average net thickness of the recommended zone is 50 feet. The recommended zone consist of the upper half of the Marchand Sand. The Marchand Sand is overlain by the Medrano Sandstone and underlain by the Culp-Melton Zone.

[FR Doc. 85–25320 Filed 10–24–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 21

[Order No. 1110-85]

Witness Fees

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This order proposes to revise the regulation for the payment of fees and expenses of witnesses. The proposed revision will reflect the current witness attendance fee of $30 a day and establishes witness transportation and per diem expenses at the same rates as those received by Government employees. In addition, the proposed revision delineates the various classes of aliens who are eligible and ineligible to receive the witness fees and expenses.

DATE: Comments on the proposed rule must be received by December 24, 1985.

ADDRESS: Written comments should be submitted in duplicate to: Kamal J. Rahal, Director, Finance Staff, Office of the Controller, Justice Management Division, United States Department of Justice, P.O. Box 7405, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Allen R. Wilhoit, Assistant Director, Financial Policy and Information Requirements Group, Finance Staff, on Telephone Number (202) 633-3914.

SUPPLEMENTARY INFORMATION: The Department of Justice proposes to revise Part 21 of Title 28, Code of Federal Regulations to conform to 28 U.S.C. 1821. This revision contains a new section of definitions to ensure a common understanding of the applicable terms.

In addition, the procedure for computation of the fees and allowances of witnesses is stated in this Part. Fact witness travel is linked to the travel allowances of Government employees. However, it is considered impractical to have fact witnesses travel under the quarter day rule which applies to Government employees. A procedure has been devised to pay fact witnesses the approximate travel expenses Government employees would be entitled to for performing similar travel.

Finally, the Department of Justice proposes to revise the certification of attendance of witnesses to include United States Trustees, United States District Judges for criminal *in forma pauperis* proceedings, United States Parole Commission Hearing Examiners in parole proceedings, and the Executive Assistant or Administrative Officer of the President's Commission on Organized Crime.

The Department of Justice has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; and will not have significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This is not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

List of Subjects in 28 CFR Part 21

Courts, Government employees, Travel and transportation expenses.

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 509 and 510, 5 U.S.C. 301 and 5751, and 8 U.S.C. 1103, it is proposed that Part 21 of Title 28, Code of Federal Regulations, be revised to read as follows:

PART 21—WITNESS FEES

Sec.

Authority: 28 U.S.C. 509, 510, 1821-1825, 5 U.S.C. 301.

§ 21.1 Definitions.

(a) *Agency Proceeding.* An agency process as defined by 5 U.S.C. 551 (5), (7) and (9).

(b) *Alien.* Any person who is not a citizen or national of the United States.

(c) *Judicial Proceeding.* Any action or suit, including any condemnation, preliminary, information or other proceeding of a judicial nature. Examples of the latter include, but are not limited to, hearings and conferences before a committing court, magistrate, or commission, grand jury proceedings, pre-trial conferences, depositions, and coroners' inquests. It does not include informational or investigative proceedings conducted by a prosecuting attorney for the purpose of determining whether an information or charge should be made in a particular case. The judicial proceeding may be in the District of Columbia, a State, or a territory or possession of the United States including the Commonwealth of Puerto Rico or the Trust Territory of the Pacific Islands.

(d) *Pre-trial Conference.* A conference between the Government Attorney and a witness to discuss the witness' testimony. The conference must take place after a trial, hearing or grand jury proceeding has been scheduled but prior to the witness' actual appearance at the proceeding.

(e) *Residence.* The term "residence" is not limited to the legal residence, but includes any place at which the witness is actually residing and at which the subpoena or summons is served. If the residence of the witness at the time of appearance is different from the place of subpoena or summons, the new place of residence shall be considered the witness' residence for computation of the transportation allowance; but if the witness is on a business or vacation trip at the time of appearance, the witness shall be paid for travel from the place of service if this does not result in the witness being paid for more travel than is actually performed.

(f) *Summons.* An official request, invitation or call, evidenced by an official writing of the court, authority, or party responsible for the conduct of the proceeding.

§ 21.2 Employees of the United States serving as witnesses.

(a) *Applicability.* This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to Travel Expenses.*

(1) *Official Capacity.* An employee is entitled to travel expenses (in accordance with § 21.2(c)) in connection with any judicial or agency proceeding with respect to which the employee is summoned (and is authorized by the employee's agency to respond to such summons), or is assigned by his or her agency: (i) To testify or produce official records on behalf of the United States, or (ii) to testify in his or her official capacity or produce official records on behalf of a party other than the United States. The witness appropriation of the Department of Justice is not available for expenses incurred under these conditions.

(2) *Unofficial Capacity, Federal Involvement.* An employee is entitled to travel expenses (in accordance with § 21.2(c)) in connection with any juficial or agency proceeding with respect to which the employee is summoned to testify on behalf of the United States. If an employee is summoned to testify on behalf of a party other than the United States, the employee's travel expenses shall be payable by the court, authority,

or party which cuased the employee to be summoned.

(3) *Unofficial Capacity, No Federal Involvement.* An employee who appears as a witness in any judicial proceeding in an unofficial capacity in which there is no Federal involvement is not authorized Government travel expenses and may retain reimbursement for expenses which he or she receives from the court, authority or party which caused the employee to be summoned.

(c) *Allowable Travel Expenses.* An employee qualifying for payment of travel expenses by virtue of being called in an official capacity or on behalf of the United States shall be paid at rates and in amounts allowable for other purposes under the provisions of 5 U.S.C. 5702–5705 and applicable regulations prescribed thereunder by the Administrator, General Services, and the employing agency. Such payment shall be reduced to the extent that the travel expenses are paid to the employee for his or her appearance by the court, authority, or party which caused the employee to be summoned as a witness in an official capacity on behalf of a party other than the United States.

(d) *Payment and Reimbursement.* (1) *Payable by the Employing Agency.* If an employee serves as a witness, and the case involves the activity in connection with which he or she is employed, the travel expenses are payable from the appropriation of the employing agency. The Comptroller General has defined the extent to which the case must be related to the agency's activity as a condition to the agency's responsibility for payment in 23 Comp. Gen. 47, 49 (1943), which states "the employing agency is required to pay . . . the traveling expenses incurred by the witness only where the information or facts ascertained by the employee as part of his official duties forms the basis of the case, or where the proceeding is predicated upon a law that that agency is required to administer." In 39 Comp. Gen. 1, 3 (1959), the Comptroller General determined that if an employee testifies regarding facts and information he or she acquired in the course of his or her assigned duties, the employing agency is responsible for the payment of the employee's travel expenses. In these instances, the witness appropriation of the Department of Justice is not available for payment of expenses.

(2) *Payable by the Department of Justice.* If an employee appears on behalf of the United States in an unofficial capacity in a judicial proceeding involving the Department of Justice, the employee's travel expenses are payable by the Department of Justice. The employing agency may advance or pay the travel expenses of the employee and later obtain reimbursement from the Department of Justice by submitting an appropriate bill together with a copy of the approved advance or travel voucher.

(e) *Leave and Attendance Fee.* (1) *Leave.* An employee is considered to be in official duty status when appearing as a witness in his or her official capacity or on behalf of the United States in an unofficial capacity. An employee is entitled to court leave when he or she appears as a witness in a unofficial capacity not on behalf of the United States and the United States, the District of Columbia, or a State or local government is a party to the case. An employee must use annual leave or leave without pay to appear as a witness when the United States, the District of Columbia, or a State or local government is not a party.

(2) *Attendance Fee.* An employee who appears on behalf of the United States is not entitled to receive an attendance fee. An employee who appears on behalf of a party other than the United States while in official duty status or while on court leave should request an attendance fee from the court, authority, or party which caused the employee to be summoned. Such fee shall be remitted to the employing agency. An employee who must use annual leave or leave without pay to appear as a witness may retain an attendance fee which he or she receives.

§ 21.3 Aliens.

(a) *Aliens Entitled to Payment of $30 Per Day.* The following aliens are entitled to witness fees and allowances provided in § 21.4:

(1) aliens lawfully admitted for permanent residence (documentary evidence: Form I–151 or Form I–551, Alien Registration Receipt Card);

(2) aliens lawfully admitted in one of the nonimmigrant categories described in 8 U.S.C. 1101(a)(15) (documentary evidence: unexpired Form I–94, Arrival—Departure Record). But see below § 21.3(b);

(3) aliens admitted as refugees under 8 U.S.C. 1157 and aliens granted asylum under 8 U.S.C. 1158 (documentary evidence: Form I–94, Arrival Departure Record, indicating admission as refugee under 8 U.S.C. 1157 or granting asylum under 8 U.S.C. 1158, employment authorized).

(4) aliens who have rendered themselves amenable to deportation proceedings, but have not admitted deportability or have not been determined to be deportable pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(b) *Aliens Entitled to Payment of $1 Per Day.* An alien who is "excludable" in accordance with 8 U.S.C. 1226, but whose removal is stayed by the Attorney General (in accordance with 8 U.S.C. 1227(d)) because: (1) The testimony of the alien is necessary on behalf of the United States in the prosecution of offenders against the United States, or (2) the testimony of the alien is necessary on behalf of an indigent criminal defendant in accordance with Rule 17(b) of the Federal Rules of Criminal Procedures, is entitled to a $1 per day witness fee. No other fees and allowances are authorized.

(c) *Aliens Not Entitled to Payment.* An alien who has been paroled into the United States for prosecution pursuant to 8 U.S.C. 1182(d)(5) (documentary evidence: Form I–94, Arrival-Departure Record, Parole Edition), or an alien who has admitted belonging to a class of aliens who are deportable, or an alien who has been determined pursuant to 8 U.S.C. 1252(b) to be deportable (documentary evidence: decision by a Special Inquiry Officer, Board of Immigration Appeals, or court), is prohibited from receiving fees and allowances in accordance with 28 U.S.C. 1821(e).

(d) *Doubtful Cases.* If the Immigration and Naturalization Service advises that the alien has admitted deportability, or that he or she was paroled into the United States for prosecution, or that deportation proceedings have been completed against the alien with a result favorable to the Government, no payment under 28 U.S.C. 1821 may be made.

§ 21.4 Fees and allowances of fact witnesses.

The fees and allowances of fact witnesses, other than those covered by § 21.2, attending at any judicial proceeding, shall be as follows:

(a) *Fee.* A witness shall be paid an attendance fee of $30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance. However, if both attendance and travel occur on the same day, a witness is entitled to only one fee.

(b) *Allowable Transportation Expenses.* A witness shall be entitled to transportation expenses based on the means of transportation reasonably utilized (based on the nature, duration, location and distance of travel) and the distance necessarily traveled from and

to such witness' residence by the shortest practical route and the fastest means of transportation available in going to and returning from the place of attendance. Additional costs incurred (including attendance fees and subsistence allowances) because of a slower means of transportation must be justified for consideration.

(1) A witness who travels by regularly scheduled common carrier shall be paid for the actual expenses of transportation at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A witness who travels by privately owned vehicle shall be paid a transportation allowance equal to the mileage allowance paid for official travel of employees of the Federal Government under the provisions of 5 U.S.C. 5704. However, when two or more witnesses travel in the same privately owned vehicle, only the witness incurring the expense shall receive the mileage allowance.

(3) A witness incurring incidental transportation expenses, such as taxi fares between the place of attendance, residence or lodging and the carrier terminals; bridge, road and tunnel tolls; ferry fares; and parking fees shall be paid in full for such expenses. Receipts or other evidence of actual payment are required for *all parking fees* (if available) and all other single items costing more than $25.

(4) First-class travel by witnesses requires the same justification and approval required for first-class travel by employees of the Federal Government.

(c) *Subsistence Allowance.* A witness (other than a witness detained *in custody*) who is required to be away from his or her residence *overnight* is entitled to a subsistence allowance. A witness who *is not* required to be away from his or her residence overnight *is not* entitled to a subsistence allowance. The witness' subsistence allowance shall not exceed either the per diem rate or the actual subsistence allowance rate prescribed for Government employees for the place of attendance. These rates are established by the Administrator, General Services, for areas within the conterminous United States; the Secretary of Defense for areas of the United States other than conterminous; or the Secretary of State as published in the Standardized Regulations (Government Civilians, Foreign Areas) for foreign areas. The witness' subsistance allowance shall consist of a meal and miscellaneous expense portion and a lodging portion. *When an overnight stay is required,* the witness shall be entitled to: (1) The meal and miscellaneous expense portion for each day (or partial day) the witness is required to remain away from his or her residence and (2) the lodging portion for each night the witness is required to incur a lodging expense. The meal and miscellaneous expense portion shall be 50% of the authorized subsistence allowance rate rounded to the next whole dollar in an actual subsistence rate area, or 45% of the per diem rate rounded to the next whole dollar in a per diem area. The Lodging portion shall be the difference between the meal and miscellaneous expense portion and the authorized rate.

(d) *Detained Witness Fee.* A witness (other than an alien covered by § 21.3) detained *in custody* pursuant to 18 U.S.C. 3149 for want of security for his or her appearance shall receive subsistence *in kind* and shall be paid a single daily attendance fee for each day the witness is detained. A witness in custody for purposes other than 18 U.S.C. 3149 is ineligible to receive the attendance and subsistence fees provided by this section.

§ 21.5 Use of table of distances.

Mileage payable to witnesses under 28 U.S.C. § 8121 shall be computed on the basis of odometer readings or the highway distances as stated in the Rand McNally Standard Highway Mileage Guide or in any generally accepted highway mileage guide which contains a shortline nationwide table of distances and which is designated by the Administrator, General Services, for such purposes. However, with respect to travel in areas for which no such highway mileage guide exists, mileage payable under 28 U.S.C. 1821 shall be based on the lesser of either (a) the route of travel actually employed or (b) a usually traveled route.

§ 21.6 Proceedings In Forma Pauperis.

28 U.S.C. 1915 provides for the commencement, presecution or defense of any suit, action, or proceeding without prepayment of fees and costs. Witnesses shall attend as in other cases.

(a) *Civil Cases.* There are currently no provisions for payment of witnesses called by the indigent. If the indigent party prevails, witness fees and expenses may be taxed as costs in accordance with 28 U.S.C. 1920.

(b) *Criminal Cases.* Rule 17(b), Federal Rules of Criminal Procedure, requires that fact witnesses *subpoenaed* on behalf of an indigent defendant be paid in the same manner as witnesses called on behalf of the Government. The attendant must be certified by the presiding officer of the court. The expenses of Federal Government employees are treated in the same manner as they are treated when the employee is called by a Government attorney.

§ 21.7 Certification of witness attendance.

In any case in which the United States Department of Justice, or office or orgainzation thereof, is a party, the Department of Justice shall pay all fees and allowances of witnesses, except for those witnesses as defined in § 21.2(d)(1), on the certification of the following officials: the United States Attorney, as Assistant United States Attorney, a United States Trustee, or the United States Department of Justice attorney who actually conducts the case. In criminal proceedings *in forma pauperis* or in proceedings before a United States Commissioner, United States Magistrate or United States Parole Commission Hearing Examiner, the Department of Justice shall pay all fees and allowances of witnesses on the certification of the United States District Judge hearing the case or such Commissioner, Magistrate, or Hearing Examiner. In proceedings before the President's Commission on Organized Crime (PCOC), the Department of Justice shall pay all fees and allowances on the certification of the Executive Assistant or Administrative Officer of the PCOC.

Dated: October 8, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-25418 Filed 10-24-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Iowa Permanent Regulatory Programs

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of proposed amendments to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Iowa regulations at Chapter 4 as a result of modifications to Federal regulations, and proposed amendments to Chapter 26 concerning blaster training, examination and certification. This notice sets forth the time and locations that the Iowa program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments not received by 4:30 p.m., November 25, 1985, will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Iowa program.

A public hearing on the proposed amendments has been scheduled for November 19, 1985. Any person interested in speaking at the hearing should contact Mr. Charles Sandberg at the address or telephone number listed below by November 12, 1985. If no person has contacted Mr. Sandberg by that date to express an interest in the hearing, the hearing will not be held. If only one person requests the opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. at the Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106.

Written comments and requests for a hearing should be directed to Mr. Charles Sandberg, Acting Director, Kansas City Field Office, Professional Building, Room 502, 1103, Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Copies of the Iowa program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contracting the Kansas City Field Office.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, DC 20240.

Iowa Department of Soil Conservation, Mines and Minerals Divisions, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Sandberg, Acting Director, Kansas City Field Office, Professional Building, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register.**

II. Submission of Revisions

By letter dated July 25, and 26, 1985, Iowa submitted proposed program amendments consisting of:

1. Amendments to IAC Chapter 4 rules for Iowa's Coal Regulatory Program requiring payment of all reclamation fees from previous and existing operations as required by section 402 of SMCRA; modifying the provision for a presiding officer at contested case hearings; correcting the requirement for local filing of permit applications—permit applications will be available for public inspection in the county recorder's office; clarifying the provision for incidental boundary changes allowing a total of 20 acres of incidental boundary changes over the life of the permit; modifying requirements for frequency and type of inspections including inactive operations and aerial inspections and establishing the standards for extension of abatement periods for notices of violation beyond 90 days.

2. An amendment establishing IAC Chapter 26 "Blaster Training, Examination and Certification for Coal Mines". This chapter establishes the requirements and the procedures applicable to the development of regulatory progams for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface or underground coal mining operations.

3. The Iowa submission included a final rule IR 780–4.61(83) "Penalty Schedule". This is the rule that was approved by the Office of Surface Mining on May 24, 1985 (50 FR 21440). The changes made to this rule are only minor editorial ones. Therefore, OSM is requesting comment only on the changes to the rule.

The full text of the proposed amendments is available for review at the addresses listed above. Upon request to OSM's Field Office Director, each person may receive, free of charge, one single copy of the proposed program amendments. The Director now seeks public comment on whether the proposed amendments are consistent with the Federal regulations. If approved, the amendments will become part of the Iowa program.

III. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

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

Dated: October 21, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–25504 Filed 10–24–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to general hydrologic requirements and liability insurance requirements.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before November 25, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on November 19, 1985 beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Offce of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexinton Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may received, free of charge, one single copy of the proposed amendment by contacting OSM's Lexington Field Office listed under "ADDRESSES".

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the persons listed under "FOR FURTHER INFORMATION CONTACT" by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

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

Public meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in ADDRESSES by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

III. Submission of Program Amendments

On September 16, 1985, Kentucky submitted program amendments to modify its general hydrologic requirements and liability insurance requirements. Kentucky submitted these proposed amendments in part in response to a letter from the Director, OSM, which identified areas of the Kentucky program needing revision.

The amendments would modify 405 KAR 7:015 to remove Reclamation Advisory Memorandum (RAM) # 64 concerning split coverage for liability insurance. Also, 405 KAR 10:030 would be amended to incorporate those parts of RAM # 64 that are still applicable. The amendments at 405 KAR 16:060 and 18:060 would modify the general hydrology requirements including requirements for sediment control measures, acid-forming and toxic-forming spoil, ground-water protection and recharge capacity, surface water protection, transfer of wells, water rights and replacement and discharge into and from an underground mine.

Therefore, the Director, OSM is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less

effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environment Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

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

Dated: October 21, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-25505 Filed 10-24-85; 8:45 am]

BILLING CODE 4310-05-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM85-1]

Rules of Practice and Procedure Relating to Documentation of Statistical and Computer-Generated Evidence

October 21, 1985.

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This docket considers proposals to revise our Rules of Practice that were included in public comments on the rule changes that the Commission proposed in Docket No. RM85-2. Commentors' proposed changes that were not directly related to the specific changes proposed by the Commission in Docket No. RM85-2 were deferred for consideration in this docket. These include proposals to add certain test and validation information to the list of foundational requirements for computer simulation model results offered in evidence, proposals that relate to the legibility of workpapers [Rules 54(o)(3) and 92(1)(3)], documentation of statistical studies [Rule 31(k)(2)(iv)], information on the methods used by the Postal Service to attribute or assign costs [Rule 54(h)(4)], and technical revisions to Rules 54(f)(3)(iii) and 54(h)(10).

DATE: Comments must be received by November 25, 1985.

ADDRESS: Comments and correspondence relating to this notice should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street NW., Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268 (telephone: (202) 789-6820).

SUPPLEMENTARY INFORMATION: On October 21, 1985, in Docket No. R85-2, the Commission adopted proposals to amend our Rules of Practice that dealt with workpaper citation requirements, requirements for admitting computer-generated evidence into the record, and documentation requirements for the "roll-forward" computer model. The Notice of Proposed Rulemaking in Docket No. RM85-2 was issued June 18, 1985, and was published on Tuesday, July 2, 1985, in the **Federal Register** (50 FR 27308-27313). Public comments responding to that June 18 Notice included some proposals that were directly related to the Commission's proposals and some that were only indirectly related. Those that were directly related were dealt with in Docket No. RM85-2, which became final on October 21, 1985. Those proposals that were indirectly related to our June 18 Notice have been deferred for consideration in this docket.

This docket solicits public comments on the proposal of Time, Inc., that it submitted on August 2, 1985, as part of its comments in Docket No. RM85-2, that Rule 31(k)(3)(i) of our Rules or Practice require information that tests and validates computer simulation models whose results are offered in evidence. Time, Inc. proposes that we add the following language as new paragraph (*j*) to the list of documentation items that are presumptively necessary to establish a foundation for computer-generated evidence:

> Computer simulation models that seek to describe the operations of the Postal Service, in whole or in part, or any postal related activity, offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of paragraph (k)(3) and the separate requirements of paragraph (k)(2) (statistical studies), to the extent that portions of the simulation model utilize or rely upon such separate or integrated studies. Information that compares the simulation model output results to the actual operation(s) being modelled, using data other than those from which the model was developed, shall be separately identified and submitted as evidence supporting the test and validation of the simulation model. Separate statements concerning the model limitations, including limiting model design assumptions and range of data input utilized in model design, shall be provided. Where test and validation of the entire simulation model are not possible, test and validation information shall be provided for disaggregate portions of the model. If disaggregate testing and validation are not possible, separate statements to that effect and statements regarding operational experts' review of model validity shall be provided.

Time, Inc. notes that such a requirement is implicit in Rule 31(k)(3)(i)(*e*), which, by example, incorporates generally accepted software document standards that contain test and validation documentation. Time, Inc., contends, however, that these requirements should be made explicit in our rule in order to be effective.

We also solicit public comment on several proposals made by Dow Jones, Inc., in its comments filed August 9, 1985, in Docket No. RM85-2. These include its proposal to strengthen the current requirement in Rule 54(o)(3) that workpapers be "neat and legible" to counteract what it contends is a common problem of participants' workpapers failing to meet this standard. It proposes that our rules require advance certification that workpapers are legible and prescribe remedies for failing to meet the standard. Comments on Behalf of Dow Jones & Co., Inc., August 9, 1985, Docket No. RM85-2 (hereafter "Dow Jones Comments") at 2-3.

Rule 31(k)(2) sets forth standard statistical significance tests and other documentation requirements for statistical studies that hearing participants rely on Dow Jones, Inc.

proposes that these be made mandatory rather than provided "upon proper request" as the Rule now states. In particular Dow Jones, Inc., proposes that the information concerning statistical methodology contained in paragraph 31(k)(2)(iv) of our rules become a mandatory requirement. Dow Jones Comments at 5.

Dow Jones, Inc., also proposes that we make some technical corrections to our Rules of Practice. It suggests that Rule 54(h)(4), which currently requires the Postal Service to "identify the methodology used to attribute or assign each type of cost," should also require an explanation of how that methodology works, and set forth the calculations underlying the use of the methodology. Dow Jones Comments at 6. A similar requirement that underlying calculations be shown should be added to Rule 54(o)(2)(v), according to Dow Jones, Inc. This would require that the Postal Service show, in addition to "results" of special studies used to modify, expand, project, or audit routinely collected data, the calculations underlying those results.

Dow Jones, Inc., also notes that current Rule 54(f)(3)(iii)(c) requires assignment and distribution of costs "to functions set forth in f(3)(iii)(b) of this section" but that f(3)(iii)(b) contains only examples, not an exhaustive list of functions. It suggests that the reference back to f(3)(iii)(b) be reworded to avoid the inference that the examples listed there are exhaustive. Dow Jones Comments at 6–7.

In addition to the above proposed amendments, we proposed that a typographical error in the second sentence in § 3001.54(h)(10) be corrected. That sentence, as it now appears in the CFR, ends with a period. It should end with a colon.

Note.—The Commission finds that the proposed rule changes do not constitute a major rule. The cost of compliance should be small because parties relying upon statistical studies or computer simulator models will generally have the required information or expertise available nor will the changes have any adverse effects on competition, employment or other relevant factors.

List of Subjects in 39 CFR Part 3001

Administrative Practice and procedure, Postal Service.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85–25480 Filed 10–24–85; 8:45 am]

BILLING CODE 7715-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–70; RM–4754]

FM Broadcast Station in Juneau, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Dismissal of proposal.

SUMMARY: Action taken herein dismisses a petition filed by Denali Broadcasting Company, Inc. to allot Class C FM Channel 255 to Juneau, Alaska, based on the petitioner's failure to express continuing interest in the proposal.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Juneau, Alaska) MM Docket No. 85–70, RM–4754).

Adopted: October 15, 1985.

Released: October 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 50 FR 14946, published April 16, 1985, proposing the allotment of Class C Channel 255 to Juneau, Alaska, as that community's sixth FM service, in response to a petition filed by Denali Broadcasting Company, Inc.

2. According to Commission policy, a showing of continuing interest is required before a channel will be allotted to a community. See, *Williams, Arizona*, 47 FR 20827, and paragraph 2 of the Appendix to the *Notice*. The petitioner herein failed to file comments in response to the *Notice*. The period for such filing in this proceeding has expired and no other party has expressed interest in the proposed Class C allotment at Juneau.

3. In view of the foregoing, it is ordered, that the petition of Denali Broadcasting Company, Inc., proposing the allotment of Class C FM Channel 255 to Juneau, Alaska, is dismissed.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–25533 Filed 10–24–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–309; RM–4959]

FM Broadcast Station in Manhattan, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substation of Class C2 FM Channel 284 for Channel 269A at Manhattan, Kansas, and modification of the license of Station KMKF (FM) to specify operation on the Class C2 Channel. The allotment is proposed in response to a petition filed by Manhattan Broadcasting Company and could provide Manhattan with its first wide-coverage Class C2 FM station.

DATES: Comments must be filed on or before December 12, 1985, and reply comments on or before December 27, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Manhattan, Kansas) (MM Docket No. 85–309, RM–4959).

Adopted: October 15, 1985.
Released: October 21, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Manhattan Broadcasting Company ("petitioner"), licensee of Station KMKF (FM), Channel 269A, Manhattan, Kansas, requesting the substitution of FM Channel 284C2 for Channel 269A and modification of its license to specify operation on the Class C2 channel.

2. Petitioner points out that since it publishes a daily newspaper and is also the licensee of an AM station in Manhattan, the modification of its license to specify a new frequency in a rule making context would represent a major change as specified in § 73.3555 of the Commission's multiple ownership rules. However, petitioner points out that Note 4 of § 73.3555 exempts situations like its own "if the proscribed community encompassment already exists and would do so after application grant." See *Amendment of Multiple Ownership Rules*, 22 F.C.C. 2d 306, 315 (1970).

3. We believe that the proposal warrants consideration in view of the expressed desire for a wider coverage area FM station to serve the public interest. A staff engineering study reveals that the proposed allotment of FM Channel 284C2 can be made in compliance with the minimum distance separation requirements with a site restriction 12.6 kilometers (7.8 miles) north of Manhattan, Kansas. The site restriction is necessary to avoid short spacing to Station KFFX, Channel 285A, Emporia, Kansas, and FM Channel 285A recently allotted in MM Docket 84–458 to Salina, Kansas.

4. In accordance with our established policy, we shall propose to modify the license of Station KMKF(FM) to specify operation on FM Channel 284C2. However, if another party should indicate an interest in the Class C2 allotment, the modification may not be implemented, unless an additional equivalent channel is allotted. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).

5. Accordingly, in order to provide Manhattan, Kansas, with its first wide area coverage FM station, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Manhattan, KS	296A, 280A	280A, 284C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before December 12, 1985, and reply comments on or before December 27, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Michael J. McCarthy, Esq., Dow, Lohnes & Albertson, 1255–23rd Street NW., Suite 500, Washington, DC 20037 (Counsel to Petitioner).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Table of FM allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should not that the from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petition constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Sevice.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions

by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-25531 Filed 10-24-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-311; RM 5032]

FM Broadcast Station in Karns, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Piedmont Partnership, proposes the allotment of Channel 226A to Karns, Tennessee, as that community's first FM service.

DATES: Comments must be filed on or before December 13, 1985, and reply comments on or before December 30, 1985.

ADDRESS: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Karns, Tennessee) (MM Docket No. 85-311, RM-5032).

Adopted: October 15, 1985.

Released: October 22, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Piedmont Partnership ("petitioner"), seeking the allotment of FM Channel 226A to Karns, Tennessee, as that community's first FM service. Petitioner has stated its intention to apply for the channel. The channel can be allotted in compliance with the Commission's minimum distance separation requirements, § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

2. In view of the fact that Karns, Tennessee could receive its first local FM service the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Karns, TN		226A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before December 13, 1985, and reply comments on or before December 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Nancy L. Wolf, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington, DC 20037. (Counsel for petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Patricia A. Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which the Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if

advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-25528 Filed 10-24-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-310; RM-5036]

FM Broadcast Station in Marshall, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 222A to Marshall, Texas, as that community's second FM service at the request of Gordon Media Corp.

DATES: Comments must be filed on or before December 13, 1985, and reply comments on or before December 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Marshall, Texas) (MM Docket No. 85-310, Rm-5036).

Adopted: October 15, 1985
Released: October 22, 1985.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it for consideration a petition for rule making filed by Gordon Media Corp. ("petitioner"), requesting the allocation of FM Channel 222A to Marshall, Texas, as that community's second FM service. Petitioner, licensee of AM Station KCUL, Marshall, Texas, has expressed its intention to apply for the channel. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

PART 73—[AMENDED]

2. In view of the fact that the proposed allotment could provide Marshall, Texas with its second FM service, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Marshall TX	280A	222A, 280A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before December 13 1985, and reply comments on or before December 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Steven A. Lerman, McKenna, Wilkinson & Kittner, 1150 17th Street, NW., Washington, DC 20036. (Counsel for petitioner)

Gordon Media Corp., P.O. Box 462, Marshall, Texas 75670. (Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b) 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Patricia A. Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any Comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filled the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitons for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the data for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-25529 Filed 10-24-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-312; RM-5047]

FM Broadcast Station in Slaton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Williams Broadcasting Group, proposes the substitution of Channel 225A for Channel 224A at Slaton, Texas, and modification of the license of Station KJAK-FM (Channel 224A) to specify operation on the new frequency.

DATES: Comments must be filed on or before December 13, 1985, and reply comments on or before December 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Slaton, Texas) (MM Docket No. 85-312, RM-5047).

Adopted: October 15, 1985.

Released: October 22, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Williams Broadcasting Group ("petitioner"), licensee of Station KJAK(FM), Channel 224A at Slaton, Texas. Petitioner requests the substitution of Channel 225A for Channel 224A at Slaton, Texas, and modification of its license to specify operation on the new frequency. The substitution can be made in compliance with the Commission's minimum separation requirements.

2. Petitioner states, as an inevitable result of several operating Lubbock Class C stations, the audience of Station KJAK(FM) experiences severe difficulties with receiver overload resulting from cross-modulation. As a possible solution to the problem, petitioner seeks to relocate to another channel.

3. In view of the above, the Commission believes the public interest would be served by proposing the channel substitution as it could alleviate the problem and permit Slaton's only FM station to provide better service to the public. Therefore, we shall propose to modify the license of Station KJAK(FM) to specify operation on Channel 225A in lieu of Channel 224A.

PART 73—[AMENDED]

4. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Slaton, TX	224A	225A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before December 13, 1985, and reply comments on or before December 30, 1985, and are advised to

read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John H. Midlen, Jr., Chartered, 1050 Wisconsin Avenue, NW., Washington, DC 20007. (Counsel to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–25534 Filed 10–24–85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Eight Foreign Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for eight foreign mammals: Leadbeater's possum, buffy tufted-ear marmoset, southern bearded saki, large-eared hutia, little earth hutia, dwarf hutia, Cabrera's hutia, and Baluchistan bear. All occupy very restricted ranges and are jeopardized by human habitat disruption and/or direct killing. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for these eight mammals. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by December 24, 1985. Public hearing requests must be received by December 9, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director (OES), Broyhill 500, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, Broyhill Building, 1000 N. 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, DC 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

Whenever practical, and if there is no substantial evidence to the contrary, the Service classifies foreign mammals as endangered, pursuant to the Endangered Species Act of 1973, as amended, if such mammals are so classified in the *Red Data Books* of the International Union for Conservation of Nature and Natural

Resources (IUCN). These books result from research by the IUCN Conservation Monitoring Centre in the United Kingdom, which draws upon authorities from around the world for the latest and best data on the bioconservation status of mammals. The Service and IUCN classifications are now almost in general accord, but in the most recent editions of the *Red Data Books* covering mammals (Thornback 1978, Thornback and Jenkins 1982), the following eight taxa, which are not yet on the U.S. List of Endangered and Threatened Wildlife, are categorized as endangered by the IUCN:

Leadbeater's possum (*Gymnobelideus leadbeateri* McCoy, 1867), a marsupial, about 150 millimeters (mm) (6 inches (in.)) in head and body length, with a tail about 200 mm (8 in.) long and flattened laterally, arboreal and nocturnal, and found in the west forests of southeastern Australia (Nowak and Paradiso 1983);

Buffy tufted-ear marmoset (*Callithrix jacchus aurita* (E. Geoffroy, 1812), considered a full species, *C. aurita*, by IUCN), a small primate, less than 300 mm (12 in.) in head and body length and 400 mm (15 in.) in tail length, characterized by white ear tufts and black head markings, arboreal, and found in the forests along the southeastern coast of Brazil (Nowak and Paradiso 1983);

Southern bearded saki (Chiropotes satanas satanas (Hoffmannsegg, 1807)), a primate, 360 to 520 mm (14 to 20 in.) in head and body length, with a bushy tail of about the same length, dark in color, and found in the tropical forests of Amazonian Brazil (Nowak and Paradiso 1983, Thornback and Jenkins 1982);

Large-eared hutia (*Capromys auritus* Varona, 1970), a large rodent, about 300 mm (12 in.) in head and body length, with a tail about 180 mm (7 in.) long, having harsh brown fur, arboreal, and found only in a mangrove swamp on Cayo Fragoso, an island off north-central Cuba (Hall 1981, Thornback and Jenkins 1982);

Little earth hutia (*Capromys sanfelipensis* Varona, 1970), a rodent similar to the large-eared hutia, but having a mostly reddish tail, and found in an area of low and dense vegetation on Cayo Juan Garcia off southwestern Cuba (Hall 1981, Thornback and Jenkins 1982);

Dwarf hutia (*Capromys nana* G.M. Allen, 1917), a somewhat smaller rodent than the above, about 200 mm (8 in.) in head and body length and 175 mm (7 in.) in tail length, generally reddish agouti in color, and fond only in the Zapata Swamp, about 100 kilometers (62 miles) southeast of Havana, Cuba (Hall 1981, Thornback and Jenkins 1982);

Cabrera's hutia (*Capromys angelcabrerai* Varona, 1979), a rodent similar to the dwarf hutia, but having a relatively shorter tail, and found only on the Cayos de Ana Maria off south-central Cuba (Varona, 1979); and

Baluchistan bear (*Ursus thibetanus gedrosianus* Blanford, 1877, considered by some authorities to belong to a separate genus, *Selenarctos*), a small subspecies of the Asiatic black bear, generally reddish brown in color, usually with a pale breast mark, and now found in the mountains of southern Pakistan and possibly southeastern Iran (Macey 1982).

Available data indicate that each of the above mammals qualifies for classification as endangered, pursuant to the Endangered Species Act. Several appear to be on the verge of extinction. As explained below, the main problems are thought to be habitat destruction and direct killing by people.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors, and their application to the eight mammals named above, are as follows (information from Thornback 1978, and Thornback and Jenkins 1982, unless otherwise noted):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the named mammals have naturally restricted ranges and are dependent on specific kinds of habitat. In some cases, their ranges have been substantially reduced because of human habitat disruption.

Leadbeater's possum is known only from a small area of southeastern Victoria, the southeasternmost state of mainland Australia. It was believed extinct after 1909, but was rediscovered in 1961. It apparently requires mature montane forest, with mountain ash trees over 150 years old and containing hollows that are used for construction of nests. Many such trees were killed by fires in the 1930's and are no longer usable by the possum. Most of the known remaining range of the species is in areas scheduled for logging.

The buffy tufted-ear marmoset has an extremely small range in a region along the southeastern coast of Brazil comprising southeastern Sao Paulo, western Rio de Janeiro, and adjacent parts of Minas Gerais. It is entirely dependent on forest habitat, nearly all of which has already been cleared for agricultural, lumbering, and industrial purposes.

The southern bearded saki occurs to the south of the Amazon River in east-central Brazil. It depends on tropical rain forest and seems to be partial to undisturbed habitat. Its range has a large human population and is being rapidly developed. This mammal thus has disappeared from many areas.

The large-earned hutia was not discovered until 1970 and is known only from one area of mangrove swamp on Cayo Fragoso, an island off north-central Cuba. The population is thought to be very small and vulnerable.

The little earth hutia was also discovered in 1970 and has been recorded only from Juan Garcia Cay, a very small island off southwestern Cuba. It may also occur on the nearby and larger Cayo Real. It is thought to be uncommon and was not located at all during an expedition to Juan Garcia Cay in 1980.

The dwarf hutia is currently confined to the Zapata Swamp southeast of Havana. Fossil remains, however, indicate that it once occurred over a much larger part of Cuba. Agricultural development is a potential threat to its small remaining habitat.

Cabrera's hutia was discovered only in 1974 and has not been located since 1975. It is apparently confined to mangrove swamps on a few small islands in the Cayos de Ana Maria off south-central Cuba. Current numbers are unknown but are thought to be very low.

The Baluchistan bear originally occurred almost throughout the mountainous parts of what is now the nation of Pakistan. It currently appears confined to a relatively small area in the south-central part of the nation, but may also occur in adjacent parts of southeastern Iran. It is evidently rare, with perhaps fewer than 200 individuals surviving. Most of its original forest habitat has been eliminated. According to Roberts (1977), forest clearing opens areas to human utilization and thus leads to increased killing of the bear.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At present, overutilization is not reported to be a problem for Leadbeater's possum or the buffy tufted-ear marmoset. However, any commercial use of the marmoset would be disastrous, considering its low population levels, and primates historically have been heavily exploited

for commercial and scientific purposes. The tail of the southern bearded saki is used as a duster, and was being commonly sold in the city of Belem, Brazil, in 1978.

The main threat to the large-eared, little earth, and Cabrera's hutias is reportedly taking for use as food by fishermen and other persons who visit the small islands where the animals live. The hutias are sometimes driven into the water, where they are slow and clumsy, and thus easily captured. The dwarf hutia is also probably taken by fishermen who visit its swamp habitat.

The Baluchistan bear has declined drastically since the 1930's because of killing by people. It is regarded as vermin and is regularly killed by local farmers, who claim that it damages millet and sorghum crops, and attacks domestic sheep and goats.

C. *Disease or predation.* The buffy tufted-ear marmoset may have disappeared from two national parks in Brazil because of epidemics. Otherwise, disease and nonhuman predation have not been reported as problems for the eight species covered by this proposal.

D. *The inadequacy of existing regulatory mechanisms.* Leadbeater's possum is protected against taking by the laws of Victoria, but only some parts of its habitat are being managed with consideration of its welfare. The buffy tufted-ear marmoset and southern bearded saki are not fully protected by law in Brazil. The habitat of both primates is not protected, except in a few relatively small parks and preserves. All hutias are legally protected in Cuba, but enforcement is difficult. The Baluchistan bear is not known to be protected by law.

E. *Other natural or manmade factors affecting its continued existence.* All eight mammals covered by this proposal occur in such small numbers that inbreeding and loss of genetic viability could be a problem.

The decision to propose endangered status for the eight mammals named above was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would constitute failure to properly classify these mammals pursuant to the Endangered Species Act and would exclude these species from benefits provided by the Act. A decision to propose only threatened status would not adequately reflect the evident rarity and multiplicity of problems of the various species. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in the **Federal Register** of June 29, 1983, 48 FR 29990). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. However, an opinion of August 31, 1981, from the Office of the Solicitor, U.S. Department of the Interior, indicates that the jeopardy prohibition of section 7(a)(2) does not apply in foreign countries.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It is also illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken unlawfully. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The buffy tufted-ear marmoset and the Baluchistan bear are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), meaning that their importation into the U.S. requires both an export permit from the country of origin and an import permit from the U.S. Management Authority for CITES. The southern bearded saki is on Appendix II of CITES, meaning that importation into the U.S. requires an export permit from the country of origin. International trade in these three species, and the other five that are covered by this proposed rule, is expected to be minimal. The service will review all of these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned govenmental agencies, the scientific community, industry, private interests, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species:

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of these species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulations on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from those in this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "ADDRESSES" section.

National Environmental Policy Act

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

References

Hall, E.R. 1981. The mammals of North America. John Wiley & Sons, New York, 2 vols.

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Nowak, R.M., and J.L. Paradiso. 1983. Walker's mammals of the world. Johns Hopkins Univ. Press, Baltimore, 2 vols.

Roberts, T.J. 1977. The mammals of Pakistan. Ernest Benn Ltd., London, xxvi + 361 pp.

Thornback, J. 1978. Red data book. Volume 1: Mammalia. International Union for Conservation of Nature and Natural Resources, Morges, Switzerland.

Thornback, J., and M. Jenkins. 1982. The IUCN mammal red data book. Part 1. International Union for Conservation of Nature and Natural Resources, Gland, Switzerland, x1+516 pp.

Varona, L.S. 1979. Subgenro y especie nuevos de *Capromys* (Rodentia: Caviomorpha) para Cuba. Poeyana, no. 194, 33 pp.

Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1975 or FTS 235-1975).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Bear, Baluchistan	*Ursus thibetanus gedrosianus*	Iran, Pakistan	Entire	E		NA	NA
Hutia, Cabrera's	*Capromys angelcarbreral*	Cuba	do	E		NA	NA
Hutia, dwarf	*Capromys nana*	do	do	E		NA	NA
Hutia, largo-eared	*Capromys auritus*	do	do	E		NA	NA
Hutia, little earth	*Capromys sanfilipensis*	do	do	E		NA	NA
Marmoset, buffy tufted-ear	*Callithrix jacchus aurita*	Brazil	do	E		NA	NA
Possum, Leadbeater's	*Gymnobelideus leadbeateri*	Australia	do	E		NA	NA
Saki, southern bearded	*Chiropotes satanas satanas*	Brazil	do	E		NA	NA

Dated: October 7, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-25457 Filed 10-24-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Serianthes Nelsonii Merr. (Hayun Lagu)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a plant, *Serianthes nelsonii* (*hayun lagu*), as an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. This species is known from two mature trees located in the Territory of Guam and an estimated 64 trees on the island of Rota, Commonwealth of the Northern Mariana Islands. The continued existence of this species is endangered by habitat degradation or destruction, typhoons and other natural or man-caused disasters, and the cropping of seedlings by introduced deer and pigs. A determination that *Serianthes nelsonii* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 24, 1985. Public hearing requests must be received by December 9, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and

Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The earliest known collection of *Serianthes nelsonii* was that made on Guam by Alfred Marche who botanically explored the Mariana Islands in the late 1880's. This material remained unstudied until 1947, when F. R. Fosberg and M. H. Sachet reported on it (Fosberg and Sachet 1957). In early 1918, Peter Nelson, of the Guam Experimental Station, received the first grant awarded from the Charles Budd Robinson, Jr., Memorial Fund of the New York Botanical Garden. This grant of 50 dollars was to assist him in field work on Guam. As stipulated by the grant, the first set of his collections was submitted to Elmer Merrill, a botanist at the Bureau of Science, Manila, to be identified. Merrill recognized the plant as new to science and in 1919 described it, naming it in Nelson's honor. The tree subsequently was discovered on Rota by R. Kanehira in the 1930's. It presently is believed to be endemic to those two islands.

The Chamorro name, *hayun lagu*, translates as "foreign" or "northern" tree. As *Serianthes nelsonii* certainly is a native species, the name may indicate that it always has been fairly rare. Or it may reflect the fact that usually it is a component of the limestone forests, which are found mostly in the northern half of Guam.

Serianthes nelsonii is a large tree reaching a height of 60 feet or more and a trunk diameter of nearly six feet. The younger parts of the tree, the inflorescence, and the fruits are covered with rusty-brown hairs. The leaves are about ten inches long, doubly pinnate, and with 20 to 30 pairs of small, dark-green leaflets on each pinna. The flowers are shaped like small brushes, the petals nearly an inch long, pale greenish-white; the filaments extend about twice that length beyond the petals, and are white at the base, pink to maroon for most of their length, and tipped with a yellow anther. The fruit is a hard, dry, pod, about 5 inches long by 1 inch wide, densely covered with rusty-brown hair.

It is not known if the tree was ever very common; however, large portions of native habitat on Guam and Rota have been destroyed by human activities, such as the recent clearing of native vegetation adjacent to the population of this species on Rota. On Guam, trees are thought to have been destroyed in the past during land clearing on the Air Force Base. Today, 66 individuals are estimated to be extant in the wild, all but two from Rota. The two Guam trees are on Andersen Air Force Base and the Rota trees are on private and local government lands.

On December 14, 1981, Paul M. Calvo, then Governor of Guam, petitioned the Service to list *Serianthes nelsonii* as an endangered species. Subsequently, on February 15, 1983, the Service published a "Notice of findings on certain petitions and review of status" in the **Federal Register** (48 FR 6752), which included this species.

On November 28, 1983 (48 FR 53640), the Service published a supplementary notice of plant species under review for listing as endangered or threatened. *S. nelsonii* was included in that notice as a category 1 candidate, indicating that the Service then had sufficient information to propose listing it. On October 13, 1983, and again on October 12, 1984, the Service found that listing of the species was warranted, but precluded by other pending proposals, in accord with section 4(b)(3)(B)(iii) of the Act. Such a petition is treated as if resubmitted on the date of finding, in accord with section 4(b)(3)(C)(i) of the Act, so that a new findings would have been required before October 12, 1985. Approval of the present proposal on October 8, 1985, constituted a finding that the listing of this species is warranted and proposes to implement the petitioned action in accord with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Serianthes nelsonii* Merr. (*hayun lagu*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Large portions of native habitat on Guam and Rota have been degraded or destroyed as a result of human activities. It is not known if this species was ever common, but undoubtedly it was once more common than it is today. Some of the early Nelson specimens appear to have been collected in areas now on Andersen Air Force Base, since cleared for buildings and other facilities. Another tree is known to have been inadvertently destroyed during land clearing on the base. Recent clearing of land on Rota for agricultural purposes has destroyed the limestone forest vegetation adjacent to the *Serianthes* population on that island. Some of the trees are visible from the agricultural land.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a problem.

C. *Disease or predation.* Seedlings that have been transplanted from the wild into forest nursery pots have been very susceptible to mealy bug and scale insect damage. Although it is not known whether these insects may affect plants in the wild, this may occur. One of the two trees on Guam is infested with termites. At least three trees have produced seedlings, but, as no seedling taller than 8 inches has been seen, it is believed that they are eaten by the introduced deer and, perhaps, wild pigs.

D. *The inadequacy of existing regulatory mechanisms. Serianthes nelsonii* was placed on the Guam Endangered Species List on September 24, 1981, and is thereby protected by the Endangered Species Act of Guam (Pub. L. 15-36). Listing as endangered by the Federal Government under the Endangered Species Act of 1973, as amended, would provide additional protection through Section 7 (interagency cooperation) and Section 9 (prohibitions). Such action also would facilitate cooperative efforts by the Service to provide funding and technical assistance to the Government of Guam to protect the species and enhance its recovery (under Section 6).

E. *Other natural or manmade factors affecting its continued existence.* Typhoons are common in Micronesia. At least two of the few remaining trees have been damaged by the high winds of typhoons. The extremely small number of extant individuals coupled with a lack of seedlings contributes to this species' vulnerability. A single event such as a fire, a storm, or a natural fluctuation in the number of individuals could cause the demise of a significant percentage of the remaining members of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Serianthes nelsonii* as endangered. Endangered status reflects the destruction of native habitat that has occurred, the real and potential threats faced by the species, and the low number of individuals

extant. A discussion of the reasons for which critical habitat is not proposed can be found in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such a determination would result in no known benefit to the species. The two remaining mature trees known from Guam are on Federal property, where no current or known future activity by the U.S. Air Force would adversely affect them. Should any potential adverse effects develop, the involved agencies could be informed by means other than a critical habitat determination. In addition, publication of detailed range information for such an easily identifiable species that occurs in such small numbers would expose it to potential vandalism.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or to destroy or adversely modify proposed critical habitat. If a species is listed subsequently section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat the responsible Federal agency must enter into formal consultation with the Service. The two extant plants of *Serianthes nelsonii* on Guam are on Andersen Air Force Base. If the species is listed as endangered, the Air Force would be required to enter into consultation with the Service before undertaking or permitting any action that may affect the plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Serianthes nelsonii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition would apply to *Serianthes nelsonii*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681, to be codified at 50 CFR 17.62). Two of the extant trees are on Federal property; the remainder are on lands owned by individuals or the local government. It is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect or this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Serianthes nelsonii*;

(2) The location of any additional specimens of *Serianthes nelsonii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and,

(4) Current or planned activities in the subject area and their possible impacts on *Serianthes nelsonii*.

Final promulgation of the regulation on *Serianthes nelsonii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service (see "Address", above).

National Environmental Policy Act

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

Literature Cited

Fosberg, F.R., and M.H. Sachet. 1957. Plantes recoltees en Micronesie au XIX[e] siecle. Bulletin du Museum d' Historie Naturelle, Paris, Series 2, 29(5): 428-438.

Author

The primary author of this proposed rule is Dr. Derral Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea Family:						
Serianthes nelsonii	Hayun lagu	Western Pacific Ocean: U.S.A. (Guam, Rota).	E	NA	NA	

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–25458 Filed 10–24–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 207
Friday, October 25, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

Correction

In FR Doc. 85–24851, appearing on page 42198 in the issue of Friday, October 18, 1985, make the following corrections:

1. In the list of members in the second column of the page, the following names should have appeared between "Charles L. Grizzle" and "Eddie F. Kimbrell":

Earl Hadlock
Raymond R. Hancock
Clara I. Harris
Suzanne Harris
Edward D. Hews
William J. Hudnall
Thomas O. Kay
J. Michael Kelly

2. In the list of alternate members in the second column of the page, the name "Ernest Koening" should have read "Ernest Koenig".

BILLING CODE 1505-01-M

Federal Grain Inspection Service

Designation Renewal; Idaho Grain Inspection Service, Inc. (ID); Lewiston Grain Inspection Service, Inc. (ID); Utah Department of Agriculture (UT)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Idaho Grain Inspection Service, Inc. (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and Utah Department of Agriculture (Utah), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: December 1, 1985.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8528.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not be to a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulations do not apply to this action.

FGIS announced that Idaho's Lewiston's, and Utah's designations terminate on November 30, 1985, and requested applications for official agency designation to provide official services within specified geographic areas in the June 3, 1985, **Federal Register** (50 FR 23323). Applications were to be postmarked by July 3, 1985. Idaho, Lewiston, and Utah were the only applicants for their respective designations and each applied for designation renewal in the areas currently assigned to those agencies.

FGIS announced the applicant names and requested comments on same in the August 1, 1985, **Federal Register** (50 FR 31207). Comments were to be postmarked by September 16, 1985; a total of nine comments were received. Eight of the comments supported the designation renewal of Lewiston. One of the comments supported the designation renewal of all three agencies.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Idaho, Lewiston, and Utah are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective December 1, 1985, and terminating November 30, 1988, Idaho, Lewiston, and Utah will provide official inspection services in their specified geographic areas, which are the entire areas previously described in the June 3 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X of Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the appropriate agency at one of the following addresses:

Idaho Grain Inspection Service, Inc., U.S. Highway 30 West, P.O. Box 4209, Pocatello, ID 83201

Lewiston Grain Inspection Service, Inc., 1450 3rd Avenue North, Lewiston, ID 83501

Utah Department of Agriculture, 350 North Redwood Road, Salt Lake City, UT 84116.

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

Dated: October 17 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–25380 Filed 10–24–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Frankfort Grain Inspection, Inc. (IN); Jinks Grain Weighing Service (IL) and Paris Illinois Grain Inspection (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Frankfort Grain Inspection Service (Frankfort), Jinks Grain Inspection Service (Jinks) and Paris Illinois Grain Inspection (Paris).

DATE: Comments to be postmarked on or before December 9, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400

Independence Avenue SW, Washington, DC 20250. All comment received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

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

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not be to a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulations do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the August 30, 1985, **Federal Register** (50 FR 35276). Applications were to be postmarked by September 30, 1985. Frankfort, Jinks, and Paris were the only applicants for their respective designations, and each applied for designation renewal in the areas currently assigned to those agencies.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

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

Dated: October 16, 1985.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–25379 Filed 10–24–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to Detroit Grain Inspection Services, Inc. (MI) and Grain Inspection Services, Inc. (MI)

AGENCY: Federal Grain Inspection Service (FGIS); USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are Detroit Grain Inspection Service, Inc., and Grain Inspection Services, Inc.

DATE: Applications to be postmarked on or before November 25, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Detroit Grain Inspection Service, Inc. (Detroit), P.O. Box 176, Emmett, MI 48022, and Grain Inspection Services, Inc. (Battle Creek), 24 First Street, Battle Creek, MI 49017, were each designated under the Act as an official agency to provide inspection functions on May 1, 1983.

Each official agency's designation terminates on April 30, 1986. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Detroit, in the States of Michigan and Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line;

Bounded on the East by the Michigan State line south to State Route 50;

Bounded on the South by State Route 50 west to U.S. Route 127; and

Bounded on the West by U.S. Route 127 north U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

The following location, outside the foregoing contiguous geographic area, is presently assigned to Detroit and is part of this geographic area assignment:

St. Johns Coop., St. Johns, Clinton County, Michigan.

The geographic area presently assigned to Battle Creek, in the State of Michigan, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Michigan, the area is:

Bounded on the North by the northern and eastern Mason County lines; the northern and eastern Newago County lines; the northern Montcalm County line; the western, northern, and eastern Isabella County lines; the northern Gratiot and Saginaw County lines; the western Bay County line; the western and northern Arenac County lines; the western and northern Iosco County lines; the Lake Huron and Saginaw Bay shorelines south and east to State Route 53;

Bounded on the East by State Route 53 south to State Route 46; State Route 46 west to Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south the Michigan State line;

Bounded on the South by the southern Michigan State line west to Lake Michigan; and

Bounded on the West by the Lake Michigan shoreline north to the northern Mason County line.

In Ohio, the area includes Williams County.

The following location, outside of the foregoing contiguous geographic area, is presently assigned to Battle Creek and is part of this geographic area

assignment: Crop Aid, Hudson, Lenawee County, Michigan.

An exception to the described geographic area is the following location situated inside the Battle Creek's area which has been and will continue to be serviced by Detroit Grain Inspection Service, Inc.:

St. Johns Coop., St. Johns, Clinton County, Michigan.

Interested parties, including Detroit and Battle Creek, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulafions issued thereunder. Designation in each specified geographic area is for the period beginning May 1, 1986, and ending April 30, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Dated: October 16, 1985.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–25378 Filed 10–24–85; 8:45 am]

BILLING CODE 3410-EN-M

Cancellation of Designation Issued to Keokuk Grain Inspection Service, Inc.; Interim Assignment of Designation to John H. Oliver, Inc., Doing Business as Keokuk Grain Inspection Service; and Request for Designation Applicants (IA and IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the cancellation of designation of Keokuk Grain Inspection Service, Inc. (Keokuk), effective August 1, 1985. Keokuk reincorporation as John H. Oliver, Inc., doing business as Keokuk Grain Inspection Service (Oliver), and has requested that a designation be granted to that agency. Oliver has been and will continue to provide official inspection services, in the geographic area specified below, on an interim basis, from August 1, 1985, to April 30, 1986. A request for designation applicants is also included in this notice.

DATE: Applications to be postdmarked on or before November 25, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

This notice announces the cancellation of designation of Keokuk Grain Inspection Service, Inc. (Keokuk), effective August 1, 1985. Keokuk reincorporated as John H. Oliver, Inc., doing business as Keokuk Grain Inspection Service (Oliver), and has requested that a designation be granted to that agency. Oliver has been and will continue to provide official inspection services, in the geographic area specified below, on an interim basis, from August 1, 1985, to April 30, 1986. A request for designation applicants is also included in this notice.

The Administrator of FGIS has determined that the interim assignment of this geographic area to Oliver is consistent with the provisions and objectives of the U.S. Grain Standards Act, as amended (Act) and that this action will facilitate the providing of official inspection services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official in an assigned geographic area.

Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area in the State of Illinois and Iowa to be provided service by Oliver, on an interim basis, and which is available for assignment to the applicant selected for the new designation is as follows: Hancock and McDonough Counties, Illinois; and Davis, Lee, and Van Buren Counties, Iowa.

The following locations in Illinois, outside of the foregoing contiguous geographic area, are presently assigned to Keokuk and are part of this geographic area assignment: 1. Central Soya, Inc., Dallas City, and Lomax Grain Elevator, Lomax, both in Henderson County; and 2. Ursa Farmers Co-op, Meyer, and Ursa Farmers Co-op, Ursa, both in Adams County.

Interested parties, including Oliver, are hereby given opportunity to apply for official agency designation to provide official inspection services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period May 1, 1986, through April 30, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Dated: October 17, 1985.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 85–25377 Filed 10–24–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the State of Florida

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the U.S. Grain Standards Act, as Amended (Act), the Administrator of FGIS is authorized to designate official agencies to perform official services under the Act. This notice announces that FGIS is requesting applicants for designation as an official agency for the conduct of all or specified functions involved in official grain inspection in the State of Florida. FGIS has been and will continue to provide such official services, in the geographic area specified below, until a decision can be made in this matter.

DATE: Applications to be postmarked on or before November 25, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this section.

This notice announces that FGIS is requesting applicants for designation as an official agency for the conduct of all or specified functions involved in official grain inspection in the State of Florida. It has been determined that there is a need for such services within the State of Florida. FGIS has been and will continue to provide such official services, in the geographic area specified below, until a decision can be made in this matter.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, the designation in the specified geographic area will not exceed a 3-year period.

The geographic area, in the State of Florida, which is available for assignment to the applicant selected for designation, as follows: The entire State of Florida except those export port locations within the State.

Interested parties are hereby given opportunity to apply for official agency designation to provide official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Dated: October 18, 1985.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–25381 Filed 10–24–85; 8:45 am]

BILLING CODE 3410-EN-M

Animal and Plant Health Inspection Service

Forest Service

Availability of Draft Addendum to Gypsy Moth Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service and Forest Service, USDA.

ACTION: Notice of availability; request for comment.

SUMMARY: The Animal and Plant Health Inspection Service and the Forest Service hereby give notice of the availability of a draft addendum to the Final Environmental Impact Statement (FEIS) on Gyspy Moth Suppression and Eradication Projects—as supplemented, 1985. The draft addendum contains a plain language version of a worst case analysis discussed in the FEIS approved on March 8, 1985. The draft addendum responds to a ruling in *Oregon Environmental Council* v. *Kunzman* (Civil No. 82–504–RE) which found that the FEIS was legally adequate, but that the worst case analysis in Appendix F failed to meet the regulatory requirements for clarity.

DATE: Written comments concerning the draft addendum to the FEIS must be received by December 12, 1985.

ADDRESSES: Submit written comments on the draft addendum to the FEIS to Gary Moorehead, Staff Officer, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The public may inspect written comments received at Room 663 of the Federal Building, Hyattsville, Maryland, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

Interested parties may obtain copies of the draft supplement to the FEIS by writing:

Plant Protection and Quarantine, Animal and Plant Health Inspection Services, U.S. Department of Agriculture, Room 302–E, Administration Building, 14th & Independence Ave., NW., Washington, DC 20250

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 657 Federal Building, Room 511 N.W. Broadway, Portland, OR 97209–3490

Northwestern Area State and Private Forestry Office, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008

Northeastern Area State and Private Forestry Office, Forest Service, U.S. Department of Agriculture, 180 Canfield Street, Morgantown, WV 26505

Copies may be inspected at the above locations as well as at the following other field offices:

Plant Division, Oregon Department of Agriculture, Agricultural Building, Salem, OR 97310

Gypsy Moth Office, Oregon Department of Agriculture, 950 W. 13th Street, Eugene, OR 97402

Pacific Southwest Region, State and Private Forestry Office, Forest Service, U.S. Department of Agriculture, 630 Sansome Street, San Francisco, CA 94111

Regional Forester, Eastern Region, U.S. Department of Agriculture, 310 W. Wisconsin Avenue, Room 500, Milwaukee, WI 53203

Pacific Northwest Region, State and Private Forestry Office, Forest Service, U.S. Department of Agriculture, 319 Southwest Pine Street, P.O. Box 3623, Portland, OR 97208

FOR FURTHER INFORMATION CONTACT:

Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436–8295

Peter Orr, Assistant Director Insect and Disease Management Staff, Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008 (215) 461–3153.

SUPPLEMENTARY INFORMATION: On April 26, 1985, the United States District Court of Oregon, ruled that the Final Environmental Impact Statement for Gypsy Moth Suppression and Eradication Projects, as supplemented—1985 (FEIS), was legally adequate, but the worst case analysis was not understandable by its intended readers. In making this ruling, the Court found that although the worst case analysis in

Appendix F contained all the necessary information, it was too technical, complex, and full of equations and calculations. The draft addendum responds to the Court's ruling. It is a plain language version of Appendix F and translates the technical data contained in appendix F into terms that disclose possible human health problems in language that all readers can understand. The draft addendum also contains toxicity information presented to the Court during the *Oregon Environmental Council* v. *Kunzman* litigation.

Since this document does not propose significant changes in the proposed action or contain significant new information, the Forest Service and the Animal Plant Health Inspection Service (APHIS) do not consider it to be a supplement as defined in the National Environmental Policy Act implementing regulations 40 CFR 1500–1508. This document only contains information that was presented to the U.S. District Court to clarify issues about human health risk and the plain language of Appendix F.

The draft addendum is being sent for review and comment to agencies, organizations, and individuals listed in appendix B of the FEIS. Comments regarding the material in this document will be considered in preparation of a document which will be submitted to the Court.

Copies of either the draft addendum or the FEIS are available upon request, from the offices listed under "ADDRESSES".

For the Forest Service.

Dated: October 22, 1985.

R. Max Peterson,

Chief, Forest Service.

For the Animal and Plant Health Inspection Service.

Dated: October 23, 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85-25656 Filed 10-24-85; 12:19 pm]

BILLING CODE 3410-34-M; 3410-11-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 9:30 p.m. on December 6, 1985 and convene at 9:00 a.m. and adjourn at 12:00 noon on December 7, 1985, at the Miyako Hotel, 1625 Post Street, San Francisco, California. The purpose of the meeting is to discuss project concepts and proposals and to hear from community representatives about civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxwell Greenberg, or Philip Montez, Director of the Western Regional Office at (213) 688–3437, (TDD 213/894–0508).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 21, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25453 Filed 10-24-85; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on November 14, 1985, at the McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to continue FY '86 project planning.

Persons desiring additional information, or planning a presentation to the Committee, should contract Committee Chairperson, Robert Wells or Jacob Schlitt, Director of the New England Office at (617) 223–4671, (TDD 617/223–0344).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 21, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25454 Filed 10-24-85; 8:45 am]

BILLING CODE 6335-01-M

Wisconsin Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on November 12, 1985, at the School Administration Building, 545 West Dayton, Room 103, Madison, Wisconsin. The purpose of the meeting is to discuss proposed new projects and to share information on civil rights issues pertaining to American Indians in Wisconsin.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office, at (312) 353–7371, (TDD 312/886–2168).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 21, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25455 Filed 10-24-85; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon on November 18, 1985, at the Waikiki Trade Center, 2255 Kuhio Avenue, Suite 1800—Board Room, Honolulu, Hawaii. The purpose of the meeting is to discuss plans for a public forum on police-community relations and engage in program planning for FY '86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre Tatibouet, or Philip Montez, Director of the Western Regional Office at (213) 688–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 22, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25594 Filed 10-24-85; 8:45 am]

BILLING CODE 6335-01-M

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 10:00 p.m. on November 21, 1985, at the Quality Inn, Route 1 South, North Brunswick, New Jersey. The purpose of the meeting is to select a major project for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero, Director of the Eastern Regional Office at (212) 264–0400 (TDD 212/264–0400). Hearing impaired persons who will attend the meeting and require the services of a signer, should contact the Regional Office at least seven (7) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 22, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–25593 Filed 10–24–85; 8:45 am]

BILLING CODE 6335–01–M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on November 20, 1985, at the Municipal Building, 600 Fourth Avenue, Room 911, Seattle, Washington. The purpose of the meeting is to plan programs for FY '86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Arnold Manseth, or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442–1246, (TDD 206/442–4744). Hearing impaired persons who will attend the meeting and require the services of a signer, should contact the Regional Office at least seven (7) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 22, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–25595 Filed 10–24–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Color Television Receivers Except for Video Monitors From Taiwan; Initiation of Antidumping Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Review.

SUMMARY: On April 30, 1984, the Department of Commerce published an antidumping order on color television receivers, except for video monitors, from Taiwan. We have received requests from six manufacturers and one importer to conduct an administrative review of the antidumping duty order. In accordance with § 353.53a of the Commerce Regulations, we are initiating that administrative review. The review covers the period October 19, 1983 through March 31, 1985.

EFFECTIVE DATE: October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth Klages or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/525.

SUPPLEMENTARY INFORMATION: .

Background

On April 30, 1984, the Department of Commerce published in the **Federal Register** (49 FR 18337) the antidumping duty order on color television receivers, except for video monitors, from Taiwan. We have received requests, in accordance with § 353.53a of the Commerce Regulations, from six manufacturers and one importer, to conduct an administrative review of that order covering AOC International, Inc., Capetronic (B.S.R.) Ltd., Fulet Electronic Industrial Corp., Ltd., Nettek Corp., Ltd., Shinlee Corp., Shin-Shirasuna Electric Corp., and Tatung Co.

Initiation of the Review

In response to the requests, we are initiating an administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. Interested parties are invited to participate in this review. We intend to publish the final results of the review not later than 365 days after the end of the month of publication of this notice.

Scope of the Review

Imports covered by the review are shipments of Taiwanese color television receivers, except for video monitors, complete or incomplete, regardless of tariff classification. Such merchandise is currently classifiable under items 684.9247, 684.9250, 684.9252, 684.9254, 684.9256, 684.9258, 684.9260, 684.9270, 684.9655, 684.9656, 684.9658, 684.9660, and 684.9663 of the Tariff Schedules of the United States Annotated. The review covers AOC International, Inc., Capetronic (B.S.R.) Ltd., Fulet Electronic Industrial Corp., Ltd., Nettek Corp, Ltd., Shinlee Corp., Shin-Shirasuna Electric Corp., Tatung Co., and the period October 19, 1983 through March 31, 1985.

This initiation of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: October 17, 1985.

Gilbert B. Kaplan,

Acting Deputy, Assistant Secretary, Import Administration.

[FR Doc. 85–25539 Filed 10–24–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–008]

Color Television Receivers From Korea; Initiation of Antidumping Duty Administrative review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Review.

SUMMARY: On April 30, 1984, the Department of Commerce published an antidumping duty order on color television receivers from Korea. We have received requests from three manufacturers to conduct an administrative review of the antidumping duty order. In accordance

with § 353.53a. of the Commerce Regulations, we are initiating that administrative review. The review covers the period May 1, 1984 through March 31, 1985.

EFFECTIVE DATA: October 25, 1985.

FOR FURTHER INFORMATION CONTRACT: Laura Merchant or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202 377–2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department of Commerce published in the Federal Register (49 FR 18336) the antidumping duty order on color television receivers from Korea. We have received requests, in accordance with § 353.53a of the Commerce Regulations, from Samsung Electronics Co., Ltd., Daewoo Electronics Co., Ltd., and Gold Star Co., Ltd. to conduct an administrative review of that order.

Initiation of the Review

In response to the requests, we are initiating an administrative review of the antidumping duty order on color television receivers from Korea. Interested parties are invited to participate in this review. We intend to publish the final results of the review not later than 365 days after the end of the month of publication of this notice.

Scope of the Review

Imports covered by the review are shipments of Korean color televisions receivers, complete or incomplete, regardless of tariff classification. Such merchandise is currently classifiable under items 684.9247, 684.9250, 684.9252, 684.9254, 684.9256, 684.9258, 684.9360, 684.9270, 684.9655, 684.9656, 684.9658, 684.9660, and 684.9663 of the Tariff Schedules of the United States Annotated. The review covers Samsung Electronics, Co., Ltd., Daewoo Electronics Co., Ltd Gold Star Co., Ltd., and the period May 1, 1984 through March 31, 1985.

This initiation of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1)) and § 353. 53a of the Commerce Regulations (19 CFR 353.53a).

Dated: October 17, 1985.

Gilbert B. Kaplan,

Acting Deputy, Assistant Secretary, Import Administration.

[FR Doc. 85–25538 Filed 10–24–85; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of infomation 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 and uses to be made of the information collected; (4) Type or 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

Application for Discharge: DD Form 2168 is essential to identify and collect basic information needed to search available records or develop sufficient information to determine the applicant's membership in a group approved by the DOD Civilian/Military Service Review Board for equivalent active military service status.

Responses 600

Burden hours 125

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301–4000, telephone (202) 695–0643. This collection is not for contract.

Dated: October 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–25580 Filed 10–24–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). 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 and 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.

New

1986 Survey of Reserve Component Spouses

The survey will be the first large-scale canvass of the Reserve Component spouses ever conducted. The information will be used to evaluate the effectiveness of current policies and programs and plan new ones; examine the impact of families on readiness and retention; and explore the situations of families which are critical to mobilization planning.

Responses 69,100

Burden hours 34,550

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD (FM&P), Room 3C800, Pentagon, Washington, DC 20301–4000, telephone (202) 695–0643.

Dated: October 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–25581 Filed 10–24–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). 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 and 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.

Reinstatement Revision

Federal Student Loan Confirmation

Military Services are authorized to repay student loans for individuals who meet certain criteria and who enlist for active military service for a specified obligation period. Legislation requires that the Services verify the status of the loan prior to repayment. This form collects the necessary verification data from lending institutions.

Responses 4,500

Burden hours 750

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD FM&P, Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643. This collection is not for contract.

Dated: October 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-25582 Filed 10-24-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday and Friday, 21-22 November, 1985.

Times of meeting: 0800-1700 hours.

Places: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet to discuss SDI architecture sensors for discrimination and novel intercept techniques. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-25507 Filed 10-24-85; 8:45 am]

BILLING CODE 3712-92-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Endowment Grant Program; Extension of Fiscal Year (FY) 1985 Deadline for Raising Matching Funds Under the Endowment Grant Program

The Supplemental Appropriations Act, 1985, Pub. L. 99-88, extends availability of $15.2 million of the FY 1985 Endowment Grant Program funds to September 30, 1986. Therefore, the Secretary extends the deadline for raising matching funds to July 15, 1986, for those institutions selected in FY 1985 for funding under the Endowment Grant Program. The previous closing date of August 15, 1985 was published in the **Federal Register** on July 19, 1985. (49 FR 29471).

The Endowment Grant Program is authorized by section 333 of Title III of the Higher Education Act of 1965, as amended (20 U.S.C. 1065a). Under the Program, the Secretary is authorized to make grants to eligible institutions of higher education for the purpose of establishing or increasing endowment funds at those institutions. The Federal grant funds must be matched dollar-for-dollar by the institution selected to receive a grant. In accordance with § 628.41(b) of the program regulations (49 FR 37325, September 21, 1984), the Secretary determines annually the fund-raising period.

Subject to other limitations in the statute, the maximum endowment grant an institution may receive is an amount equal to the amount of matching funds it raises by July 15, 1986.

Further Information: For further information, contact Ms. Anne Price-Collins, Chief, Challenge Grant and Endowment Branch, Division of Institutional Development, U.S. Department of Education, Room 3045, Regional Office Building 3, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 245-9091.

(20 U.S.C. 1064-1069c)

(Catalog of Federal Domestic Assistance Number 84.031—Institutional Aid Programs)

Dated: October 21, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-25547 Filed 10-24-85; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 25, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submision of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comments at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 22, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Lender's Request for Interest and Special Allowance for Loans Made from Tax Exempt Funds
Agency Form Number: ED 799A
Frequency: Quarterly
Affected Public: Businesses or other for-profit
Reporting Burden
Responses: 300
Burden Hours: 90
Recordkeeping Burden
Recordkeepers: 75
Burden Hours: 90

Abstract: The form is used by specific entities to apply for interest and special allowance from loans that were made from tax exempt funds. The interest rate remains the same as for other Guaranteed Student Loan lenders while the special allowance is paid at ½ the normal rate for certain loans. This is the only method available to collect that information to make the special payments as required.

Type of Review Requested: Revision
Title: Title IV Quality Control Project
Agency Form Number: ED 2463
Frequency: One-time
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden
Responses: 6,950
Burden Hours: 3,614
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: Recipients of aid from the Pell, Campus-Based and Guaranteed Student Loan programs under Title IV of the Higher Education Act, and their parents, will be asked to verify personal financial information submitted to receive financial aid. Institutions administering these programs will be interviewed about administering practices. The data will be used to assess compliance with program requirements and efficiency of use of public funds.

Type of Review Requested: Extension
Title: Application for Certification for Participation in Programs under Title IV of the Higher Education Act of 1965, as Amended
Agency Form Number: ED 633
Frequency: Annually
Affected Public: Businesses or other for-profit
Reporting Burden
Responses: 1,500
Burden Hours: 3,000
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: This form is used by colleges, universities and vocational schools to apply to the Department to become certified to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.

Office of Special Education and Rehabilitation Services

Type of Review Requested: Extension
Title: List of Hearing Officers Recordkeeping
Agency Form Number: NA
Frequency: Annually
Affected Public: State of local governments
Reporting Burden
Responses: 0
Burden Hours: 0
Recordkeeping Burden
Recordkeepers: 16,000
Burden Hours: 1,600

Abstract: Each public agency in States receiving funds under Part B of the Education of the Handicapped Act must keep a list of persons who serve as hearing officers, along with their qualifications. This recordkeeping requirement is found in 34 CFR 300.507(c). The list serves to inform interested parties of the training and abilities of persons serving as impartial hearing officers.

Type of Review Requested: Reinstatement
Title: Program Impact Reporting System (PIRS)
Agency Form Number: ED 911
Frequency: Annually
Affected Public: State or local governments
Reporting Burden
Responses: 83
Burden Hours: 3,464
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: The specified data must be collected by the Department and must be included in the annual report to Congress in accordance with Section 13 of the Rehabilitation Act of 1973, as amended. The respondents are State vocational rehabilitation (VR) agencies. The specified data are demographic and programmatic and are submitted on each individual closed out from the VR system each fiscal year.

[FR Doc. 85-25546 Filed 10-24-85; 8:45 am]

BILING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-85-033 (OFP Case Number 66019-9293-01-02-12)]

Powerplant and Industrial Fuel Use; Pennwalt Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption by Pennwalt Corporation and availability of certification.

SUMMARY: On September 18, 1985, Pennwalt Corporation (Pennwalt) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent site limitation exemption for a proposed major fuel burning installation (MFBI), to be located in Wyandotte, Michigan, from the prohibitions 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 the use of petroleum and natural gas as a primary energy source in certain new MFBIs. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are published in the **Federal Register** at 46 FR 59872 (December 7, 1981). The site limitation exemption criteria is contained in 10 CFR 503.33 of the final rules.

Pennwalt requests a permanent site limitation exemption in order to burn natural gas or propane in two Babcock & Wilcox boilers to be operated at Pennwalt's chemical manufacturing facility located in the town of Wyandotte, Wayne County, Michigan. A review of the petition is provided in the

SUPPLEMENTARY INFORMATION section below. As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31(a) and 501.33(a), 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 the petition as well as other documents and supporting materials on this proceeding is available at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, 9:00 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 of public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons thereof, would be published in the Federal Register.

DATES: Written comments or a request for public hearing on the acceptance of Pennwalt's petition for exemption are due on or before December 9, 1985.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Coal & Electricity Division, Case Control Unit Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number ERA-FC-85-033 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Phone (202) 252-6769.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION:

Pennwalt owns and operates the chemical manufacturing plant. The facility is located in Wayne County Michigan. The plant is divided into two locations. The East Plant is located in both Wyandotte and Riverview, Michigan, on the east side of West Jefferson Avenue while the West Plant is located directly across West Jefferson Avenue and is entirely in Riverview, Michigan.

It is Pennwalt's intention to reduce or cease operations at the East Plant. In doing so, it will become uneconomical and impractical to continue purchasing steam from two coal-fired 225,000 lb/hr, 900 psig boilers with a back-up oil-fired 200,000 lb/hr, 400 psig boiler to supply an average 55,000 lb/hr to the West Plant. These boilers are located in the East Plant, and are owned and operated by Detroit Edison.

Pennwalt has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition in a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned new boiler has been furnished.

The proposed MFBI would consist of two Babcock & Wilcox type boilers with a rated output of 120,000 lb/hr steam at 450 psig each. Pennwalt determined that the facility requires an average 55,000 lb/hr and a maximum of 87,500 lb/hr.

The physical limitations addressed by the petitioner are, coal fired boilers along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse. Coal fired boilers are larger than oil/gas fired boilers. Space in the boiler house is very limited. Additional area would also be required to stockpile coal but space is available to store propane.

Pennwalt certified that:

1. The site limitation criteria contained in 10 CFR 503.33(a) are satisfied by the boilers for which exemption is sought and the plant where it will be installed;

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the boilers for which the exemption is sought and the plant at which it will be installed.

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 Part 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) and 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.

Pursuant to 10 CFR 501.3, ERA hereby accepts Pennwalt's petition for a permanent site limitation exemption for the proposed boilers. The acceptance of the petition by ERA does not constitute a determination that Pennwalt 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 October 18, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-25487 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and time: Wednesday, November 20, 1985—9:00 a.m. to 5:00 p.m. Thursday, November 21, 1985—9:00 a.m. to 5:00 p.m.

Location: Sheraton Santa Fe Inn and Conference Center, 750 North Saint Francis Drive, Santa Fe, New Mexico.

Contact: Richard E. Nygren, Office of Fusion Energy (ER-50.1), U.S. Department of Energy, Mail Stop G-226, Washington, D.C. 20545, Phone: (301)-353-4941.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advance on recommended appropriate levels of funding to develop those strategies and to help maintain

appropriate balance between competing elements of the program.

Agenda Outline

1. Report of MFAC Subpanel Formulating Recommendations on the Systems Studies Program
   A. Review of Charge to MFAC—Davidson
   B. Subpanel Findings and Recommendations—Baldwin
2. MFAC Discussion and Recommendations
3. Public Discussion
4. Technical Planning Activity Status
   A. Overview and Future Activities—Baker
   B. Plasma Physics—Callen
   C. Fusion Technology—Abdou
   D. Fusion Systems—Dean
5. Mirror Program Status
   A. Program Plan—Willis
   B. TMX Upgrade Results and Status—Fowler
   C. Review of Program Plan by Mirror Coordinating Committee—Post
6. Ignition Studies and Project Status
   A. Planning and Schedule—Clarke
   B. Ignition Tokamak Oversight Committee (ITOC)—Activity Summary and Plans for Option Evaluation—Furth
7. Interim Report of MFAC Panel XIV on Ignition Physics—Meade
8. Other Program Issues—MFAC Discussion
9. New Charge Areas—Clarke, Davidson
10. MFAC Discussion and Recommendations
11. Public Discussion

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, 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 October 22, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-25583 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TA85-4-1-000, 001]

Alabama-Tennessee Natural Gas Co.; Revised PGA Rate Adjustment

October 22, 1985.

Take notice that on October 16, 1985, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Fifth Revised Sheet No. 4, as part of its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is proposed to become effective September 9, 1985, and Alabama-Tennessee requests that there be granted any necessary waivers of the Commission's Regulations to accomplish this proposed effective date.

Alabama-Tennessee states that the purpose of the revised tariff sheet is to reflect spot market purchases being made by Alabama-Tennessee and the rates of its supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., filed on September 9, 1985, in Docket No. TA82-2-9-002 (PGA85-2), to be effective September 9, 1985.

Fifth Revised Sheet No. 4 provides for the following rates:

Rate schedule	Rates after current adjustment
G-1:	
Demand	D_1 $7.53 D_2 08.26¢
Commodity	12.85¢
Gas	312.73¢
SG-1:	
Commodity	21.41¢
Gas	359.18¢
I-1:	
Commodity	16.71¢
Gas	333.63¢

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 29, 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25667 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-117-005 et al.]

Alabama-Tennessee Natural Gas Co. et al.; Filing of Pipeline Refund Reports and Refund Plans

October 22, 1985

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before November 1, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing Date	Company	Docket No.	Type filing
Oct. 7, 1985	Alabama-Tennessee Natural Gas Co	RP85-117-005	Btu.*
Oct. 11, 1985	Northern Natural Gas Co	RP85-113-003	Btu.*
Oct. 15, 1985	Trunkline Gas Co	RP85-77-003	Btu.*
Do	Panhandle Eastern Pipe Line Co	RP85-96-004	Btu.*
Do	Mid-Louisiana Gas Co	RP85-82-002	Btu.*
Do	United Gas Pipe Line Co	RP85-90-002	Btu.*
Do	Northwest Pipeline Corp	RP85-83-003	Btu.*
Do	El Paso Natural Gas Co	RP85-92-002	Btu.*
Do	Columbia Gas Transmission Corp	RP85-91-003	Btu.*
Do	National Fuel Gas Supply Corp	RP85-93-002	Btu.*
Do	Colorado Interstate Gas Co	RP85-95-004	Btu.*
Do	Colorado Interstate Gas Co	RP85-95-005	Btu.*
Do	MIGC, Inc	RP85-137-002	Btu.*
Do	Consolidated Gas Supply Corp	RP85-87-002	Btu.*
Do	Sea Robin Pipeline Co	RP85-89-002	Btu.*
Do	Northwest Central Pipeline Corp	RP85-81-002	Btu.*
Do	Transwestern Pipeline Corp	RP84-88-002	Btu.*
Do	Florida Gas Transmission Co	RP85-75-002	Btu.*
Oct. 16, 1985	Natural Gas Pipe Line Co. of America	RP85-99-004	Btu.*
Do	Southern Natural Gas Co	RP85-153-003	Btu.*
Do	Mississippi River Transmission Corp	RP85-80-002	Btu.*

APPENDIX—Continued

Filing Date	Company	Docket No.	Type filing
Do.	Transcontinental Gas Pipe Line Corp	RP85-78-002	Btu.*
Do.	Arkla Energy Resources	RP85-119-002	Btu.*

* Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings receive new sub-docket numbers.

[FR Doc. 85-25566 Filed 10-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-18-20-000, 001]

Algonquin Gas Transmission Co; Proposed Changes in FERC Gas Tariff

October 22, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on October 17, 1985, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Second Substitute Sixth Revised Sheet No. 203
Second Substitute Seventh Revised Sheet No. 203
Second Substitute Seventeenth Revised Sheet No. 213

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F-2 and Rate Schedule S-IS decreases in Consolidated Gas Transmission Corporation's ("Consolidated") underlying Rate Schedule RQ and Rate Schedule E, as set forth in its compliance filing. The rates as shown on Second Substitute Seventh Revised Sheet No. 203 reflect the decrease under Rate Schedule F-2 Demand Handling Charge in Algonquin Gas' October 1, 1985 filing.

Algonquin Gas requests that the Commission accept Second Substitute Sixth Revised Sheet No. 203 and Second Substitute Seventeenth Revised Sheet No. 213, to be effective September 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas also requests that the Commission accept Second Substitute Seventh Revised Sheet No. 203 to be effective November 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 29, 1985. Protests will be considered by the Commission in determining the approporiate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-25568 Filed 10-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI86-18-000]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co.; Application

Issued: October 21, 1985.

Take notice that on October 15, 1985, ARCO Oil and Gas Company, a Division of Atlantic Richfield Company ("ARCO"), filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales for Resale. The authority sought therein would grant limited-term abandonment of sales of gas released by purchasing pipelines and the resale of that and other committed or dedicated gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act.

These authorizations are being requested to permit continuation of sales and deliveries of gas previously initiated under ARCO's Special Marketing Program and to permit ARCO to maximize its efforts to sell gas to existing and new markets. The authorization requested herein encompasses gas which qualifies for a maximum lawful price in excess of the section 109 Rate.

ARCO requests that such authorizations be issued prior to November 1, 1985, and be effective as of November 1, 1985, to avoid market disruptions which may be caused by termination of sales under the "ARCO Special" and other authorized special marketing programs on October 11, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before October 28, 1985, file with the Federal Energy Regulatory Commission ("Commission"), Washington, DC 20426, a motion to intervene or a protest in accordance with the requirement of the Commission's Rules of Practice and Procedure ("Rules") (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless ARCO is otherwise advised, it will be unnecessary for ARCO to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-25569 Filed 10-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8778-001]

The Catalyst Energy Development Corp.; Surrender of Preliminary Permit

October 23, 1985.

Take notice that the Catalyst Energy Development Corporation, Permittee for the Union Pond Project No. 8778, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8778 was issued on June 7, 1985, and would have expired on November 30, 1986. The project would have been located on the Hockanum River, in Hartford County, Connecticut.

The Permittee filed the request on September 20, 1985, and the preliminary permit for Project No. 8778 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-25570 Filed 10-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA85-2-21-003]

Columbia Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

October 22, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 17, 1985, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on September 1, 1985:

Substitute One hundred and first Revised Sheet No. 16
Substitute Seventh Revised Sheet Nos. 16B and 16C
Substitute Thirty-eighth Revised Sheet No. 64

Columbia states that the foregoing tariff sheets are being filed to comply with the Commission's Order issued September 19, 1985, which directs Columbia to file revised rates to track the appropriate rates of Texas Eastern Transmission Corporation (Texas Eastern) effective August 1, 1985 and September 1, 1985. Specifically, Columbia states that the purpose of the filing is to reflect the changes in Texas Eastern's rates as of September 1, 1985, to explain Columbia's treatment of Texas Eastern's rates for the period August 1, 1985 through August 31, 1985, and to seek any waivers necessary to comply with the September 19 Order.

With respect to Columbia's rates effective September 1, 1985, the instant filing provides for (1) an increase in the demand rates of $.008/Dth applicable to Non-Shielded Customers and $.007/Dth applicable to Shielded Customers, which results in an additional increase of $229,664 to that reflected in the August 20, 1985 filing and (2) an increase of $36 to the Demand Purchased Gas Surcharge applicable to customers receiving quantities under Rate Schedule SGES.

With respect to Columbia's rates effective for the period August 1, 1985 through August 31, 1985, Columbia states that it has no basis at this time to make any revised filing to reflect any other rate design for Texas Eastern effective August 1, 1985 than that already reflected in its August 20 filing. Columbia has requested any waivers which the Commission deems necessary in order to make its requested rates reflected in its August 20 filing effective as of August 1, 1985.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 29, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-25571 Filed 10-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI75-12-001 et al.]

Diamond Shamrock Offshore Partners Limited Partnership; Petition To Amend Certificates of Public Convenience and Necessity and To Redesignate Rate Schedules

October 21, 1985.

Take notice that on September 30, 1985, Diamond Shamrock Offshore Partners Limited Partnership (Petitioner), of P.O. Box 631, Amarillo, Texas 79173, pursuant to § 154.91 *et seq.*, and § 157.23 *et seq.*, of the Regulations [18 CFR 154.91 *et seq.* and 157.23, *et seq.*, (1983)], filed a petition requesting that the Commission amend certain of the certificates of public convenience and necessity heretofore issued to Diamond Shamrock Exploration Company (Exploration) and the related Gas Rate Schedules to reflect the assignment of certain producing properties and of contracts. In addition, Petitioner requests that the Commission proceedings relating to these properties and contracts in which Diamond Shamrock Exploration Company was heretofore a party-applicant or party-respondent reflect this change.

Effective September 1, 1985, Exploration transferred all of its Offshore Gulf of Mexico federal oil and gas leases and all gas sales contracts in connection with production from those leases to Petitioner.

Petitioner will continue, as the successor to Exploration for the assigned leases and contracts, all sales of natural gas which it produces from said leases. In addition, Petitioner will participate in all proceedings involving sales of such production in which Exploration was a party. Attached as Exhibit II is a list of the certificates, rate schedules and Commission proceedings in which Petitioner will be the seller or a party generally.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 4, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure [18 CFR 385.211, 385.214]. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

LIST OF CERTIFICATE PROCEEDINGS, RATE SCHEDULES AND COMMISSION PROCEEDINGS TO BE COVERED BY DIAMOND SHAMROCK OFFSHORE PARTNERS LIMITED PARTNERSHIP

Docket No.	Diamond Shamrock Exploration Company rate schedule No.	Diamond Shamrock offshore partners limited partnership rate schedule No.	Purchaser	Location
CI75-12	38	1	Tumkline Gas Company	Block 338, East Cameron Area, South Addition, Offshore (Federal) Louisiana.
CI75-13	39	2	do	Block 639, West Cameron Area, South Addition, Offshore (Federal) Louisiana.
CI75-14	40	3	do	Block 320, Vermilion Area, South Addition, Offshore (Federal) Louisiana.
CI77-447	48	4	do	Block 380, "A" Platform, Eugene Island Area, South Addition, Offshore (Federal) Louisiana.

LIST OF CERTIFICATE PROCEEDINGS, RATE SCHEDULES AND COMMISSION PROCEEDINGS TO BE COVERED BY DIAMOND SHAMROCK OFFSHORE PARTNERS LIMITED PARTNERSHIP—Continued

Docket No.	Diamond Shamrock Exploration Company rate schedule No.	Diamond Shamrock offshore partners limited partnership rate schedule No.	Purchaser	Location
CI77-620	49	5	Southern Natural Gas Company	Blocks 288 & 289, Main Pass Area, East Addition, Offshore (Federal) Louisiana.
CI78-744	55	6	Trunkline Gas Company	Blocks A-369 & A-370, High Island Area, East Addition, South Extension, Offshore (Federal) Texas.
CI79-187	58	7	do	Blocks A-327 & A-332, High Island Area, East Addition, South Extension, Offshore (Federal) Texas.
CI79-342	59	8	Arkla Energy Resources, a division of Arkla, Inc.; Southern Natural Gas Company	Blocks 72, 73 & 72/74, Main Pass Area, Offshore (Federal) Louisiana.
CI79-420	60	9	Trunkline Gas Company	Block A-511, High Island Area, South Addition, Offshore (Federal) Texas.
CI79-496	62	10	Northern Natural Gas Company	Block 261, Eugene Island Area, Offshore (Federal) Louisiana.
CI80-41	66	11	Southern Natural Gas Company	Blocks 114, 115 & 116, Main Pass Area, Offshore (Federal) Louisiana.
CI80-251	67	12	Trunkline Gas Company	Block 353, East Cameron Area, South Addition, Offshore (Federal) Louisiana.
CI81-121-000	68	13	Transcontinental Gas Pipe Line Corporation	Blocks A-442 & A-443, High Island Area, South Addition, Offshore (Federal) Texas.
CI81-201-000	69	14	Trunkline Gas Company	Blocks 377 & 380, "B" Platform, Eugene Island Area, South Addition, Offshore (Federal) Louisiana.
CI81-448-000	70	15	United Gas Pipe Line Company	Block A-442, High Island Area, South Addition, Offshore (Federal) Texas.
CI82-270-000	71	16	Panhandle Eastern Pipe Line Company	Block 220, East Cameron Area, Offshore (Federal) Louisiana.
CI82-284-000	72	17	Trunkline Gas Company	Block A-542, High Island Area, South Addition, Offshore (Federal) Texas.
CI83-50-000	74	(1)	Texas Eastern Transmission Corporation	Block 264, Vermilion Area, South Addition, Offshore (Federal) Louisiana.
CI83-243-000	76	18	Trunkline Gas Company	Block A-365, High Island Area, East Addition, South Extension, Offshore (Federal) Texas.
CI83-300-000	77	19	Transco Gas Supply Company	Block A-376, High Island Area, East Addition, South Extension, Offshore (Federal) Texas.
CI84-442-000	79	20	Tennessee Gas Pipeline Company	Blocks 225 & 226, Vermilion Area, Offshore (Federal) Louisiana.
CI84-444-000	80	21	Transcontinental Gas Pipe Line Corporation	Block A-131, Galveston Area, South Addition, Offshore (Federal) Texas.
CI84-443-000	81	22	Transcontinental Gas Pipe Line Corporation	Blocks A-446, A-447 & A-448, High Island Area, South Addition, Offshore (Federal) Texas.
CI84-450-000	82	23	United Gas Pipe Line Company	Block A-471, High Island Area, South Addition, Offshore (Federal) Texas.
CI84-451-000	83	24	Texas Eastern Transmission Corporation	Blocks A-289 & A-290, High Island Area, East Addition, South Extension, Offshore (Federal) Texas.
CI85-154-000	84	25	Florida Gas Transmission Company	Block 555, Matagorda Island Area, Offshore (Federal) Texas.

[1] Notice of Cancellation and Affidavit of Exclusion Under NGPA section 601(a)(1)(B) filed April 30, 1984—not yet officially notified of cancellation by Commission.

OTHER PROCEEDINGS:

In the Matter of Amerada Hess Corporation, et al., Docket No. GP85-4-000; Carnegie Natural Gas Company, CP85-735-000; Northern Natural Gas Company, CP85-710-000; Transcontinental Gas Pipe Line Corporation, GP84-53-000.

[FR Doc. 85-25572 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-498-001]

Eastern Kentucky Production Co.; Corporate Name Change

October 22, 1985.

Take notice that on October 7, 1985, Eastern Kentucky Production Company (Eastern Kentucky), of 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed a petition pursuant to §§ 154.91, *et seq.*, and §§ 157.23, *et seq.*, of the Regulations [18 CFR 154.91, *et seq.*, and 157.23 *et seq.* (1984)], requesting that the Commission amend the certificate of public convenience and necessity heretofore issued to KEPCO, Inc. and the related Gas Rate Schedule listed in the attached Exhibit II to reflect a change of name from KEPCO, Inc. to Eastern Kentucky Production Company.

Effective August 15, 1985, KEPCO, Inc. changed its name to Eastern Kentucky Production Company, as evidenced by the Certificate of Amendment To Articles of Incorporation dated July 24, 1985.

Notice is hereby given that the certificate of public convenience and necessity in docket No. CI84-498-001 issued to KEPCO, Inc. and the related Gas Rate Schedule listed in the attached Exhibit II are redesignated to reflet the corporate name change from KEPCO, Inc. to Eastern Kentucky Production Company.

Kenneth F. Plumb,

Secretary.

CERTIFICATE AND RATE SCHEDULE OF KEPCO, INC. FOR REDESIGNATION AS EASTERN KENTUCKY PRODUCTION COMPANY

Rate schedule No.	Docket No.	Purchaser
1	CI84-498-000	Kentucky West Virginia Gas Company.

[FR Doc. 85-25573 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS66-107 et al.]

Hamon Operating Co., a Texas Corp. (Hamon Oil Co.), et al.; Applications for "Small Producer" Certificates [1]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

October 21, 1985.

Any person desiring to be heard or to make protest with reference to said applications should on or before November 4, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS56-107	[1]9-10-85	Hamon Operating Company, a Texas Corporation (Hamon Oil Company), Republic Bank Tower, 325 North St. Paul, Suite 3900, Dallas, Texas 75201-3902.
CS71-382	[2]11-19-84	Bayou Production Company, Inc. a Louisiana Corporation (Charles O. Hardey), 982 Jordan Street, Shreveport, La. 71101-4393.
CS72-482	[3]9-9-85	Johnson Minerals Company (Butler-Johnson, Inc.), P.O. Box 4648, Shreveport, La. 71104.
CS76-103	[4]9-27-85	Virginia P. Armstrong (E.B. Armstrong), 3300 Belmead Lane, Tyler, Texas 75701.
CS76-106	[4]9-27-85	Lois Pollard & C. O. Pollard Testamentary Trust (C. O. Pollard), P.O. Box 6688, Tyler, Texas 75711.
CS76-206	[5]9-19-85	Bob R. Highfill, Wilda Mae Long, Reva Williams, Jack Highfill & Louis E. Highfill (Bennett R. Highfill), P.O. Box 529, Woodward, Okla. 73802.
CS85-96-000	9-16-85	G. & M. Gas and Oil, Rt. 4, Box 4-D, Midland, Texas 79701.
CS85-104-000	9-23-85	Sierra Production Company, 550 Westlake Park Blvd. Suite 350, Houston, Texas 77079.
CS85-105-000	9-13-85	Saba Energy, Inc., P.O. Box 9931, Midland, Texas 79707.
CS85-107-000	9-11-85	Beem Oil & Gas Company, 116 Heritage Drive, East, Tyler, Texas 75703.
CS85-108-000	9-9-85	University of Texas at Austin Law School Foundation, 727 East 26th Street, Austin, Texas 78705.
CS85-109-000	9-13-85	Bayou Resources, Inc., 1200 Milam Suite 300, Houston, Texas 77002.
CS85-110-000	9-13-85	Huthnance Energy Company & Vanguard Offshore Management Company, HEC-601 Jefferson Suite 500, Houston, Texas 77002 and VOMCO-3624 One Shell Square, 701 Poydras, New Orleans, La. 70139.
CS85-112-000	9-11-85	TPEX Exploration, Inc., 1536 Cole Blvd. #225, Golden, Colorado 80401.
CS85-113-000	9-16-85	Bank One Trust Co., 100 E. Broad, Columbus, Ohio 43271-0181.
CS85-114-000	9-19-85	Trio Oil Company, P.O. Box 799, Pampa, Texas 79066-0799.
CS85-115-000	9-30-85	W. & W. Oil Company, P.O. Box 458, Andrews, Texas 79714.
CS86-1-000	10-2-85	W. & T. Oil Properties, Inc., 828 Royal Suite 521, New Orleans, La. 70116.
CS86-2-000	10-7-85	Walling X Oil Co., Box 175, Whitoface, Texas 79379.
CS86-3-000	10-11-85	Desert Gulf Corporation, 11719 Rio Verde Ln., Houston, Texas 77044.
CS86-4-000	10-11-85	Greer & Bockhan Gas Co., Inc., One Dag Hammarskjold Plaza, New York, N.Y. 10017.

[1] Hamon Oil Company by instruments dated 8-9-85; effective 7-1-85, at 7:00 o'clock a.m., assigned and conveyed to Hamon Operating Company, a Texas Corporation all of its properties and assets, businesses and operations.

[2] Being noticed to reflect a name change.

[3] Mr. E.B. Armstrong is deceased and his interests have passed to his widow, Mrs. Virginia P. Armstrong and she has filed a small producer exemption application to be designated as certificate holder in Docket No. CS76-103.

[4] Mr. C.O. Pollard is deceased and his interests have passed to his widow (50%), and to the C.O. Pollard Testamentary Trust (50%) and they have filed a small producer exemption application to be designated as joint certificate holders in Docket No. CS76-106.

[5] Mr. Bennett Highfill is deceased and by Final Decree of his estate he transferred, conveyed and assigned unto said persons his oil, gas and other mineral rights under Docket No. CS76-206.

[FR Doc. 85-25574 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-19-000 et al.]

Electric Rate and Corporate Regulation Filings; Appalachian Power Co. et al.

October 21, 1985.

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Company

[Docket No. ER86-19-000]

Take notice that American Electric Power Service Corporation (AEP) on October 10, 1985 tendered for filing on behalf of its affiliate Appalachian Power Company (APCO), which is an AEP affiliated operating subsidiary, Modification No. 22 dated August 30, 1985 to the Interconnection Agreement dated February 1, 1948 between APCO and Virginia Electric and Power Company (VEPCO). The Commission has previously designated the 1948 Agreement as APCO's Rate Schedule FERC No. 16.

Modification No. 22 replaces the Emergency Service Schedule to modernize the terms and conditions of this schedule to be consistent with other emergency service schedules that APCO has on file with the Commission with other interconnected electric utility systems. This Emergency Schedule also includes a transmission demand rate (which is not yet presently in effect on the AEP system) of 2.75 mills per kilowatthour when APCO is the supplying party and 2.2 mills when VEPCO is the supplying party. This Modification also revises the provisions for Economy Energy by adding a 3.75 mills per kilowatthour minimum to APCO's multi-party Economy Energy rate, and updates the provisions for Non-Displacement Power and Energy by adding a 2.75 mills per kilowatthour demand charge for multi-party transmission when APCO is the supplying party and a 2.2 mills per kilowatthour demand charge when VEPCO is the supplying party.

AEP has requested that the Commission permit this Modification to become effective in two parts, allowing APCO's 2.75 mill per kilowatthour demand charge for multi-party Non-Displacement Power and Energy and 3.75 mill minimum on multi-party Economy Energy to become effective as of August 12, 1985 and the remainder of this Modification to become effective as of October 10, 1985. This request has been made so that APCO could participate in multi-party opportunity sales to VEPCO that would not have otherwise been made. APCO's rates in this Modification are consistent with the charges associated with the transmission demand rates APCO presently has in effect for Transmission Service, Limited Term Power, and Short Term Power services. These rates have previously been submitted and accepted for filing by the Commission for filing in numerous other AEP filings.

Copies of the filing were served upon Public Service Commission of West Virginia and the Virginia State Corporation Commission.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company

[Docket No. ER86-21-000]

Take notice that on October 15, 1985, The Connecticut Light and Power Company (CL&P) tendered for filing proposed rate schedules with respect to individual Transmission Agreements dated July 1, 1985 between (1) CL&P, Western Massachusetts Electric Company (WMECO) and Holyoke Water Power Company (HWP and together with CL&P and WMECO, the NU Companies) and each of the following:

Electric Division, Department of Public Utility, Town of Wallingford, Connecticut (Wallingford)

Electric Department, Third Taxing District of the City of Norwalk (Norwalk III)

South Norwalk Electric Works (South Norwalk)

CL&P states that the Transmission Agreements provide for transmission services to Wallingford, Norwalk III, and South Norwalk for the wheeling of their allocation of a portion of Connecticut's allocation of the New York Power Authority's hydroelectric power from the Niagara and St. Lawrence Projects during the period from July 1, 1985 to June 30, 1995.

The transmission charge rate is a monthly rate equal to one-twelfth of the estimated annual average cost of firm transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreements. The monthly transmission charge is determined by the product of

(i) the transmission charge rate ($/kW-month), and (ii) the number of kilowatts each company is entitled to receive during such month.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreements to become effective on July 1, 1985.

WMECO and HWP have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, HWP, Wallingford (Wallingford, Connecticut), Norwalk III (East Norwalk, Connecticut), and South Norwalk (South Norwalk, Connecticut).

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ER84-568-007]

Take notice that on October 8, 1985, Gulf States Utilities Company tendered for filing a compliance report showing a summary of the total refund including interest to each of its affected customers.

Comment date: October 31, 1985, in accordance with Standard Paragraph H at the end of this notice.

4. The Kansas power and Light Company

[Docket No. ER86-16-000]

Take notice that on October 10, 1985, The Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated October 3, 1985, with the City of Chapman, Chapman, Kansas for wholesale service to that community. KPL states that this contract permits the City of Chapman to receive service under rate schedule WSM-12/83 designated Supplement NO. 9 to R. S. FERC No. 176. The proposed effective date is November 1, 1985. 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 Chapman and the State Corporation Commission.

Comment date: October 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER86-15-000]

Take notice that on October 10, 1985, Pacific Gas and Electric Company (PGandE) tendered for filing changes to the rate schedules under the "Interconnection Agreement between Pacific Gas and Electric Company and the Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement).

The Interconnection Agreement provides the Northern California Power Agency (NCPA) with, among other services, firm transmission service between Points of Receipt and Points of Delivery. NCPA wishes to include additional Points of Receipt at the NCPA tap line from its geothermal projects and at PGandE's Lakeville Substation. The new Points of Receipt will allow NCPA to take delivery of power and energy from NCPA #2 and #3 Geothermal projects. Since NCPA #3 is scheduled to begin operation in October 1985, PGandE has requested a waiver of the Commission's notice requirements to permit the new Points of Receipt to be effective as of the date this filing is accepted by the Commission.

Comment date: October 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Power & Light Company, an Assumed Business name of PacifiCorp

[Docket No. ER86-25-000]

Take Notice that on October 15, 1985, Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing, in accordance with section 35.12 of the Commission's Regulations, Pacific's FERC Electric Tariff, Original Volume No. 5, Service Schedule LF-1.

Pacific requests this rate schedule to become effective November 17, 1983, which it claims is the date of commencement of service.

Copies of the filing were supplied to the Public Utility Commissioner of Oregon, the Bonneville Power Administration, and the Emerald People's Utility District.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER86-18-000]

Take notice that, on October 10, 1985, Southern California Edison Company (Edison) tendered for filing a change of rates for transmission service under the provisions of the Agreement for Delivery of Energy from the Solar Power Pilot Plant between Edison and the Department of Water and Power of the City of Los Angeles (Los Angeles). (Rate Schedule FERC No. 163).

These rate changes are proposed to become effective on minimum statutory notice; i.e., 60 days after receipt for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Department of Water and Power of the City of Los Angeles.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER86-20-000]

Take notice that, on October 15, 1985, Southern California Edison Compnay ("Edison") tendered for filing an extension of the arrangements between Edison and the Cities of Anaheim ("Anaheim") and Riverside ("Riverside") for the purchase of Replacement Capacity under the provisions of the following rate schedules:

	Rate schedule FERC No.
1. City of Anaheim	95
2. City of Riverside	94

Edison requests waiver of the Commission's prior notice requirement and an effective date of August 25, 1985, for these extensions.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER86-22-000]

Take notice that on October 15, 1985, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after October 31, 1984. This filing includes a revised Schedule 4 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows that the fourth quarter PCA adjustment to the current base ASC is 1.45 mills/kWh, which when combined with the base

ASC results in a net ASC rate effective for this period.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company

[Docket No. ER86-23-000]

Take notice that on October 15, 1985 Union Electric Company (UE) tendered for filing an Interchange Agreement dated August 29, 1985, between UE and Iowa Southern Utilities Company.

The Interchange Agreement, supersedes in its entirety an existing agreement and among other things, establishes the rights and obligations of the parties, the points of interconnections, the types of power and energy to be exchanged and the rates therefor.

UE requests that the filing be permitted to become effective December 1, 1985.

Comment date: October 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25335 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8626-001]

T.R. Owen; Notice of Surrender of Preliminary Permit

October 23, 1985.

Take notice that Mr. T.R. Owen, Permittee for the proposed Crane Creek Project No. 8626, has requested that his preliminary permit be terminated. The preliminary permit was issued on April 22, 1985, and would have expired on September 30, 1986. The project would have been located on Crane Creek in Mariposa County, California. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on September 27, 1985, and the preliminary permit for Project No. 8626 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-25575 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL86-5-000]

Public Service Co. of New Mexico; Notice of Filing

October 22, 1985.

Take notice that on October 18, 1985, Public Service Company of New Mexico ("Petitioner"), filed a Petition For An Order Disclaiming Jurisdiction pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission and section 203(a) of the Federal Power Act. Petitioner requests the following orders: (1) An order disclaiming jurisdiction over a sale and leaseback of a portion of Petitioner's interest in the Palo Verde nuclear generating station ("Palo Verde"); and (2) an order disclaiming jurisdiction over the proposed institutional investors, who would be owner participants under the lease documents (the "equity investors") and owner trustees (the "lessors") of Petitioner's Palo Verde interest and determining that the equity investors and lessors will not, as a result of their ownership interest in Palo Verde, become "public utilities" as that term is defined in section 201(e) of the Federal Power Act.

Petitioner is an electric utility incorporated in the State of New Mexico, with its principal office in Albuquerque, New Mexico. Petitioner owns a 10.2 percent interest in Palo Verde and proposes to sell up to all of its interest in Palo Verde Unit 1 and one-third of its interest in related common facilities. Petitioner states that the facilities to be sold and leased back are generating facilities, and that the equity investors and lessors of Petitioner's interest will purchase and lease back that interest solely as an investment. Petitioner further states that after the sale to the equity investors and lessors and the simultaneous leaseback to Petitioner, the equity investors and lessors will assert no operating control over the facilities and the facilities will be used for the same purposes as previously contemplated by Petitioner.

Palo Verde Unit No. 1 was synchronized with Petitioner's main transmission grid on June 10, 1985. The purchase price for the subject facilities is estimated at up to approximately $400,000,000. Petitioner requests an order from the Commission on or before November 15, 1985, in order for public debt to be marketed prior to the end of the calendar year.

Any person desiring to be heard or to protest said petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211 (1985). All such motions or protests should be filed on or before October 31, 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 the petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-25576 Filed 10-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI83-269-043 et al.]

Tenneco Oil Co. et al.; Petition to Amend Certificate of Public Convenience and Necessity and Request for Expedited Action

October 21, 1985.

Take notice that on October 10, 1985, Tenneco Oil Company, Houston Oil &

Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration, II, Ltd. TINCO, Ltd., and Tenneco West, Inc. (hereinafter Applicant) filed a petition pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the provisions of 18 CFR Parts 157 and Rule 207 seeking an amendment of the certificate of public convenience and necessity authorizing Applicant's special marketing program called TENNEFLEX to (1) extend the term thereof and (2) remove limitations on the customer eligibility criteria. Applicant requests an extension of the TENNEFLEX Program to the earlier of (1) April 30, 1986, (2) the effective date of a certificate issued to and accepted by Applicant in Docket No. CI85–633–000. The modification requested by Applicant is to remove the restrictions on eligibility criteria for purchases under the TENNEFLEX Program. In particular, Applicant requests expansion of the customer eligibility criteria to eliminate the limitation on access of firm sales customers to a maximum of 10% of the firm contract entitlement with a releasing pipeline.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 28, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–25577 Filed 10–24–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–177–007]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 22, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 16, 1985 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following sheets:

First Revised Sheet No. 16
Second Revised Sheet No. 17
First Revised Sheet No. 22
First Revised Sheet No. 24
First Revised Sheet No. 41
Second Revised Sheet No. 42
Original Sheet No. 78A

On July 31, 1985, Texas Eastern filed revised tariff sheets with a proposed effective date of September 1, 1985 in Docket No. RP85–177 proposing decreased rates and other tariff changes in its FERC Gas Tariff. The rates reflected in such filing as reflected on Sheet No. 14 reflect a modified fixed variable rate design and an allocation of demand cost based on peak and annual consumption; i.e., Demand-1 and Demand-2 charges. This was the rate design and allocation prescribed by the Commission in its July 12, 1985 Order in Docket Nos. RP83–85, *et al.*

On August 30, 1985, the Commission issued an Order accepting for filing and suspending proposed tariff sheets subject to refund and conditions and establishing rehearing in Docket No. RP85–177. The purpose of this filing is to comply with such August 30, 1985 Order in Docket No. RP85–177 with respect to the D–1 and D–2 charges set forth in Sheet No. 14 of Texas Eastern's Gas Tariff made effective September 1, 1985. This filing has been made necessary by the Commission's action in Docket Nos. RP83–35, *et al.* Texas Eastern there filed a compliance filing which was rejected as premature by the Commission. Texas Eastern, as recognized by the Commission in rejecting the filing, had no basis for anticipating that this would occur and the instant filing is in order to remedy that problem and comply with the August 30, 1985 Order.

The proposed effective date of the subject tariff sheets is September 1, 1985 pursuant to the Commission's instructions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 29, 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–25578 Filed 10–24–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of September 13 Through September 20, 1985

During the Week of September 13 through September 20, 1985, the appeal and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occures first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 13 through Sept. 20, 1985]

Date	Name and Location of applicant	Case No.	Type of submission
Sept. 17, 1985	Economic Regulatory Administration, Washington, D.C.	HRD-0301	Motion for discovery. If granted: Discovery would be granted in connection with the Statement of Objections submitted by Eason Oil Company in response to a Proposed Remedial Order (Case No. HRO-0254) issued to the firm.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Sept. 13 through Sept. 20, 1985]

Date	Name and Location of applicant	Case No.	Type of submission
Sept. 18, 1985	Volpe, Boskey & Lyons, Washington, D.C.	HFA-0312	Appeal of information request denial. If granted: Volpe, Boskey & Lyons would receive access to copies of any documents showing the Department of Energy's interpretation of the "Closure and Post Closure" language in its option FY 1982 contract with Eagle-Picher Industries at the time the contract was made.
Sept. 19, 1985	Bassman, Mitchell & Alfano, Washington, D.C.	HEJ-0053	Protective order. If granted: The Office of Hearings and Appeals would issue as a final Decision and Order a Protective Order entered into by Bassman, Mitchell & Alfano and the Mobil Oil Corporation, concerning Mobil Oil Corporation's average selling prices between July 1975 through December 1977.
Sept. 20, 1985	Corum Energy Corporation, Washington, D.C.	HRD-0302 and HRH-030	Motion for discovery and evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing convened in connection with a Statement of Objections submitted by Corum Energy Corporation in response to the January 18, 1983 Proposed Remedial Order (Case No. HRO-0125) issued to the firm.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 13 to Sept. 20, 1985]

Date Received	Name of Refund Proceeding/ name of refund applicant	Case No.
9/16/85	Allied Materials/Kelly Oil Company.	RF194-3
9/16/85	Boswell/Reilly Tar & Chemical Corp.	RF179-8
9/16/85	Red Triangle/John F. Patterson	RF178-18
9/16/85	F.O. Fletcher/Powell Distributing	RF172-13
9/16/85	Allied Materials/Schulte Oil Co	RF194-2
9/16/85	Field/Norwood E. "Woody" Pendleton.	RF173-7
9/16/85	Harris/Grace Oil Company	RF193-4
9/16/85	Champlain/Leffler's Store	RF187-5
9/16/85	Red Triangle/John Twain Bankston.	RF178-19
9/16/85	True/Black Thunder Marketing, Inc.	RF195-1
9/17/85	Aminoil/Harper Propane Service	RF139-138
9/17/85	Red Triangle/Bill's Service	RF178-20
9/17/85	Saber/Land O' Lakes	RF192-2
9/6/85	Champlain/Walt's Citgo	RF187-6
9/18/85	Amoco/Wisconsin	RQ21-233
9/18/85	Boswell/Quaker State Oil Refining Corporation.	RF179-9
9/18/85	F.O. Fletcher/Burien Fuel Company.	RF172-14
9/18/85	Boswell/General Motors Corporation.	RF179-10
9/19/85	F.O. Fletcher/Fill-Up Stations, Inc.	RF172-15
9/19/85	St. James/Beaver Coal & Oil Company.	RF180-28
9/19/85	Gulf/Phil Palma	RF40-3051

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 13 to Sept. 20, 1985]

Date Received	Name of Refund Proceeding/ name of refund applicant	Case No.
9/19/85	Boswell/Emery Chemicals	RF179-11
9/19/85	Field/Mini Mart	RF173-8
9/19/85	Good Hope/Val-Cap, inc	RF189-5
9/20/85	F.O. Fletcher/Blue & White Transport, Inc.	RF172-16
9/20/85	Arkla Chemical/Halliburton Company.	RF153-24
9/20/85	Sid Richardson/Avon LP Gas Company.	RF26-21
9/20/85	Aminoil/Dalton Gas, Inc	RF139-139
9/20/85	APCO/George's APCO	RF183-145
9/20/85	F.O. Fletcher/Clements Oil Company.	RF172-17
9/20/85	F.O. Fletcher/I.D. Johnson & Co.	RF172-18
9/20/85	F.O. Fletcher/Lynch Oil Company.	RF172-19
9/20/85	F.O. Fletcher/Bill's Auto Service	RF172-20
9/20/85	Field/Jenson's Service	RF173-9
9/20/85	Glaser/Henderson Propane Company.	RF174-3
9/20/85	Inland/Charles Browder Marine	RF176-13
9/20/85	Inland/Sieveking Company, Inc.	RF176-14
9/20/85	Ideal/Burns Propane Gas Service.	RF186-2
9/20/85	Endicott/John Hull	RF188-2

[FR Doc. 85-25465 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of September 20 Through September 27, 1985

During the Week of September 20 through September 27, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 20 Through Sept. 27, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 23, 1985	Barbier Oil and Supply Company, East Tawas, Michigan	HEE-0168	Exception to the reporting requirements. If granted: Barbier Oil and Supply Company would not be required to file certain EIA reporting forms.
Sept. 25, 1985	Bob's Oil Company, Martin, South Dakota	HOF-0562	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement the Second Stage Refund Procedures in Bob's Oil Company (Case No. HEF-0039) proceeding.
Do	Phelps Energy Company, Inc., Burnside, Kentucky	HEF-0169	Exception to the reporting requirements. If granted: Phelps Energy Company, Inc. would not be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".

REFUND APPLICATIONS RECEIVED

[Week of Sept. 20 to Sept. 27, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case number
9/23/85	F.O. Fletcher/Merritt Traux Oil Co.	RF172-21
9/23/85	Inland/Bi-Rite Petroleum, Ltd	RF176-15

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 20 to Sept. 27, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case number
9/23/85	Ayers/Kerr-McGee Corporation	RF177-4
9/23/85	St. James/Joseph Ingle & Sons	RF180-29

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 20 to Sept. 27, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case number
9/23/85	Sid Richardson/Evans Oil & Gas, Inc.	RF26-22

REFUND APPLICATIONS RECEIVED—Continued

[Week of Sept. 20 to Sept. 27, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case number
9/24/85	Allied Materials/Great Plains Oil Co.	RF194-4
9/24/85	F.O. Fletcher/Franklin Oil Company	RF172-22
9/24/85	F.O. Fletcher/C.B. Oil Company	RF172-23
9/24/85	St. James/Global Petroleum Corporation.	RF180-30
9/24/85	True/Texaco, Inc	RF195-2
9/25/85	Field/Bill Olson's	RF173-10
9/26/85	St. James/W.H. Riley & Son, Inc	RF180-31
9/23/85	Red Triangle/Jim D. McBee	RF178-21
9/26/85	Husky/Allen's Inc	RF161-77
9/26/85	Husky/Seger Oil Company, Inc	RF161-78
9/26/85	LARCO/Madan Oil Company	RF112-181
9/27/85	Gulf/Al Raynor's Service	RF40-3052
9/27/85	Champlain/Wolcott Garage	RF187-7
9/25/85	Gulf/Pollock's Gulf Service	RF40-3053
9/27/85	Tiger/Wonas Reed & Rental	RF196-1
6/12/85	Kingston/David Rubin	RF197-1
9/24/85	National Helium/Washington	RQ3-234
9/24/85	Perry Gas/Washington	RQ183-235
9/24/85	Colline/Washington	RQ2-236

[FR Doc. 85-25486 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $9,719 (plus accrued interest) obtained as the result of a consent order which the DOE entered into with Blaylock Oil Company, Inc. (Case No. HEF-0037), located in Homestead, Florida. The funds will be available to customers that purchased Blaylock motor gasoline during the period October 1, 1979 through December 31, 1979.

DATE AND ADDRESS: Applications for refund of a portion of the Blaylock consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Blaylock Oil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0037.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a consent order entered into by Blaylock Oil Company, Inc. (Blaylock) which settled possible pricing violations with respect to the firm's sales of motor gasoline during the period October 1, 1979 through December 31, 1979. Under the terms of the consent order, $9,719 has been remitted by Blaylock and is being held in an interest-earning escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two-stage refund procedures and solicited comments from interested parties concerning the proper disposition of the Blaylock consent order funds. The Proposed Decision and Order discussing the distribution of the funds remitted by the consent order firms was issued on July 17, 1985. 50 FR 30749 (July 29, 1985).

The Decision and Order published with this Notice reflects an analysis of comments received from interested parties. As the Decision indicates, applications for refunds from the Baylock consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased motor gasoline from Baylock during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: October 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

October 10, 1985.

Name of Firm: Blaylock Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0037.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office o. Hearings and Appeals (OHA) of the DOE in connection with a Consent Order entered into with Blaylock Oil Company, Inc. (Blaylock). The Petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

Blaylock is a "reseller-retailer" of refined petroleum products as that term was defined at 10 CFR 212.31, and is located in Homestead, Florida. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Blaylock's records revealed possible regulatory violations with respect to the firm's pricing of motor gasoline during the period October 1, 1979 through December 31, 1979 (the audit period). In order to settle all claims and disputes between Blaylock and the DOE regarding the firm's sales of motor gasoline during that three-month period, Blaylock and the DOE entered into a Consent Order on October 15, 1981 in which Blaylock agreed to remit to the DOE $9,719 to be disposited into an interest-bearing escrow account for ultimate distribution "in a just and equitable manner in accordance with applicable laws and regulations." Consent Order ¶ 5. By its terms, the Blaylock Consent Order constitutes neither an admission by Blaylock nor a finding by the DOE that Blaylock violated the price regulations during the audit period. This Decision and Order concerns the distribution of the $9,719 consent order amount, which is currently held in a DOE escrow account, plus accrued interest.

On July 17, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by Blaylock's alleged overcharges. *See Blaylock Oil Co.*, Case No. HEF-0037 (July 17, 1985) (proposed decision), 50 FR 30749 (July 29, 1985).[1] In the PDO, we

[1] Previously, on February 7, 1984, the OHA had issued a PDO tentatively establishing procedures for the distribution of the escrowed Blaylock consent order funds. However, on June 5, 1984, a United States District Court granted in part an Application for Preliminary Injunction filed by Blaylock and directed the DOE to delay this special refund proceeding until such time as the language in the PDO was modified in accordance with the court's decision. *Blaylock Oil Co.* v. *DOE*, Fed.

Continued

described a two-stage process for distribution of the Blaylock consent order funds. Specifically, we proposed to distribute funds in the first stage to claimants who could demonstrate that they were injured by Blaylock's alleged overcharges during the consent order period. We further stated that any money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the Blaylock refund process. This Decision sets forth the information that a purchaser of Blaylock motor gasoline should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO.[2] We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*). It would therefore be premature for us to address issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious first-stage claims have been paid.

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. It is DOE policy to use the Subpart V process to distribute such funds. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶ 82.597 (1981) (*Vickers*).

We have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Blaylock consent order funds. We will therefore grant the ERA's petition and assume jurisdiction over these funds.

III. Determination of Injury and Refund Amounts

Potentials claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers) of Blaylock motor gasoline, and (ii) firms, individuals, or organizations that were consumers of Blaylock motor gasoline. The motor gasoline will have been purchased either directly from Blaylock or in a chain of distribution leading back to Blaylock. As explained below, the consent order funds shall be distributed to eligible claimants who demonstrate that they were injured by Blaylock's alleged overcharges.

In the PDO, we proposed to adopt certain presumptions pursuant to 10 CFR 205.282(e) in order that refunds might be distributed efficiently and equitably. First, we proposed to adopt a presumption that the alleged overcharges were dispersed equally in all of Blaylock's sales during the consent order period. OHA has referred to this presumption in the past as a volumeteric refund amount. Since we have received no comments in opposition to it, we shall adopt the volumetric presumption in this proceeding. To determine the per gallon volumetric factor in the instant proceeding, the $9,719 consent order amount will be divided by the total volume of motor gasoline Blaylock sold during the consent order period. Using the information available to us at the present time, the volumetric amount in this proceeding will be $0.00459 per gallon ($9,719 divided by 2,116,189 gallons of motor gasoline). Refunds will be calculated by multiplying the volumetric factor by the total amount of motor gasoline that an applicant purchased from Blaylock. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

The second presumption we proposed to establish was a presumption of injury for small claims under which resellers whose claims did not exceed $5,000 would be presumed to have absorbed any overcharges and would be exempted from the general requirement that resellers make a detailed demonstration that they did not pass through to their own customers the increased costs associated with the alleged overcharges.

The State of Texas filed comments in opposition to our proposed presumption of injury for small claims. Texas contends that the Subpart V regulations require persons to establish injury as a result of an alleged regulatory violation in order to be eligible for a refund. Texas further argues that presumptions of any kind can only be utilized after the claimant has successfully proven injury. According to Texas, presumptions may be applied to determine the amount of a refund, but are not permitted to be used to establish injury. Texas also contends that a reseller that has not proven that it did not pass through alleged overcharges to its own customers has not established that it had "clean hands" and is therefore not permitted to participate in an equitable special refunds proceeding.

We cannot accept Texas' position. As an initial matter, the State's contention that OHA may not adopt a presumption of injury is without merit. Section 205.282(e) of the Subpart V regulations specifically authorizes the use of presumptions in order to promote efficiency and equity and to resolve insofar as practicable all outstanding claims. *See* 10 CFR 205.282(e). The only authority Texas cites in support of its assertions is a passage from the preamble to the Subpart V regulations concerning the establishment of *irrebuttable* presumptions. *See Federal Energy Guidelines* (*Regulations Preambles* 1974–1981) ¶ 40,408 at 40,979–43. The preamble points out that the use of *irrebutable* presumptions should be carefully limited because they could adversely affect the rights of some parties. The presumption of injury we discussed in the PDO is rebuttable, however. We have refused to apply the presumption of injury and have denied refunds in cases where resellers have submitted information that shows that they did not absorb alleged overcharges or were otherwise uninjured by a consent order firm's pricing practices. *See Standard Oil Co., (Indiana)/ Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 (1985); *Vickers Energy Corp./*

Energy Guidelines (Court Decisions 1981–1984) ¶ 26,500 (N.D. GA. 1984). A second PDO was issued on July 12, 1984, but was rescinded on July 26, 1984. On April 30, 1985, Blaylock and the DOE entered into a settlement of the pending court case, resulting in its dismissal. Under the terms of that settlement, the DOE is free to proceed with the implementation of Subpart V procedures to distribute the Blaylock consent order funds.

[2] We have not received any comments in response to the July 17, 1985 PDO. We did, however, receive comments in response to the first two PDOs and, with the exception discussed below, those comments will be addressed here. As we noted in the July 17, PDO, we shall not address the comments filed by Blaylock in response to the February 7, 1984 PDO. Those comments primarily set forth Blaylock's opposition to our exercise of jurisdiction in this case. In the April 30, 1985 settlement with the DOE (*see* n.1), Blaylock explicitly waived opposition to the DOE's processing of claims in this proceeding. Moreover, in another proceeding, we have recently considered and rejected contention similar to those advanced by Blaylock, and we will not restate that discussion here. *See E.M. Bailey Distributing Co.*, 13 DOE ¶ 85,049 (1985).

Standard Oil Co., 10 DOE ¶ 85,036 (1982); *Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

Moreover, we reject Texas' claim that the "clean hands" doctrine bars refunds to reseller claimants in special refund proceedings in the absence of a detailed demonstration of injury. That doctrine states that persons who have engaged in improper conduct are barred from receiving equitable relief. While the clean hands doctrine may be applied in Subpart V proceedings, *see, e.g., Tenneco Oil Co./Kern Oil & Refining Co.*, 10 DOE ¶ 85,022 at 88,098, and *Illinois Gasoline Dealers Association*, 13 DOE ¶ 85,114 (1985), it should not be applied automatically to all reseller applicants. Since the reseller price rule at 10 CFR 212.93 permitted the recoupment of all increased product costs, a reseller would not have acted improperly in passing through its increased product costs to its customers. Our focus in determining whether a refund applicant was injured is therefore not the propriety of the applicant's actions but the degree to which alleged overcharges were absorbed by that applicant.

The DOE procedural regulations expressly permit the use of presumptions in refund proceedings precisely because of the perplexing problems inherent in reconstructing pricing practices during past periods. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,207 (1982). As we have stated in the PDO, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of the alleged overcharges, which in this case took place six years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to use its limited resources more efficently. We therefore reject Texas' contentions.

Under the small claims presumption we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes unless its volumetric refund exceeds $5,000.[3] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) (*Aztex*). In light of the fact that the escrow amount in this proceeding is relatively small, we find it probable that all reseller claimants will fall under the threshold level.[4]

In addition to the presumptions we are adopting in this proceeding, we are making a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled by the Blaylock Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of motor gasoline on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of motor gasoline covered by the Blaylock Consent Order need only report their purchase volumes from Blaylock in order to make a sufficient showing that they were injured by the alleged overcharges.

We shall also establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.282(b).

[3] Resellers that were spot purchasers from Blaylock will be ineligible to receive any refunds, even refunds below the threshold level, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a purchaser generally would not have made spot market purchases at increased prices unless it was able to pass through to its customers the full amount of those prices. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

[4] Should any recaller claim a refund in excess of $5,000, it will be required to provide a detailed demonstration that it absorbed the alleged overcharges. *See Aztex*, 12 DOE at 88,354.

IV. Application for Refund Procedures

After having considered the comments received concerning the first-stage procedures tentatively adopted in our July 17, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Blaylock motor gasoline during the consent order period. Applications must be postmarked within 90 days after publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Blaylock Oil Company Consent Order Fund, Case No. HEF-0037.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Blaylock Oil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Blaylock consent order funds, the following subjects should be covered in applications for refund:

A. Each applicant should report its purchase volumes of Blaylock motor gasoline by month for the period of time it is claiming it was injured by the alleged overcharges.

B. Each applicant should specify how it used the Blaylock motor gasoline—i.e., whether it was a reseller or an end-user.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(i) State whether it maintained banks of unrecouped increased product costs from the date of the alleged violation until the product was decontrolled. It should furnish OHA with quarterly bank calculations; [5]

(ii) Submit evidence to establish that it did not pass on the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. Each applicant should report whether it is or has been involved as a part in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Blaylock Oil Company, Inc. pursuant to the Consent Order executed on October 15, 1981 may now be filed.

(2) All applications must be filed no later then 90 days after publication of this Decision and Order in the Federal Register.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: October 10, 1985.

[FR Doc. 85-25488 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to eligible claimants a total of $10,938,130.18 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Earth Resources Company/Delta Refining Company. The funds are being held in escrow following settlement of all claims and disputes arising from an audit by the Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed by November 25, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0205.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION:

In accordance with 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $10,938,130.18 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Earth Resources Company/Delta Refining Company (ERC) on November 26, 1980. The funds were provided to the DOE by the firm in order to settle all claims which the Economic Regulatory Administration could have pursued under the DOE price and allocation regulations relating to transactions by ERC involving the production, refining, and marketing of petroleum products during the period August 19, 1973 through January 28, 1981 (the consent order period).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by ERC. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased refined petroleum products from ERC during the consent order period. The Proposed Decision and Order provides that in order to be entitled to receive any portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that the claimant was injured by the alleged unlawful prices for covered products charged by ERC. This evidence includes specific documentation concerning the date, place, price, and volume of product purchases, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered.

The Proposed Decision and Order also refers to the distribution in a second-stage proceeding of any funds remaining after all valid claims are paid. The DOE solicits comments on any proposals that claimants may suggest for this second-stage distribution.

Until final procedures are adopted, no claims for refunds will be accepted. Applications for Refund, therefore, should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments should be submitted by November 25, 1985, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC, between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 11, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

October 11, 1985

Name of Case: Earth Resources Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0205.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Earth Resources Company (ERC). Under the terms of the consent order, ERC agreed to refund a

[5] The bank requirement for retailers was eliminated in the amendments to the retailer price rule effective July 15, 1979. 44 FR 42542 (July 19, 1979). Therefore, no showing of cost banks will be required of motor gasoline retailers in this proceeding.

total of $15.3 million, including payments to the DOE, in settlement of all civil and administrative claims by the DOE relating to ERC's compliance with the federal petroleum price and allocation regulations applicable to refiners of petroleum products during the period from August 19, 1973 through January 28, 1981 (the consent order period).

I. Background

ERC was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, ERC was engaged in the production, refining, and marketing of products covered by the federal petroleum price and allocation regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[1]

The ERA audited ERC to determine the firm's compliance with these regulations. In the course of the audit process, ERC entered into a consent order with the DOE, whereby the firm agreed to refund a total of $15.3 million to various parties to resolve all issues regarding ERC's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 45 FR 81256 (1980). Comments were filed by seven interested parties. The proposed consent order was adopted without modification as a final order of the DOE on January 27, 1981. 46 FR 8647 (1981).

The consent order set forth various methods of refunding the settlement funds to different categories of ERC customers. ERC paid refunds to retail purchasers of motor gasoline at company-owned stations by instituting a $5 million price reduction through these situations.[2] ERC also agreed to make $1,674,000 in refund payments to another ultimate consumer, the United States Defense Fuel Supply Center (DFSC).[3] ERC paid the sum of $7,875,000 into a DOE escrow account for distribution to all other purchasers of ERC's refined petroleum products. Finally, in settlement of alleged violations of the DOE Crude Oil Entitlements Program, ERC paid $262,000 into the DOE escrow account.[4]

II. Jurisdiction to Fashion Refund Procedures

The Subpart V process may be used in situations where the DOE is unable to readily identify the persons who may be eligible to receive refunds as a result of enforcement proceedings or to readily ascertain the amounts that such persons should receive. 10 CFR 205.280. Subpart V authorizes the OHA, upon request by an appropriate DOE enforcement official, to fashion special procedures to distribute moneys obtained as part of a settlement agreement. 10 CFR 205.281–205.282. After reviewing the record in this proceeding, we have determined that the implementation of Subpart V procedures is appropriate. There is a significant degree of difficulty in identifying the purchasers who may have been injured by ERC's pricing practices. In addition, the alleged overcharges were associated with the price methodology of a refiner, so that any impact likely was spread throughout a broad range of customers. Furthermore, for a large portion of the consent order fund, it is difficult to ascertain the proper amount of refunds to identifiable indured parties. Therefore, the provisions of Subpart V provide a very useful mechanism for refunding money to parties likely to have been injured by the alleged violations. Accordingly, the OHA will accept jurisdiction of the funds received by the DOE pursuant to the ERC consent order.

III. Proposed Refund Procedures

A. Crude Oil Claims

The ERC consent order resolves the firm's alleged violations of both the petroleum price and allocation regulations. As stated *supra*, with regard to the crude oil regulations, the consent order stipulated that ERC pay $626,000 to the DOE in settlement of allegations concerning ERC's compliance with the DOE Crude Oil Entitlements Program. This figure represents funds to be set aside to provide restitution for the effects of ERC's alleged Entitlements Program violations.

Recently we found that it is impossible to trace to the ultimate victims the effects of crude oil overcharges spread by the Entitlements Program. Report of the Office of Hearings and Appeals, *In re: the Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 19 1985). *See also VGS Corporation, et al.*, 13 DOE ¶ 85,165 at 88,449 (1985). Based on this report, the DOE issued a policy statement recommending that the Congress of the United States formulate a means for distributing the crude oil overcharge funds to the general public on an indirect basis. 50 FR 27400 (July 2, 1985). The DOE further recommend that if Congress does not enact a plan for indirect restitution by the Fall of 1986, the funds should be paid to the United States Treasury. In view of the DOE's recommendation, the OHA announced that it intends to place all crude oil funds received pursuant to Subpart V into an escrow account for similar indirect distribution. 50 FR at 27403. We propose that the crude oil portion of the ERC consent order fund—$626,000 plus accrued interest—be pooled with other crude oil consent order funds for indirect distribution.

B. Refined Products Claims

1. Refunds to Identifiable Purchasers

The remaining $10,312,130.18 plus interest in the consent order fund relates to ERC's alleged violations of refined products pricing and allocation regulations. During the first stage in the refund process, the consent order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by ERC's alleged overcharges in sales of covered products. The claims procedures we propose to implement are set forth below. In addition, as in many prior special refund cases, we propose adoption of certain presumptions. First, we will tentatively adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by ERC during the consent order period. We therefore propose to calculate refunds based on a per-gallon, volumetric refund amount. Second, we will propose a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

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[1] ERC marketed all of its petroleum products under the name Delta Refining Company. On November 13, 1980, MAPCO, Inc. (MAPCO) acquired more than 50 percent of ERC's outstanding capital stock, and ERC was merged fully into MAPCO soon thereafter. However, the consent order with ERC only pertains to sales by ERC as an independent entity.

[2] A Portion of the $5,000,000 price reduction to retail gasoline purchasers was never implemented due to the deregulation of petroleum products on January 28, 1981. *See* Executive Order 12287, 46 FR 9909 (January 30, 1981). This portion—$896,496.51—was deposited into the DOE escrow account established for the ERC consent order.

[3] As of March 31, 1982, ERC had paid $356,521.89 in credit to FSC. On April 1, 1982, however, ERC deposited the remaining $1,540,631.67 due DFSC (including interest accrued since the beginning of the credit payment period) into the DOE escrow account. As discussed *infra*, we have determined that DFSC, as an ultimate consumer of ERC products, is entitled to this sum plus accrued interest.

[4] As of August 30, 1985, the ERC consent order escrow account contained $10,938,130.18 in principal and $4,677,689.74 in accumulated interest, for a total of $15,615,819.92 (hereinafter referred to as the consent order fund).

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable to OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons bought from ERC during the consent order period, August 19, 1973 through January 28, 1981, multiplied by a volumetric percentage. This percentage is computed by dividing the total amount of consent order funds available for refined products claims by the total number of gallons of covered products sold by ERC during the consent order period.[5] In addition, the interest which has accrued to the consent order fund will be applied to each paid refund on a pro rata basis. Finally, we intend to set a minimum refund amount to potential claimants. In prior proceedings, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See Office of Special Counsel*, 10 DOE § 85,048 at 88,214 (1982). We will utilize the same minimum refund amount in this case.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by ERC were spread equally over all gallons of product marketed by the firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of ERC's pricing practices during the consent order period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE § 85,054 (1984), and cases cited therein at 88,164.

As stated *supra*, the consent order stipulated that ERC pay credit in the amount of $1,674,000 to DFSC, an ultimate consumer of ERC jet fuel. However, the credit payments were never completed, and MAPCO, ERC's successor, paid the unpaid credit amount to the DOE escrow account. *See* Note 3 *supra*. We propose that DFSC be eligible to receive this full unpaid credit amount, plus accumulated interest, instead of a refund based on the volumetric methodology discussed above. By providing for a refund payment to DFSC, the consent order both identified DFSC as a likely injured party and provided a measure of the appropriate amount of restitution. We therefore believe that allowing DFSC to apply for the unpaid credit amount conforms best with the intent of the consent order and the purpose of a Subpart V refund proceeding.

We propose that reseller and retailer purchasers of ERC products seeking refunds totalling $5,000 or less based on the volumetric presumption will not be required to provide a detailed demonstration of injury resulting from the alleged overcharges. The presumption that these claimants seeking smaller refunds were injured by the pricing practices settled in the consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the ERC alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a reseller or retailer claimant seeking a volumetric refund will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the early years of the consent order period are long past, the cost of compiling sufficient data is probably quite high, and the potential refund amounts are low, we believe that $5,000 is a reasonable threshold value. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE § 85,226 (1984), and cases cited therein.

We propose that a reseller or retailer which claims a total refund in excess of $5,000 be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm may be required generally to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of ERC petroleum products must show that is maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,009 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE § 85,009 (1982). If actual, contemporaneously calculated cost banks are not available due to specific circumstances, we will accept other types of information which conclusively prove the existence of cost banks during the consent order period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *Bayou State Oil Corporation*, 12 DOE § 85,197 (1985). *See also Tenneco Oil Company/*

[5] We are awaiting data to be provided by the Energy Information Administration as to ERC's sales of refined products during the consent order period. This material will supplement the incomplete sales information contained in files compiled during the audit of ERC, and will enable us to calculate the volumetric refund amount to be distributed on a per-gallon basis to successful claimants in this proceeding. The volumetric amount will be included in a final Decision and Order, at which point potential claimants will be able to compute the refund amounts for which they may qualify.

Northern Petroleum, Inc., 13 DOE ¶ ——, No. RF7–126 (September 27, 1985).[6]

We find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administraton: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that downstream end-user purchasers of a consent order firm's petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applications from firms regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of the alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultrual cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from ERC to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538. However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

[6] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE § 82,587 at 85,396 (1981).

As in previous cases, we propose that there is a class of potential claimants who may be presumed to have suffered no injury from the alleged overcharges. Those parties are firms that made spot purchases of ERC petroleum products.[7] *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers*:

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchase of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase of their own customers.

8 DOE at 85,396–97. We believe that the same rationale applies in this case. Consequently, we propose to establish a rebuttable presumption that spot purchasers were not injured by the pricing practices resolved in the consent orders. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to ERC.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim in accordance with the presumptions outlined above, including, where necessary, specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in a final Decision and Order. *See Vickers*. Before disposing of any of the consent order funds, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim. Purchasers of covered products who filed claims in response to the original consent order notice in the **Federal Register** will be informed of these refund procedures by mail, as will parties which have previously expressed their interest in this proceeding to the DOE. As a final matter, we note that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchases also will be considered. Such applications will be evaluated on a case-by-case basis.

[7] We will except from this principle cooperative organizations which made spot purchases of products from ERC And resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who, as ultimate consumers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶ 82,538 (1982) at 85,293. *See, e.g.*, Anadarko Production Co./Cities Service CO., 12 DOE ¶ 85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of ERC products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

2. Distribution of the Remainder of the Consent Order Fund

After all meritorious claimants have received an appropriate refund, it is possible that the consent order funds may not be exhausted. Any remaining funds should be distributed during a second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. However, any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As was noted in *Vickers*:

> [Such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE 85,397. We will consider any comments received regarding second-stage alternatives and then issue a final Decision and Order establishing procedures for the first stage. In that decision, we will solicit another round of comments on the distribution of the funds that may remain after payment of claims in the first stage. In this way, we will have adequate opportunity to consider the oustanding issues before reaching a final decision on the second stage.

It is therefore ordered that:

The funds remitted to the Department of Energy by Earth Resources Company pursuant to the consent order finalized on January 27, 1981 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85–25489 Filed 10–24–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy

announces the procedures for disbursement of $110,925 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Consumers Oil Company of Rosemead, California. The funds will be available to Powerine Oil Company and any customers who purchased No. 2 oils from Powerine during the period October 1, 1973 through June 30, 1976.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the Federal Register and should be addressed to: Consumers Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0055.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Consumers Oil Company (Consumers) of Rosemead, California. This Consent Order settled possible pricing violations with respect to Consumers' sales of gas oil, diesel fuel, and motor gasoline during the period October 1, 1973 through September 30, 1976 (the audit period). Under the terms of the Consent Order, Consumers remitted $110,925 to the DOE. This amount is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Consumers consent order fund. The Proposed Decision and Order discussing the distribution of the consent order fund was issued on April 16, 1985. 50 FR 15968 (April 23, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Applications will be accepted from Powerine Oil Company and any customers who purchased No. 2 oils from Powerine during the period October 1, 1973 through June 30, 1976. The specific information required in an application for refund is set forth in Section VI of the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: October 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 11, 1985.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Consumers Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0055.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petiton for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Consumers Oil Company (Consumers) of Rosemead, California.

I. Background

Consumers Oil Company is a "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. An ERA audit of Consumer's operations during the period October 1, 1973 through September 30, 1976 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Notice of Probable Violation (NOPV) issued to Consumers on January 3, 1979, the ERA alleged that during the audit period Consumers overcharged its customers by $2,542,131. In order to settle all claims and disputes between Consumers and the DOE regarding Consumers' compliance with the DOE price regulations in sales of gas oil, diesel fuel, and motor gasoline during the audit period, the firm entered into a Consent Order with the DOE on May 29, 1980. Under the terms of the Consent Order, Consumers agreed to the following: (1) To issue direct refunds totalling $347,437 by cash or credit memoranda to gas oil and diesel fuel customers who either were end-users or had suffered alleged overcharges of less than $10,000; (2) to roll back prices by a total of $114,823 in sales of motor gasoline; and (3) to remit $110,925 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. This latter payment made to the DOE in several installments ending on June 2, 1983, was intended to settle any alleged overcharges to none-end-user customers of diesel fuel or gas oil where the alleged overcharge amount exceeded $10,000. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Consumers does not admit that it committed any such violations.

II. Proposed Decision and Order

On April 16, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 15968 (April 23, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on the information contained in Exhibits B and C to the Consent Order. These Exhibits list the names of all those customers who were allegedly overcharged by Consumers, along with individual alleged overcharge amounts. We observed that this approach was warranted based on our experience in prior Subpart V cases in which the ERA had identified all or most of the purchasers of the firm's products, the consent order period was coterminous with the audit period, and specific alleged overcharge amounts for individual customers had been calculated by the ERA. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). As indicated above, however, all of the listed customers except non-end-users who were allegedly overcharged by more than $10,000 were to receive direct refunds from Consumers under the terms of the Consent Order. The Exhibits list only one non-end-user customer who was allegedly overcharged by more than $10,000. That firm is Powerine Oil Company (Powerine), a refiner and marketer of petroleum products. The Exhibits indicate that the $110,925 placed in the DOE escrow account was solely attributable to Consumers' alleged overcharges in sales of diesel fuel to

Powerine.[1] We therefore proposed to establish a claims procedure whereby Powerine, and any customers who purchased No. 2 oils (No. 2-D diesel fuel or No. 2 heating oil) from Powerine during the consent order period, could apply for a refund.[2] We noted that these customers were likely to be the only firms who would be eligible for refunds in the present proceeding. We also noted that claimants who purchased No. 2 oils from Powerine would be eligible for refunds only to the extent that Powerine passed through the alleged Consumers overcharges to its customers.

A copy of the PD&O was published in the **Federal Register** on April 23, 1985, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to Powerine. While no comments were filed by Powerine or any of its customers, comments were filed on behalf of Trans-Tech Liquidating Trust and the States of California, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

In a letter received by this Office on May 17, 1985, Trans-Tech Liquidating Trust (Trans-Tech) states that it has purchased product from Consumers and wishes to be included in the refund proceeding.[3] Under the proposed refund procedures, Trans-Tech would not be eligible to apply for a refund as a direct purchaser of Consumers diesel fuel. We have reviewed the consent order file and the record of this proceeding and have concluded that our proposed procedures should not be modified. As we indicated in the PD&O, the Consent Order resolved alleged overcharges in specific transactions with identified customers during the Consumers period. The names of those identified customers are provided in the exhibits to the Consent Order and do not include Trans-Tech as one of the customers allegedly overcharged by Consumers during consent order period. We therefore find that the Consent Order did not cover any transactions between Consumers and Trans-Tech. Moreover, as stated above, the entire refund amount deposited by Consumers in the DOE escrow account was attributable to alleged overcharges in sales of diesel fuel to Powerine. We have therefore determined that Powerine is the only direct purchaser of Consumers refined petroleum products who is eligible to apply for a refund in the present proceeding. Accordingly, the proposed procedures will not be modified to allow Trans-Tech to apply for a refund.

The comments filed by the States discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. We have determined that it would be premature for us to address at this time the issues raised by the States. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that Powerine or a purchaser of No. 2 fuels from Powerine should submit in an Application for Refund in order to establish eligibility for a portion of the consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund and will be initiated only after all the meritorious first stage claims have been paid. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Since we have received no other comments regarding the PD&O, we will adopt the proposed refund procedures.

III. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Consumers consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

IV. Determination of Injury

Powerine, a small, independent refiner and marketer, resold the diesel fuel it purchased from Consumers. Powerine will be required to demonstrate that it did not pass on to its customers the price increases implemented by Consumers. Accordingly, in order to qualify for a refund, Powerine must show that at the time it purchased diesel fuel from Consumers market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. In addition, Powerine must show that from the date of the alleged violation until the date on which diesel fuel was decontrolled (July 1, 1976), the firm had a sufficient "bank" of unrecovered costs. In other words, it must demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). Reseller claimants who purchased No. 2 oils from Powerine during the consent order period will have to make the same showing of injury in order to be eligible for a refund. As mentioned above, however, these claimants will be eligible to receive refunds only to the extent that Powerine passed through the alleged Consumers overcharges to its customers. Nonetheless, we will establish refund procedures for these claimants so that they may apply for refunds in the event that Powerine is unable to show injury for the entire consent order amount.

A. Small Claims Presumption

We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of No. 2 oils from Powerine. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they

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[1] According to Exhibit B of the Consent Order, Powerine should have received a direct refund of $3,690 to compensate for any alleged overcharges by Consumers in sales of gas oil. We therefore stated in the PD&O that Powerine would not be eligible to apply for a refund based on its purchases of gas oil from Consumers.

[2] Under the refiner price regulations, Powerine was required to allocate its increased costs for purchases of diesel fuel to its selling prices for No. 2 oils. *See* 10 CFR 212.83(c)(1)(i)(A). Accordingly, any alleged overcharges by Consumers in sales of diesel fuel to Powerine which Powerine did not absorb would have been passed through to all of Powerine's No. 2 oil customers. As we noted in the PD&O, No. 2 oils were decontrolled effective July 1, 1976, 41 FR 24516 (June 16, 1976), and so the Consumers consent order period for those products is October 1, 1973 through June 30, 1976.

In addition, we noted in the PD&O that during five months of the consent order period (February through June 1976), Powerine was permitted to allocate a portion of its increased diesel fuel costs to motor gasoline. *See* 10 CFR 212.83(d)(2). We now find, however, that Powerine did not allocate any portion of its increased diesel fuel costs to motor gasoline. As a result, Powerine's motor gasoline customers are not eligible to apply for refunds in the present proceeding.

[3] In its comments, Trans-Tech simply states: "We have made purchases from Consumers Oil Company and would like to be included in the refund adjustments."

did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984). As proposed in the PD&O, we will adopt this presumption in the present case. Accordingly, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[4]

B. Spot Purchasers

As we proposed in the PD&O, we will also adopt as rebuttable presumption that firms which made only spot purchases from Powerine suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Powerine's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers* 8 DOE at 85,396–97. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise discretion as to where and when it made the purchase(s) on which its refund claim is based.

C. End-users

Some of the customers who purchased No. 2 oils from Powerine during the consent order period may have been end-users or ultimate consumers. As in many prior special refund cases, we are making a finding that end-users or utlimate consumers were injured to the extend that the alleged overcharges settled in the Consent Order were passed through to them by Powerine. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209, and cases cited therein. We have therefore concluded that end-users of No. 2 oils purchased from Powerine experienced the impact of any overcharges which were passed along by Powerine and need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased No. 2 oils from Powerine for consumption as fuel or raw materials will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

V. Calculation of Refund Amounts

As discussed above, Powerine is the only allegedly overcharged customer identified in the Consent Order or the ERA audit files that did not receive a direct refund from Consumers. Moreover, as we stated in the PD&O, the entire refund amount deposited by Consumers in the DOE escrow account was specifically attributable to alleged overcharges in sales of diesel fuel to Powerine. Powerine will therefore be permitted to apply for a refund up to the entire consent order amount, i.e., $110,925, plus accrued interest. As indicated above, however, in order to qualify for a refund above the threshold level, Powerine will be required to demonstrate that it did not pass through Consumers' alleged overcharges to its own No. 2 oil customers. In the event that Powerine is unable to prove injury for the total amount of the alleged overcharges, the remaining monies in the consent order fund will be available for distribution to customers who purchased No. 2 oils from Powerine. As in prior refund cases, we will adopt a presumption that any alleged overcharges passed on by Powerine were spread equally over all gallons of No. 2 oils marketed by the firm during the consent order period. *See Conoco, Inc./Banco Properties, Inc.*, 12 DOE ¶ 85,117 at 88, 362 (1984). The OHA has referred to this presumption in the past as a volumetric refund amount. In the absence of better information, the volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[5] As we stated in the PD&O, the volumetric refund factor for customers who purchased No. 2 oils from Powerine will be determed by dividing the amount remaining in the consent order fund after any refund to Powerine by the total volume of No. 2 oils sold by Powerine during the consent order period. This will result in a refund amount for each gallon of No. 2 oils which an applicant purchased from Powerine.[6] In addition, successful refund applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

VI. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Consumers consent order fund. Accordingly, we shall now accept applications for refunds from Powerine and any customers who purchased No. 2 oils from Powerine during the consent order period. In order to receive a refund, Powerine will be required to report the monthly volumes of Consumers diesel fuel which it purchased during the consent order period. Similarly, a Powerine customer will be required to report the monthly volumes of No. 2 oils

[4] As in prior refund cases, resellers whose potential refund amount exceeds the $5,000 threshold amount may elect to apply for a refund based on the threshold amount. Powerine, too, may limit its claim to the threshold amount.

[5] We recognize, however, that the impact on an individual purchaser could have been greater than the volumtric amount. Any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disporportionate injury as a result of any overcharges passed through by Powerine during the consent order period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of any overcharges passed through by Powerine. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,233–34 (1984).

[6] The maximum volumetric refund amount for customers who purchased No. 2 oils from Powerine would be $0.008510 per gallon. We arrived at this figure by dividing the entire Consumers consent order fund ($110,925) by the estimated total volume of No. 2 oils sold by Powerine during the consent order period (13,034,490 gallons). If Powerine is granted a refund, the volumetric refund amount for Powerine customers will be reduced accordingly.

purchased from Powerine during the consent order period. In addition, a Powerine customers must state how it used the No. 2 oils, i.e., whether it was a reseller or an ultimate consumer. Powerine, and resellers of Powerine No. 2 oils who request refunds in excess of the $5,000 threshold amount, must submit evidence to establish that they did not pass on the alleged overcharges to their customers. Specifically, each of these applicants must state whether it had banks of unrecouped product cost increases from the date of the alleged violation until June 30, 1976, and if so, must furnish the OHA with quarterly bank calculations. The applicant must also state whether it or any of its affiliates have filed any other applications for refund in which banks have been provided to demonstrate injury.

In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Applicants should also report whether they, or any affiliates or subsidiaries, have any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** Each application must be in writing, signed by the applicant, and specify that it pertains to the Consumers Consent Order Fund, Case No. HEF-0055. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by Consumers Oil Company pursuant to the Consent Order executed on May 29, 1980 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: October 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-25490 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Stampede Powerplant Final Power Allocation

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Final Allocation of Stampede Powerplant Power.

SUMMARY: The United States Bureau of Reclamation (Reclamation) is currently constructing the Stampede Powerplant, a 3.65 megawatt (MW) hydroelectric facility, as part of the Washoe Project. Reclamation estimates that the Stampede Powerplant will be commercially operable by the summer of 1986. The Western Area Power Administration (Western) will market the energy to be produced by the Stampede Powerplant, pursuant to section 302 of the Department of Energy Organization Act of 1977, 42 U.S.C. 7152. Western hereby announces the final allocation of Stampede Powerplant energy to the Truckee-Donner Public Utility District (hereinafter referred to as TDPUD); and the designation of the Lahontan National Fish Hatchery and the Marble Bluff Fish Facility as project loads of the Washoe Project.

Adoption of Final Allocation of Stampede Powerplant Power

The proposal allocation of Stampede Powerplant energy was published in the **Federal Register** on Thursday, May 23, 1985 (50 FR 21350). Western received two applications requesting allocation of the Stampede Powerplant energy, one from the Sierra Pacific Power Company (SPPC) and the second from TDPUD. No comments were received by Western throughout the public comment period which ended June 14, 1985.

Western hereby adopts the allocation of Stampede Powerplant power to TDPUD proposed in the aforementioned **Federal Register.** Western designates the TDPUD as the receipient of the final allocation of energy from the Stampede Powerplant based on TDPUD's status as a preference agency (section 9(c) Reclamation Project Act of 1939 (43 U.S.C 485h(c))), which is ready, willing and able to contract for the energy from the Stampede Powerplant.

Designated Project Loads

Lahontan National Fish Hatchery and the Marble Bluff Fish Facility qualify under the Washoe Project Act as qualified project loads.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western concerning this allocation will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 978-4418.

Issued in Golden, Colorado, October 16, 1985

William H. Clagett,

Administrator.

[FR Doc. 85-25584 Filed 10-24-85; 8:45 am]

BILLING CODE 6450-01-My

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51594; TSH-FRL 2916-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final

rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-42, 86-43, 86-44, 86-45, 86-46, 86-47 and 86-48—January 9, 1986.

P 86-49, 86-50, 86-51, 86-52, 86-53, 86-54, 86-55, 86-56, 86-57, 86-58 and 86-59 January 12, 1986.

P 86-60, 86-61, 86-62, 86-63, 86-64, 86-65, 86-66, 86-67, 86-68 and 86-69—January 13, 1986.

P 86-70—January 14, 1986.

Written comments by:

P 86-42, 86-43, 86-44, 86-45, 86-46, 86-47 and 86-48—December 10, 1985.

P 86-49, 86-50, 86-51, 86-52, 86-53, 86-54, 86-55, 86-56, 86-57, 86-58 and 86-59—December 13, 1985.

P 86-60, 86-61, 86-62, 86-63, 86-64, 86-65, 86-66, 86-67, 86-68 and 86-69—December 14, 1985.

P 86-70—December 15, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51594]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 86-42

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Resin in coatings. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-43

Manufacturer. Confidential.

Chemical. (G) Rubber modified expoxy.

Use/Production. (G) Intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-44

Manufacturer. Confidential.

Chemical. (G) Polyester urethane polymer.

Use/Production. (S) Protective coating for fabrics and other flexible substrates and a combining or laminating adhesive for fabrics and plastics. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Confidential.

P 86-45

Importer. Confidential.

Chemical. (G) Adipic acid, polymer with disubstituted alkanol.

Use/Import. (S) Industrial and commercial accelerator for unsaturated polyester resins used to manufacture bolt anchors. Import range. 280-560 kg/yr.

Toxicity Data. Acute oral: LD_{50}—>5.0 ml/kg body weight (non-poisonous); Irritation: Skin—Non-irritant; Eye—Non-irritant.

Exposure. Import: dermal, a total of 10 workers.

Environmental Release/Disposal. No release.

P 86-46

Manufacturer. Confidential.

Chemical. (G) C14-C20 alkyl ammonium sulfate quaternary.

Use/Production. (G) Fiber antistat. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-47

Manufacturer. Chem-tronics, Inc.

Chemical. (G) Imide amide resin.

Use/Production. (S) Industrial and commercial adhesives for high temperature applications and to produce syntactic foams in-house. Prod. range. 200—800 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-48

Manufacturer. Chem-tronics, Inc.

Chemical. (G) Imide amide resin.

Use/Production. (S) Industrial and commercial to coat electrical conductors and as laminating resins to produce high strength composites. Prod. range. 300—1,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers.

Environmental Release/Disposal. No release. Disposal by POTW.

P 86-49

Manufacturer. Hach Company.

Chemical. (S) Carboxymethylammonium 4-methylbenzenesulfonate.

Use/Production. (S) Industrial and commercial standard nitrogen compound for calibration of Kjeldahl nitrogen determination. Prod. range. 10—30 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. Less than 10 kg released to water. Disposal by POTW.

P 86-50

Manufacturer. Hach Company.

Chemical. (S) 3-carboxypyridinium-4-methylbenzenesulfonate.

Use/Production. (S) Industrial and commercial standard nitrogen compound for calibration of Kjeldahl nitrogen determination. Prod. range. 10—30 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. Less than 10 kg water. Disposal by POTW.

P 86-51

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate homopolymer.

Use/Production. (S) Site-limited and industrial coatings. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 86-52

Manufacturer. Confidential.

Chemical. (G) Epoxy amine resin.

Use/Production. (S) Site-limited and industrial coatings. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da.

Environmental Release/Disposal. No release.

P 86–53

Manufacturer. Disogrin Industries, Corporation.

Chemical. (S) Polymer of poly[oxy-1,4-butanediyl], alpha-hydro-omega-hydroxy-, 1,3-benzenedicarboxylic acid, polymer with 1,6 hexanediol and nonanedioic acid, carbon black MTFF, 1,1'-biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-, Phenol, 4,4'-(methanetetryldinitrilo)bis(3,5-bis(1-methylethyl)-, 1,4-butanediol, Ethanol,2,2'-(1,4-phenylene bis(oxy)bis, 1,4-diazabicyclo [2.2.2] octane.

Use/Production. (S) Site-limited to be molded on site into wheels, rollers and mechanical parts for use in textile industry. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 workers, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 86–54

Manufacturer. Confidential.

Chemical. (G) Heterocyclic amine salt of an alkyldithiocarbamate.

Use/Production. (G) Destructive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–55

Importer. Confidential.

Chemical. (G) Perfluoroalkyl polyether.

Use/Import. (S) Industrial fluid for vacuum pump, as a base oil for grease and as a lubricant. Import range. Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight; Eye—Non-irritant.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–56

Manufacturer. Confidential.

Chemical. (G) Hydrocarbon resin, hydrogenated.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. Acute oral: >5.0g/kg; Acute dermal: 3.16 g/kg; Irritation: Skin—Slight; Skin sensitization: Positive (Guinea pig).

Exposure. Confidential.

Environmental Release/Disposal. None. Disposal, confidential.

P 86–57

Manufacturer. Confidential.

Chemical. (G) Hydrocarbon resin, hydrogenated.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: 3.16 g/kg; Irritation: Skin—Slight; Skin sensitization: Positive (Guinea pig).

Exposure. Confidential.

Environmental Release/Disposal. None. Disposal, confidential.

P 86–58

Manufacturer. American Cyanamid Company.

Chemical. (G) Melamine formaldehyde, alkylated resin.

Use/Production. (G) Industrial curing resin for coating. Prod. range. Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Minimal; Eye—Minimal; Ames test: Non-mutagenic.

Exposure. Manufacture: dermal, a total of 56 workers, up to 1.5 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 5 to 10 kg/batch released to land. Disposal by landfill.

P 86–59

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Resin will be converted to exterior top coates. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–60

Manufacturer. Confidential.

Chemical. (G) Mixed ferric salt.

Use/Production. (G) Additive. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 19 workers, up to 9 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 6 kg/batch released to land. Disposal by POTW.

P 86–61

Manufacturer. Hercules Incorporated.

Chemical. (G) Hydrocarbon resin.

Use/Production. (G) Adhesive additive (tacxifier resins for adhesives). Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–62

Manufacturer. Confidential.

Chemical. (G) Polyester urethane polymer.

Use/Production. (S) Industrial magnetic tape binder. Prod. range. Confidential.

Toxicity Data. No data submitted

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–63

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane polymer.

Use/Production. (S) Magnetic tape binder. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–64

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Site-limited chemical intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–65

Importer. Pacific Anchor Chemical Corporation.

Chemical. (S) 4-methyl-2-phenyl-1H-imidazole-5-methanol.

Use/Import. (S) Industrial powder coatings and curing agent for epoxy adhesives. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Import: inhalation, a total of 20 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 1 kg/yr released to air and water.

P 86–66

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Substituted triazine isocyanurate.

Use/Import. (S) Industrial curing agent for epoxy encapsulating systems and epoxy adhesives. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 10–20 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 1 kg/yr released to air and water.

P 86–67

Importer. Pacific Anchor Chemical Corporation.

Chemical. (S) 2-methyl-1H-imidazole, adduct with 1,3,5-triazine-2,4,6 (1H,3H,5H)-trione hydrate.

Use/Production. (S) Industrial powder coatings and curing agent for expoxy adhesives. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Import: inhalation, a total of 20 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 1 kg/yr released to air and water.

P 86-68

Importer. Pacific Anchor Chemical Corporation.

Chemical. (S) 2-phenyl-1H-imidazole, adduct with 1,3,5-triazine 2,4,6(1H,3H,5H) trione.

Use/Import. (S) Industrial powder coatings and curing agent for epoxy adhesives. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Import: inhalation, a total of 20 workers, up to 2 hr/da., up to 10 da/yr.

Environmental Release/Disposal. Less than 1 kg/yr release to air and water.

P 86-69

Importer. Pacific Anchor Chemical Corporation.

Chemical. (S) 2,4-diamino-6-[2-ethyl-4-methyl-1H-imidazol-1-yl)ethyl]-1,3,5-triazine.

Use/Import. (S) Industrial powder coatings and curing agents for epoxy adhesives. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Import: dermal and inhalation, a total of 10 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 1 kg/yr released to air and water.

P 86-70

Importer. Ashland Chemical Company.

Chemical. (G) Phenolic acrylic.

Use/Import. (G) Coating Resin. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: October 21, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-25520 Filed 10-24-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59737; TSH-FRL No. 2915-9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250) EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y86-7—October 31, 1985.

Y86-8, 86-9 and 85-10—November 6, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room, E-611, 401 M Street, SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-7

Manufacturer. Hercules Incorporated.

Chemical. (G) Phenolic modified rosin ester.

Use/Production. (S) Industrial resin for use in offset inks and letterpress inks. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-8

Importer. Hitachi Chemical Company America, Ltd.

Chemical. (G) Poly (ether amide).

Use/Import. (S) Site limited and industrial insulation varnish for semiconductors. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-9

Importer. Hitachi Chemical Company America, Ltd.

Chemical. (G) Poly (ether ester amide).

Use/Import. (S) Site limited and industrial insulation varnish for semiconductors. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-10

Importer. Hitachi Chemical Company America, Ltd.

Chemical. (G) Poly (ether silicone amide).

Use/Import. (S) Site limited and industrial insulation varnish for semiconductors. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: October 21, 1985.

Linda Travers,

Acting Director, Information Management Division.

[FR Doc. 85-25521 Filed 10-24-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2910-4]

Environmental Impact Statements; Availability

Correction

In FR Doc. 85-24454, beginning on page 41584 in the issue of Friday, October 11, 1985, make the following correction:

In the third column, in EIS No. 850433, in the first five, "Final" should read "Draft".

BILLING CODE 1505-01-M

[OPTS-53074; FRL-2897-9]

Premanufacture Notices; Monthly Status Report for May 1985

Correction

In FR Doc. 85-22098, beginning on page 37579, in the issue of Monday,

September 16, 1985, the following Premanufacture Notices are corrected, in whole or in part.

I. 117 Premanufacture Notices Received During the Month

PMN No.	Identity/generic name
P 85-897	2,8,10-trioxa . . .
P 85-925	Polymer of: 2-ethanol, 1,1'-thiobis; ethanol, 2-mercapto, reaction product with propylene oxide; 3-thiahept-5-ene-1-ol, ethanol, 2-mercapto, reaction product with oxirane, [2-propenyl (oxy)methyl], 4, 4'-thiodiphenol, ethanethiol, 2, 2'-[1,2-ethanediyl bis(oxy)]bis.

II. 166 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity/generic name
P 85-740	Generic name: Polymer of acrylates, . . .
P 85-746	4-(2-methyl-butyl)phenyl 4-(2-methyl butyl)biphenyl 4'-carboxylate.
P 85-748	4-n-octyloxyl . . .
P 85-755	4(2-methylbutyl)phenyl 4'-n-heptylbiphenyl carboxylate.
P 85-758	4-(2-methylbutyl) 4'-pentylbiphenyl carboxylate.
P 85-767	Generic name: 4-n-alkoxyphenyl . . .
P 85-773	Generic name: 4-(Trans-4-n-alkylcyclohexyl)-n-alkoxybenzene.
P 85-776	Generic name: 5-n-alkyl-2-[4-n-alkoxyphenyl] . . .
P 85-778	Generic name: 5-n-alkyl-2-[4-n-alkoxyphenyl]-1, 3-pyrimidine.
P 85-783	Generic name: Adduct of chlorinated olefin/polydiene.
P 85-839	(+)-4-cyanophynyl-4-(2"-methylbutyl) biphenyl 4'-carboxylate.
P 85-843	(+) 4-n-dodecyloxy 4'-(2-methylbutyl)-phynyl-benzoate.
P 85-874	3-thiahept-5-ene-1-ol.

III. 130 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)

PMN No.	Identity/generic name
P 85-476	Generic name: Substituted cyclohexene carboxylic acid.

IV. 101 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No.	Chemical identification
P 85-308	Generic name: Substituted alkyl silyl urea.
P 85-358	Polymer of 2,2-dimethyl-3-hydroxypropyl-1, 2-dimethyl . . .
P 85-419	Generic name: Alkyd resin.
P 85-420	Generic name: Alkyd resin.
P 85-421	Generic name: Alkyd resin.
P 85-422	Generic name: Alkyd resin.

V. 126 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identity/generic name
P 83-339	Generic name: Reaction product of polycyclosulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.
P 84-903	N-methylbenzabromodiphenyl amine.

BILLING CODE 1505-01-M

[ER-FRL-2915-1]

Environmental Impact Statements; Weekly Receipt

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed October 14, 1985 Through October 18, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850455, Final, AFS, WA, Mount St. Helens National Volcanic Monument, Comprehensive Management Plan, Gifford National Forest, Due: November 25, 1985, Contact: Ed Osmond (206) 696-7524.

EIS No. 850456, Final, FHW, GA, Murray Road Construction, Washington Road and Cherry Street Intersection to Reynolds Street, Richmond and Columbia Cos., Due: November 25, 1985, Contact: George Osborne (404) 881-4751.

EIS No. 850457, Draft, FHW, IA, Greenhill Road Construction, IA-57 in Cedar Falls to Hackett Road Bypass in Waterloo, Black Hawk County, Due: December 17, 1985, Contact: H.A. Willard (515) 233-1664.

EIS No. 850458, FSuppl, COE, AL, Frank Jackson State Park Earth Fill Dam and Reservoir Construction, Additional Information and Changes, Permits, Covington County, Due: November 25, 1985, David Findley (205) 694-3770.

EIS No. 850459, Draft, BIA, NM, Ojo 345kv Transmission Line Extension and Substation Construction, Approval and Right-of-Way Grants, Due: January 2, 1986, Contact: William C. Allen (505) 766-3374.

EIS No. 850460, Final, FHW, CA, CA-113 Construction, south of CR-P27 to south of I-5, Yolo County, Due: November 25, 1985, Contact: Michael A. Cook (916) 440-2521.

EIS No. 850461, Final AFS, KY, WV, VA, Jefferson National Forest, Land and Resource Management Plan, Due: November 25, 1985, Contact: Thomas Hoots (703) 982-6193.

EIS No. 850462, Draft, SCS, AR, Tyronza River Watershed Protection and Flood Prevention, Mississippi and Poinsett Cos., Due: December 9, 1985, Contact: Jack Davis (501) 378-5445.

EIS No. 850463, Final, FHW, WI, WI Trunk Highway 50 Improvement, US 12 to I-94, Kenosha and Wadworth Cos., Due: November 25, 1985, Contact: Robert Cooper (608) 264-5940.

Amended Notice

EIS No. 850294, DRevised, AFS, MT, ID, Kootenai National Forest, Land and Resource Management Plan, Due: November 1, 1985, Published FR—7-19-85—Review extended.

Dated: October 22, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-25585 Filed 10-24-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2915-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 7, 1985 through October 11, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DR-AFS-K65058-00, Rating EC2, Coronado Nat'l Forest, Land and Resource Mgmt. Plan, AZ and NM. Summary: EPA requested that the FEIS contain more information on the impacts to water quality and riparian habitats from multiple use activities.

ERP No. D-COE-C32030-00, Rating LO, Arthur Kill Channel Navigation Improvements, Howland Hook Marine Terminal, Deepening and Maintenance, NJ and NY. Summary: EPA's review indicated that no significant adverse impacts would result from the proposed project. However, EPA requested DDT analysis of the liquid phase and DDT bioaccumulation analysis of the substrate because DDT is suspected of being present in part of the dredge area. EPA also requested mitigation and restoration of wetlands, mudflats and fisheries habitat impacted by the proposed dredging.

ERP No. D–COE–J34015–ND, Rating EC2, Baldhill Dam and Lake Ashtabula Reservior, Dam Safety Protection Plan, Sheyenne R., ND. Summary: EPA generally concurs with the alternative (Plan 1A) selected, but has requested additional information on wetland identification and replacement, potential water quality degradation downstream due to construction and operation of the project, and a better identification of impacts associated with offsite borrow areas.

ERP No. D1–COE–J36020–ND, Rating EC2, Lake Darling Dam Modifications, Lake Darling Flood Control Project, Souris R., ND. Summary: EPA's review identified concerns in the areas of alternative selection and water quality impact mitigation. EPA has requested that a Canadian reservior alternative which provides flood reduction in the project area be included in the EIS. Further discussion for mitigation of the projected downstream sedimentation increases resulting from the project altered flows was also requested.

ERP No. D–SFW–K64013–CA, Rating LO, Coachella Valley Fringe-Toed Lizard, ESA Section 10(a) Incidental Take, Habitat Conservation Plan, Permit, Adoption, CA. Summary: Although EPA noted a lack of objection to the proposal, it was recommended that the Fish and Wildlife Service consult the Army Corps to determine if flood control projects could affect the lizard's habitat.

Final EISs

ERP No. F–AFS–E65031–KY, Daniel Boone Nat'l Forest Land and Resource Mgmt. Plan, KY. Summary: EPA has no objections to the implementation of the preferred alternative with the mitigation measures outlined in the FEIS and strong enforcement of coal mining and oil production regulations to minimize stream degradation from mineral extraction.

ERP No. F–AFS–J65133–00, Wasatch-Cache Nat'l Forest, Land and Resource Mgmt. Plan, UT and WY. Summary: Several substantive revisions were made to the proposed Forest Plan and DEIS to address EPA concerns and recommendations regarding water resources; watersheds; riparian areas and wetlands, management of fisheries, timber, and range; and monitoring. Several EPA concerns remain relating to, among others, site-specific impact assessment plans, monitoring, and coordination during Plan implementation.

ERP No. F–AFS–K61055–CA, N. Fork Kern River, Wild and Scenic Rivers Study, Designation, Sequoia Nat'l Forest, CA. Summary: EPA indicated that the FEIS adequately addressed the environmental impacts of the proposed wild and scenic river designation.

ERP No. F–BLM–G70001–NM, Rio Puerco Resource Area, Resource Mgmt. Plan, NM. Summary: EPA has no objections to the proposed action as described.

ERP No. F–COE–G36049–TX, Wright Patman Lake and Dam Operation and Maintenance Program, (Formerly Texarkana Lake), Sulphur R., TX. Summary: EPA has no objections to the proposed action as described.

Regulations

ERP No. R–FRC–A05460–00, Waiver of the Water Quality Certification Requirement of Section 401(a)(1) of the Clean Water Act, 18 CFR Part 4, (Docket No. Rm–5–6–000) (50 FR 32229). Summary: EPA has no objections to the proposed rulemaking concerning waiver of the certification. EPA did, however, have some recommendations to offer for effective implementation of the proposed regulation.

Dated: October 22, 1985

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–25586 Filed 10–24–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

October 21, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

OMB Number: 3060–0182
Title: § 73.1620, Program Tests
Action: Extension
Respondents: Permittees of a nondirectional or directional AM or FM station or a nondirectional or directional TV station, desiring to conduct program tests
Estimated Annual Burden: 115 Responses; 115 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–25532 Filed 10–24–85; 8:15 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEMA Advisory Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: November 19, 1985.

Time: 8:30 a.m. to 4:00 p.m.

Place: Federal Emergency Management Agency, Room 401, 500 C Street SW., Washington, DC 20472.

Purpose: FEMA program office staff will provide status reports on their major activities and present issues to the Board for consideration. The national-security exercises program will be discussed. Work teams on civil defense policy and future programs will report findings to the Board. Discussions will include classified information. The Acting Director has determined that the Board meeting should be closed to the public because discussions will involve information that is specifically authorized to be kept Secret in the interest of national defense or foreign policy and is properly classified pursuant to Executive Order.

October 22, 1985.

Bernard A. Maguire,

Associate Director, National Preparedness.

[FR Doc. 85–25473 Filed 10–24–85; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–750–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–750–DR), dated October 18, 1985, and related determinations.

DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of October 18, 1985, the President declared a major disaster under the authority of the Disaster

Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of New York resulting from Hurricane Gloria, beginning on September 27, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Frank P. Petrone of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Nassau and Suffolk Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James J. Delaney,

Acting Deputy Director, Federal Emergency Management Agency.

[FR Doc. 85-25471 Filed 10-24-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-746-DR]

Puerto Rico; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Mangement Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-746-DR), dated October 10, 1985, and related determinations.

DATED: October 19, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Puerto Rico, dated October 10, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 10, 1985:

The Municipalities of Aibonito, Arecibo, Barceloneta, Barranquitas, Bayamon, Ceiba, Dorado, Fajardo, Guanica, Hormigueros, Humacao, Jayuya, Jauna Diaz, Manati, Maunabo, Naguabo, Penuelas, Salinas, San German, Utuado, Vega Baja, Villalba, Yabucoa, and Yauco for Individual Assistance.

The Municipalities of Adjuntas, Aguas Buenas, Barceloneta, Barranquitas, Cayey, Ciales, Cidra, Comerio, Dorado, Guanica, Guaynabo, Jayuya, Juana Diaz, Lajas, Loiza, Manati, Morovis, Naranjito, Orocovis, Penuelas, Salinas, San German, San Sabastian, Santa Isabel, Toa Alta, Toa Boja, Trujillo Alto, Utuado, Villalba, and Yauco for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-25472 Filed 10-24-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004098-001.

Title: Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Atlas Shipping Ltd. (Atlas)

Synopsis: This agreement modifies the basic agreement whereby the Port assigns certain marine terminal facilities in the Port's Outer Harbor Terminal, Berth No. 6 to Atlas. The amendment expands the use of the assigned premises to include vessel operations in User's California/European service and to establish a vessel call maximum for dockage charges of fifty vessels in any contract year. The parties should replace any dockage compensation payment and receipt provisions of the basic agreement in effect on or after October 8, 1985, and accordingly provision is made for the Port to refund Atlas any differences following the effective date of the agreement.

Agreement No.: 202-010689-009.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Evergreen Marine Corp.
Hanjin Container Lines, Ltd.
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korean Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co. Ltd.

Synopsis: The proposed amendment would change the agreement's independent action provisions to allow a party's previously filed independent action to remain in effect following an action by the entire agreement to modify the item affected without separate notice from the original party to the agreement management, except that the present notification procedure would continue to apply in the event of an effective increase in rate by the agreement.

Agreement No.: 202-010689-010.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Evergreen Marine Corp.
Hanjin Container Lines, Ltd.
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korean Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.

Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co. Ltd.

Synopsis: The proposed amendment would explicitly provide that freight forwarder's compensation and brokerage are not subject to independent action by individual members.

Agreement No.: 202-010689-011.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Evergreen Marine Corp.
Hanjin Container Lines, Ltd.
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korean Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co. Ltd.

Synopsis: The proposed amendment would permit the parties to adopt mandatory terms for individual and multi-party service contracts, or to limit such contracts or prohibit them entirely.

Dated: October 21, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85-25543 Filed 10-24-85; 8:45 am]
BILLING CODE 6730-01-M

Agreement No. 8600 "Policy Level Agreement" (Agreement No. 203-008600-005); Erratum

The **Federal Register** Notice of October 10, 1985 (Vol. 50, No. 197, page 41409) incorrectly identified Agreement No. 8600 "Policy Level Agreement" as Agreement No. 203-008600-005, whereas it should have read Agreement No. 206-008600-005.

By Order of the Federal Maritime Commission.

Dated: October 21, 1985.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85-25544 Filed 10-24-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

October 18, 1985.

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 recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

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, Secertary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 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: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, 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, DC 20551 (202-452-3822)

Proposal to approve under OMB delegated authority the extension without revision of the following report:

1. Report titles: Monthly Survey of Industrial Electricity Use
Agency form number: FR 2009A, B
OMB Docket number: 7100-0057
Frequency: Monthly
Reports: Public and privately-owned electric utilities and self-generators
Small businesses are not affected.

General description of report: This information collection is voluntary and is given confidential treatment [5 U.S.C. 552(b)(4)].

The report collects information on the volume of electric power sold to mining or manufacturing establishments or generated by such establishments for their own use. Survey results are used as a proxy for physical production measures in certain categories of the Industrial Production Index.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 85-25491 Filed 10-24-85; 8:45 am]
BILLING CODE 6210-01-M

Agency Forms Under Review

October 18, 1985.

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, DC 20551 (202-452-3822)
OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: One-Time Survey of Foreign Transactions of Primary Dealers Agency form number: FR 3035
OMB Docket number: 7100–0214
Frequency: One-Time
Reporters: U.S. Government Securities Dealers
Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 248a(2) and 353 et seq.] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report will provide information on the foreign activity of the 36 primary U.S. Government securities dealers over a period of one month. The information will be used to gauge the magnitude of foreign transactions and to gain some insight into their composition.

Board of Governors of the Federal Reserve System, October 18, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–25492 Filed 10–24–85; 8:45 am]

BILLING CODE 6210–01–M

CCNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 15, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CCNB Corporation,* New Cumberland, Pennsylvania; to acquire 15.98 percent of the voting shares of Gettysburg National Bank, Gettysburg, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp,* Evansville, Indiana; to merge with Greencastle Bancorp, Inc., Greencastle, Indiana, thereby indirectly acquiring First Citizens Bank and Trust Company, Greencastle, Greencastle, Indiana.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Ridgedale Financial Services, Inc.,* Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Ridgedale State Bank, Minnetonka, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Benton Capital Corporation,* Benton, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of East River Bancshares, Inc., Benton, Louisiana, thereby indirectly acquiring Bank of Benton, Benton, Louisiana.

2. *RepublicBank Corporation,* Dallas, Texas; to acquire 100 percent of the voting shares of Richardson Bank & Trust, Richardson, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alyworth Proprietary Limited,* Melbourne, Australia; *Costa Mesa Limited,* London, England; *Costa Mesa Holdings N.V.,* Curacao, Netherland Antilles; *Citizens Financial Holdings B.V.,* Amsterdam, Netherlands; and *Citizens Holdings,* Brea, California; to become a bank holding company by acquiring at least 80 percent of the voting shares of Citizens Bank of Costa Mesa, Costa Mesa, California.

2. *Mesa Holdings, Ltd.,* Mesa, Arizona; to become a bank holding company by acquiring 93.9 percent of the voting shares of Mesa Bank, Mesa, Arizona.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–25495 Filed 10–24–85; 8:45 am]

BILLING CODE 6210–01–M

First Maryland Bancorp, et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843)(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted througout the United States.

Each application is available for immedicate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposals.

Unles otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Maryland Bancorp,* Baltimore, Maryland, and *Allied Irish Banks, Limited,* Dublin, Ireland; to engage *de*

novo through its subsidiary First Maryland Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and credit disability insurance directly related to extensions of credit by credit extending affiliates of First Maryland Bancorp pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the states of Florida and Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to engage *de novo* through its subsidiary, Calument Discount Brokerage Services, Inc., Columbus Georgia, in the offering of securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. The Mitsubishi Bank Limited, Tokyo, Japan, and *BanCal Tri-State Corporation*, San Francisco, California; to continue to engage *de novo* directly in short-term commerical financing, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than November 12, 1985.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25496 Filed 10-24-85; 8:45 am]

BILLING CODE 6210-01-M

FMB of South Carolina Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must inlcude 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 November 14, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FMB of South Carolina Bancshares, Incorporated*, Holly Hill, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank of South Carolina, Holly Hill, South Carolina.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cahaba Bancorp*, Trussville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Cahaba Bank & Trust, Trussville, Alabama.

2. *First Commercial Financial Corporation*, Bradentown, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of first Commercial Bank of Manatee County, Bradenton, Florida.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *C & L Investment Company, Inc.*, Miller, South Dakota; to become a bank holding company by acquiring 61.1 percent of the voting shares of Hand County State Bank, Miller, South Dakota. Comments on this application must be received not later than November 15, 1985.

2. *First Hawley Bancshares, Inc.*, Hawley, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Hawley, Hawley, Minnesota. Comments on this application must be received not later than November 15, 1985.

3. *St. Paul Bancshares, Inc.*, St. Paul, Minnesota; to become a bank holding company by acquiring 94.13 percent of the voting shares of Summit State Bank of Phalen Park, St. Paul, Minnesota. Comments on this application must be received not later than November 15, 1985.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sun Belt Bancshares Corporation*, Conroe, Texas; to become a bank holding company by acquiring 51 percent of the voting shares of National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25497, Filed 10-24-85; 8:45 am]

BILLING CODE 6210-01-M

Gary-Wheaton Corp., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Gary-Wheaton Corporation,* Wheaton, Illinois; to engage *de novo* through its subsidiary, Gary-Wheaton Securities Brokerage, Incorporated, Wheaton, Illinois, in providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services. Such services are presently being performed by Applicant's subsidiary, Gary-Wheaton Bank. These activities would be performed in DuPage and Will Counties, Illinois.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **The Union of Arkansas Corporation,** Little Rock, Arkansas; to engage *de novo* through its subsidiary, Union Credit Card, Inc., Oklahoma City, Oklahoma, in the purchasing, issuing and servicing of consumer loans through the issuance of credit cards and private label cards. These activities would be conducted nationwide.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25498 Filed 10-24-85; 8:45 am]

BILLING CODE 6210-01-M

Industrial Bank of Japan, Limited; Acquisition of Bank Shares by a Bank Holding Company

Industrial Bank of Japan, Limited, Tokyo, Japan, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. (a)(3) to acquire at least 75 percent of the voting shares of J. Henry Schroder Bank & Trust Company, New York, New York. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of the Board's Regulation Y (12 CFR 225.21(a)), for permission to acquire voting shares of J. Henry Schroder Banking Corporation, New York, New York, a corportion chartered under Article XII of the New York State , Banking Code. Applicant states that the proposed subsidiary would engage only in activities permissible under §225.25(b) of the Board's Regulation Y. These activities are commercial lending (including issuing letters of credit and purchasing and discounting acceptances), and dealing in foreign exchange. These activities would be performed from offices of Applicant's subsidiary in New York, New York, and Grand Cayman, Cayman Islands.

Such activities have been specified by the Board in §225.25(b) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of §225.23.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 8, 1985.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25499 Filed 10-24-85; 8:45 am]

BILLING CODE 6210-01-M

Louisiana Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.,* Baton Rouge, Louisiana; to acquire Terre Agency, Inc., Houma, Louisiana, thereby acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiaries in the event of the death or disability or involuntary unemployment of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Applicant also proposes to act as agent in the sale of insurance limited to assuring repayment of the outstanding balance on an extension of credit by a finance company in the event of loss or damage to any property used as collateral for such extension of credit, and provided such extension of credit does not exceed the limits set forth in section 4(c)(8)(B) of the Act.

Board of Governors of the Federal Reserve System, October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25500 Filed 10-24-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 18, 1985.

Public Health Service

Office of the Assistant Secretary for Health

Subject: List of Ingredients Added to Tobacco In the Manufacture of Cigarettes—New
Respondents: Cigarette manufacturers, packagers or importers
Subject: Laboratory-Based Research on the Cognitive Aspects of Survey Methodology: Reporting Chronic Conditions in the National Health Interview Survey— Revision (0937–0140)
Respondents: Individuals or household

National Institutes of Health

Subject: Periodic Survey of Health Status, Minnesota Colon Cancer Control Study—New
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Dated: October 22, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–25560 Filed 10–24–85; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Meetings

Correction

In FR Doc. 85–24598, beginning on page 41958 in the issue of Wednesday, October 16, 1985, make the following correction:

On page 41959, second column, under **Dermatologic Drugs Advisory Committee**, the **Agenda** paragraph should read as follows:

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

BILLING CODE 1505–01–M

[Docket No. 85F–0441]

Bio-Cide International, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bio-Cide International, Inc., has filed a petition proposing that the food additive regulations as amended to provide for a stabilized chlorine dioxide solution for use as a sanitizing rinse for food-processing equipment.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5H3689) has been filed by Bio-Cide International, Inc., 1111 North Flood Avenue, Norman, OK 73070, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for a stabilized chlorine dioxide solution for use as a sanitizing rinse for food-processing equipment.

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), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: October 11, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–25462 Filed 10–24–85; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

Federal Council on the Aging: Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: The Federal Council on the Aging (FCA) is holding its November meeting in conjunction with the Private Lond Term Care Insurance Seminar of the American Health Care Association and the American Association of Retired Persons. The FCA regular business meeting will commence on November 19, 1985 from 3:00 PM—5:00 PM. The FCA will reconvene on November 20 from 9:30 AM—4:00 PM. Council members will then convene on November 21 and 22 at the St. Francis Westin Hotel to participate in the Long Term Care Insurance seminar.

Place: York Hotel 940 Sutter Street, San Francisco, California. The meeting will be held in the Board Room.

Status: The FCA portion of this meeting, to be held at the York Hotel (Board Room) is open to the public.

Contact Person: James B. Conroy, Executive Director, Room 4243, HHS North Building, 245–2451 for further information.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will conduct a meeting on November 19 and 20, 1985 from 3:00 PM–5:00 PM and from 9:30 AM–4:00 PM respectively in the Board Room of the York Hotel, 940 Sutter Street, San Francisco, California.

The agenda will include: the presentation of a report regarding *Family Structures and Long Term Care Insurance for the Elderly* prepared for the FCA by Harold Feldman, Ph.D.,

Professor Emeritus of Cornell University. Also included will be a hearing on *Recruitment and Retention of Nursing Home Employees—A Labor Problem Facing America's Health Care Industry.* The regularly scheduled business and committee meetings and other reports will complete this agenda.

Dated: October 21, 1985.

Adelaide Attard,

Chairperson, Federal Council on the Aging.

[FR Doc. 85-25516 Filed 10-24-85; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Assessment of Medical Technology; Endoscopic Electrocoagulation in Treatment of Upper Gastrointestinal Bleeding

In continuation of the Federal Register notice in Vol. 48, No. 82, p. 19081 of April 27, 1983, the Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is seeking additional information in coordinating an assessment of the safety, clinical effectiveness, and indications for endoscopic electrocoagulation in the treatment of upper gastrointestinal bleeding. Specificially, this assessment seeks to determine whether data exists to support a coverage determination regarding the safety and clinical effectiveness of monopolar, bipolar, or multipolar electrocoagulation, electrofulguration, or heater probe in the treatment of upper gastrointestinal bleeding due to gastric or duodenal ulcers, Mallory-Weiss tears, varices, or vascular anomalies.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than December 24, 1985.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from these technologies in the treatment of upper gastrointestinal bleeding. Proprietary information is not being sought.

Written material should be submitted to: Richard S. Bodaness, M.D., Ph.D., National Center for Health Services Research and Health Care Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857 (301) 443-4990.

Dated: October 18, 1985.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-25558 Filed 10-24-85; 8:45 am]

BILLING CODE 4160-17-M

Assessment of Medical Technology; Continuous Positive Airway Pressure in Treatment of Obstructive Sleep Apnea

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of continuous positive airway pressure (CPAP) in the treatment of obstructive sleep apnea. Specifically this assessment seeks to determine: 1. What are the medical indications for the procedure as well as its clinical acceptability? 2. What criteria exist for defining pathological obstructive sleep apnea? 3. Is CPAP a reasonable alternative to trachectomy or nocturnal airway patency devices? Data that would help to define the population of patients with this disease that might benefit from the application of this technology is also being sought.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectivness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than January 23, 1986.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from CPAP in the treatment of obstructive sleep apnea. Proprietary information is not being sought.

Written material should be submitted to: Harry Handelsman, D.O., National Center for Health Services Research and Health Care Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4990.

Dated: October 11, 1985.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-25514 Filed 10-24-85; 8:45 am]

BILLING CODE 4160-17-M

Availability of Technical Report on Toxicology and Carcinogenesis Studies of HC Blue No. 1

The HHS' National Toxiology Program today announces the availability of the Technical Report describing toxicology and carcinogenesis studies of HC Blue No. 1 (2,2'[(4-(methylamino)-3-nitrophenyl)imino]bis(ethanol)). HC Blue No. 1 is a nitrophenylenediamine derivative used exclusively as a semipermanent hair dye.

Toxicology and carcinogenesis studies of HC Blue No. 1 were conducted by administering the test chemical in feed for 103 weeks to groups of 50 F344/N rats and 50 B6C3F; mice of each sex. The dietary concentrations used were 0, 1,500, or 3,000 ppm for rats and male mice and 0, 3,000 or 6,000 ppm for female mice. These concentrations were selected on the basis of results from single-administration gavage studies and 14-day and 13-week feed studies.

Under the conditions of these feed studies, there was *equivocal evidence of carcinogenicity* in male F344/N rats, since HC Blue No. 1 caused a marginal increase in the incidence of hepatocellular neoplastic nodules/carcinomas. For female F344/N rats, there was *some evidence of carcinogenicity* in that HC Blue No. 1 induced increased incidences of alveolar/bronchiolar neoplasms. There was *clear evidence of carcinogenicity* of HC Blue No. 1 for male and female

B6C3F$_1$ mice as shown by increased incidences of hepatocellular carcinomas. The incidences of follicular cell adenomas of the thyroid gland were also increased in male mice receiving HC Blue No. 1.

Copies of *Toxicology and Carcinogenesis Studies of HC Blue No. 1 in F344/N Rats and B6C3F$_1$ Mice (Feed Studies) (TR 271)* are available without charge from the NTP Public Information Office, M.D. B2-04, P.O. Box 12233, Research Triangle Park, N.C. 27709. Telephone (19) 541-3991, FTS: 629-3991.

Dated: October 15, 1985.

David P. Rall,

Director.

[FR Doc. 85-25493 Filed 10-24-85; 8:45 am]

BILLING CODE 4140-01-M

Availability of Technical Report on Toxicology and Carcinogenesis Studies of HC Blue No. 2

The HHS' National Toxicology Program today announces the availability of the Technical Report describing toxicology and carcinogenesis studies of HC Blue No. 2 (2,2'-[(4-[(2-hydroxyethyl)amino]-3-nitrophenyl)imino]bis[ethanol]), HC Blue No. 2 is a nitrophenylenediamine derivative used as a semipermanent hair dye.

Toxicology and carcinogenesis studies of HC Blue No. 2 were conducted by administering the test chemical in feed for 103 weeks to groups of 50 F344/N rats of each sex and for 104 weeks to groups of 50 B6C3F$_1$ mice of each sex. The dietary concentrations used were 0, 5,000, or 10,000 ppm for male rats and male mice and 0, 10,000, or 20,000 ppm for female rats and female mice. These concentrations were selected on the basis of results from single-administration gavage and 14-day and 13-week feed studies. For the 2-year studies, the average daily doses were approximately 195 and 390 mg/kg in male rats, 465 and 1,000 mg/kg in female rats, 1,320 and 2,240 mg/kg in male mice, and 2,330 and 2,330 and 5,600 mg/kg in female mice.

Under the conditions of these studies, there was *no evidence of carcinogenicity* in male and female F344/N rats or in male and female B6C3F$_1$ mice receiving HC Blue No. 2 in the diet at concentrations of 0.5% and 1.0% for males and 1.0% and 2.0% for female for 2 years. HC Blue No. 2 administration caused a dose-related increase in the incidence of hyperostosis of the skull in male and female rats.

Copies of *Toxicology and Carcinogenesis Studies of HC Blue No. 2 in F344/N Rats and B6C3F$_1$ Mice (Feed Studies) (TR 293)* are available without charge from the NTP Public Information Office, M.D. B2-04, P. O. Box 12233, Research Triangle Park, N. C. 27709. Telephone (919) 541-3991, FTS: 629-3991.

Dated: October 15, 1985.

David P. Rall,

Director.

[FR Doc. 85-25494 Filed 10-24-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1556]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatment of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Improvement Assistance Program (CIAP)—Reporting/Monitoring
Office: Public and Indian Housing
Form Number: HUD-52826 and HUD-53001
Frequency of Submission: On Occasion and Quarterly
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 15,950
Status: Extension
Contact: Pris Buckler, HUD (202) 755-6640; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 18, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: HUD National Quality of Life Initiatives Awards Program
Office: Policy Development and Research
Form Number: None
Frequency of Submission: Single-Time
Affected Public: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 4,800
Status: New
Contact: Edwin A. Stromberg, HUD, (202) 426-1520; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 15, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Residential Appraisal Report
Office: Housing
Form Number: HUD-92800.0T
Frequency of Submission: On Occasion

Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 25,000
Status: Revision
Contact: Robert J. Rankin, HUD, (202) 755-6702; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 15, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: American Housing Survey—1986 Metropolitan Sample (AHS-MS)
Office: Policy Development and Research
Form Number: AHS-61, 62, 63, 66, 67, and 68
Frequency of Submission: Annually
Affected Public: Individuals or Households
Estimated Burden Hours: 23,760
Status: Revision
Contact: Duane T. McGough, HUD, (202) 755-5060; Arthur F. Young, Census, (301) 763-2863; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 15, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Real Estate Settlement Procedures
Office: Housing
Form Number: HUD-1
Frequency of Submission: On Occasion
Affected Public: Individuals or Households
Estimated Burden Hours: 867,500
Status: Extension
Contact: Brian J. Chappelle, HUD, (202) 755-6720; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 24, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certification Pages for Settlement Statement
Office: Housing
Form Number: HUD-9596
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Federal Agencies or Employees
Estimated Burden Hours: 8,250
Status: Revision
Contact: Jacqueline B. Campbell, HUD, (202) 755-5740; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 24, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-25466 Filed 10-24-85; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-85-808; FR 2162]

Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Order of Succession.

SUMMARY: The Office Manager is designating officials who may serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager.

EFFECTIVE DATE: This designation is effective: September 1, 1985.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Office of Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106, phone 215-597-2655. (This is not a toll free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager, with all the powers, functions, and duties redelegated or assigned to the Office Manager: Provided, that no official is authorized to serve as Acting Office Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Development Division.
3. Director, Housing Management Division.

Authority: Delegation of Authority by the Secretary effective April 23, 1985, 50 FR 18742, May 2, 1985.

Dated: September 10, 1985.

I. Margaret White,

Manager, Washington, DC Office.

[FR Doc. 85-25468 Filed 10-24-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C-40594]

Realty Action—Exchange Public Lands in Jackson County, CO

The following described public lands have been determined to be suitable for disposal under section 206 of the Federal Land Policy And Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 11 N., R. 79 W.,
Sec. 30, NE¼NE¼.
T. 11 N., R. 80 W.,
Sec. 11, SE¼NE¼, NE¼SE¼
Containing 120 acres.

In exchange for these lands, the United States will obtain non-federal lands in Jackson County from A Bar A Ranch Inc. (Gates Rubber Co.), P.O. Box 5887, Denver, CO 80217, described as follows:

Sixth Principal Meridian

T. 10 N., R. 79 W.,
Sec. 2, Lots 2 and 3*.
T. 11 N., R. 79 W.,
Sec. 35, E½SW¼.
Containing 161.00 acres.
*Lot 3 may be dropped from consideration depending upon final appraisal.

The purpose of the exchange is to consolidate the surface estate of both the United States and A Bar A Ranch Inc. and to resolve an access problem to a valuable recreation area known as "North Sand Hills Special Recreation Management Area." As part of the consideration for the exchange, A Bar A Ranch, Inc., agrees to grant under a separate document a perpetual easement to this special recreation management area off of County Road 6E in the SE¼ of Section 24, T. 11 N., R. 79 W., 6th P.M., Colorado, which will guarantee public access to the lands being acquired by the United States.

The exchange conforms with the Bureau's planning for the lands involved. The public interest will be served by making this exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted and/or money will be used to equalize values upon completion of the final appraisal of the lands.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation for ditches and canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine or remove the minerals.

3. Any patents issued will be subject to oil and gas leases C-30822, C-30831, and Rights-of-Way C-9231, C-093900.

Publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from mineral leasing, nor from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. Any subsequent application under the public land laws, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such lands or upon publication in **Federal Register** of a termination of the segregation or two (2) years from the date of publication, whichever occurs first.

Detailed information concerning the exchange, including the land report and environmental assessments, is available for review at the Kremmling Resource Area Office, Kremmling, Colorado and the Craig District Office, Craig, Colorado.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81626. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action.

In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Date: October 16, 1985.

Terry Plummer,

Acting District Manager.

[FR Doc. 85-25549 Filed 10-24-85; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Gates of the Arctic National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting on Tuesday, November 19, 1985, from 9:00 A.M. to 5:00 P.M. and ending Thursday afternoon, November 21, 1985.

Location: Federal Building, 101 12th Avenue, Room 329, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call to order
2. Roll call
3. Introducton of visitors and guests
4. Minutes
5. National Park Service reports
   a. General management plan
   b. Research projects
   c. Kobuk River patrols
   d. Park operations
   e. Land exchanges
6. Program outline
7. Committee workshops
   a. Eligibility
   b. Access
8. Committee reports and recommendations
9. Public testimony
10. Other business
11. Date and agenda for next meeting
12. Adjournment.

Written comments and recommendations received prior to November 11, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Dated: October 18, 1985.

Boyd Evison,

Regional Director, Alaska Region.

[FR Doc. 85-25537 Filed 10-24-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Dayton Hudson Corporation, 777 Nicollet Mall, Minneapolis, Minnesota 55402.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

(i) Lechmere Inc., 275 Wildwood Street, Woburn, Massachusetts 01801. State of Incorporation: Massachusetts

(ii) Mervyn's, 25001 Industrial Boulevard, Hayward, California 94545. State of Incorporation: California.

(iii) B. Dalton Bookseller, 7505 Metro Boulevard, Edina, Minnesota 55435. State of Incorporation: Minnesota.

James H. Bayne,

Secretary.

[FR Doc. 85-29474 Filed 10-24-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30688]

Walking Horse and Eastern Railroad Co., Inc.; Exemption From 49 U.S.C. 11343, 11301, and 11322

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from prior approval under 49 U.S.C. 11301 the issuance of stock by Walking Horse and Eastern Railroad Company, Inc. (WH&E). The petition for exemption from 49 U.S.C. 11322 was dismissed. The acquisition of control of WH&E by G. Richard Abernathy, who already controls the Columbia and Silver Creek Railroad (C&S), comes within the class of transactions exempted from prior approval under 49 CFR 1180.2(d)(2). The lines of WH&E and C&S do not connect with each other, the acquisition is not part of a series of anticipated transactions that would lead to a connection, and the transaction involves no Class I carriers. As a condition to the use of this exemption, any employee affected by the acquisition of control shall be protected pursuant to *New York Dock Ry.—Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This decision is effective November 25, 1985. Petitions to stay must be filed by November 4, 1985, and petitions for reconsideration must be filed by November 14, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30688 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Eric D. Gerst, P.C., Suite 900, Philadelphia Bourse, 21 South Fifth Street, Philadelphia, PA 19106

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 17, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioner's Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-25477 Filed 10-24-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-83 (Sub-No. 8)]

Maine Central Railroad Co.; Abandonment in Cumberland, Sagadahoc, Lincoln and Knox Counties, ME; Corrected of Findings[1]

The Commission has issued a certificate authorizing the Maine Central Railroad Company to abandon its 52.12-mile rail line between Brunswick (milepost 33.79) and Rockland (milepost 85.91) in Cumberland, Sagadahoc, Lincoln and Knox Counties, ME. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

[1] This corrects the Notice of Findings published October 10, 1985, to reflect the proper milepost designation at Rockland.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-25475 Filed 10-24-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated July 30, 1985, and published in the **Federal Register** on August 8, 1985; (50 FR 32121), Arenol Chemical Corporation, 40-33 23rd Street, Long Island, City, New York 11101, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Control Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: October 16, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-25483 Filed 10-24-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated August 2, 1985, and published in the **Federal Register** on August 8, 1985; (50 FR 32122), Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 16, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-25484 Filed 10-24-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration Application; DuPont Pharmaceuticals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 26, 1985, Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than November 25, 1985.

Dated: October 16, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-25481 Filed 10-24-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-38]

Registration Applications; Larry L. Kompus, M.D., Orchard Lake, Mi; Hearing

Notice is hereby given that on July 3, 1985, the Drug Enforcement Administration, Department of Justice, issued to Larry L. Kompus, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on March 20, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, November 7, 1985, in the Magistrate's Courtroom, Room 1014, U.S. Courthouse, 231 West Lafayette Street, Detroit, Michigan.

Dated: October 21, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-25482 Filed 10-24-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Amendment of Privacy Act systems of records, Office of the Solicitor.

SUMMARY: The Department of Labor is hereby amending the system of records notice for DOL/SOL-7, entitled Attorney Assignment Record-SOL-7. Specifically, the sections on "Categories of Individuals Covered by the System" and "Retrievability" are being changed to add the names of the judges assigned to the cases and to add the names of individuals and/or parties involved in the cases.

DATE: Persons wishing to comment on this notice may do so by November 25, 1985.

EFFECTIVE DATE: Unless otherwise noticed in the **Federal Register**, this notice shall become effective November 25, 1985.

ADDRESS: Seth D. Zinman, Associate Solicitor, Office of the Solicitor, Division of Legislation and Legal Counsel, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue, NW Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, Department of Labor, Room N-2428, 200 Constitution Avenue, NW Washington, DC 20210; Telephone (202) 523-8188.

Revision of DOL/SOL-7

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Labor hereby revises the system of records maintained by the Office of the Solicitor, previously published at 47 FR 30414 (July 13, 1982).

DOL/SOL-7

SYSTEM NAME:

Attorney Assignment Record—SOL-7.

SYSTEM LOCATION:

SOL Division Offices, Washington, D.C.; SOL Regional and Sub-Regional Offices terminals at various locations. DOL computer, GAO Building, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys employed by the Office of Solicitor; the names of judges assigned to the cases and the names of the individuals and/or parties involved in the cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual attorney assignments; identification of cases pending, status of litigated cases, opinions requested, case agency record, and miscellaneous assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Civil Service Reform Act.

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:

Manual and computer files.

RETRIEVABILITY:

Currently by name of attorney; potentially retrievable by the name of the judge assigned to the case, and by the name of the individual and/or party involved in the case.

SAFEGUARDS:

Manual files are kept locked. Computer files accessible only through proper code number.

RETENTION AND DISPOSAL:

Records are maintained for life of assignment and are then disposed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Solicitors, Office of the Solicitor, Washington, DC; Regional Solicitors and Associate Regional Solicitors at various field locations.

NOTIFICATION PROCEDURE:

See above.

CONTESTING RECORD PROCEDURES:

As above.

RECORD SOURCE CATEGORIES:

Case files, correspondence files, opinion files, and miscellaneous files.

Signed at Washington, D.C., this 18th day of Oct. 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-25887 Filed 10-24-85; 8:45 am]

BILLING CODE 4510-23-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-168; Exemption Application No. D-4124 et al.]

Grant of Individual Exemptions; Crawford Fitting Co., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated the any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied

with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Crawford Fitting Company Profit Sharing Trust and the Associated Profit Sharing Trusts of Several Related Corporations (the Crawford Plans) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 85-168; Exemption Application No. D-4124]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b) (2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply: (1) To those leases of certain manufacturing equipment (the Equipment) between the Crawford Plans and the Crawford Fitting Company and several related employers (the Crawford Companies) that were entered into prior to June 1, 1980, and to the renewals of such leases (including renewals of leases previously covered by section 414(c) of the Act that were extended beyond June 30, 1984), to the extent that any such lease, when entered into, did not cause the affected plan to have more than 25 percent of its assets committed to such transactions; (2) effective April 9, 1975, to the purchase from and subsequent leaseback to the Toner Company (Toner) of certain real estate (the Property) by the Crawford Fitting Company Profit Sharing Trust (the CFC Trust); and (3) prospectively, to the cash sale of the Equipment and the Property by the respective Crawford Plans (which term includes the CFC Trust) to selected members of the Crawford Companies within 90 days of the grant of this exemption, provided that, at all times, the amounts received by the Crawford Plans in the above described transactions represent(ed) no less than the fair market value at the time of such transactions.

Effective Dates: The exemption will be effective January 1, 1975 with respect to the lease of the Equipment; April 9, 1975 with respect to the purchase and leaseback of the Property; and from the date of the grant of the exemption for the cash sale of the Equipment and the Property.

Written Comments: The Department received one written comment with respect to the proposed exemption. The commentator urged the Department to "carefully scrutinize" the disentanglement aspect to the proposed transactions. In making a decision to propose that portion of the exemption, the Department reviewed fully the terms under which this process would occur before making a finding that the disentanglement process satisfied the requisite criteria for providing relief. It should also be noted that the relief afforded by this exemption is only available where the transactions are accomplished pursuant to the representations made and the conditions imposed. Accordingy, after consideration of the entire record, including the comment submitted, the Department has concluded that the exemption should be granted as proposed.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 26, 1985 at 50 FR 30535.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-8753. (This is not a toll-free number.)

K's Merchandise Mart, Inc. Profit Sharing Plan and Trust (the Plan) Located in Decatur, Illinois

[Prohibited Transaction Exemption 85-169; Exemption Application No. D-4918]

Exemption

The restrictions of sections 406(a), 406b(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a 3.28 acre parcel of unimproved real property (the Property) by the Plan to K's Merchandise Mart, Inc., provided that the price paid for the Property is not less than its fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1985 at 50 FR 34212.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Gulf and Western, Inc. Commingled Trust for Pension and Profit Sharing Plan—the Catalina Employees' Retirement Plan (the Plan) Located in Fullerton, California

[Prohibited Transaction Exemption 85-170; Exemption Application No. D-5504]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property (the Real Property) to Kayser-Roth Corporation (the Employer), provided the sales price for the Real Property is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice or proposed exemption published on August 19, 1985 at 50 FR 33429.

Written Comments. The Department received one written comment to the proposed exemption and no requests for a public hearing. The written comment, which was submitted by the Employer, related to the proposed sales price for the Real Property. According to the Employer, the Real Property is to be acquired from the Plan at its fair market value as established by an independent appraisal and determined (a) as unencumbered by a pre-existing lease between the Plan and the Employer and (b) after a recent condemnation proceeding by the City of Fullerton, California (Fullerton). In addition, the Employer represents that the Plan will receive the entire condemnation award of $275,000.

The Employer notes that paragraph 5 of the notice of proposed exemption (id at 33430) makes mention of a February 1, 1984 appraisal in which the Appraisal Division of Cushman and Wakefield (Cushman and Wakefield) placed the fair market value of the Real Property at

$1,015,000 prior to the condemnation proceeding by Fullerton. However, the Employer explains that a subsequent appraisal on June 12, 1985 by Cushman and Wakefield placed the fair market value of the Real Property at $900,000 following the condemnation. The Employer represents that the sales price for the Real Property will be based on the fair market value as established by the updated appraisal rather than on the amount determined in the earlier appraisal. In addition, the Employer reconfirms that the Plan will receive the entire $275,000 condemnation award.

After consideration of the entire record, the Department had decided to grant the requested exemption.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Equitable Life Assurance Society of the United States (Equitable), Located in New York, New York and Equitable Realty Assets Corporation (Equitable Realty) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 85-171; Application No. D-5558]

Exemption

I. *Transactions*

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective July 12, 1984, to the following transactions involving serial mortgage-backed bonds (the Bonds) and the pledged mortgages (the Pledged Mortgages) and other collateral (the Collateral) securing such Bonds:

(1) The extension of credit between an employee benefit plan and Equitable or its affiliate arising from the holding of Bonds by the plan in connection with the initial issuance of the Bonds where Equitable or any of its affiliates is a party in interest with respect to the plan, provided that the plan pays no more than fair market value for the Bonds, and provided further that the rights and interests evidenced by the Bonds are not subordinated to the rights and interests evidenced by other Bonds in the same series of Bonds;

(2) The extension of credit between an employee benefit plan and Equitable of its affiliate arising from the continued holding of Bonds by the plan where such Bonds are acquired from a person who is independent of Equitable and its affiliates;

(3) The direct or indirect purchase, exchange or transfer of Bonds by any wholly-owned subsidiary of Equitable from an employee benefit plan where such subsidiary or any affiliate thereof is a party in interest with respect to the plan, provided that—

(i) The subject transactions are carried out in accordance with the terms of a binding agreement between the Equitable subsidiary and the banking institution acting as trustee under the trust indenture,

(ii) The subject agreement is available to investors before they acquire any of the Bonds, and

(iii) The plan receives at least fair market value for the Bonds;

(4) The redemption of any of the Bonds by any wholly-owned subsidiary of Equitable from an employee benefit plan where such subsidiary or any affiliate thereof is a party in interest with respect to the plan, provided that—

(i) The subject transaction is carried out in accordance with the terms of a binding agreement between the Equitable subsidiary and the banking institution acting as trustee,

(ii) The subject agreement is available to investors before they acquire any of the Bonds, and

(iii) Except as provided in item (iv) below, the amount paid for the Bonds equals the "Redemption Price" of such Bonds as defined in Section III below, and

(iv) In the event the minimum debt service requirements for the payment of the Bonds cannot be met, all of the Bonds will be redeemed on a totally pro rata basis with no preference or priority to any Bondholder;

(5) The direct or indirect purchase, sale, exchange or transfer of Bonds between Equitable or any of its affiliates and an employee benefit plan where Equitable or any of its affiliates is a party in interest with respect to the plan, provided that—

(i) The funds used in such transactions do not involve any of the Collateral,

(ii) The subject transaction is negotiated on an arm's-length basis, and

(iii) The fiduciary acting on behalf of the plan is independent of Equitable and its affiliates.

B. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or sanctions would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act), solely because of the ownership of any of the Bonds.

II. *General Conditions*

A. The relief provided under Section I, above, is available only if the following conditions are met:

(1) For each series of Bonds, Equitable or its subsidiary maintains a system for insuring or otherwise protecting the Pledged Mortgages and the other Collateral securing such Bonds and for protecting Bondholders against reductions in principal and interest payments due to defaults in loan payments or property damage. This system must provide such protection up to an amount not less than the greater of one percent of the aggregate principal balance of all of the Collateral, or the principal balance of the largest Pledged Mortgage.

(2) The trustee under the indenture is not an affiliate of Equitable or its subsidiaries, provided, however, that the trustee shall not be considered to be an affiliate solely because the trustee has succeeded to the rights and responsibilities of Equitable pursuant to the terms of the servicing agreement providing for such succession upon the occurrence of one or more events of default by Equitable; and

(3) The sum of all payments made to and retained by Equitable in connection with the Bonds and the Collateral and all funds inuring to the benefit of Equitable as a result of the servicing of the Pledged Mortgages and other Collateral represents not more than reasonable compensation for the services provided by Equitable.

III. *Definitions*

A. For purposes of this exemption, the term "Bonds" means mortgage-backed bonds issued by any wholly-owned subsidiary of Equitable pursuant to the Series A offering or any subsequent offering having the same material terms.

B. For purposes of this exemption, the term "Pledged Mortgage" means any interest-bearing obligation secured by either first or second mortgages or deeds of trust on residential property, including condominium units. The Pledged Mortgages include the original mortgages pledged to the trustee or other mortgages or deeds of trust delivered to the trustee at any time prior to the cancellation of the Bonds.

C. For purposes of the exemption, the term "Collateral" means (a) the Pledged Mortgages and (b) eligible investments including (i) obligations issued or guaranteed by the United States or any agency or instrumentality of the United States whose obligations are backed by the full faith and credit of the United States, (ii) obligations of other federal

agencies or instrumentalities which are acceptable at the time of the investment to Standard & Poor's and Moody's as collateral for obligations having ratings equal to the initial ratings of the Bonds, excluding mortgage-backed securities on which timely payment is not guaranteed, (iii)(A) deposits in other obligations of any bank (including the bank acting as trustee) whose debt obligations (or whose parent bank holding company's debt obligations) have credit ratings from both Standard & Poor's and Moody's equal to the initial ratings on the Bonds (if such deposits or obligations mature in one year or less, such bank or bank holding company need only have the highest commerical paper ratings from both such rating agencies and a long-term debt rating of Aa3 from Moody's), or (B) deposits in any other bank or savings institution so long as such deposits are fully insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation, (iv) repurchase obligations with respect to federal government or agency securities entered into with any bank described in clause (iii)(A) above, (v) interest-bearing or discount corporate securities having credit ratings from Standard & Poor's and Moody's equal to the initial ratings on the Bonds, (vi) commercial paper having the highest rating obtainable from Standard & Poor's and Moody's, provided that the issuer thereof also has a long-term debt rating of at least Aa3 from Moody's, and (vii) a guaranteed investment contract issued by an insurance company or other corporation acceptable to both Standard and Poor's and Moody's. No mortgage-backed security meeting the above standards will be an "eligible investment", however, if it bears interest at a rate in excess of 10 percent per annum.[1]

D. For the purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(E) For purposes of this exemption, the term "Redemption Price" means—

(i) In the case of any zero-coupon Bond, 100 percent of the then "Accredited Value" of such Bond ("Accreted Value" is an amount equal to the sum of (i) the initial public offering price of the Bond, as shown on the cover of the prospectus, plus (ii) interest on such amount, computed semi-annually to the date of the determination, at an annual rate equal to the yield to maturity of such Bonds, as shown on the cover of the prospectus); and

(ii) In the case of any installment Bonds, 100 percent of the remaining principal amount thereof plus accrued interest to the date of redemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1985 at 50 FR 32659.

Effective Date: This exemption is effective July 12, 1984.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Rex Stanley Feed Yard, Inc. Employees Pension Trust (the Plan) Located in Dodge City, Kansas

[Prohibited Transaction Exemption 85-172; Exemption Application No. D-5926]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years, to the proposed loans by the Plan of up to 25% of its assets to Rex Stanley Feed Yard, Inc., provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice proposed exemption published on August 23, 1985 at 50 FR 34213.

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this five year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Information Contract: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Dan-Ric, Inc. Pension Plan and Dan-Ric, Inc. Profit-Sharing Plan (the Plans) Located in LaGrange, Georgia

[Prohibited Transaction Exemption 85-173; Exemption Application Nos. D-6018 & D-6019]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4875(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plans of a one-half interest in certain unimproved real property to Dan-Ric, Inc., the sponsor of the Plans, provided that all terms and conditions of such sale are at least equivalent to those which the Plans could obtain in dealing at arm's length with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1985 at 50 FR 34217.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Michigan Valve & Fitting Company Employees Profit-Sharing Plan and Trust (the Plan) Located in Detroit, Michigan

[Prohibited Transaction Exemption 85-174; Exemption Application No. D-6035]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a certain office building (the Building) located in Detroit Michigan by the Plan to Michigan Valve & Fitting Company, a party in interest

[1] The applicants represent that the ten percent interest rate cap applicable to mortgage-backed eligible investments is intended to ensure that the eligible investments have the same investment characteristics as the Pledged Mortgages. The interest rate cap, by precluding the holding of high interest rate mortgage loan investments, is also intended to reduce the likelihood of prepayments on the eligible investments. The ten percent interest cap will not limit the yield on such investments. The yield on such investments will consist of interest and market discount and will reflect the market yield on such investments at the time they are acquired.

with respect to the Plan, provided that the Plan receives not less than the appraised fair market value for the Building as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1985 at 50 FR 34218.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

The Colorado National Bank of Denver (the Bank) Located in Denver, Colorado

[Prohibited Transaction Exemption 85-175; Exemption Application No. D-6059]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the sale on December 23, 1983 of certain securities by the Amax Inc. Commingled Fund (the Fund), for which the Bank was a fiduciary, to three of the Bank's collective investment accounts, provided that the sales price for each security was the fair market value of such security on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1985 at 50 FR 34219.

Effective Date: The effective date of this exemption is December 23, 1983.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Harden, Napheys, Schmidt & Hass, P.C. Restated Profit Sharing Plan (the Plan) Located in Fort Collins, Colorado

[Prohibited Transaction Exemption 85-176; Exemption Application No. D-6164]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of real property (the Property) to the United Bank of Fort Collins, a party in interest with respect to the Plan, provided that the price paid is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1985 at 50 FR 34220.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of October, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-25591 Filed 10-24-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-4326 et al.]

Proposed Exemptions; Whataburger, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW, Washington, DC 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of Pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications field pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these

notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Whataburger, Inc., Profit Sharing Plan and Trust (the Plan) Located in Corpus Christi, Texas

[Application No. D-4328]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the subordination by the Plan of its interest in three parcels of land (the Properties) in favor of the owners of the Whataburger franchised restraurants located thereon after the franchises were acquired by Whataburger, Inc. (Whataburger), the Plan sponsor, from the original third party franchisees (the Selling Franchisees), provided that no change occurred in the terms and conditions of the Plan's subordination of its interest in the Properties as a result of Whataburger's acquisition of the franchises from the Selling Franchisees.

Effective Dates: The effective dates of this proposed exemption, if granted, are June 1, 1978 through September 30, 1983.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 1,275 participants and assets of $4,267,700 as of September 30, 1983. The Plan is trusteed by Citizens Bank of Corpus Christi, Texas (the Bank). At the direction of the Plan Committee (the Committee), which is composed of five corporate officials, the Bank invests the assets of the Plan primarily in the Whataburger Group Trust for Employee Benefit Plans (the Group Trust). The Group Trust is trusteed by five corporate officials of Whataburger. Since the Plan is currently the sole participant in the Group Trust and all assets of the Group Trust are assets of the Plan, the term "Plan" is used in this exemption to refer collectively to the Plan and the Group Trust.

2. Whataburger is an operator and franchisor of fast food restaurants. As of September, 1983, Whataburger was operating 178 units. In some instances, Whataburger owns both the building and the underlying land; in others it is the lessee of both the building and the underlying land and in still other instances it is the lessee of the land only. Whataburger has established a franchise system consisting of 27 franchisees with 122 franchised units. The vast majority of the franchised units are located on land owned by persons unrelated to either the Plan or Whataburger.

3. In the late 1960's, one of the Whataburger shareholders acquired unimproved real property upon which buildings were to be constructed for use as franchised units to be operated by third party franchisees. The shareholder entered into ground leases with the franchisees providing for rental rates ranging from 4% to 5% of the adjusted gross receipts of the franchised unit. The applicant represents that this rental arrangement proved to be extremely profitable to the shareholder. The applicant further represents that in many circumstances the shareholder recovered the full cost of the property in just a few years and continued thereafter to realize a significant return each year.

4. The applicant represents that because of the shareholder's favorable investment return, the Committee felt that similar arrangements would be excellent investments for the Plan. Therefore, beginning in March, 1973, and continuing until August, 1979, the Plan acquired ten parcels of land (the Land), including the Properties, from unrelated parties. Nine of the parcels are located in Texas and one is located in Tennessee.

5. At or around the time of acquisition of each parcel of Land, the Plan entered into a lease with individual franchisees (the Franchisees), including the Selling Franchisees. Although each of the ten Franchisees has a contractual relationship with Whataburger under which the Franchisee is entitled to operate a Whataburger Restaurant (the Restaurants) and under which Whataburger receives franchise fees, Whataburger owns no interest in either the Franchisees or the Restaurants. No employee of a Franchisee participates in the Plan. Further, no Franchisee is controlled by Whataburger, any fiduciary of the Plan, any owner of 50% of Whataburger or any person providing services to the Plan. The applicant concludes that no Franchisee is a party in interest with respect to the Plan.

6. In order to construct a Restaurant on a parcel of Land, each Franchisee (including the Selling Franchisees) obtained a construction loan and long-term financing from a financial institution. The applicant represents that the Franchisees acted on their own in arranging and obtaining loans from banks. In order for the Franchisees to obtain such financing, the financial institution in each case required the Plan to pledge its interest in the underlying parcel of Land as collateral for the loan. The applicant represents that the pledge of real property as security for a construction loan and long-term financing is a common commercial practice. The applicant further represents that this practice was not in the past and still is not uncommon for ground leases between Whataburger and independent third party landowners.,

7. During the period from 1973 to 1979 when the Plan purchased the Land, Whataburger and its franchisees opened a total of 86 Whataburger units. The applicant represents that during this period Whataburger was approached on a regular basis by individuals seeking franchises and by individuals seeking to ground lease real property for Whataburger units to either Whataburger or Whataburger franchisees. The applicant further represents that during this period, Whataburger's ability to expand was not predicated on the Plan's purchase of the Land.

8. In four instances between the dates of February 1, 1977 and May 6, 1980, a Franchisee ceased operating his Restaurant. The applicant represents that the cessation of operations was, in each case, for personal or business reasons, unrelated to the Franchisee's relationship to the Plan and usually occurred because the Franchisee wished to retire or pursue other business ventures. In each instance, the franchise agreement between Whataburger and the Franchisee terminated and Whataburger acquired the Franchisee's operations, including the building located on the Plan's land. In addition, Whataburger assumed the debt on the building and became the lessee of the Land. The Plan's interest in its Land remained pledged to secure the debt on the building.

9. The Restaurants acquired by Whataburger from the Franchisees are as follows: Memphis, Tennessee acquired February 1, 1977; San Angelo, Texas acquired June 1, 1978; Denton, Texas acquired October 24, 1979; and San Marcos, Texas acquired May 6, 1980. The applicant represents that the

Properties (located in San Angelo, Denton and San Marcos) and the parcel of Land underlying Memphis Restaurant together constitute qualifying employer real property as defined in section 407(d)(4) of the Act and the Plan's leases to Whataburger are statutorily exempt by section 408(e) of the Act from the prohibited transaction provisions of section 406 of the Act.[1] However, at the time the Memphis Restaurant was acquired by Whataburger, the parcel of Land underlying that Restaurant was the only parcel of Land leased by the Plan to Whataburger. The applicant states that this particular lease constituted a prohibited transaction from February 1, 1977 until June 1, 1978, when Whataburger acquired the San Angelo Restaurant (which the applicant represents brought the leases of the Memphis and San Angelo Properties within the statutory exemption of section 408(e) of the Act.[2] The applicant represents that Whataburger will pay all applicable excise taxes with respect to the transaction within 60 days of the grant of this proposed exemption.

10. Prior to Whataburger's acquisition of the Memphis Restaurant, the original Franchisee (who owned two franchises in Memphis) was indebted to the Citizen's State Bank (CSB) on two notes for approximately $205,000 in the aggregate, one of which was secured by the building and the Plan's subordination of its interest in the parcel of Land underlying the building. When Whataburger acquired the Franchisee's two Memphis franchises, it combined the two notes and borrowed an additional $185,000 from CSB. The Plan's interest in its parcel of land remained pledged to CSB as partial security on the, now larger, $390,000 debt. The Department is unable to find that any safeguards existed to protect the interest of the Plan, its participants and beneficiaries in this transaction. The applicant acknowledges that the subordination of the Plan's interest in the parcel of Land underlying the Memphis Restaurant on behalf of Whataburger constituted a prohibited transaction from the date that Whataburger acquired the franchise until September 30, 1983, the date that Whataburger substituted other property as collateral for this loan and CSB released its lien against the Plan's property. The applicant represents that Whataburger will pay all applicable excise taxes with respect to the subordination within 60 days of the grant of this proposed exemption.

11. With respect to the Properties, when Whataburger assumed those franchises, Whataburger merely assumed the Selling Franchisee's debt, neither refinancing the debt nor in any other way modifying the terms of the loan that existed between the Selling Franchisees and their banks. The applicant represents that in each instance when the Plan's subordination of its interest in the Properties in favor of Whataburger came into being, the following independent safeguards were in place: (a) The negotiations which resulted in the Plan's agreement to subordinate its interest in the Property were conducted between unrelated parties at the time the original lease was entered into; (b) Whataburger merely assumed pre-existing terms and conditions when it took over the operations of the Selling Franchisee; and (c) when Whataburger acquired the franchise there was no change in the terms and conditions of the Plan's subordination agreement with respect to the Property.

12. The applicant recognized that the Plan's continued subordination of its interest in the Properties after Whataburger acquired the franchises of the Selling Franchisees may constitute prohibited transactions. Accordingly, the applicant seeks an exemption for the Plan's subordination of its interest in a Property from the time Whataburger acquired a franchise until the lien encumbering the Property underlying the franchise was released. In each case, the lien against a Property was released when Whataburger paid the balance on the note which it assumed from the Selling Franchisee. The lien against the San Angelo Property was released in September, 1981; the lien against the San Marcos Property was released on March 30, 1983; and the lien against the Denton Property was released on September 30, 1983.

13. In summary, the applicant represents that the Plan's subordination of its interest in the Properties after Whataburger acquired the franchises from the Selling Franchisees met the statutory conditions for an exemption under section 408(a) of the Act because: (a) The negotiations resulting in the Plan's agreement to subordinate its interest in each of the Properties were conducted between unrelated parties at the time the original leases was entered into between the Plan and the unrelated Selling Franchisees; (b) Whataburger merely assumed pre-existing terms and conditions when it took over the franchises of the Selling Franchisees; and (c) when Whataburger acquired the franchises of the Selling Franchisees there was no change in the terms and conditions of the Plan's subordination agreements.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Central States, Southeast and Southwest Areas Pension Fund (the Plan) Located in Chicago, Illinois

[Application No. D-5901]

Proposed Exemption

The Department is proposing to extend, until January 21, 1990, certain portions of Prohibited Transaction Exemption (PTE) 77-11 (42 FR 54041, October 7, 1977). Authority to grant the proposed exemption is given to the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

If the proposed exemption extension is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)((2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, until January 21, 1990, to the arrangement by any investment manager for the Plan for the provision of supplemental services (as described in Part V of PTE 77-11 and PTE 84-114, 49 FR 30609, July 31, 1984) on behalf of the Plan with respect to existing real estate-related assets (the Existing Real Estate-Related Assets).

In addition, if the proposed exemption extension is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply until January 21, 1990 to the following:

(A) The adjustment and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property (as described in Part VIII of PTE 77-11 and PTE 84-114), but only to the extent that PTE 84-14 [1] is not applicable with

[1] In this proposed exemption the Department expresses no opinion as to whether the Properties and the Memphis Land constitute qualifying employer real property as defined in section 407(d)(4) nor as to the applicability of section 408(e) to the leasing of such real property.

[2] In this proposed exemption the Department expresses no opinion as to the applicability of section 408(e) to the leasing of the Plan's Memphis and San Angelo Land.

[1] 49 FR 9494, March 13, 1984. PTE 84-14 is a class exemption permitting qualified professional asset managers (QPAMs) who are related to employee benefit plans to engage in transactions involving plan assets provided certain conditions are met.

respect to such transaction by reason of either (1) the assets of the Plan represent more than 20 percent of the total client assets under the management of the investment manager at the time of the transaction, or (2) the investment manager does not satisfy the equity requirement of Part V(a)(4) of PTE 84–14; and

(B) New transactions between the Plan and certain non-fiduciary parties in interest and disqualified persons (as described in Part IX of PTE 77–11 and as extended by PTE 83–57 and PTE 84–114), but only to the extent that PTE 84–14 is not applicable with respect to such transaction for either of the reasons cited in subparagraph (A) above.

Effective Date: If granted, the proposed exemption would be effective January 20, 1985. It would expire on January 20, 1990.

Summary of Facts and Representations

1. *The Applicant.* This proposed exemption is requested in an application filed with the Department on November 20, 1984 by Morgan Stanley, Inc. (MSI). MSI is a privately-owned, New York-based holding company which, through its subsidiaries, is engaged in the world-wide business of raising, trading and managing capital. Since January 20, 1984, MSI has been named fiduciary of the Plan, succeeding The Equitable Life Assurance Society of the United States (Equitable) which had served in this capacity since 1977. As named fiduciary, MSI has exclusive responsibility and authority to control and manage all assets of the Plan and to allocate those assets among different types of investments managers. MSI also has exclusive responsibility and authority to appoint, replace and remove investment managers.

The duties and responsibilities conferred on MSI are embodied in a consent decree (the Consent Decree) entered on September 22, 1982 by the United States District Court for the Northern District of Illinois (the Court) and a November 17, 1983 named fiduciary agreement (the 1983 Named Fiduciary Agreement) entered into by the Plan and MSI. These documents collectively mandate that MSI's activities be further subject to the continuing jurisdiction of four independent bodies—the trustees (the Trustees) of the Plan, an independent special counsel (the Independent Special Counsel,[2] the Court and the Department.

[2] The Court has appointed the Honorable William B. Saxbe (Mr. Saxbe), former Attorney General of the United States, as Independent Special Counsel.

2. *The Plan.* The Plan is a jointly-administered, multiemployer defined benefit pension plan established and maintained under collective bargaining agreements between employers and certain affiliated unions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The Plan is jointly administered by eight Trustees consisting of an equal number of employee and employer representatives under section 302(c)(5) of the Labor Management Relations Act, 1947, as amended.

More than 12,000 employers presently make contributions to the Plan under collective bargaining agreements involving over 200 local union organizations. The number of active and retired participants and beneficiaries in the Plan exceeds 450,000.

The total of the Plan's managed assets is currently valued at approximately $4.8 billion, of which approximately 11.6 percent (about $558 million) is invested in real estate and mortgage loans. The remainder of the Plan's managed assets is invested in common stocks, bonds and other securities-related assets.

3. *PTE 77–11.* In 1977, the Department and the Internal Revenue Service (the Service) issued PTE 77–11, a nine-part exemption, to resolve a number of questions which arose with respect to the prohibited transaction provisions of the Act and the Code regarding the management of the Plan's assets under a named fiduciary agreement (the 1977 Named Fiduciary Agreement) entered into between the Trustees, Equitable and Victor Palmieria and Company Incorporated (VPCO) on June 30, 1977, pursuant to which Equitable was appointed as named fiduciary of the Plan. PTE 77–11 was also intended to resolve certain issues pertaining to individual investment management agreements that were dated June 30, 1977 and were executed between the Trustees, Equitable, VPCO and three other independent investment managers who were appointed by the Trustees to provide investment managment services to the Plan.

Part IX of PTE 77–11 was extended by the Department on April 1, 1983 by PTE 83–57 (48 FR 14091), and as discussed below, by PTE 84–114 which superseded PTE 83–57.

4. *PTE 84–114.* On July 31, 1984, the Department granted PTE 84–114, which was made retroactive to January 20, 1984. PTE 84–114 provided continuing exemptive relief for transactions described in Parts V, VIII and IX of PTE 77–11. (These transactions are discussed in detail below.) For transactions taking place after August 30, 1984, PTE 84–114 revoked PTE 77–11.

PTE 84–114 permitted the implementation of the 1983 Named Fiduciary Agreement. Moreover, it permitted the Plan's investment managers and real estate investment managers to continue to manage the Plan's assets without a disruption in the continuity of investment advice and services to the Plan while MSI was performing an in-depth review of the performance of the managers, the investments of the Plan and the investment policy of the Plan.

The exemptive relief authorized by PTE 84–114 expired with respect to each investment manager on the earlier of January 20, 1985 or the date on which the investment manager ceased to have responsibility for the management of assets of the Plan under its investment management contract which became effective on January 20, 1984.

5. *Extension of PTE 84–114.* MSI requests that all three parts of PTE 84–114 be extended as set forth below. MSI states that the extension is necessary to ensure the continued effective managment of the Plan's assets and it believes the extension is in the interest of the Plan and its participants and beneficiaries of the Plan.

A. *Part V of PTE 77–11.* As originally proposed under Part V, Equitable and VPCO were permitted to provide or arrange for supplemental services to the Plan in connection with the managment of the Plan's real estate assets. Moreover, Equitable and VPCO could be reimbursed for their direct expenses if they provided supplemental services, in addition to their regular compensation for providing basic real estate asset management services. However, under the agreements with MSI entered into as of January 20, 1984, and as reflected in PTE 84–114, Equitable and VPCO were still allowed to determine which services were basic and which were supplemental, but neither were permitted to perform supplemental services, themselves.

On April 30, 1984, the Plan adopted an investment policy statement requiring the substantial reduction of the aggregate amount of the loans and equity holdings of the Plan's Existing Real Estate-Related Assets held as of January 20, 1984 over the next five years.[3] (Basic and supplemental

[3] The Existing Real Estate-Related Assets consist primarily of fixed rate mortgage loans secured by casino/hotels, other hotels/motels and land. According to the exemption application, these investments do not satisfy many of the criteria for new real estate-related assets (the Future Real

Continued

services have been provided in the management of these assets.) No acquisition of the Future Real Estate-Related Investments will be made until MSI has completed the process of verifying and valuing the Existing Real Estate-Related Assets, selected managers for such assets under long-term contracts, and MSI and the Trustees have developed a specific set of investment objectives and guidelines for the Future Real Estate-Related Investments.

As part of its in-depth review of the Plan, MSI is in the process of completing its selection of real estate investment managers. Each real estate investment manager will continue to have the responsibility to determine which services are basic as well as which are supplemental. However, none of the real estate investment managers of the Existing Real Estate-Related Assets (or their affiliates) will be permitted to provide supplemental services.

According to MSI, the determination by an investment manager concerning whether a service is supplemental or basic could involve a prohibited transaction. Therefore, MSI believes it will be necessary to extend Part V relief, which presently applies to only Equitable and VPCO, to other real estate investment managers having responsibility over the Existing Real Estate-Related Assets.

To monitor the performance of Equitable, VPCO and the real estate investment managers, MSI has established oversight procedures that are set forth in the real estate investment management agreements for these entities. These procedures require the real estate investment manager to notify MSI and the Trustees in writing if it decides that a service is supplemental and the real estate investment manager has hired a third party to perform this service. If MSI determines the service is not supplemental, it must inform the real estate investment manager that the service provider's fees are to be paid by the manager.

MSI states that an additional safeguard with respect to the transactions described in Part V, is provided by the Independent Special Counsel by virtue of his duties to monitor and report on the activities of the Plan, the Trustees, and the real estate investment managers.

B. *Part VIII of PTE 77-11.* Part VIII provided a conditional exemption that permitted the Plan's investment managers to adjust or to continue any pre-existing loan, lease, service agreement or other arrangement entered into before the implementation of the 1977 Named Fiduciary Agreement and the individual investment management agreements. It also allowed the continued holding by the investment managers of employer securities or employer real property acquired before the effective date of the 1977 agreements.

MSI represents that many of the investments currently held by the Plan were made prior to the 1977 agreements and may continue to pose prohibited transaction problems since the assets in question consist primarily of the Existing Real Estate-Related Assets. In light of the continued holding by the Plan of these investments, MSI believes it is necessary to continue this exemption for certain current and future investment managers and real estate investment managers.

MSI also asserts that one of the basic premises underlying the granting of Part VIII relief was to avoid the enormous and potentially duplicative burden of investigation that would be required of investment managers and real estate investment managers in ascertaining whether an existing transaction was a prohibited transaction. In addition, unless an exemption were granted, MSI states that the managers would not have the flexibility to decide whether the continuation or adjustment of an otherwise prohibited transaction would be in the best interests of the Plan.

MSI further represents that Part VIII relief should be extended because certain of the Plan's investment managers and real estate investment managers may not be able to make use of Part I of PTE 84-14, the Class Exemption for QPAMs. According to MSI, the consent Decree provides that in order to be eligible for appointment as an investment manager or real estate investment manager, the Plan's assets allocated to the manager must not constitute more than 25 percent of the total of all assets under management. MSI notes that Part I of PTE 84-14 is not applicable if the assets of a pension plan represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction. Given this disparity in the percentage of assets under management, MSI concludes that an investment manager or real estate investment manager of the Plan may be precluded from using Part I of PTE 84-14 and would need to use the exemption requested herein.

Furthermore, MSI states that certain investment managers and real estate investment managers may not satisfy one of the conditions in the definition of a QPAM as set forth in PTE 84-14. Part V(a)(4) provides that an investment adviser registered under the Investment Advisers Act of 1940 will be a QPAM only if it meets certain requirements as to assets under management and shareholders' or partners' equity. Although the Consent Decree has an assets under management requirement (which is greater than the QPAM requirement), MSI states that it does not have an equity requirement. Thus, if an investment manager does not satisfy the QPAM equity requirement, MSI believes the manager would be precluded from using Part I of PTE 84-14 and would need to use the exemption requested herein.

To the best of MSI's knowledge, the current investment managers and real estate investment managers needing continued relief under PTE 84-114 because they do not meet the QPAM equity requirement are McCowan Associates, Inc. and VPCO. In addition, MSI states that future managers who do not meet the QPAM asset or equity criteria may need continued relief under PTE 84-114 since a limited pool of prospective investment managers exists.

As part of its monitoring process, MSI requires all investment managers and real estate investment managers to include in their monthly reports to it and to the Trustees a statement regarding whether the managers have discovered or been notified during the preceding month of a party in interest's involvement in any transaction with respect to the Existing Real Estate-Related Assets. If the managers uncover such activities, they are required to provide written documentation on these matters to MSI, the Trustees, the Department and the Service.

MSI will continue to evaluate these reports and analyses and take appropriate action, if required. MSI also states that further protection will be provided the Plan and its participants and beneficiaries by the Independent Special Counsel.

C. *Part IX of 77-11 as Extended by PTE 83-57.* Part IX provided an exemption for new transactions

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Estate-Related Investments) because of the type of collateral pledged, the financial status of the borrower and, in certain cases, the poor documentation maintained for these assets at the time they were placed under the control of the real estate investment managers pursuant to the 1977 Named Fiduciary Agreement. As a result of the foregoing, the exemption application states that more intensive services are required with respect to the Existing Real Estate-Related Assets. Moreover, the exemption application explains that efforts to reduce (and if possible, ultimately dispose of) the Existing Real Estate-Related Assets over the next five years require more supplemental services than would otherwise be expected for a typical portfolio of high quality real estate assets such as the Future Real Estate-Related Investments.

between the Plan and certain categories of parties in interest, including service providers (other than any trustee, administrator or investment manager, or any persons related thereto) and employers whose contributions for the preceding Plan year are less than five percent of the total for that year, and persons related thereto. Part IX required Plan investment managers and real estate investment managers to report to the Department on any transaction engaged in by the manager on behalf of the Plan with a person whom the manager actually knew to be a Plan service provider or a part in interest by reason of a relationship to a service provider.

MSI represents that Part IX relief was granted in recognition of the immense number of persons who are parties in interest with respect to the Plan as well as the magnitude of the Plan's assets. MSI states that under these circumstances, the management of the Plan's assets would inevitably result in prohibited transactions despite efforts by investment managers to identify parties in interest. MSI asserts that since these factors continue, an extension of this exemption will be necessary.

Moreover, MSI believes that Part I of PTE 84–14 should be applicable to virtually all new transactions involving the Plan's assets, assuming its requirements are met. However, for those investment managers or real estate investment managers not meeting the asset or equity tests required under Part I of PTE 84–14 MSI requests an extension of PTE 85–114

With respect to any proposed new transaction which involves a person whom a manager actually knows to be a party in interesst, MSI will continue to require, prior to engaging in the transaction, that the manager provide to MSI and the Trustees a description of the terms of the proposed transaction together with their analysis of the reasonableness of the transaction and protections afforded Plan participants and beneficiaries.

In addition, MSI will require the real estate investment managers to continue their practice of ascertaining whether a potential candidate to a transaction is a party in interest. The names of all parties submitting these representations will be furnished to the Plan for its review and determination of the status of the candidate.

As noted previously, the Independent Special Counsel will again provide protection with respect to the interests of the Plan and its participants and beneficiaries. Moreover, MSI asserts that this exemption will continue to be needed under the 1983 Named Fiduciary Agreement and the investment management agreements.

6. *Views of the Independent Special Counsel.* As stated above, Mr. Saxbe is the Independent Special Counsel for the Plan. By letter dated February 25, 1985, Mr. Saxbe represents that it is his understanding that the same conditions, procedures and safeguards applicable to PTE 84–114 will be continued in the proposed exemption. He also states that in his January 1, 1984 quarterly report as Independent Special Counsel, he indicaed that the Department's failure to reaffirm PTE 84–114 in a timely manner, at least on an interim basis, could result in substantial detriment to the Plan. Because of the continuing unique nature of the Plan's assets, the magnitude of those assets and the large number of individuals who are parties in interest, Mr. Saxbe is still of the view that the relief granted in PTE 84–114 was in the interest of the Plan and its participants and beneficiaries. Therefore, he believes the requested extension of PTE 84–114 would also be in the interest of the Plan and its participants and beneficiaries.

7. In summary, it is represented that the proposed exemption to extend Parts V, VIII and IX of PTE 77–11 satisfies the statutory requirements of section 408(a) of the Act because: (a) It ensures the continued, effective management of the Plan's assets; (b) it provides relief for certain of the Plan's investment managers and real estate investment managers who are precluded from using Part I of PTE 84–14 by reason of their failure to satisfy prescribed asset or equity requirements; (c) for each transaction exempted, MSI has monitored and will cotinue to monitor the performance of the investment managers who have responsibility over certain of the Plan's assets; (d) MSI's monitoring activities with respect to the investment managers are subject to further review by the Independent Special Counsel, the Trustees, the Court and the Department; and (e) the Independent Special Counsel approves of the prior exemption and he recommends that it be continued.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of October, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–25592 Filed 10–24–85; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on November 12, 1985, from 9:00

a.m.–6:00 p.m.; on November 13, from 9:00 a.m.–9:30 p.m.; on November 14, from 9:00 a.m.–9:00 p.m.; and on November 15, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 15, from 1:30–3:30 p.m. Topics for discussion will include Guidelines, Five-Year Plan, Long-Term Enhancement paper and Conductors Study.

The remaining sessions of this meeting on November 12, from 9:00 a.m.–6:00 p.m.; November 13, from 9:00 a.m.–9:30 p.m.; November 14, from 9:00 a.m.–9:00 p.m.; and on November 15, from 9:00 a.m.–1:00 p.m. and from 3:30 p.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

October 22, 1985.

[FR Doc. 85–25579 Filed 10–24–85; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Long Range Plan for NRC; Meeting

The ACRS Subcommittee on Long Range Plan for NRC will hold a meeting on November 6, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting will be closed to discuss information which would otherwise not be available.

The agenda for subject meeting shall be as follows:

Wednesday, November 6, 1985—8:30 a.m. until the conclusion of business.

The Subcommittee will continue discussions on developing comments on a long range plan for the NRC. Topics under discussion are primarily technical issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years. The Subcommittee expects to hold discussions with a number of knowledgeable individuals to explore a long range plan for the NRC.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 22, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–25556 Filed 10–24–85; 8:45 am]

BILLING CODE 7590–01–M

Regional State Liaison Officers'; Meeting

On November 6 and 7, 1985, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont. A representative of the District of Columbia will also be attending the meeting. The subjects which will be discussed include radioactive waste management, emergency response, transportation, Price Anderson, as well as other items of mutual regulatory interest.

The meeting will be conducted at the Sheraton Valley Forge Hotel, North Gulph Road and First Avenue, King of Prussia, Pennsylvania. The meeting is open to the public for attendance and observation and will take place from 9:00 a.m. until 5:00 p.m. on Wednesday, November 6 and from 8:30 a.m. until 1:00 p.m. on Thursday, November 7, 1985.

Questions regarding this meeting should be directed to Paul Lohaus at (215) 337–5246.

Dated at King of Prussia, Pennsylvania this 18th day of October 1985.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Regional Administrator.

[FR Doc. 85–25565 Filed 10–24–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–06589; License No. 45–09663–01 EA 85–04]

Met Lab, Inc.; Order Modifying License

I

Met Lab, Inc., 605 Rotary Street, Hampton, Virginia, 23661 (the "licensee") is the holder of a materials license issued by the Nuclear Regulatory Commission (the "Commission") pursuant to 10 CFR Parts 30 and 34. The license, issued on November 2, 1982 and due to expire on June 30, 1987, authorizes the licensee to possess sealed sources for use in industrial radiography.

II

On June 7 and 27, 1984, an inspection on Met Lab, Inc. activities by the NRC Region II staff revealed that the licensee had not conducted its activities in full compliance with NRC requirements. A Notice of Violation ("NOV") was issued to the licensee on July 5, 1984. One of the violations identified in the NOV was the failure of the licensee to perform annual radiation response checks on pocket dosimeters.

The licensee responded to the NOV by letter dated September 10, 1984 under signature of its President, Oscar W. Ward, III. In the licensee's response, the licensee denied the violation involving

failure to make annual pocket dosimeter radiation response checks. The licensee stated that the pocket dosimeters had been checked but that the records had not been available for review because they had been filed incorrectly and could not be located during the inspection. As part of the denial, the licensee submitted a copy of a record of three pocket dosimeter checks for correct response to radiation allegedly performed on January 21, 1984.

On November 27, 1984, a special inspection and an Office of Investigations' (OI) inquiry were performed at the licensee's facility by a Region II inspector and a Region II OI investigator. Based on the results of the special inspection and inquiry, an Order to Show Cause Why License Should Not Be Revoked (Order) was issued on May 15, 1985. The Order was issued because the NRC staff believed that the licensee in its response to the NOV fabricated the record of the pocket dosimeter checks. On June 8, 1985, the licensee responded to the Order. In the licensee's response, the licensee denied that the response to the NOV was fabricated and stated that the record in question was submitted by mistake. In addition, the licensee proposed that, if the license was not revoked, the licensee would agree to hire a consultant, approved by the NRC, to perform an independent audit and provide guidance on acceptable practices. I met with the licensee on October 8, 1985 in Bethesda, Maryland to discuss the response to the Order.

On the basis of an evaluation of the licensee's response and the meeting with the licensee on October 8, 1985, I have determined the licensee has shown adequate cause why Licensee No. 45-09963-01 should not be revoked and that the license should be modified to require implementation of the proposed improvements as set forth in Section III below. This decision is based upon a determination that the specific plans described in the licensee's response and the commitments which the licensee made during the October 8, 1985 meeting, including the performance of audits by an independent consultant, should be adequate to enable Met Lab, Inc. to conduct future activities in compliance with NRC requirements.

III

In view of the foregoing and pursuant to sections 81, 161b, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Parts 30 and 34, it is hereby ordered that:

The licensee shall have compliance audits conducted consisting of an initial audit and at least one follow-up audit. These audits shall be performed by an independent consultant approved by the Regional Administrator, NRC Region II. The initial audit shall be completed no later than March 30, 1986 and the second audit completed no later than September 30, 1986. Within thirty days after each audit, a written report of the audit findings shall be sent to the NRC Region II Regional Administrator at the same time it is sent to the licensee. Within sixty days of receipt of each of the audit reports, the licensee shall submit a report to the Region II Regional Administrator describing the corrective actions to be taken to implement the audit findings or provide justification for alternative corrective action or no corrective action if any specific audit finding is not adopted. This report shall also include a schedule for completion of the corrective action for each audit finding. At the completion of the second audit, the consultant shall provide a recommendation to the licensee and the NRC Region II Regional Administrator on whether further audits are necessary. The NRC Region II Administrator may relax or terminate any of the preceding conditions for good cause shown.

IV

The licensee may request a hearing on this Order within 25 days of the date of its issuance. Any request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall also be sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section III of this Order.

The Order modifying license set forth in Section III shall become effective upon expiration of the time within which a hearing may be requested or, if a hearing is requested, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 16th day of October 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-25563 Filed 10-24-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-143; License No. SNM-124 EA 84-128]

Nuclear Fuel Services, Inc.; Revised Order Modifying License

I

Nuclear Fuel Services, Inc. (the licensee) is the holder of Special Nuclear Material License No. SNM-124 which authorizes the licensee to possess and use special nuclear material at the fuel fabrication plant in Erwin, Tennessee.

II

On October 5-18, 1984, a special NRC inspection was conducted to review the safety and safeguards concerns regarding the licensee's discovery of an accumulation of Uranium-235 in the 200 Complex ventilation system. As a result of this inspection, two violations were identified—failure to adequately investigate and determine the source of uranium-bearing solids in the ventilation system despite early indicators of Uranium-235 buildup and failure to perform adequate radiological surveys during ventilation system cleanout and subsequent investigation. These violations are described in greater detail in a Notice of Violation and Proposed Imposition of Civil Penalty issued February 21, 1985.

Accompanying the Notice of Violation was an Order Modifying License, issued the same date. The Order described the circumstances surrounding the violations, their consequences, and proposed additional license conditions which the NRC viewed as necessary to ensure adequate planning, design, and control of operational activities at the Erwin Facility. By its terms, the Order was to become effective upon expiration of the time during which a hearing might be requested on the Order, or in the event a hearing was requested, on the date specified in an order issued following further proceedings. Several extensions of time were granted to the licensee to respond to the Order Modifying License.

III

On April 1, 1985 NRC staff members met with representatives of the licensee to discuss issues relevant to this enforcement action. During this meeting the licensee expressed a desire to modify and clarify in some cases the license conditions proposed by the February 21st Order. The NRC agreed to consider modifications to the proposed license conditions if the licensee proposed them.

The licensee responded to the Order in a submital dated April 22, 1985 and proposed certain modifications to the staff proposed license conditions. At the same time, the licensee made a contingent request for a hearing, which served to stay the effectiveness of the Order.

After careful consideration of the licensee's proposed modifications, the staff determined that some modification of the proposed license conditions was warranted. Discussions between the staff and the licensee resulted in agreement as to the clarifying modifications to be made to the license conditions proposed by the February 21st Order. The licensee has agreed to the imposition of these conditions and to withdraw its contingent request for a hearing. Accordingly, this Order modifies the previous Order and sets forth the license conditions that will now be included in the license.

IV

In view of the foregoing agreement between the Staff and the licensee, and pursuant to sections 53, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 70, it is hereby ordered that license No. SNM–124 is modified to add the following new License conditions:

1. In addition to the membership specified in Subsection 250.5 of the license application dated July 6, 1983, the IAC Council shall include the Materials Manager and the Security Manager. The Plant Manager may appoint appropriate qualified alternates to the IAC to participate in IAC Council meetings if IAC members are absent from the site during the meeting.

2. In addition to the requirements specified in Subsection 250.1 of the license application dated July 6, 1983, the IAC Council members shall review and evaluate, prior to implementing, all changes to the facility or facility operations which affect material control and accountability or physical security. As used therein, "facility" includes but is not limited to: buildings, process equipment with SNM and support systems, nuclear and non-nuclear storage areas (internal and external), landscaping, etc. For material control and accountability or physical security matters, the IAC may satisfy these requirements by either individual review or collectively at a meeting provided, however, that individual members of the IAC continue to have the authority to request a meeting of the IAC on any given matter.

3. In addition to the requirements specified in Subsection 250.4 of the license application dated July 6, 1983, the IAC Council shall document its review of changes, conducted pursuant to Subsection 250.1 of the license application and Condition 2 above, in a summary report describing the technical basis for accepting the change. At a minimum, the report shall contain:

a. A description of the IAC approved change(s), as well as equipment and location (e.g., building number) involved in the change;

b. For approved changes, the nuclear criticality safety and radiation safety analyses performed, if any, by the Nuclear Safety Specialist and Health Physics Analyst respectively and any other supporting analyses presented to the IAC;

c. Issues discussed by the IAC Council; and

d. The IAC's recommendation concerning the proposed change.

4. In addition to the IAC Council functions outlined in Subsection 250 of the license application dated July 6, 1983, the IAC Council shall meet at least quarterly to:

a. Review reports of health and safety inspections and audits which the license requires be conducted, the semiannual employee exposure and effluent reports specified by License Condition No. 30, and the annual safeguards review and audits specified by 10 CFR 70.58(c)(2) and 73.46(g)(6);

b. Review all violations of regulations and license conditions and any unusual events having safety significance, and associated investigation reports. Particular attention should be paid to the corrective actions taken and follow-up evaluations conducted to measure the effectiveness of these corrective actions; and

c. Provide the Plant Manager and corporate management as appropriate, with written reports of its findings and recommendations within 20 working days of each meeting. The recommended actions shall include recommendations as to how corrective actions and improvements should be accomplished. The responsibility for assuring that necessary corrections and improvements are completed remains with plant or corporate management. The IAC Council reviews described in section a. above of annual safeguards reviews and audits may satisfy the requirements for reporting to plant and corporate management specified in 10 CFR 70.58(c)(2) and 73.46(g)(6).

5. Notwithstanding the note to Figure 211–1 on page 10 of the application dated October 1, 1984:

a. The individual who participates as the Health and Safety Manager on the IAC Council shall not report directly or indirectly to the individual who performs the initial radiation safety evaluation of the proposed change.

b. The individual who performs the independent nuclear criticality safety review for the proposed change, as required by subsection 303(c) of the license, shall not report directly or indirectly to the individual who performs the nuclear criticality safety evaluation required by subsection 303(c). The person performing the independent review shall have, as a minimum, the qualifications specified in subsection 231.3.2.2. Proposed changes presented to the IAC in accordance with subsection 250 of the license shall include the nuclear criticality safety evaluation and the independent review.

6. The word "investigation" as used in the license application or license conditions is defined as an inquiry to establish the facts and circumstances associated with the matter of interest and to make recommendations for improvement or corrections. Such an investigation shall:

a. Be initiated and completed as soon as practical after the discovery of the event; and

b. Be under the direction of a manager designated by the Plant Manager.

7. Investigations shall be documented in written reports which shall as a minimum:

a. Include a statement regarding the cause(s) of the event;

b. Include recommendations for immediate and long-term corrective actions to prevent recurrence; and

c. Be retained for 5 years.

8. If any provision of the Order conflicts with any other condition of the license, the provisions of this Order will be controlling and will supersede the license conditions with which they conflict.

V

The license conditions contained herein shall become effective upon issuance of this Order.

Dated at Bethesda, Maryland, this 18th day of October 1985.

For The Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85–25564 Filed 10–24–85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A86-1; Order No. 641]

Leach, Tennessee 38349 (Dell Walker, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Issued: October 22, 1985.

Docket Number: A86-1
Name of Affected Post Office: Leach, Tennessee 38349
Name(s) of Petitioner(s): Dell Walker
Type of Determination: Closing
Date of Filing of Appeal Papers: October 7, 1985
Categories of Issues Apparently Raised:
1. Effect of the community [39 U.S.C. 404(b)(2)(A)].
2. Effect of postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 22, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix—Docket No. A86-1, Leach, Tennessee 38349

October 7, 1985—Filing of Petition
October 22, 1985—Notice and Order of Filing of Appeal
November 1, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
November 12, 1985—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
December 2, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
December 17, 1985—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].
December 24, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
February 4, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-25479 Filed 10-24-85; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23870; 70-6546]

Connecticut Light and Power Co.; Notice of Proposal To Amend Credit Agreement

October 21, 1985.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric subsidiary of Northwest Utilities ("NU"), P.O. Box 270, Hartford, Connecticut 06141, a registered holding company, has filed a post-effective amendment to the declaration in this proceeding with this Commission pursuant to sections 6(a), 6(b) and 7(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

By an order dated March 4, 1981 (HCAR No. 21950), the Commission authorized CL&P and The Hartford Electric Light Company (a predecessor company that was merged into CL&P) to issue term notes up to aggregate principal amounts of $100 million and $50 million, respectively, pursuant to the terms of a term-loan agreement ("Credit Agreement") with a group of eight banks ("Banks").

Under the terms of the Credit Agreement, the term notes will have their final maturities at the end of ten years after the 1981 date of issue, with amortization of the principal amount made in four equal installments at the end of the seventh, eighth, ninth and tenth years. The term loans are secured by a mortgage on the Company's interest in Millstone Unit No. 1. The mortgage is junior to the present lien of the indentures securing CL&P's and HELCO's first mortgage bonds. The term notes bear interest payable quarterly. For the first four years, interest was at the Prime Rate or, at CL&P's election, at the London Interbank Offered Rate ("LIBOR") plus ½ of 1 percent per annum. In the fifth and sixth year, interest would be at 102 percent of the Prime Rate or, at CL&P's election, LIBOR plus ⅝ of 1 percent per annum. In the seventh through tenth years, interest would be at 105 percent of the Prime Rate, or, at CL&P's election, LIBOR plus ¾ of 1 percent per annum.

CL&P now proposes to amend its Credit Agreement, whereby interest will be at the Prime Rate or a specified multiple thereof, or, at CL&P's election, either at LIBOR plus a specified margin ("Margin") or at such interest rate and on such terms and conditions as CL&P and the Banks may mutually agree ("Negotiated Loan"). In the case of Prime Rate borrowings, the Amendment provides for interest on loans to be at the Prime Rate prior to April 5, 1987 and Prime Rate times 1.05 on and after April 5, 1987 through maturity. This provision, in effect, reduces Prime Rate loans to 100% of the Prime Rate rather than 102½ of the Prime Rate for the two years ending April 5, 1987.

In the case of LIBOR loans, the Amendment provides that the Margin means (i) ½ of 1 percent prior to April 5, 1985, and on and after July 22, 1985 through April 5, 1987; (ii) ⅝ of 1 percent from April 5, 1985 through July 21, 1985, and (iii) ¾ of 1 percent on and after April 5, 1987 to maturity. This provision, in effect, reduces LIBOR loans to a margin of ½ of 1 percent above LIBOR rather than ⅝ of 1 percent above LIBOR for the two years ending April 5, 1987, with the minor exception of a preexisting LIBOR-based loan that accrued interest at LIBOR plus ⅝ of 1 percent for the 3½ month period ended July 21, 1985.

In the case of Negotiated Loans, it is anticipated that CL&P and the Banks would negotiate interest rates, maturity and other terms and conditions from time to time, which would be subject to approval of the Commission.

Under the Amendment, Prime Rate loans are to be repaid and reborrowed on April 5, July 5, October 5, and January 5 in each year. LIBOR loans and Negotiated Loans mature at the expiration of the specified interest period and may be reborrowed. The Credit Agreement contains provisions under which any reborrowings may be made in the form of Prime Rate loans, LIBOR loans, or Negotiated Loans.

Pending the receipt of regulatory approvals, CL&P is receiving the benefit of the reduced rates as of July 22, 1985, contemplated by the Amendment, pursuant to an informal understanding with the Banks.

The Amendment would also contain provisions that would facilitate the ability of the Banks to sell participations in their interests in the loans made

pursuant to the Credit Agreement, to other financial institutions.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 14, 1985 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service by affidavit or, in case of an attorney at law, by certificate, should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the amended declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-25511 Filed 10-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23868; 70-7163]

The Connecticut Light & Power Co. and Western Massachusetts Electric Co.; Notice of Proposal To Enter Term Loan and Rate Swap Agreements

October 18, 1985.

The Connecticut Light & Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037 and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089 (collectively, "Company"), subsidiaries of Northeast Utilities ("NU"), a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

In order to reduce the high cost of construction financing experienced from 1980 through 1982, CL&P and WMECO proposed in previous filings to enter into one or more transactions to convert outstanding floating rate obligations to fixed rate obligations, and to lower the effective interest rate on outstanding fixed rate term obligations. (Pending File Nos. 70-7137; 70-7130; 70-6546.) As an alternative, they now propose to enter into fixed-rate, term-loan agreements ("Agreement(s)"), through December 31, 1986, with one or more commercial banks, or other institutional lenders, whereby they would issue unsecured notes up to $450 million and $110 million, respectively, to be applied to the redemption or repurchase of bonds, or the prepayment or repayment of notes issued under the floating rate loan agreements, on the belief that interest rates are at or near the level that would warrant such action. Any excess proceeds will be temporarily invested, or used to repay short-term or construction-trust debt.

The notes would be due and payable on a date which shall be not less than one nor more than ten years after the date thereof. Each note would bear interest on the unpaid principal amount from the date thereof, payable at intervals no less frequently than semiannually, and at the maturity thereof, not greater than 250 basis points over the then applicable prime rate of Chemical Bank as of the date upon which a definitive Term Loan Agreement is executed, and in no event greater than 13% per annum. The Agreements may contain a prepayment penalty clause.

Additionally, CL&P and WMECO propose to enter into separate interest rate swap agreements, through December 31, 1986, with one or more banks for not more than $350 million for CL&P, and $90 million for WMECO ("Reference Amounts") of floating rate notes in the aggregate. Each interest rate swap agreement would provide that the Company would receive payments from the bank based on a floating rate (such as LIBOR) and the Reference Amount, having a designated maturity, and that the fixed amounts to be paid by the Company to the bank would be based on a fixed interest rate to be negotiated between the Company and the bank, but not to exceed 13% and the Reference Amount. Any additional cost of the transaction, including fees and variances in the floating rate, will be reflected in a one-time up front fee, or as part of the periodic fixed rate payment. The interest rate swap agreements may contain early termination provisions in the form of liquidated damages.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-25512 Filed 10-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14762; File No. 811-3709]

Hartford Advisers Fund, Inc.; Application To Deregister

October 21, 1985.

Notice is hereby given that Hartford Advisers Fund, Inc. ("Applicant"), Hartford Plaza, Hartford, CT 06115, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 22, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant, a Maryland corporation, states that it filed a registration statement on Form N-1 on April 6, 1983, to register an indefinite number of common shares and its registration statement became effective on July 20, 1983. Applicant further states that it is a corporation in existence and in good standing in accordance with Maryland law. The application states that there is one shareholder, Hartford Life and Accident Insurance Company, which owns 100% of the shares outstanding of Applicant. The application states that on May 15, 1985, the sole director of the Applicant adopted a resolution advising dissolution of the corporation and the sole shareholder approved such resolution. The Applicant states that its assets consist of $99,853 invested in U.S. Treasury short term obligations, cash and receivables, and upon settlement of any existing liabilities, the sole shareholder will receive the full liquidation value of its shares. The

Applicant also states that it is not a party to any litigation or administrative proceedings and that it intends to file Articles of Dissolution with the appropriate Maryland authorities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 15, 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, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-25510 Filed 10-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23867; 70-7165]

Maine Yankee Atomic Power Co.; Notice of Proposal To Enter $20 Million Eurodollar Revolving Credit Agreement

October 18, 1985.

Maine Yankee Atomic Power Company ("Yankee"), Edison Drive, Augusta, Maine 04336, an indirect subsidiary of New England Electric System and Northeast Utilities, registered holding companies, has filed an application under section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(2) thereunder.

Yankee proposes to issue not more than $20 million in prinicipal amount of promissory notes ("Notes") to a group of major international banks ("Banks"), with Union Bank of Switzerland acting as agent bank ("Agent Bank") for the other Banks in the group. The purpose of the financing is to establish a revolving credit facility to meet Yankee's short term financing requirements. The Notes will be secured, pursuant to the Security Agreement, by a second lien on Yankee's nuclear fuel inventory, and its rights under its Power Contract and Capital Funds Agreements with the sponsors of the Yankee plant.

The Notes will be issued pursuant to a Eurodollar Credit Agreement ("Credit Agreement") among Yankee, the Banks and the Agent Bank, pursuant to which the Banks have agreed to make available to Yankee a revolving credit facility in principal amount at any one time ourstanding of not more than $20 million, and will expire upon one year's notice to Yankee from the Banks.

The Credit Agreement provides that Yankee may from time to time select interest periods for each revolving credit loan of one, three or six months duration. The interest rate on each revolving credit loan will be the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected, plus ¾%; provided that if by reason of circumstances affecting the Eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, the interest rate shall be determined on the basis of the Bank's actual costs of funding such loan. Yankee will also pay a commitment fee during the term of the revolving credit facility of ⅜% per annum of the unused portion of the total revolving credit facility. Yankee has the right at any time to terminate in whole or reduce in part the unused portion of the facility. The Credit Agreement also provides that if, as a result of any change in any applicable law, regulation or policy, the Bank incurs additional costs, Yankee will pay those costs, but can terminate or prepay the affected portion of the loan without penalty.

The terms of the Credit Agreement, the Notes and the Security Agreement have been determined by negotiations between Main Yankee and the Agent Bank. The Agent Bank will receive a fee for arranging the issuance of the Notes, but will receive an agency fee of $5,000 per annum for its services as agent for the Banks.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-25513 Filed 10-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22536; Filed No. SR-MSRB-85-19]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Customer Confirmations

The Municipal Securities Rulemaking Board on October 7, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of rule G-15(a) concerning customer confirmations (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows:

The Board has received inquiries whether a municipal securities dealer must send a confirmation to a customer when the customer utilizes the dealer to tender bonds pursuant to a put option. Board rule G-15(a)(i) requires dealers to send confirmations to customers at or before the completion of a transaction in municipal securities. The Board believes that whether a dealer that accepts for tender put bonds from a customer is engaging in "transactions in municipal securities" depends on whether the dealer has some interest in the put option bond.

In the situation in which a customer puts back a bond through a municipal securities dealer either because he purchased the bond from the dealer or he has an account with the dealer, and the dealer does not have an interest in the put option and has not been designated as the remarketing agent for the issue, there seems to be no "transaction in municipal securities" between the dealer and the tendering bondholder and no confirmation needs to be sent. The Board suggests, however, that it would be good industry practice

to obtain written approval of the tender from the customer, give the customer a receipt for his bonds and promptly credit the customer's account. Of course, if the dealer actually purchases the security and places it in its trading account, even for an instant, prior to tendering the bond, a confirmation of this sale transaction should be sent.[1]

If a dealer has some interest in a put option bond which its customer has delivered to it for tendering, a confirmation must be sent to the customer. A dealer that is the issuer of a secondary market put option on a bond has an interest in the security and is deemed to be engaging in a municipal securities transaction if the bond is put back to it.

In addition, a remarketing agent, [*i.e.*, a dealer which, pursuant to an agreement with an issuer, is obligated to use its best efforts to resell bonds tendered by their owners pursuant to put options] who accepts put option bonds tendered by customers also is deemed to be engaging in a "transaction in municipal securities" with the customer for purposes of sending a confirmation to the customer because of the remarketing agent's interest in the bonds.[2] The Board's position on remarketing agents is based upon its understanding that remarketing agents sell the bonds that their customers submit for tendering, as well as other bonds tendered directly to the trustee or tender agent, pursuant to the put option. The customers and other bondholders, pursuant to the terms of the issue, usually are paid from the proceeds of the remarketing agent's sales activities.[3]

B. Not applicable.

C. Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Rule G–15(a) requires that, at or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer, or municipal securities dealer shall send to the customer a written confirmation of the transaction containing certain information. The Board received an inquiry whether, under rule G–15(a), a dealer must send confirmations to customers who utilize the dealer to tender put option bonds on their behalf. The Board has determined that, if the dealer has no interest in the put option bonds, a confirmation need not be sent since the dealer basically is assisting the customer in the redemption of his bond and is not executing transactions with the customer. However, if the dealer has an interest in the put option bond, *i.e.*, it is the issuer of a secondary market put or acts as remarketing agent for the issue, then a transaction is deemed to occur and a confirmation should be sent.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes and directs the Board to adopt rules

> . . . designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest . . .

B. Self-Regulatory Organization's Statement of Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 15, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–25509 Filed 10–24–85; 8:45 am]

BILLING CODE 8010–01–M

[1] This would apply equally in circumstances in which the dealer has an interest in the put option bond.

[2] Of course, remarketing agents also must send confirmations to those to whom they resell the bonds.

[3] If these funds are not sufficient to pay tendering bondholders, such bondholders usually are paid from certain funds set up under the issue's indenture or from advances under the letter of credit that usually backs the put option.

DEPARTMENT OF STATE

[Public Notice CM–8/694]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on November 8, 1985, at 9:00 a.m. in Room 1105 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems connected with preparation of the documentary series entitled *Foreign Relations of the United States* and other responsibilities of that Office. Of particular importance are

editorial and publishing practice and questions related to declassification of official records as specified in Executive Order 12356 (April 2, 1982).

In accordance with section 10(d) of the Advisory Committee Act (Pub. L. 92–463) it has been determined that certain discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b (c)(1), and that the public interest requires that such activities be withheld from disclosure. The meeting will therefore be closed when such discussions take place, at 2:00 p.m., Friday, November 8.

Persons wishing to attend the meeting should come before 9:00 a.m. on November 8 to the Diplomatic Entrance of the Department of State at 22nd and C Streets, NW., Washington, DC. They will be escorted to Room 1105 and at the conclusion of the open portion of the meeting back to the Diplomatic Entrance.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520; telephone (202) 632–8888.

William Z. Slany,

Executive Secretary.

[FR Doc. 85–25540 Filed 10–24–85; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Agreements Filed With the Department of Transportation Under Sections 408, 409, 412 and 414 During the Week Ending October 18, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Oct. 15, 1985	43486	Members of International Air Transport Association	Revalidate Mid-Atlantic Cargo Agreement	Dec. 1, 1985.
Oct. 18, 1985	43496	Members of International Air Transport Association	Intra-Pacific Fare Revisions	Nov. 1, 1985.
	R-1—R-11			
Do	43497	Members of International Air Transport Association	Intra-Pacific Fare Revisions	Oct. 29, 1985.
	R-1—R-15			
Do	43498	Members of International Air Transport Association	Canadian Proportional Rates—South Pacific	Nov. 1, 1985.
Do	43499	Members of International Air Transport Association	Specific Commodity Rates—North Atlantic	Oct. 11, 1985.
Oct. 16, 1985	43490	Raymond M. Gray, c/o Stephen A. Alterman, Meyers & Alterman, 1710 Rhode Island Avenue, NW., Second Floor, Washington, DC 20036.		
		Application of Raymond M. Gray pursuant to section 416 of the Act, requests an exemption from section 408 of the Act to the extent necessary to permit Mr. Gray to acquire up to 85% of the stock of Air One, Inc., a certificated U.S. air carrier, while at the same time owning approximately 17% of the Stock of Pride Air, Inc.		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85–25588 Filed 10–24–85; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week ended October 18, 1985

Subpart Q. Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Oct. 15, 1985	43482	Leisure Air, Inc., c/o James Edward McNair 7955 NW., 12th Street, Suite 306, Miami, Florida 33126.
		Application of Leisure Air, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the regulations requests the issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled transportation of persons, property and mail:
		Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.
		Conforming Applications, Motions to Modify Scope and Answers may be filed by November 12, 1985
Oct. 15, 1985	43483	Leisure Air, Inc., c/o James Edward McNair, 7955 NW. 12th Street, Suite 306, Miami, Florida 33126.
		Application of Leisure Air, Inc. pursuant to Section 401 (d)(1) of the Act and Subpart Q of the Regulations requests the issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled foreign air transportation of persons, property and mail as follows:
		Between a point or points in the United States and Shannon, Ireland and a point or points in Belgium, the Netherlands, Luxembourg, the Federal Republic of Germany, and Switzerland.
		Between a point or points in the United States and a point or points in Antigua and Barbauda, Bahama Islands, Barbados, Belize, Chile, Costa Rica, Dominican Republic, El Salvador, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Nicaragua, St. Kitts, the Netherlands Antilles and Trinidad and Tobago.
		Conforming Applications, Motions to Modify Scope and Answers may be filed by November 21, 1985.
Oct. 15, 1985	43485	Eastern Air Lines, Inc., c/o Robert N. Duggan, 1030—15th Street, NW., Washington, DC 20005.
		Application of Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Eastern to engage in the air transportation of persons, property and mail between the coterminal points Seattle, Washington and Portland, Oregon and the coterminal points Tokyo and Osaka, Japan.
		Conforming Applications, Motions to Modify Scope and Answers may be filed by November 12, 1985.
Oct. 15, 1985	43487	The Lord's Airline, Inc., c/o Harry A. Bowen, Bowen and Atkin, 2020 K Street NW., Suite 350, Washington, DC 20006.

Date filed	Docket No.	Description
Oct. 17, 1985	43494	Application of the Lord's Airline, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing scheduled carriage of passengers, property and mail between Miami and Israel via the intermediate points, Luxembourg, United Kingdon, France, Netherlands, Belgium, Republic of Germany, Denmark, Spain, Italy, Turkey, and Greece and authority to operate charters. Conforming Applications, Motions to Modify Scope and Answers may be filed by November 12, 1985. American West Airlines, Inc., c/o John E. Gillick, Kirby, Gillick, Schwartz & Tuohey, Suite 310, 1220 L Street, NW., Washington, DC 20005.
Oct. 18, 1985	43495	Application of American West Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity to engage in scheduled air transportation of passengers, property and mail on a back-up basis, as follows: "Between Oakland and San Jose, California and Phoenix and Tucson, Arizona on the one hand, and Guaymas, Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, Guadalajara, Manzanillo, Mexico City, Zihuatanejo, and Acapulco, Mexico, on the other hand." Conforming Applications, Motions to Modify Scope and Answers may be filed by November 15, 1985. American Airlines, Inc., c/o Alfred V.J. Prather, Prather Seeger Doolittle & Farmer, 1600 M Street, NW., 7th Floor, Washington, DC 20036.
Oct. 15, 1985	43500	Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 284 (Dallas/Ft. Worth-La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, and Guadalajara, Mexico). Conforming Application, Motions to Modify Scope and Answers may be filed by November 15,1985. Tower Travel Corporation d/b/a Atlantic Express, c/o Morris R. Garfinkle, Galland, Kharasch, Morse & Garfinkle, 1054 Thirty-first Street, NW., Washington, DC 20007.
		Application of Tower Travel Corporation d/b/a Atlantic Express pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its existhg certificate to authorize air transportation of persons, property and mail between a point or points in the United States and France. Conforming Applications, Motions to Modify Scope and Answers may be filed by November 15, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-25589 Filed 10-24-85; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

[Order 85-10-65; Order 43472]

Application of People Express, Inc. for Approval of Acquisition of Control

Issued by the Department of Transportation on the 22nd day of October 1985.

On October 11, 1985, People Express, Inc. ("People Express") filed an application for an exemption from, or prior approval under, section 408 of the Federal Aviation Act of 1958, 49 U.S.C. 1378, for People Express' proposed acquisition of Frontier Holdings, Inc. ("Holdings"), and Holdings' wholly owned subsidiary, Frontier Airlines ("Frontier"), a certificated air carrier. People Express controls another certificated air carraier, People Express Airlines ("PEA"). People Express' application included information concerning itself and PEA required to be filed by the Department's rules on section 408 applications, 14 CFR Part 303, 50 FR 31134, 31144-31146 (July 31, 1985). On October 17, 1985, Holdings supplemented People Express' application by filing information about itself and Frontier.

We have completed our preliminary review of People Express' application and the supporting material filed by People Express and Holdings. People Express and Holdings have submitted information specified under each of the sections of the Department's regulations on section 408 applications. Sections 303.10 through 303.18. Our preliminary review of the application indicates some minor omissions, but we have determined that these omissions do not preclude the Department from beginning to process the application, which appears to contain in substantial part the information required for analysis under section 408. Therefore, we will not reject the application as incomplete at this time.

The Department's current rules on section 408 applications, which took effect on August 30, establish a twenty-one day period for comments, which begins on the date of filig the application seeking section 408 approval. The rules also establish a fifteen-day answer period for applications seeking an exemption under section 416(b) of the Act, 49 U.S.C. 1386(b). People Express' application seeks either an exemption or section 408 approval. In addition, People Express' initial filing omitted the material required on Holdings and Frontier. We will direct that interested persons file comments by November 7. This is twenty-one days after information supplementing People Express' application was submitted by Holdings. The Department's rules require that information on both parties to a consensual merger be included with an application, even when a joint application is not filed. Section 303.04(b). In these circumstances, the Department has determined that it is proper to start the twenty-one day clock from the date the additional information was filed. While the applicant also requested use of exemption procedures, we have not, at this point, determined whether the application should be reviewed under section 408 or exemption procedures. Thus, we shall employ the twenty-one day answer period provided by our regulations. As provided in § 303.42, comments may address the merits of the application, whether additional information should be required from the applicant, what procedures should be followed in considering the application, and other matters interested persons wish to raise at this time.[1] The comments may discuss whether the Department should use its exemption authority to approve the transaction. After we review the comments, we will rule on People Express' request that we approve the acquisition under section 416(b) of the Act, 49 U.S.C. 1386(b).

In addition, we have preliminarily determined that People Express and Holdings should file certain additional required information. People Express and Holdings have failed to provide information on their officers and directors, as required by §303.10 (a), (d), (e), and (f). Further, People Express did not include the annual reports to its shareholders required by §303.1(b); and Holdings did not include the proxy statement issued for the shareholder meeting originally scheduled for October 1985 to consider its proposed acquisition by an employee stock ownership plan, as required by §303.11(a)(3). We will require People Express and Holdings to file the omitted information on the date that comments are due.

In a letter to the Assistant Secretary for Policy and International Affairs, counsel for People Express has requested permission to withhold from filing a confidential study of Frontier prepared for People Express by its financial advisors, Morgan Stanley and

[1] All comments and additional supporting materials should be filed with the Department's Docket Section.

Company. People Express argues that preservation of the study's confidentiality is necessary to assure free communications between corporations and their legal and financial advisors. In addition, People Express asserts that all information in the study, except Morgan Stanley's expert opinion on Frontier's valuation, is already available in the record. People Express claims that the valuation opinion is not relevant to the issues presented by a section 408 application. Finally, People Express asserts that the study does not fall into any of the specifically enumerated categories of "studies, reports and analyses regarding the proposed transactions" listed in Part 303. To the contrary, §303.10(g) requires the filing of "all studies, reports and analyses regarding the proposed transaction or the other party to the transaction made by or for the applicant within three years preceeding the application." The Morgan Stanley study clearly falls within the board scope of §303.10(g). If the study proves to be irrelevant or unnecessary to our review of People Express' section 408 application, we would consider exempting the study from the filing requirement of §303.10(g). However, we are not prepared to make that decision without reviewing the report. In view of People Express' concern that this study is particularly sensitive, we will allow People Express to submit one copy of the study on a confidential basis by October 31, 1985 to the Department's Assistant General Counsel for Litigation, so as to enable us to determine whether the study should be exempted from the usual filing requirements. Should we determine that the study should be filed, we would grant applicant Rule 39 protection to ensure confidential treatment, should applicant so desire.

Part of ths supporting information submitted by People Express and Holdings was filed under the cover of Rule 39 motions for confidential treatment. We will grant the motions, subject to reconsideration at any time for good cause shown. In addition, we will allow counsel and experts of other parties to inspect immediately *in camera* the documents for which the People Express and Holdings request confidential treatment. Counsel and experts may inspect the documents at the offices of the Department of Transportation, Room 4107, 400 Seventh Street SW., Washington, DC, upon the submission of an affidavit indicating that he or she will preserve the documents' confidentiality. Any answer or other filing raising matters contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

Accordingly,

1. Answers and comments on this application are due November 7, 1985;

2. People Express, Inc. and Frontier Holdings, Inc. shall file the information omitted from their application and additional information, as outlined above, by November 7, 1985;

3. People Express shall submit, by October 31, 1985, on a confidential basis to the Assistant General Counsel for Litigation, one copy of the Morgan Stanley and Company study referred to in counsel's letter of Octoer 11, 1985;

4. We grant, subject to reconsideration at any time for good cause shown, People Express' and Frontier Holdings, Inc.'s motions for confidential treatment of certain information; and

5. This order will be published in the **Federal Register.**

By:

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR. Doc. 85-25590 Filed 10-24-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Dept. Cir.—Public Debt Series—No. 30-85]

Treasury Notes of October 31, 1987, Series AB-1987

Washington, October 18, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Teasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of October 31, 1987, Series AB-1987 (CUSIP No. 912827 ST 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated October 31, 1985, and will accrue interest from that date, payable on a semiannual basis on April 30, 1986, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, October 23, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 22, 1985, and received no later than Thursday, October 31, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A

noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficent to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary Considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, October 31, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors not later than Tuesday, October 29, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, October 31, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the secrities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other doucments submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of

holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-25503 Filed 10-22-85 12:59 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on December 3, 1985 at 1:00 p.m., the Salt Lake City Regional Office Station Committee on Educational Allowances shall at Room 5102, 125 South State Street, Salt Lake City, UT, 84147 conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Dean's Custom Upholstery, 236 West 5th South, Salt Lake City, UT, 84101 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: October 18, 1985.

F.A. Johnson,

Acting Director, VA Regional Office, Salt Lake City, UT.

[FR Doc. 85-25330 Filed 10-24-85; 8:45 am]

BILLING CODE 8320-01-M

Station Committee on Education Allowances; Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Education Allowances that on December 5, 1985, at 1:00 p.m., the Salt Lake City Regional Office Station Committee on Educational Allowances shall at Room 5102, 125 South State Street, Salt Lake City, UT, 84147 conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Weston Trucking, 267 West Main, Tremonton, Utah, 84337 should be discontinued as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: October 18, 1985.

F.A. Johnson,

Acting Director, VA Regional Office, Salt Lake City, UT.

[FR Doc. 85-25331 Filed 10-24-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 207
Friday, October 25, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, November 4, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Steet, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization; GC Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: October 23, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85-25664 Filed 10-23-85; 3:45 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, November 5, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on General Counsel Operations
3. A Proposed Contract to Establish a Toll Free Information System for the Equal Employment Opportunity Commission
4. Revisions to Memorandum of Understanding between the Equal Employment Opportunity Commission and the Federal Communications Commission

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

DATED: October 23, 1985.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

[FR Doc. 85-25648 Filed 10-23-85; 3:45 pm]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:15 p.m. on Friday, October 18, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A) consider recommendations with respect to administrative enforcement actions against insured banks (names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii);

(B) consider a recommendation regarding microcomputer training for 1986;

(C) consider a recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,343

Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois

(D) (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Early Bank, Early, Texas, which was closed by the Banking Commissioner for the State of Texas on Friday, October 18, 1985; (2) accept the bid for the transaction submitted by Texas Bank, Early, Texas, a newly-chartered State nonmember bank; (3) approve the applications of Texas Bank, Early, Texas, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The Early Bank, Early, Texas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(E) (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First State Bank, Jet, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Friday, October 18, 1985; (2) accept the bid for the transaction submitted by Cleo State Bank, Cleo Springs, Oklahoma, and insured State nonmember bank; (3) approve the application of Cleo State Bank, Cleo Springs, Oklahoma, for consent to purchase certain assets of and assume the liability to pay deposits made in First State Bank, Jet, Oklahoma, and for consent to establish the sole office of First State Bank as a branch of Cleo State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 5:17 p.m. and at 8:55 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A) (1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank of Kanaranzi, Kanaranzi, Minnesota, which was closed by the Commissioner of Commerce in Charge of Financial Institutions for the State of Minnesota on Friday, October 18, 1985; (2) accepted the bid for the transaction submitted by Citizens State Bank of Silver Lake, Silver Lake, Minnesota, an issured State nonmember bank; (3) approved the application of Citizens State Bank of Silver

Lake, Silver Lake, Minnesota, for consent to purchase certain assets of and assume the liability to pay deposits made in Farmers State Bank of Kanaranzi, Kanaranzi, Minnesota, and for consent to establish the two offices of Farmers State Bank of Kanaranzi as branches of Citizens State Bank of Silver Lake; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) (1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Citizens Bank, Ogden, Utah, which was closed by the Commissioner of Financial Institutions for the State of Utah on Friday, October 18, 1985; (2) accepted the bid for the transaction submitted by Commercial Security Bank, Ogden, Utah, an insured State nonmember bank; (3) approved the application of Commercial Security Bank, Ogden, Utah, for consent to purchase certain assets of and assume the liability to pay deposits made in The Citizens Bank, Ogden, Utah, and for consent to establish the five offices of The Citizens Bank as branches of Commercial Security Bank; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 22, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-25646 Filed 10-23-85; 3:45 pm]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 29, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, October 31, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings
Correction and Approval of Minutes
Draft AO 1985-28
  Craig Wonderlich, on behalf of Friends of Lane Evans Committee
Draft AO 1985-29
  Theodore L. Jones, on behalf of John Breaux Committee
Discussion of Procedures to be Followed Regarding Proposed Revisions of 11 CFR 110.1 and 110.2
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-25561 Filed 10-22-85; 4:26 p.m.]

BILLING CODE 6715-01-M

5

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, October 30, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25615 Filed 10-23-85; 11:43 am]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 30, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed extension, with revisions, of the Report on Claims on Selected Foreign Countries by U.S. Branches and Agencies of Foreign Banks (FR 2029B).

2. Policy statement proposed by the Federal Financial Institutions Examination Council regarding repurchase agreements of depository institutions with securities dealers and others.

Discussion Agenda

3. Proposals regarding 1986 fee schedules for Federal Reserve check collection, electronic payments, and definitive securities safekeeping and noncash collection services.

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25616 Filed 10-23-85; 11:43 am]

BILLING CODE 6210-01-M

7

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, November 6, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of October, 1985.

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 Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523–5920.

Date of notice: October 18, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 85–25624 Filed 10–23 1:07 pm]

BILLING CODE 7550–01–M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 31, 1985.

PLACE: Suite 410, 1825 K Street NW., Washington, DC.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs Mary Ann Miller, (202) 634–4015.

Dated: October 22, 1985.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 85–25603 Filed 10–23–85; 10:32 am]

BILLING CODE 7600–01–M

9

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 42119, October 17, 1985.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: Sunday, October 20, 1985.

CHANGE IN MEETING: Meeting cancelled.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3049.

SUPPLEMENTARY INFORMATION: A quorum of the Board of Regents was not present at the time of the meeting because of flight problems encountered by one of the members.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 23, 1985.

[FR Doc. 85–25625 Filed 10–23–85; 1:07 pm]

BILLING CODE 3810–01–M

Federal Register

Friday
October 25, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA85–5036	Sept. 20, 1985.
Colorado: CO85–5021	Apr. 12, 1985.
Idaho:	
ID85–5010	Feb. 15, 1985.
ID85–5014	Mar. 1, 1985.
Maryland:	
MD85–3053	Sept. 27, 1985.
MD85–3045	Sept. 6, 1985.
Michigan: MI85–5022	June 7, 1985.
Montana: MT84–5041	Dec. 14, 1984.
Nevada:	
NV84–5014	June 8, 1984.
NV83–5121	Sept. 23, 1983.
New York:	
NY84–3018	July 6, 1984.
NY83–3027	July 22, 1983.
Utah: UT83–5120	Sept. 30, 1983.
Wyoming: WY85–5025	May 17, 1985.

Cancellation of General Wage Determination Decision

General Wage Decision CO83–5115, Delta, Garfield, Gunnison, Mesa, Montrose and Pitkin Counties, Colorado, is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1 (29 CFR), section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, 1.6(a)(2)(i)(A) the incorporation of the cancelled decision in contract specifications, the opening of bids which is within ten (10) days of this notice, need not be affected.

Signed at Washington, DC this 18th day of October 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. ID85-5014 - Mod #4
(50 FR 8567 - March 1, 1985)
Ada and Canyon Counties, Idaho

CHANGE:	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Areas 1 & 2	$13.85	$4.88
CEMENT MASONS:		
Areas 1 & 2	12.52	5.75
LABORERS:		
Areas 1 & 2:		
General Laborer, asphalt laborer, landscaper	11.60	4.84
Air tampers	11.70	4.84
Pipelayer, jackhammer, gunnite gunman, vibrator (4" & over)	11.80	4.84
Hod carrier, mason tender, plaster tender, tile setter tender	11.90	4.84
POWER EQUIPMENT OPERATORS:		
Area 1:		
Air Compressor, rubber tired tractor with attachments	14.23	4.05
Frontend & overhead loaders up to 4 yds, spreaders, tractor, rubber tired with backhoe, trenching machine	14.91	4.05
Power shovels & draglines under 1 yd	15.08	4.05
Asphalt paver self propelled cranes up to 50 tons, derrick, loaders front end & overhead over 4 yds to 7 yds, shovels & draglines 1 yd to 3 1/2 yds, crawler type tractor with attacments	15.26	4.05

DECISION NO. CA85-5036 -
Mod. #2
(50 FR 38411 - September 20, 1985)
Alameda, Alpine, etc., Counties, CA

Add:	Basic Hourly Rates	Fringe Benefits
Tile Finishers:		
Area 3:		
Add the following counties to the Area Description: Plumas, Sacramento, Shasta and Sierra Counties.		

DECISION NO. MD85-3053
MOD. #2
(50 FR 39521-September 27, 1985)
ALLEGANY AND GARRETT COUNTIES, MARYLAND

ADD:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Flaggers	10.33	3.70

DECISION NO. MD85-3045
MOD. #2
(50 FR 36524-September 6, 1985)
ALLEGANY AND GARRETT COUNTIES, MARYLAND

ADD:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Flaggers	10.20	3.70

DECISION NO. MI85-5022 -
Mod. #2
(50 FR 24116 - June 7, 1985)
Macomb, Monroe, Oakland, Washtenaw and Wayne Counties, MI

Add:	Basic Hourly Rates	Fringe Benefits
Painters:		
Area 3:		
Painters	$15.05	$5.02
Tapers	15.20	5.04
Residential Painter	13.05	5.02

(3)

DECISION NO. MT84-5041 -
Mod. #5
(49 FR 48883 - December 14, 1984)
Statewide, Montana

Add:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Flagperson		
Zone 1:	$9.00	$2.60
Zone 2:	9.65	2.60
Zone 3:	9.85	2.60
Zone 4:	10.25	2.60

DECISION NO. NV84-5014 -
Mod. #15
(49 FR 23988 - June 8, 1984)
Statewide (does not include the Test Range, or Building construction in Churchill, Lyon, and Mineral Counties, or Highway construction in Douglas County), Nevada

Change:	Basic Hourly Rates	Fringe Benefits
Marble, Terrazzo, and Tile Finishers:		
Area 1	$12.90	

DECISION NO. NV83-5121 -
Mod. #10
(49 FR 43532 - September 23, 1983)
Clark County (does not include the Nevada Test Site), Nevada

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers; Stonemasons	$16.59	
Marble Setters	16.59	
Marble, Terrazzo, Tile Finishers	12.90	
Mason Tenders	13.87	
Terrazzo Workers; Tile Setters	16.59	

DECISION NO. NY84-3018 -
MOD. #3
(49 FR 27899 - July 6, 1984)
CATTARAUGUS, CHAUTAUQUA & ERIE COUNTIES, NEW YORK

CHANGE:	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):		
Group 1	16.375	6.56+e
Group 2	16.22	6.56+e
Group 3	16.18	6.56+e
Group 4	16.095	6.56+e
Group 5	15.94	6.56+e
Group 6	15.785	6.56+e
Group 7	15.325	6.56+e
Group 8	13.445	6.56+e
Group 9	13.29	6.56+e
Group 10	13.275	6.56+e
Group 11	13.22	6.56+e
Group 12	13.075	6.56+e
Group 13	13.875	6.16+e
Group 14	17.375	6.16+e
Group 15	17.875	6.16+e
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):		
Class A	15.85	6.56+f
Class B	15.35	6.56+f
Class C	14.28	6.56+f
Class D	12.10	6.56+f
Class E	16.60	6.56+f
Class F	16.85	6.56+f
Class G	17.35	6.56+f

DECISION NO. NY83-3027 -
MOD. #12
(48 FR 33622 - July 22, 1983)
NASSAU & SUFFOLK COUNTIES, NEW YORK

CHANGE:	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Suffolk County:		
Building & Residential	20.92	5.67
Heavy & Highway	20.97	5.67

(4)

DECISION NO. CO85-5021
MOD #2
(50 FR 14562 April 12, 1985)
Statewide, Colorado

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Flaggers/Traffic Directors	$ 6.90	$2.09
Group 1	10.05	2.09
Group 2	10.10	2.09
Group 3	10.60	2.09
TUNNEL LABORERS:		
Group 1	10.05	2.09
Group 2	10.95	2.09
Group 3	11.05	2.09
Group 4	11.15	2.09
Group 5	11.20	2.09
Group 6	12.10	2.09
SHAFTS,'RAISES, MISSILE SILOS, AND ALL UNDERGROUND WORK OTHER THAN TUNNELS		
Group 1	11.05	2.09
Group 2	11.20	2.09
Group 3	11.30	2.09
Group 4	11.55	2.09
Group 5	11.65	2.09
Group 6	12.25	2.09

(5)

	Basic Hourly Rates	Fringe Benefits

DECISION NO. CO85-5021
MOD #2 (Continued)

LABORERS:
Group 1:

Minimum labor, including caissons to 8' carrying reinforcing rods; dowel bars; fence erectors; fire watcher on power plants and oil refineries; gabion basket and reno mattresses; signaling, metal mesh; nursery man, including seeding; mulching and planting trees; pipe plants and yards; schrubs and flowers; stake chaser; tie bar and chairs in concrete, paving, waterproofing concrete.

Group 2:

Air, gas, hydraulic tools and electrical tool operators; barco hammers; cutting torches; drill; diamond and core drills; electric hammers; jackhammers; hydraulic jacks; tampers; air tampers; boring machines; air hydraulic boring machines; automatic concrete power curbing machines; concrete processing material; form-setters; highways, streets, and airports runways; operators of concrete saws on pavement (other than gangsaws); power operated concrete buggies; hot asphalt labor; asphalt curb machines; paving breakers; transverse concrete conveyor operator; cofferdams; boxtenders; caisson 8' to 12'; caissons over 12'; jackhammer operators in caissons over 12'; labor applicable to pipe coating or wrapping; pipe wrappers, plant and yard; relining pipe; hydroliner (a plastic may be used to waterproof); pipelayer on underground bores; sewer, water, gas, oil and telephone conduit; enamalers or pipe, inside and out, mechanical grouters; monitors; jeep holiday detector men; pump operators, rakers; vibrators; hydro-broom, mixer man; gunite nozzelmen; shotcrete operator; timbermen, timber and chain saws; sand blasters; licensed powdermen; powdermen and blasters; siphons; signalmen

Group 3:

Plug and galleys in dams; scalers; and work on or off bridges 40' above the ground performed by laborers' working from a bos'n chair, swinging stage, life belt, or block and tackle as a safety requirement. All lines and safety belts used shall be of a type approved by state and federal laws

(6)

DECISION NO. ID85-5010 - Mod#4
(50 FR 6503 - Feb. 15, 1985)
Statewide Idaho

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
AREA 2:		
Zone 1:		
Carpenters	$13.85	$4.88
Piledrivermen	14.02	4.88
Millwrights, Machine Erectors & Boom Men	14.14	4.88
(Zone differential - unchanged)		
CEMENT MASONS:		
AREA 2:		
Zone 1:		
Group 1	12.52	5.75
Group 2	12.72	5.75
(Zone Differential - Unchanged)		
LABORERS:		
AREA 2:		
Zone 1:		
Group 1	11.60	4.84
Group 2	11.70	4.84
Group 3	11.80	4.84
Group 4	11.90	4.84
Group 5	11.95	4.84
Group 6	12.20	4.84
Group 7	12.45	4.84
Group 8	11.75	4.84
Group 9	11.90	4.84
Group 10	12.20	4.84
(Zone Differential Unchanged)		
POWER EQUIPMENT OPERATORS:		
AREA 2:		
Zone 1:		
Group 1	14.07	4.05
Group 2	14.23	4.05
Group 3	14.60	4.05
Grou. 4	14.91	4.05
Group 5	15.08	4.05
Group 6	15.26	4.05
Group 7	15.62	4.05
Group 8	15.85	4.05
Group 9	16.08	4.05
Group 10	16.32	4.05
(Zone Differential Unchanged)		
TRUCK DRIVERS:		
AREA 2:		
Zone 1		
Group 1	13.31	4.63
Group 2	13.37	4.63
Group 3	13.43	4.63
Group 4	13.49	4.63
Group 5	13.54	4.63
Group 6	13.80	4.63
TRUCK DRIVERS (CONT'D):		
Area 2 (Cont'd):		
Group 7	13.86	4.63
Group 8	13.92	4.63
Group 9	14.03	4.63
Group 10	14.09	4.63
Group 11	14.15	4.63
Group 12	14.21	4.63
Group 13:		
Class A	13.69	4.63
Class B	13.90	4.63
Class C	14.03	4.63
Class D	14.21	4.63
Class E	14.32	4.63
Class F	14.44	4.63
Class G	14.72	4.63
Class H	14.95	4.63
Class I	15.18	4.63
Group 14	16.60	4.63

DECISION NO. UT83-5120 - Mod. #14
(48 FR 44992 - September 30, 1983)
Statewide, Utah

	Basic Hourly Rates	Fringe Benefits
Add:		
LABORERS:		
Heavy and Highway Construction:		
Flagperson	$6.50	$1.75

DECISION NO. WY85-5025
MOD. #1
(50 FR 20711 May 17, 1985)
Statewide, Wyoming

	Basic Hourly Rates	Fringe Benefits
ADD:		
LABORERS:		
Flaggers	$7.98	

(?)

[FR Doc. 85-25295 Filed 10-24-85; 8:45 am]

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Federal Register

Friday
October 25, 1985

Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

Title I Property Improvement and Manufactured Home Loans; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-85-1178, FR-1656]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans

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

ACTION: Final rule.

SUMMARY: This final rule codifies, restates, and reorganizes the present regulations published in 24 CFR Part 201 implementing Title I, section 2 of the National Housing Act, concerning property improvement and manufactured home loans. This final rule eliminates unnecessary or duplicative material in the present regulations; uses a topical, chronological approach; standardizes, whenever possible, a variety of terms, concepts, and procedures; implements recent statutory changes, departmental proposals and industry recommendations for program changes; and enhances the fiscal soundness of the program.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: William C. Sorrentino, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-5210. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Title I, section 2 of the National Housing Act (12 U.S.C. 1703) authorizes the Secretary to insure banks, trust companies, personal finance companies, mortgage companies, and other financial institutions that the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance against losses which they may sustain as a result of defaults by borrowers in connection with insured property improvement loans or manufactured home loans.

A proposed rule was published at 49 FR 27533 on July 5, 1984 and interested persons were invited to submit written comments, suggestions, or data for the Department to consider with regard to development of the final rule. There were 45 respondents in 1984, comprised of manufacturers of manufactured housing, furniture, and home improvement products; lending institutions; a State Housing Finance Agency; home improvement and manufactured housing dealers; insurers; appraisers; lender, dealer, and insurer trade associations; attorneys; and U.S. Senators. In addition, Title I program officials and legal counsel met at various times during the ensuing months with representatives of lenders, manufacturers, dealers, homebuilders and private insurance firms. The meetings were at the request of those representatives for the purpose of enabling them to expand upon their earlier written comments. These meetings also enabled HUD to express its concerns relating to the administration of the Title I program. Several written comments were received from other respondents in 1985, representing dealers, manufacturers, homebuilders and consumers. The written and oral comments of all these respondents have been carefully considered and evaluated, and many of the respondents' recommendations have been adopted, either in whole or in part, in the final rule. In addition, HUD has made changes, mostly of an editorial nature.

The proposed rule divided Part 201 into six subparts: Subpart A—General (§§ 201.1–201.5), Subpart B—Loan and Note Provisions (§§ 201.10–201.19), Subpart C—Eligibility and Disbursement Requirements (§§ 201.20–201.28), Subpart D—Insurance of Loans (§§ 201.30–201.32), Subpart E—Loan Administration (§§ 201.40–201.43), and Subpart F—Default Under the Loan Obligation (§§ 201.50–201.55). The final rule adopts the same subpart and section scheme as was in the proposed rule, except that § 201.19 in the proposed rule has been deleted and an additional section, § 201.29, Ineligible participants, has been added to Subpart C.

General Provisions

Subpart A in the final rule is substantially the same as Subpart A in the proposed rule. Changes in the subpart are essentially editorial. For example, in the final rule each defined term in § 201.2 is given a letter designation; defined terms in the proposed rule were undesignated.

One definition in § 201.2 which was the subject of several comments from trade associations and attorneys for both home manufacturers and lenders is "volume rebate", defined in the proposed rule as:

> . . . an established marketing practice customary in the industry, whereby a manufacturer offers bonuses to all dealers on an equal basis for volume purchases over a period of time and not on individual or small volume purchases.

This was criticized by industry respondents for several reasons, among which were vagueness, i.e., "small volume" was not specific, and over-regulation, in that HUD was attempting to impose a uniform marketing program on an industry which has no uniformity in its promotional efforts but rather has many kinds of programs by many manufacturers. One respondent did agree with HUD's position (which is somewhat similar to that of the Veterans Administration) that rebate payments, except for those related to the volume of sales to dealers, should not be funded on a per-home basis by adding them to the invoiced wholesale (base) price of the home. This respondent supported HUD's efforts to eliminate individual rebates but agreed with the other criticisms of HUD's proposed approach.

HUD agrees with the criticisms of vagueness and possible regulatory excess, as well as with the observation that individual manufacturers should be allowed to implement their innovative marketing and promotional programs. But HUD continues to believe that any such programs should be based upon the volume of manufactured home sales to dealers and that their costs should be disallowed if funded on a per-home basis. HUD has responded to several discussions with representatives of the manufacturers by eliminating the use of the term "volume rebates" and by adopting an industry suggestion that the Title I regulations permit manufacturers to implement plans for the payment to dealers of "volume incentives" that conform to specific requirements.

Accordingly, the new rule allows manufacturers to reflect the projected costs of volume incentive payments to dealers in establishing the wholesale (base) prices of manufactured homes, options, furniture and specialty items as stated in published wholesale (base) price lists. Payments of volume incentives to dealers under such plans, among other requirements, must be funded from general corporate revenues, as a charge to overhead and profit; may not increase or decrease the published wholesale (base) prices on an invoiced per-home basis; may not be funded by the creation of a special product line; may not increase or decrease the retail price of the home and such items to the

ultimate purchaser; must be available to all dealers in a given marketing area; and must be based upon volume sales over a specified period of time to participating dealers.

The final rule also includes two new defined terms that relate to "volume incentives"—"Special benefits" and "Specialty items". "Special benefits" are payments other than volume incentives made by a manufacturer directly to (a) a lender to "buy down" the interest rate, discount points, or other fees or charges related to a dealer's "floor plan" financing, and (b) an advertising medium for all or part of the costs of advertising either the manufacturer's product or a particular dealer's products or services. "Specialty items" are specifically itemized and invoiced charges for services, materials or products related to a manufactured home, its installation or erection, which are sold by a home manufacturer to a dealer and which are not included elsewhere in the manufacturer's invoice.

Another definition in the proposed rule giving rise to criticism was that of the "manufacturer's invoice." As set forth in the proposed rule, this term was defined as:

> . . . a document issued by the manufacturer [on a form in general use in the industry] itemizing and certifying the wholesale price at the factory of (a) a manufactured home and any options (appliances, built-in items and equipment, and (b) any furniture supplied by the manufacturer. Such wholesale price shall be the price to the dealer of such items exclusive of freight or transportation charges, trade association fees or charges, sales taxes, discounts, bonuses, refunds, prizes, rebates (except volume rebates), or anything of value which will inure to the benefit of the dealer at the time of the home's purchase by the borrower.

Comments on this definition were received from the same individuals and organizations that commented on the definition of "volume rebate"—the two are intimately related. One comment was that the definition is at once too specific and too vague; another comment was only that the definition is too vague. A third comment was that it was the respondent's understanding that the purpose of the definition was to permit financing of the manufacturer's legitimate costs of doing business, provided that the charges are not specifically itemized on the invoice, but that this was less than clear in the proposed definition. The respondent further argued that such legitimate costs of doing business should be financed whether or not specifically stated.

HUD agrees that legitimate costs of the home manufacturer should be financed. The Department never intended that such costs not be financed, but only that certain costs not be itemized and attributed to a particular manufactured home sale. The definition in the final rule has been revised in such a manner as to delete the ambiguities of the proposed definition and to allow financing of the legitimate costs of manufacturers.

The definition of "manufacturer's invoice" in the proposed rule provided that the invoice be on a form in general use in the industry. Industry representatives persuaded the Department that no such form or forms are in use, and therefore there is no such provision in the final rule. Also, in the proposed rule the definition of "manufacturer's invoice" used the term "wholesale price"; the Department concluded that this was too vague and the definition now uses the term "wholesale (base) price", which is explained in the definition of "wholesale (base) price list" which has been added in the final rule.

Both the proposed and final rule definitions of "manufacturer's invoice" refer to a certification by the manufacturer. Manufacturers are advised that a false certification may be considered to be a violation of 18 U.S.C. 1001 so as to render the manufacturer making a false certification liable to criminal prosecution, which can result in a fine or imprisonment. Moreover, all other applicable criminal and civil penalties for fraud and misrepresentation may be invoked by the Government in the event of false certification.

The term "lender" has also been redefined in the final rule. The new definition is more detailed than was the definition in the proposed rule. Like the definition in the proposed rule, there is a requirement that a financial institution hold a Title I contract of insurance, but the final rule specifies the additional requirements that the contract not have been terminated by the Secretary and that the holder be approved both to originate and purchase, and also to hold, service, and sell insured Title I loans. If the contract of insurance has been terminated, the financial institution, with approval of the Secretary, may hold, sell or continue to service insured Title I loans held in its portfolio prior to termination of the contract, but may not originate or purchase such loans. The revised definition conforms to current Title I program practices and is compatible with the regulations for the approval of lending institutions under Title I published at 24 CFR Part 202.

"Loan" has also been redefined. This redefinition is for purposes of clarification and does not result in a substantive change.

The definition of "manufactured home" has been expanded to cover existing homes which have not been insured under 24 CFR Part 201.

"Manufactured home purchase loan" has been expanded to include appurtenances such as garages, patios, and carports. In the definition of "Note", the term "evidence of indebtedness" has been changed to "written instrument evidencing the borrower's signature to a promise to repay the principal indebtedness and to pay any interest due on a loan". "Repossession" or "Foreclosure" has been removed, and "Single family property improvement loan" has been added to clarify that single family property improvement loans may be made for both conventional and manufactured homes. Editorial changes have been made in the definitions of "Direct loan", "Furniture", "Nonresidential property improvement loan", "Property improvement loan", and "Solar energy system".

Section 201.3, Applicability of the regulations, has been amended to provide that the provisions in Subpart A are applicable to all loans reported for insurance registration before, on or after the effective date of the final rule, and the provisions of Subparts B and C are applicable to all loans for which applications are approved on or after such date. Subparts D, E, and F apply to all loans reported for insurance registration before, on, or after such date.

Loan and Note Provisions

Subpart B in the final rule contains substantive changes from its counterpart in the proposed rule. Section 201.10(b), relating to the maximum loan amount for a manufactured home purchase loan, was the subject of many comments. As set forth in the proposed rule, the maximum loan amount could not exceed the sum of enumerated items (not to exceed $40,500), including: 116% of the total of the wholesale price for the manufactured home and options and the wholesale price for furniture (not to exceed five percent of the wholesale price of the home and options) as detailed in the manufacturer's invoice. Many comments were received from trade associations with regard to the 116% multiplier and from trade associations, a furniture manufacturer, attorneys, and others with regard to the five percent furniture limitation. All the comments were to the effect that these percentages were too low and were unrealistic. It was suggested that the multiplier be changed to 120%, 125%, or

130% and that the furniture limitation be raised to 10%.

HUD has considered these comments and their ramifications, and has concluded that a higher multiplier and a higher furniture limitation are warranted. However, some invoice items will not be subject to the multiplier. The multiplier for manufactured home purchase loans has been raised to 125% of the sum of the invoiced wholesale (base) prices for the home and options, and freight charges. Any sales taxes paid by the dealer and other costs, as itemized in § 201.10(b), may be included in the loan at 100%. The Department has raised the limitation on furniture to the lesser of $2,000 or 10% of the invoiced wholesale (base) price of the home.

The proposed rule also limited allowances for set-up and transportation costs, including the rental of wheels and axles, to $500 per module, but not to exceed $1,000 for such loans. In response to industry comment this has been changed to $600 per module, without any other limitation, and the term "transportation costs" has been modified so that it is clear that this term relates to costs associated with local transportation to the homesite.

Section 201.10(d), relating to the maximum amount of a combination (manufactured home and lot) loan, was also revised. The multiplier of 125% was retained, and is applicable to the sum of the invoiced wholesale (base) prices of the home and options, and freight charges. Any sales taxes paid by the dealer may be included in the loan at 100%. The costs of transportation of the home to the homesite, set-up, and anchoring may also be included in the loan amount, but shall not exceed $900 per module.

Section 201.10 in the proposed rule provided for the maximum loan amount for an existing manufactured home based upon "the appraised value of the home (as determined by a HUD-approved appraiser)" rather than upon the wholesale invoice, as is the case for a new manufactured home. In response to industry concerns that HUD not be the final arbiter of appraised values, in the final rule "HUD-approved appraiser" has been changed to "HUD-approved appraisal". It should be noted that one respondent suggested that an appraisal system be utilized for determining the value of a new home as well as a used home. Upon inquiry, HUD has determined that although at least one proprietary system has been proposed for the publication of "blue book" home values, it is only used in portions of a few states. As yet, no valid method has been implemented, on a consensus basis throughout the country, for accurately obtaining an appraised value for a new manufactured home. Therefore, HUD has elected not to permit the use of an appraisal approach to determine the value of a new manufactured home as a basis for determining the maximum loan amount. However, HUD would consider permitting the use of such appraisals if a valid appraisal system is developed and is implemented by lenders, dealers and others in the industry, and HUD encourages the private sector to develop such a system. Such a change would require rulemaking and public comment.

In § 201.11, the term "note" has been changed to "loan", and conforming changes appear in other sections of the rule.

The caption for § 201.12 has been changed from "Form of note" in the proposed rule to "Requirements for the note" in the final rule to reflect the true nature of the provision. Most changes in the text of the section are editorial rather than substantive. The text has been expanded in the final rule to clarify the requirement that all notes be written as simple interest or similar notes, i.e., the dollar figure of the debt is stated in the amount of the proceeds disbursed, plus interest payable at a specified rate. So-called "discount" or "add-on" notes are not longer eligible for insurance. For example, if the amount borrowed is $10,000, the interest rate is 12%, and the period is 10 years, the loan will be repayable in 120 monthly installments of $143.47 for a total of $17,216.40. The note must specify that the borrower will pay $10,000 plus interest at 12% to be eligible for insurance; a note which states that the borrower will pay $17,216.40 including interest at 12% is not eligible for insurance, even though there is a provision for a rebate of unearned interest in the event of prepayment.

The prohibition of discount or add-on notes was not specifically enunciated in the proposed rule, although HUD had thought that this was accomplished by the requirement in § 201.17 that unearned interest be determined in accordance with the actuarial method. At least one lender agreed. However, during the course of developing the final rule, HUD realized that without further clarification some lenders might assume that HUD meant merely to prohibit the computation of unearned interest pursuant to the rule-of-78's. To clarify its intention to preclude the practice of executing discount or add-on notes, but with unearned interest rebates calculated according to the actuarial method, HUD has rewritten the text of § 201.12 accordingly.

Although the lender referred to above argued that conversion to a simple interest note would result in markedly higher and continuing printing and computer programming costs, HUD is not convinced that such is the case. The preparation of new notes and other documents may entail a one-time expense to lenders and dealers. But thereafter there should be no particular cost impact resulting from this decision. Any incidental programming costs for this change would occur also on a short-run basis, whereas long-term costs should decrease. For example, lenders submitting insurance claims should find that processing time for their claims is reduced because the need for HUD to have to compute and deduct unearned interest from the face amount of a discount note is obviated. HUD also believes that borrowers will benefit from the clearer presentation of financing costs, i.e., principal and stated interest, and that this enhancement of consumer information will benefit both lenders and HUD over time.

Section 201.13 in the proposed rule was captioned "Interest". This has been changed in the final rule to "Interest and discount points". The text of the section in the final rule has been changed from the proposed rule's text to clarify that the finance charge may include loan discount points to be paid in cash by the borrower as part of the borrower's initial payment (see § 201.23). The text also has been amended to provide that the dealer also may pay such discount points from its own resources and without reimbursement. This change responds to a suggestion by industry representatives contained in the comments to the proposed rule. However, no other party, such as the manufacturer, may pay such discount points to the lender. HUD had thought that the proposed rule's definition of "manufacturer's invoice", discussed above, addressed this concern by precluding the manufacturer from including and detailing discounts, including such discount points, on the manufacturer's invoice. Further examination of the issue has led to the decision to expressly state the prohibition, both by amending the definition, by amending the text of § 201.13, and by making conforming changes in § 201.23(a), § 201.25(c), and § 201.26. In the final rule, § 201.13 has been further amended to include a provision that interest shall accrue from the date of the loan which, under § 201.12, is the date that loan proceeds are disbursed. One respondent suggested that the requirement of a fixed rate for the term of the loan be eliminated so as to permit variable rate loans. HUD has decided to keep the

requirement of a fixed-rate note because variable rate loans would impose an onerous burden on the Department in calculating claim payments.

Section 201.14, Payments on the loan, in the final rule provides for equal installment payments on a weekly, biweekly, semi-monthly, or monthly basis. In the proposed rule there were no provision for semi-monthly payments, an omission that has been corrected in response to a comment.

In § 201.15, Late charges, the proposed rule stated that "[t]he note may provide for a late charge . . . ." This has been qualified in the final rule in response to a comment by adding "Subject to State law", before the above-quoted provision. A second change in this section from the proposed rule has been the substitution of "late charges or daily interest charges" for "penalties".

Several lenders objected to the requirement in § 201.17 that the lender be given 30 days' advance written notice of prepayment. These objections were based upon either State law or lender practice permitting borrowers to prepay at any time, without notice, or upon the requirements in section 501(a)(1) of the Depository Institution Deregulation Act of 1980 and the implementing regulations of the Federal Home Loan Bank Board (FHLBB). Under that Act and the FHLBB regulations, manufactured home lenders may charge interest at rates in excess of those authorized by State law if, among other things, the note provides for prepayment at any time. HUD agrees with these objections and the 30 days' advance notice requirement is not included in § 201.17 in the final rule.

Section 201.18's caption has been changed from "Loan modifications" in the proposed rule to "Modification agreements or repayment plans" in the final rule. Changes in the final rule text are essentially editorial, although the proposed rule's prohibition against increasing the payment has been removed, because it is often necessary to increase the payment to cover arrearages, and language has been added in the final rule to provide that modification agreements can provide for either reduced or increased payments. This section has been further amended in the final rule by the addition of language permitting informal repayment plans to be negotiated to permit the payment of past-due amounts over a short period of time without formal modification of the note.

Section 201.19 in the proposed rule authorized lenders to require co-makers or co-signers if a borrower's income or creditworthiness is insufficient. This section has been deleted from the final rule, and § 201.22 has been amended to require lenders to apply the same standards to co-makers and co-signers as to borrowers.

Eligibility and Disbursement Requirements

Subpart C in the final rule also contains substantive changes from its proposed rule counterpart, in addition to editorial changes.

Section 201.20(b), *Eligible use of loan proceeds*, has been modified to indicate that loan proceeds may be used *only* for eligible purposes.

Section 201.21, Manufactured home loan eligibility, has been extensively revised in the final rule. Subparagraph (3) of paragraph (c) in the proposed rule has been redesignated as subparagraph (4) in the final rule. Subparagraph (1) in the proposed rule provided that manufactured homes securing Title I insured loans must be constructed in compliance with the National Manufactured Construction and Safety Standards Act of 1974, as evidenced by affixed HUD labels or tags. This requirement is retained in the final rule, but additional requirements have been added. The final rule retains the requirement that manufacturers certify to compliance with such standards, but adds the requirement that such certification recite that it is under applicable penalties for fraud and misrepresentation.

The final rule also restates the transportation and installation requirements contained in § 201.21(c), in response to a request for clarification from a representative of manufactured home dealers. Section 201.21(c) also contains a new subparagraph (2) which requires lenders to obtain and retain copies of the manufacturers' invoices. Subparagraph (2) in the proposed rule has been redesignated as subparagraph (3) and revised to require the dealer to inspect the manufactured home for structural damage and to test the performance of its plumbing, mechanical and electrical systems.

In the proposed rule, subparagraph (3) of § 201.21(d), Manufacturer's warranty requirements, provided, in part, that "the lender shall determine to the best of its ability whether the home manufacturer is complying with its warranty obligations on other homes". This has been changed in the final rule by changing "determine" to "investigate", by deleting "to the best of its ability", and by adding the phrase "financed by the lender under any program" at the end of the sentence. HUD construes this phrase as including VA and conventional financing as well as HUD/FHA financing. The next three sentences in subparagraph (3) in the proposed rule read as follows:

> If the lender has reason to know, because of consumer complaints, dealer comments or other information concerning the manufacturer received in the course of business, that the manufacturer may not be complying with its warranty obligations, the lender shall ascertain whether such complaints against the manufacturer have been resolved, and whether the manufacturer is otherwise honoring its warranties. The lender's determination that a manufacturer is complying with its warranty obligations on other homes shall be supported with reasonable documentation in the loan file. Such documentation may reference information or materials contained in other files of the lender, provided that a responsible loan officer certifies that the lender's determination is supported by such other information or materials.

In the final rule, in response to criticisms from respondents, these three sentences have been revised to read:

> If the lender knows, because of consumer complaints, dealer comments or other information concerning the manufacturer received in the course of business, that consumers have complained about warranty performance, the lender shall ascertain whether such compaints have been resolved. The lender's findings shall be documented in the loan file. Such documentation may reference information or materials contained in other files of the lender, provided that the file contains a written certification signed by a responsible loan officer under applicable criminal and civil penalties for fraud and misrepresentation that the lender's findings are supported by such other information or materials.

In response to highly negative comments from all sectors of the industry, the final sentence of § 201.21(d)(3) in the proposed rule, requiring an acceptable Manufactured Home Warranty Plan if the lender determines that the manufacturer is not honoring its warranties, has not been included in the final rule.

Section 201.21(d)(4) in the proposed rule, relating to lender's duties if the manufacturer is a debtor in a bankruptcy or insolvency proceeding, has not been included in the final rule, and § 201.21(d)(5) in the proposed rule has been redesignated as § 201.21(d)(4). Subparagraph (5) has also been revised by deletion of the language from the proposed rule requiring notification to the Secretary if the lender cannot obtain documented assurances that the warranty obligations will be honored by a manufacturer who is a debtor in a bankruptcy or insolvency proceeding.

HUD is responding to highly critical industry comments by not promulgating the proposed rule's § 201.21(e), Manufactured Home Warranty Plan, in

the final rule. Lenders and insurance underwriters characterized the concept of alternative warranties as impractical, uneconomic and financially infeasible. Informal contacts with prominent firms in both segments of the industry have confirmed their view. Therefore, § 201.21(f) in the proposed rule has been redesignated in the final rule as paragraph (e). The requirement in proposed rule § 201.21(f) (3) and (4) that the borrower obtain a certification from the State or local authority has been changed in the final rule to a requirement that the lender obtain the certification either from the borrower or directly from the State or local authority (§ 201.21(e) (3) and (4) in the final rule).

In § 201.22, Credit requirements for borrowers, paragraph (a)(2) of the proposed rule would have required the lender to document verification of the borrower's employment during the previous two years. This has been changed in the final rule to a requirement that the lender obtain written verification of the current employment and income of the borrower and of any co-maker or co-signer, and of prior employment and income of any of them who has changed employment within the previous two years. Paragraph (a)(2) in the final rule also contains a provision, not contained in the proposed rule, that the lender obtain documentation of self-employment income during the preceding two years. This subparagraph in the proposed rule also would have required the lender to verify the source of the borrower's downpayment. The final rule does not contain this requirement, but does contain a requirement not in the proposed rule that the lender determine that the borrower's existing and proposed Title I loans do not exceed the limitation contained in § 201.10.

The language in § 201.22(b), Income requirements for manufactured home loans, has been modified to enable the Department to respond more quickly to changes in the economy, as reflected in prevailing interest rates, which could affect a borrower's ability to make payments on a Title I loan. The Department is now monitoring Title I lenders' claims/loan ratios, as stated in 24 CFR 202.6(b)(5), to assure that lenders exercise prudence and diligence in reviewing borrowers' credit and in approving loans. Periodically, the Secretary will publish by Notice in the **Federal Register** maximum percentages of net effective income to be considered by the lender in reviewing the adequacy of a potential borrower's income. Such income percentage limitations will be based upon generally prevailing interest rates and upon HUD's experience with Title I claims/loan ratios. A borrower's income will generally be considered adequate if the borrower's total prospective housing expense payments related to a Title I loan do not exceed a prescribed percentage of net effective income, and if the sum of the prospective housing expense payments and other recurring charges does not exceed another prescribed percentage of net effective income. The lender may approve a loan when either percentage is exceeded only if other documentable factors are determined which support the loan's approval. The Department anticipates publishing an income percentage Notice to take effect when this final rule is effective. Such Notice will probably set the maximum net effective income percentage for prospective housing expense at 38% and the percentage for the sum of such expense and other recurring charges at 53%.

Moreover, § 201.23(a) now contains a requirement that the borrower disclose on the loan application the source and security for any loan of funds for downpayment or other costs. In § 201.23(b), relating to downpayment requirements for a manufactured home loan, the proposed rule provided for a downpayment of 5% of the first $10,000 and 10% of the balance of the purchase price. In the final rule, this has been changed to 5% of the first $5,000 and 10% of the balance. A like change has been made in § 201.23(d) covering the downpayment for a combination loan. This change reflects the Department's concern to assure that borrowers have an adequate amount of equity invested in the property while still liberalizing the requirements contained in the existing regulations.

In § 201.24(c), Recording and perfection of security, an additional requirement is contained in the final rule that was not in the proposed rule. This requirement is that the security instrument creates a valid and enforceable lien on the secured property.

In the proposed rule § 201.25(b), Fees and charges which may be financed, permitted a fee for lender inspection of the property. In the final rule this has been changed to permit a fee for inspection by the lender or its agent. A corresponding change has been made in § 201.40(b)(2), describing the on-site inspection. Section 201.25(b)(2)(ii) in the proposed rule would have permitted the financing of premiums for comprehensive and extended hazard insurance coverage for the first three years, and many comments requested that this be changed to allow financing premiums for the first five years, as is permitted under the current Title I regulations. The Department believes that financing such premiums is, in the long run, more expensive to borrowers and increases the Department's claim payments, particularly when default occurs after expiration of the period covered by the premium. Accordingly, the Department has decided to retain the three-year limitation in the final rule, and is contemplating a subsequent rule making that would propose reduction of the term of a financed hazard insurance premium to one year. A notice of proposed rule making will be published in the **Federal Register** if the Department decides to proceed with such an amendment.

Section 201.26, Conditions for loan disbursement, provided in paragraph (a)(1) in the proposed rule that the borrower's title in the property be documented by any one of a list of specific types of evidence. This list is not included in the final rule, which instead provides that the lender may use "such title evidence as is acceptable to prudent lending institutions and leading attorneys in the jurisdiction". The requirement in paragraph (a)(6) of the proposed rule that the lender notify the borrower of the terms and conditions of the loan and of the lender's intention to disburse unless the borrower notifies the lender within six days of a decision to rescind has been removed because of conflicting Federal truth-in-lending requirements. Paragraph (a)(6) has been revised to require that the lender assure that the loan file is complete. A similar requirement has been added to paragraph (b)(2). Also in paragraph (b)(2) of this section, a requirement has been added in the final rule for manufactured home loans that the dealer certify that, to its knowledge, neither it nor the manufacturer or any other party to the transaction has loaned, advanced or paid any part of the borrower's required initial payment (including the downpayment), and that the borrower has made the initial payment. In paragraph (b)(3), items (i)–(v) in the proposed rule have been redesignated in the final rule as items (ii)–(vi), respectively, and a new item (i) has been added which requires the borrower to make a similar certification with regard to the required initial payment. Paragraph (b)(4) has been revised to clarify the statements on the placement certificate, as executed by the borrower, the dealer, and the borrower and the dealer jointly. The dealer's statement now will also reflect that the inspection and tests performed

under § 201.21(c)(3) reveal no damage or defects in the manufactured home as installed or erected on the homesite.

Section 201.26(b)(6) in the proposed rule would have required the lender to establish a cash escrow and not release it to the dealer until an on-site inspection has been made by the lender and a determination made that the requirements of paragraph (b)(7) had been met. Lenders and dealers vigorously objected to this on the grounds that it will be onerous, costly, and unworkable. The Department agrees and the provision has been changed in the final rule to permit 100% disbursement upon a certification by the dealer that the manufactured home and options, furniture, and other items included in the purchase price have been delivered to and installed or erected at the homesite, and all other work has been completed. Section 201.26(b)(6) now also contains provisions to guide the lender in resolving situations in which some materials are not delivered or work is not performed at the homesite. If the manufactured home is durable and liveable, and is acceptable to the borrower, the loan may be rewritten in an appropriate amount and registered for insurance. If the situation is otherwise, the loan may not be registered for insurance.

The mandatory on-site inspection by the lender described in paragraph (b)(7) in the proposed rule has been changed, because of lender objections, to an optional inspection by the lender or its agent. A new paragraph (b)(8) in the final rule requires the lender to notify the Secretary if an inspection under paragraph (b)(7) results in a determination by the lender that the dealer's certification under paragraph (b)(6) was false or erroneous. Paragraphs (b) (8) and (9) in the proposed rule have been redesignated as paragraphs (b) (9) and (10), respectively, and the latter has also been changed to only require a six-day notice of intent to disburse. The language in the proposed rule concerning rescission by the borrower has not been included, nor has paragraph (b)(10) of the proposed rule, which would have required the borrower to authorize the lender to disburse funds to the dealer.

In 24 CFR Part 202, Approval of Lending Institutions under Title I, § 202.6(b)(3) provides that the Department may take an administrative action—described in paragraph (a) of that section as a letter of reprimand, probation, suspension, or withdrawal of approval—based upon the lender's "failure properly to supervise and monitor dealers under the provisions of 24 CFR Part 201." Neither the existing Part 201 nor the proposed rule explicitly states what constitutes supervision and monitoring. The Department believes that due process under Part 202 requires an explicit statement of this requirement, and therefore § 201.27, Requirements for dealer loans, has been revised to accomplish this purpose. The caption of paragraph (a) has been changed from "Dealer approval" to "Dealer approval and supervision". The substance of paragraph (a)(2) in the proposed rule, relating to annual reapproval of dealers, has been moved to paragraph (a)(1), and the substance of paragraph (a)(4) has been moved to paragraph (a)(2), which has been further revised by making the maintenance of dealer files part of the lender's obligation to monitor and supervise approved dealers. Such obligation also requires periodic visits by the lender to each dealer to review its Title I performance and compliance, and that the lender shall require each dealer to furnish pertinent records relating to Title I compliance and performance. Paragraph (a)(3) in the proposed rule has been redesignated as paragraph (a)(4) and a new paragraph (a)(3) added to provide for termination of dealer approval if the lender determines that a dealer is not satisfactorily performing its Title I obligations; it also requires notice to the Secretary if a dealer's approval is terminated and bars reapproval of such dealer without prior written approval of the Secretary. The requirement in paragraph (a)(1) in the proposed rule that the dealer in the application for approval identify salespersons has been removed from the final rule. These requirements make explicit that which had been implicit, and are based on existing handbook requirements.

Section 201.28(b), requiring hazard insurance on a manufactured home, has been changed in the final rule to reflect recent statutory changes, and now also contains requirements that the lender be named as a loss payee and that the insurance be kept in force by the borrower for the term of the loan or until repossession or foreclosure. This paragraph was further changed in the final rule to permit forced placement of such insurance by the lender, at the borrower's expense, if the borrower fails to maintain it. The proposed rule was silent with regard to forced placement of insurance. A new paragraph (c) has been added to this section precluding insurance under Title I for any loan with respect to property within the Coastal Barriers Resources System, except for such loans approved before October 18, 1982. The title of the section has been amended accordingly.

A new § 201.29, Ineligible participants, has been added in the final rule. This is substantially the same as § 201.27(c) in the proposed rule. The final rule contains no § 201.27(c).

Insurance of Loan Provisions

In Subpart D, § 201.32, Insurance reserve, has been revised by changing the term "General insurance reserve" to "Insurance coverage reserve account" to more accurately reflect that there are no actual moneys set aside in reserve for lenders, but that an insurance coverage amount is credited on HUD's books which limits the amount of benefits insurance payments to a lender for claims on Title I loans in its portfolio. This change was also made in § 201.1. This change and others in the section reflect HUD's response to recent inquires and requests from lenders to clarify the treatment of "reserves" as they were characterized under the existing Title I regulations.

The section has been further amended by deleting paragraph (a) of the proposed rule from the final rule; paragraphs (b)–(f) have been redesignated in the final rule as (a)–(e), respectively. New paragraph (b) contains the provisions relating to the annual adjustments to a lender's insurance coverage reserve account. Among other things, it limits the 5-year moratorium on annual adjustments of insurance coverage amounts (formerly "reserves") to those accruing under a Title I contract of insurance issued to a newly approved lender. The provisions of § 201.32(e)(1) in the proposed rule, relating to the transfer of reserves on loans used to back guaranteed securities issued by the lender, do not appear in the final rule. Section 201.32(e)(2) in the proposed rule, providing for transfer of reserves on an earmarked basis if the sale or transfer of loans is without recourse, guaranty, guarantee, or repurchase agreement, has also been removed from the final rule. New paragraph (d) in the final rule provides that such transfers of loans will result in a transfer of insurance coverage to the reserve account of the purchasing or transferee lender in an amount equal to 10% of the actual purchase price or the net unpaid principal balance, whichever is the lesser, but not to exceed the amount of the insurance coverage in the transferor lender's reserve account. If a sale or transfer of loans is sold with recourse or under a guaranty, guarantee, or recourse agreement, there will be no transfer of insurance coverage, all

transfers of insurance coverage will occur without earmarking.

Loan Administration Provisions

Paragraph (b)(3) of § 201.40 in the proposed rule, which would require the borrower to remit to the lender any available unused loan proceeds to reduce the principal obligation of the loan, was criticized by several respondents as administratively impractical. The Department agrees with the criticism and the provision has been deleted from the final rule. Instead, the final rule now requires the borrower to certify to the eligibility of all improvements in the completion certificate required by § 201.26(a)(5).

Default Under the Loan Obligation Provisions

HUD has amended Subpart F, § 201.50, Lender efforts to cure the default, in response to industry comments by combining paragraph (a), Foreclosure or repossession as a last resort, and (b), Personal contact with the borrower, into a new paragraph (a), Personal contact with the borrower before acceleration and foreclosure or repossession. The text of this new paragraph omits the 30-day requirement in paragraph (b) in the proposed rule, as does the text of new paragraph (b)—paragraph (c) in the proposed rule—with regard to the notice of default and notice of acceleration.

Section 201.51(a) in the proposed rule would allow a lender to make a claim and proceed against the security if the Secretary grants prior approval. In the final rule, this has been changed to prohibit a claim if the lender proceeds against the security. HUD has added new subparagraph (a)(2) to deal with recent lender requests for guidance in loan default situations where the lender wishes to proceed against the property under an instrument securing a lien senior to that of a Title I loan, and also wants later to submit a Title I claim.

Section 201.52 in the proposed rule authorized a lender to accept a voluntary conveyance of a manufactured home if there is prior approval of the Secretary, the conveyance is in full satisfaction of the debt, and no insurance claim is submitted. In the final rule, the requirement for prior Secretarial approval has been deleted. In addition, acceding to industry comment, the final rule allows the lender to accept a voluntary surrender of the property without satisfaction of the debt, provided that the lender, if it intends to submit an insurance claim, acquires title and disposes of and sells the property in accordance with State and local law.

In the proposed rule, § 201.53, Disposition of property, was comprised of paragraph (a), Property improvement loans, and (b) Manufactured home loans. In the final rule, paragraph (a) has been removed, so that this section now only relates to the disposition of manufactured home loan property. The section caption has been redesignated accordingly.

Section 201.54, Insurance claim procedure, has been amended by reversing the order of paragraphs (e) and (f), and redesignating them accordingly. In newly-designated (e), bankruptcy has been added to probate and insolvency proceedings. Newly-designated (f) has been expanded to provide for repurchase of a paid claim if the Secretary subsequently discovers that the note is not valid and enforceable against the borrower, and to provide for the lender to assign a judgment and resubmit a reassigned or repurchased claim. This clarification responds to recent lender inquiries and recites HUD's interpretation of requirements imposed by existing regulations.

Section 201.55, Calculation of insurance payment, has been revised to clarify its applicability to specific post-default situations. Paragraph (a) of the proposed rule, Loans in default before the effective date, has been removed, and paragraph (b), Property improvement loans, and paragraph (c), Manufactured home loans, have been redesignated as paragraphs (a) and (b) respectively.

New paragraph (a) of the final rule restates the amount of interest to be paid on a Title I claim. Interest shall be paid at the rate of 7% per annum from the date of default to the date of a claim's initial submission of payment plus 15 calendar days. For property improvement loans, interest shall not be paid for any period greater that nine months from the date of default. Post-default interest on a manufactured home purchase loan shall not be paid for any period greater than nine months from the date of default unless the Secretary, in response to the lender's timely request, finds good cause for granting an extension of up to three additional months. Interest shall not be paid for more than 18 months from the date of default for a claim on a combination loan or a manufactured home lot loan. In response to comments by manufactured home dealers and lenders, the provisions of paragraph (b) in the final rule clarify the expenditures in the post-default period which HUD will recognize in calculating the payment of insurance benefits on a manufactured home loan.

In the preamble to the proposed rule, the Department solicited comments "concerning the implications of a proposal now under review to reduce a lender's insurance reserve if for any reason an insured loan is terminated." In response to highly negative comments from lenders, the Department has decided not to adopt the proposal.

Finally, the Department is considering whether to promulgate a new Subpart G to Part 201, relating to the collection of claims by the Department against borrowers with defaulted notes which have been assigned to HUD, and against lenders who refuse without good cause to repurchase claims that should not have been paid. This new subpart will be published in response to the enactment of the Debt Collection Act (Title 5 U.S.C. 5514, 31 U.S.C. 3701–3720) as a Notice of Proposed Rulemaking.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because the majority of financial institutions participating in the Title I program are large depository institutions and none of the proposed changes pose undue burdens for smaller entities seeking to conduct title I loan transactions.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the

Office of the Rules Docket Clerk at the above address.

OMB Control Number

The reporting provisions contained in these regulations have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and have been assigned OMB control number 2502-0328.

Regulatory Agenda

This rule was listed as item number 35 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17301) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured (Mobile) Home Insurance—Financing Purchase of Mobile Homes as Principal Residences of Borrowers;
14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and
14.162 Mortgage Insurance—Combination and Mobile Home Lot Loans

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, the Department of Housing and Urban Development (HUD) amends Title 24, Code of Federal Regulations as follows:

1. Title 24, Part 201 is revised to read as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

Subpart A—General

Sec.
201.1 Purpose.
201.2 Definitions.
201.3 Applicability of the regulations.
201.4 Exclusions of time periods.
201.5 Waivers.

Subpart B—Loan and Note Provisions

201.10 Loan amounts.
201.11 Loan maturities.
201.12 Requirements for the note.
201.13 Interest and discount points.
201.14 Payments on the loan.
201.15 Late charges.
201.16 Default provision.
201.17 Prepayment provision.
201.18 Modification agreement or repayment plan.

Subpart C—Eligibility and Disbursement Requirements

201.20 Property improvement loan eligibility.
201.21 Manufactured home loan eligibility.
201.22 Credit requirements for borrowers.
201.23 Borrower's initial payment.
201.24 Security requirements.
201.25 Charges to borrower to obtain loan.
201.26 Conditions for loan disbursement.
201.27 Requirements for dealer loans.
201.28 Flood and hazard insurance, and Coastal Barriers properties.
201.29 Ineligible participants.

Subpart D—Insurance of Loans

201.30 Reporting of loans for insurance.
201.31 Insurance charge.
201.32 Insurance coverage reserve account.

Subpart E—Loan Administration

201.40 Post-disbursement loan requirements.
201.41 Loan servicing.
201.42 Bankruptcy, insolvency or death of borrower.
201.43 Administrative reports and examinations.

Subpart F—Default Under the Loan Obligation

201.50 Lender efforts to cure the default.
201.51 Proceeding against the loan security.
201.52 Acquisition by voluntary conveyance or surrender.
201.53 Disposition of manufactured home loan property.
201.54 Insurance claim procedure.
201.55 Calculation of insurance claim payment.

Authority: Sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 201.1 Purpose.

These regulations implement the provisions of section 2 of Title I of the National Housing Act (12 U.S.C. 1703). They contain the requirements under which an approved financial institution may obtain insurance on loans made for the alteration, repair or improvement of property, for the purchase of a manufactured home and/or the lot on which to place such home, for the purchase and installation of fire safety equipment in existing health care facilities, and for the preservation of historic structures. The insurance granted by the Secretary of Housing and Urban Development shall be available only for loans involving property located within a State, as that term is defined in § 201.2. The insurance can cover up to 10 percent of the amount of all insured Title I loans in the financial institution's portfolio, as reflected in the total amount of insurance coverage contained at any time in an insurance coverage reserve account established by the Secretary, less amounts for annual adjustments and for insurance claims paid. As limited by the amount of insurance coverage in such a reserve account, the insurance can cover up to 90 percent of the loss of any individual loan.

§ 201.2 Definitions.

As used in the regulations in this part the term:

(a) "Act" means the National Housing Act, 12 U.S.C. 1703.

(b) "Actuarial method" means the method of allocating payments made on a loan between the outstanding balance of the principal amount borrowed and the interest due on a loan obligation, under which a payment is applied first to the accrued interest, and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the obligation.

(c) "Borrower" means one who applies for and receives a loan from a lender under these regulations.

(d) "Combination loan" means a loan made for the purchase or refinancing in a single transaction of a manufactured home and a manufactured home lot, and may also include a garage, patio, carport, or other comparable appurtenance.

(e) "Dealer" means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, "dealer" means one who engages in the business of manufactured home retail sales.

(f) "Dealer loan" means a loan where a dealer, having a direct or indirect financial interest in the transaction between the borrower and the lender, assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender. The lender may disburse the loan proceeds solely to the dealer or the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

(g) "Default" means a failure by the borrower to make any payment due under the note, or a failure to perform any other obligation under the note (or the security instrument therewith), when such failure continues for a period of 30 days. For the purpose of these regulations, the "date of default" shall be considered as 30 days after: (1) The first uncorrected failure to perform any obligation under the note, or (2) the first failure to make an installment payment on the note which is not covered by subsequent payments, when applied to the overdue installments in the order in which they became due.

(h) "Direct loan" means a loan for which a borrower makes application

directly to a lender without any assistance from a dealer. The credit application, signed by the borrower, may be filled out by the borrower or by a person acting at the direction of the borrower who is not a dealer. The lender may disburse the loan proceeds solely to the borrower or jointly to the borrower and other parties to the transaction. If a dealer takes legal action required by State law in order for the lender to obtain a valid and enforceable lien against the property, such action by the dealer will not convert an otherwise direct loan to a dealer loan.

(i) "Existing structure" means a dwelling, including a manufactured home classified as realty, which was completed and occupied at least 90 days prior to an application for a Title I loan, or a nonresidential structure which was a completed building with a distinctive functional use prior to an application for a Title I loan. However, these occupancy and completion requirements shall not apply to: (1) Loans having a principal obligation of $1000 or less, or (2) residential structures which have been damaged by conditions determined by the President to warrant relief under the provisions of Title 42, Chapter 68, of the United States Code.

(j) "Fire safety equipment loan" means a loan made to finance the purchase and installation of any device or construction feature which is recognized in the latest edition of the Department of Housing and Urban Development's Minimum Property Standards for Care Type Housing (HUD Handbook 4920.1) or the Fire Safety Code of the National Fire Protection Association, and which is designed to reduce the risk of death, personal injury, or property damage resulting from a fire in a health care facility.

(k) "Furniture" means movable articles of personal property relating to a home or dwelling, such as beds, chairs, sofas, lamps, tables, rugs, etc.; however, furniture does not include: (1) Items built into the home or dwelling such as wall-to-wall carpeting or heating or cooling equipment, or (2) large appliances such as refrigerators, ovens, ranges, dishwashers, clothes washers or clothes dryers.

(l) "Health care facility" means a proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State or by the municipality or other political subdivision in which the facility is located, and operated as one or more of the following: (1) A nursing home for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services performed under the general direction of persons licensed by the law of the State where the facility is located to provide such care or services; (2) an intermediate health care facility for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care, but not continuous medical care or nursing services; (3) an extended health care facility for inpatient care for convalescents or chronic disease patients who require skilled nursing care and related medical services; or (4) other comparable health care facility.

(m) "Historic preservation loan" means a loan to finance the preservation (restoration or rehabilitation) of an historic residential structure which is listed on the National Register of Historic Places or which is certified by the Secretary of the Interior as conforming with National Register criteria.

(n) "Lender" means a financial institution which is approved for credit insurance, holds a valid Title I contract of insurance that has not been terminated by the Secretary, and is approved by the Secretary under 24 CFR Part 202 and this part both to originate and purchase, and to hold, service and sell Title I loans insured under this part. If a Title I contract of insurance with such an institution has been terminated, the institution may no longer originate or purchase Title I insured loans under the contract, although with the Secretary's approval it may hold, sell or continue to service Title I insured loans held in its portfolio prior to the contract's termination.

(o) "Loan" means a disbursement of proceeds (funds) or an advance of credit to or for the benefit of a borrower who promises to repay the principal amount of such disbursement or advance, plus interest, if any, at a stated annual rate over time, with the borrower's obligation evidenced by the borrower's execution of a note. "Loan" also means a purchase by a lender of a note evidencing such obligation, or a refinancing of an existing obligation with or without an additional disbursement of proceeds or advance of credit.

(p) "Manufacturer's invoice" means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory of the manufactured home model or series, itemized options (large appliances, built-in items and equipment), an itemized furniture package, and specific specialty items, plus actual itemized charges for freight (including any rental of wheels and axles) from the factory to the dealer's lot or the homesite and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify in the invoice as follows:

> The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that: (1) the wholesale (base) prices for the manufactured home, options, furniture, and specialty items as detailed, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (2) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price list; and (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of, and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning, trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of the dealer and/or home purchaser at any date.

(q) "Manufactured home" means a transportable structure, comprised of one or more modules, each built on a permanent chassis, with or without a permanent foundation, designed for occupancy as a principal residence by a single family. A new manufactured home shall comply with the minimum property standards prescribed by the Secretary to assure its livability and durability that are published as the Manufactured Home Construction and Safety Standards implementing the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426, at 24 CFR Part 3280. An existing manufactured home that has not been insured under this part must have been constructed in accordance with the standards published at 24 CFR Part 3280 and must meet standards similar to the minimum property standards applicable to existing homes insured under Title II of the Act, as prescribed by the Secretary.

(r) "Manufactured home improvement loan" means a loan made to finance the alteration, repair or improvement of an existing manufactured home which is classified as personalty by the State or locality in which the property is located.

(s) "Manufactured home loan" means a loan for the purchase or refinancing of a manufactured home and/or the lot on which to place such home. Unless

otherwise indicated, the term includes manufactured home purchase loans, manufactured home lot loans, and combination loans.

(t) "Manufactured home lot loan" means a loan for the purchase or refinancing of a portion of land acceptable to the Secretary as a manufactured home lot. A manufactured home lot may consist of platted or unplatted land, a lot in a recorded or unrecorded subdivision or in an improved area of such subdivision, or a lot in a planned unit development. A manufactured home lot may also consist of an interest in a manufactured home condominium project (including any interest in the common areas) or a share in a cooperative association which owns and operates a manufactured home park.

(u) "Manufactured home purchase loan" means a loan for the purchase or refinancing of a manufactured home exclusive of any lot or site, and may also include a garage, patio, carport, or other comparable appurtenance.

(v) "Multifamily property improvement loan" means a loan to finance the alteration, repair, improvement or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families, which structure is not owned by a corporation, partnership or trust.

(w) "Nonresidential property improvement loan" means a loan made to finance the construction of a new exclusively nonresidential structure or the alteration, repair or improvement of an existing structure that is nonresidential. Such a structure may be temporarily used for residential purposes while the borrower constructs a new dwelling to replace a dwelling previously occupied by the borrower that was destroyed or damaged by conditions determined by the President to warrant relief under the provisions of Title 42, Chapter 68, of the United States Code, provided that the credit application is filed within one year from the date of such a determination.

(x) "Note" means the written instrument evidencing the borrower's signature to a promise to repay the principal indebtedness and to pay any interest due on a loan, whether the instrument is separate from or included within another document, and unless otherwise specified means also any security instrument with respect to that loan obligation.

(y) "Owner" means a person, including a borrower, who has title in whole or in part to the property which is the subject of a loan transaction.

(z) "Principal residence" means a home where the borrower expects to live at least nine months of the year.

(aa) "Property improvement loan" means a loan made to finance actions or items that substantially protect or improve the basic livability or utility of a property. Unless otherwise indicated, the term includes single family, multifamily and nonresidential property improvement loans; manufactured home improvement loans where the home is classified as personalty; historic preservation loans; and fire safety equipment loans in existing health care facilities.

(bb) "Rehabilitation" means the process of returning an historic residential structure to a state of utility, through repair or alteration, which makes possible an efficient contemporary use. In rehabilitation, those portions of the property important in illustrating historic, architectural and cultural values are preserved or restored.

(cc) "Restoration" means the process of accurately recovering the form and details of an historic residential structure as it appeared at a particular period of time by removing later work and by replacing missing original work.

(dd) "Secretary" means the Secretary of Housing and Urban Development or other HUD official with delegated authority.

(ee) "Security instrument" means a properly recorded chattel mortgage, real estate mortgage or deed of trust, or conditional sales contract.

(ff) "Single family property improvement loan" means a loan to finance alterations, repairs and improvements to or in connection with an existing structure, including an existing one-family manufactured home classified as real property by the State or locality in which the property is located, for use as a single family residence.

(gg) "Solar energy system" means any addition, alteration or improvement to an existing structure for single family or multifamily residential use which is designed to utilize wind or solar energy to reduce the energy requirements of that structure from other energy sources, and which complies with standards prescribed by the Secretary.

(hh) "Special benefits" means benefits other than volume incentives for dealers which a home manufacturer funds from general corporate revenues by charging them against corporate overhead and profit without changing the wholesale (base) price of a manufactured home (or series of homes), as reflected in the manufacturer's published wholesale (base) price list, and which are limited to payments by the manufacturer directly to:

(1) A financial institution to "buy down" or reduce the interest rate, discount points, or other fees or charges related to a lending agreement for a dealer's manufactured home inventory or "floor plan" financing needs; or

(2) One or more advertising media for all or part of the costs of advertising the manufacturer's homes, one or more dealer's services, and related manufactured home materials and products in such media.

(ii) "Specialty items" means services, materials or products related to a manufactured home, or its installation or erection which are sold by a home manufacturer to a dealer and which are specified in the manufacturer's invoice, including but not limited to an extended warranty or service contract, and wheels and axles (if purchased).

(jj) "State" means any State of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(kk) "Volume incentives" means specified dollar benefits to dealers under a published marketing and promotional plan, payable by a home manufacturer in cash or in kind in amounts or levels relating to the volume of sales of manufactured homes to dealers, other than benefits of a nominal value of less than $10 per home, which:

(1) The manufacturer funds from general corporate revenues by including them in the prices quoted in the manufacturer's wholesale (base) price list and charging them against corporate overhead and profit;

(2) Whether or not available on an optional basis do not increase or decrease the wholesale (base) prices for the sale of a specific home, options, furniture, or specialty items, or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice for a specific sale to a retail dealer;

(3) The manufacturer provides without creating a special product line where the cost of the benefits is the only substantive difference between the special product line and other essentially similar homes;

(4) Whether or not also of benefit to the ultimate purchaser, do not increase or decrease the retail price of the home;

(5) Are available to any dealer in a particular market area doing business with the manufacturer;

(6) The manufacturer provides only for volume sales of manufactured homes to dealers over a specified period of time;

(7) The plan provides in escalating and different amounts or levels related to either the number of homes (or modules) sold or the dollar value of such sales to a dealer, or some combination of such elements, in a specified period of time;

(8) Are structured so that only some of the dealer participants are expected to be paid the maximum benefits under the program, with substantial numbers of participants expected to receive less than the maximum amount or level of benefits; and

(9) Accrue for volume sales to a dealer over a specified period of time which is at least quarterly in length, and are paid not more frequently than quarterly.

(ll) "Wholesale (base) price list" means the price list(s), as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) prices at the factory for specific models or series of manufactured homes, itemized options, itemized furniture, and specialty items offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

§ 201.3 Applicability of the regulations.

The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan which has been made or for which a loan application has been approved before the effective date of the amendment. Unless otherwise provided, these regulations shall be applicable as of their effective date as follows:

(a) *Subpart A*, General provisions apply to all loans reported before, on or after such date for insurance registration by HUD.

(b) *Subpart B*, Loan and Note Provisions, and *Subpart C*, Eligibility and Disbursement Requirements, apply to all loans for which loan applications are approved on or after such date.

(c) *Subpart D*, Insurance and Loans, *Subpart E*, Loan Administration, and *Subpart F*, Default Under the Loan Obligation, apply to all loans reported before, on or after such date for insurance registration by HUD.

§ 201.4 Exclusions of time periods.

If a borrower is a "person in military service" as that term is defined in the Soldier's and Sailor's Civil Relief Act of 1940 and is in default on a loan insured under this part, any period of military service after the date of default shall be excluded in computing the maximum time period for filing an insurance claim.

§ 201.5 Waivers.

The Secretary may waive any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

Subpart B—Loan and Note Provisions

§ 201.10 Loan amounts.

(a) *Property improvement loans.* (1) The total principal obligation for a property improvement loan shall not exceed the actual cost of the project plus any applicable fees and charges authorized at § 201.25(b), up to the following maximum loan amounts:

(i) Single family property improvement loans—$17,500 ($20,000 where financing the installation of a solar energy system).

(ii) Multifamily property improvement loans—$43,750 or an average of $8,750 per dwelling unit ($50,000 and $10,000, respectively, where financing the installation of a solar energy system).

(iii) Nonresidential property improvement loans—$17,500.

(iv) Manufactured home improvement loans—$5,000.

(v) Historic preservation loans—the lesser of $15,000 per dwelling unit in a residential structure or $45,000 per residential structure.

(vi) Fire safety equipment loans—$50,000.

(2) Notwithstanding the maximum loan amounts in paragraph (a)(1) of this section, the prior approval of the Secretary shall be obtained for any property improvement loan which will result in any borrower having a total uppaid principal obligation under such loans which exceeds $17,500 ($20,000 where financing the installation of a solar energy system in an existing structure).

(3) No property improvement loan shall be approved where the total outstanding balance of all Title I property improvement loans on the same property exceeds the maximum loan amount prescribed for that type of loan. If more than one type of property improvement loan is involved, the total outstanding balance of such loans on a particular property shall not exceed the maximum loan amount prescribed for the larger type of loan.

(b) *Manufactured home purchase loans.* (1) The total principal obligation for a loan to purchase a new manufactured home shall not exceed the sum of the following itemized amounts, up to a maximum of $40,500:

(i) 125 percent of the sum of the wholesale (base) prices of the home and any itemized options, and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The wholesale (base) price of any furniture package supplied by the manufacturer (in an amount not to exceed the lesser of $2,000 or 10 percent of the wholesale (base) price of the home), as detailed in the manufacturer's invoice;

(iii) The wholesale (base) price of any itemized specialty items, as detailed in the manufacturer's invoice;

(iv) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(v) Transportation, including the rental of wheels and axles, to the homesite (if not included in freight charges), set-up and anchoring charges, not to exceed $600 per module;

(vi) Skirting costs, not to exceed $400;

(vii) Actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer; and

(viii) Any applicable charges authorized at § 201.25(b).

(2) Except as provided in paragraph (b)(3) of this section, the total principal obligation for a loan to purchase an existing manufactured home shall not exceed the lesser of (i) 90 percent of the total of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and any itemized amounts allowed under paragraph (b)(1)(v) through (viii) of this section, if incurred, or (ii) 90 percent of the purchase price of the home, up to a maximum of $40,500.

(3) The total principal obligation for a loan to purchase a repossessed existing manufactured home which was previously financed with an insured loan under this part shall not exceed the greater of (i) 90 percent of the total of the appraised value of the home as equipped and furnished (as determined by a HUD approved appraisal) and any itemized amounts allowed under paragraph (b)(1)(v) through (viii) of this section, if incurred, or (ii) 90 percent of the purchase price of the home, up to a maximum of $40,500.

(4) The purchase price of a new manufactured home financed with a manufactured home purchase loan includes the retail costs to the borrower, as itemized in the purchase contract, of all items set forth in paragraph (b)(1) of this section. The purchase price of an existing manufactured home financed with a manufactured home purchase loan includes the retail costs to the borrower, as itemized in the purchase contract, of all items set forth in paragraph (b)(2) or (b)(3) of this section, as applicable.

(c) *Manufactured home lot loans.* The total principal obligation for a loan to purchase and, if necessary, develop a lot suitable for a manufactured home, including on-site water and utility connections, sanitary facilities, site improvements and landscaping, shall not exceed 90 percent of either the appraised value of the developed lot (as determined by a HUD-approved appraisal) or the total of the purchase price and development costs, whichever is less, up to a maximum of $13,500.

(d) *Combination loans.* (1) The total principal obligation for a loan to purchase a new manufactured home and a lot on which to place the home shall not exceed the sum of the following itemized amounts, up to a maximum of $54,000:

(i) 125 percent of the sum of the wholesale (base) prices of the home and any itemized options, and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The wholesale (base) price of any itemized specialty items, as detailed in the manufacturer's invoice;

(iii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iv) Transportation, including the rental of wheels and axles, to the homesite (if not included in the freight charges), set-up and anchoring charges, not to exceed $900 per module;

(v) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer;

(vi) The appraised value of the developed manufactured home lot (as determined by a HUD-approved appraisal, including on-site water and utility connections, sanitary facilities, site improvements and landscaping) or the purchase price, whichever is less;

(vii) The actual cost to the borrower or the appraised value (as determined by a HUD-approved appraisal), whichever is less, of appurtenances to the home such as a permanent foundation, garage, carport or patio; and

(viii) Any applicable charges authorized at § 201.25(b).

(2) Except as provided in paragraph (d)(3) of this section, the total principal obligation for a loan to purchase an existing manufactured home and a lot on which to place the home shall not exceed 95 percent of either (i) the total appraised value (as determined by a HUD-approved appraisal) of the home as equipped and furnished, the lot as improved and any appurtenances, or (ii) their purchase price, whichever is less, plus 95 percent of any applicable charges authorized at § 201.25(b), up to a maximum of $54,000.

(3) The total principal obligation for a loan to purchase a foreclosed or repossessed existing manufactured home, lot and appurtenances which were previously financed with an insured loan under this part shall not exceed 95 percent of either (i) the total appraised value (as determined by a HUD-approved appraisal) of the home as equipped and furnished, the lot as improved and any appurtenances, or (ii) their purchase price, whichever is greater, plus 95 percent of any applicable charges authorized at § 201.25(b), up to a maximum of $54,000.

(4) The purchase price of a new manufactured home and a lot on which to place the home financed with a combination loan includes the retail costs to the borrower, as itemized in the purchase contract(s), of all items set forth in paragraph (d)(1) of this section. The purchase price of an existing manufactured home and lot financed with a combination loan includes the retail costs to the borrower, as itemized in the purchase contract(s), of all items set forth in paragraph (d)(2) or (d)(3) of this section, as applicable.

(e) *Manufactured home loan limits in high-cost areas.* (1) The maximum loan amounts otherwise applicable under paragraphs (b), (c) and (d) of this section may be increased by an amount not to exceed 40 percent where the manufactured home and/or lot is purchased and located in Alaska, Guam or Hawaii.

(2) The maximum loan amounts otherwise applicable under paragraphs (c) and (d) of this section may be increased for any geographical area except Alaska, Guam or Hawaii to the extent deemed necessary by the Secretary; however, such increase cannot exceed the percentage by which the Secretary increases the maximum mortgage amount for a one-family residence in the same area, as published by notice in the **Federal Register** in accordance with 24 CFR 203.18b. The Secretary may, from time to time, establish a schedule of areas where increased maximum loan amounts are applicable by publishing notice of the higher dollar limits in the **Federal Register**.

(f) *Loan refinancing.* No existing insured property improvement loan and no existing manufactured home loan, whether or not insured, which is delinquent or in default may be refinanced until after the borrower brings the loan account current.

(1) The total principal obligation of a loan made to refinance a borrower's existing insured property improvement loan shall not exceed the maximum loan amount permitted under this section for the particular type of loan, provided that any amount in excess of the cost to the borrower of prepaying the existing loan shall be made available only to finance additional property improvements meeting the requirements of this part.

(2) The total principal obligation of a loan made to refinance a borrower's existing insured manufactured home loan shall not exceed the outstanding balance of the existing loan.

(3) The total principal obligation of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall not exceed the cost to the borrower of prepaying the existing loan or the appraised value (as determined by a HUD-approved appraisal) of the property, whichever is less, up to the maximum loan amount permitted under this section for the particular type of loan.

(4) Where a borrower's existing uninsured manufactured home lot loan is being refinanced in connection with the purchase of a manufactured home, the total principal obligation of the combination loan shall be determined in accordance with paragraph (d)(1) or (d)(2) of this section.

§ 201.11 Loan maturities.

(a) *Property improvement loans.* The term of a property improvement loan shall be not less than six months and not more than 15 years and 32 days from the date of the loan, except that the maximum term of a manufactured home

improvement loan shall not exceed 12 years and 32 days from the date of the loan.

(b) *Manufactured home loans.* The term of a manufactured home loan shall be not less than six months and not more than 20 years and 32 days from the date of the loan, except that: (1) The maximum term for a manufactured home lot loan shall not exceed 15 years and 32 days from the date of the loan, and (2) the maximum term for a multi-module manufactured home and lot in combination shall not exceed 25 years and 32 days from the date of the loan.

(c) *Loan refinancing.* A loan to be refinanced under § 201.10(f) may be refinanced for an extended period.

(1) The term of a loan made to refinance a borrower's existing insured property improvement loan or existing insured manufactured home loan shall not exceed the maximum term permitted under paragraph (a) or (b) of this section for the particular type of loan, so long as the final maturity from the date of the original loan does not exceed the following time limits:

(i) 22 years for a manufactured home improvement loan;

(ii) 20 years for a manufactured home lot loan;

(iii) 30 years for a multi-module manufactured home and lot in combination; and

(iv) 25 years for all other property improvement and manufactured home loans.

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall be based upon the appraisal required under § 201.10(f)(3), but in any case shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) Where a borrower's existing uninsured manufactured home lot loan is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

§ 201.12 Requirements for the note.

The note shall bear the genuine signature of each borrower and of any co-maker or co-signer, be valid and enforceable against the borrower and any co-maker or co-signer, and be complete and regular on its face. The borrower and any co-maker or co-signer shall execute the note for the full amount of the loan obligation. Although the note may be executed by the borrower on an earlier date, the date of the loan for any loan insured under this part shall be the date that the loan proceeds are disbursed by the lender. Such date shall be entered on the note when disbursement occurs. No loan obligation for any Title I loan application that is approved on or after the effective date of these regulations shall be originated or purchased by a lender or registered for insurance under this part if the loan obligation is evidenced by a "discount" or "add-on" note, in which the loan amount (face amount or value) includes both the principal borrowed and interest at an agreed rate accumulated at maturity, or if such accumulated interest amount (or an equivalent time-price charge for the value of the principal outstanding during the loan term) is discounted or deducted in advance as a charge for the loan with the borrower receiving only a net amount of proceeds or credit. The note, for any Title I loan application that is approved on or after the effective date of these regulations, shall separately recite the principal amount (proceeds or credit) and any interest at an agreed annual rate which comprise the borrower's payment obligation. However, nothing herein shall preclude a lender from purchasing or selling a loan obligation otherwise eligible for Title I insurance under this part at a discount or premium price with respect to its loan amount (face amount or value). The lender shall assure that the note and all other documents evidencing the loan transaction are in compliance with applicable Federal, State and local laws. If the note is executed on behalf of a corporation, partnership of trust by an authorized representative, it shall create a binding obligation on such entity.

§ 201.13 Interest and discount points.

The interest rate for any loan shall be negotiated and agreed to by the borrower and the lender, and such interest rate shall be fixed for the full term of the loan and recited in the note. The lender and the borrower may negotiate the amount of discount points, if any, to be paid by the borrower in connection with the loan transaction as part of the borrower's initial payment. The lender also may negotiate with the dealer the amount of discount points, if any, to be paid by the dealer from its own resources of the benefit of the borrower before or at the time of the borrower's initial payment to the lender. The dealer shall not accept reimbursement for any such payment of discount points from the borrower, manufacturer or any other party. The lender shall not require or allow any parties other than the borrower or the dealer to pay any discount points or other financing charges in connection with approving or disbursing proceeds of the loan transaction. The lender and dealer need not disclose to the borrower the amount of any discount points to be paid by the dealer to the lender, but they shall comply with any Federal or State requirements for disclosure to the borrower of financing charges to be paid by the borrower, including the interest rate and any discount points. Interest on the loan shall accrue from the date of the loan, and shall be calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations.

§ 201.14 Payments on the loan.

The note normally shall provide for equal installment payments due weekly, biweekly, semi-monthly or monthly. The note may provide for either or both of the first and final payments to vary in amount but not to exceed 1½ times the regular installment. Where the borrower has an irregular flow of income, the note may be payable at quarterly or semi-annual intervals corresponding with the borrower's flow of income. The first scheduled payment after the borrower's initial payment shall be due no later than two months from the date of the loan. Multiple payment schedules may not be used in connection with any loan.

§ 201.15 Late charges.

Subject to state law, the note may provide for a late charge not to exceed five percent of each installment of principal and interest more than 15 calendar days in arrears, up to a maximum of $10 per installment for any property improvement loan and $15 per installment for any manufactured home loan. In lieu of late charges, the note may provide for daily interest charges based on the interest rate in the note. The borrower must be billed for the late charges or daily interest charges which are imposed, and evidence of such billing must be in the loan file if an insurance claim is made.

§ 201.16 Default provision.

The loan note shall contain a provision for acceleration of maturity, at the option of the holder, upon a default by the borrower.

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan. Where the loan is prepaid in full, the lender shall rebate the full unearned interest on the loan, except that a minimum retained handling charge may be deducted from the rebate if permitted by State or local law. Unearned interest shall be determined

in accordance with the actuarial method.

§ 201.18 Modification agreement or repayment plan.

No insured Title I loan which is delinquent or in default may be refinanced until after the borrower brings the loan account current. However, a written but unrecorded modification agreement acceptable to the lender and executed by the borrower may be used to reduce or increase the payment, but not to increase the term or interest rate on a Title I loan, so as to assure that a delinquent or defaulted loan is brought current before or by the end of the loan term. The lender may elect to negotiate an informal repayment plan with the borrower to enable a temporary delinquency to be cured within a short period of time. The lender may document the terms of the repayment plan by sending a letter to the borrower reciting the terms of their agreement. When a modification agreement or repayment plan is used, no insurance reporting is required under § 201.30.

Subpart C—Eligibility and Disbursement Requirements

§ 201.20 Property improvement loan eligibility.

(a) *Borrower eligibility.* (1) To be eligible for a property improvement loan (other than a manufactured home improvement loan), the borrower shall have at least a one-half interest in one of the following:

(i) Fee simple title to the real property;

(ii) Lease of the real property for a fixed term which expires not less than six calendar months after the final maturity of the loan; or

(iii) A properly recorded land installment contract for the purchase of the real property.

(2) To be eligible for a manufactured home improvement loan, the borrower shall have at least a one-half interest in the manufactured home.

(b) *Eligible use of loan proceeds.* (1) The loan proceeds shall be used only for the eligible purposes disclosed in the loan application. A manufactured home improvement loan may be used only for a home that is the principal residence of the borrower and has been completed and occupied for at least 90 days prior to the date of the loan application.

(2) The loan proceeds shall be used only to finance property improvements which substantially protect or improve the basic livability or utility of the property. The Secretary will publish by Notice in the **Federal Register** a list of items and activities which shall not be financed with the proceeds of any property improvement loan. From time to time the Secretary may amend such a list by Notice in the **Federal Register.** If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(3) The loan proceeds shall only be used to finance property improvements which are started after approval of the loan application.

(c) *Special pre-application requirements.* (1) Where the proceeds are to be used for an historic preservation loan, the proposed improvements shall be reviewed and approved by the State Historic Preservation Officer (or other person authorized by the Secretary of the Interior to make such reviews) prior to making application for a loan. The purpose of the review is to determine that (i) the structure is an historic residential structure listed on the National Register of Historic Places or certified by the Secretary of the Interior as conforming with National Register criteria, and (ii) the proposed improvements comply with criteria set by the Secretary of the Interior for the preservation of historic structures.

(2) Where the proceeds are to be used for a fire safety equipment loan, the proposed improvements shall be reviewed and approved by the State or local agency having primary jurisdiction over the fire safety requirements of health care facilities prior to making application for a loan.

§ 201.21 Manufactured home loan eligibility.

(a) *Borrower eligibility.* To be eligible for a manufactured home loan (whether a manufactured home purchase loan, a manufactured home lot loan, or a combination loan), the borrower must become the owner of the particular property which is to be financed with such a loan. Where the loan involves a manufactured home which is classified as realty, ownership of the home must be in fee simple. Where the loan involves a manufactured home lot, ownership of the lot must be in fee simple, except where the lot consists of a share in a cooperative association which owns and operates a manufactured home park.

(b) *Eligible use of loan proceeds.* (1) The loan proceeds may be used for the purchase or refinancing of a manufactured home, a suitably developed lot on which to place a manufactured home already owned by the borrower, or a manufactured home and a suitably developed lot for the home in combination. The loan proceeds may also be used for the purchase of a manufactured home and the refinancing of a manufactured home lot already owned by the borrower. Where the proceeds are for a manufactured home purchase loan or combination loan, the home must be the borrower's principal residence. Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home must be placed on the lot and occupied as the borrower's principal residence within six months after the date of the loan.

(2) A manufactured home financed with an insured loan under this part may be either: (i) A new home, which is one that is purchased by the borrower within 18 months after the date of manufacture and has not been previously occupied, or (ii) an existing home, which is one that does not meet the criteria for a new home. In order to be eligible for financing with an insured loan under this part, the manufactured home, its warranty and the site on which the home is placed must meet the requirements of paragraphs (c) through (e) of this section.

(3) The proceeds of a manufactured home purchase loan may be used to purchase furniture in an amount not to exceed ten percent of the wholesale (base) price of the home, as detailed in the manufacturer's invoice, up to $2,000. The proceeds of a combination loan shall not be used to purchase furniture.

(4) The proceeds of a combination loan may be used for the purchase, construction or installation of appurtenances to the manufactured home such as a permanent foundation, garage, carport or patio.

(5) The Secretary will publish by Notice in the **Federal Register** a list of items and activities which may not be financed with the proceeds of any manufactured home loan. From time to time the Secretary may amend such a list by Notice in the **Federal Register.** If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(c) *Construction, invoice, transportation and installation requirements.* (1) The manufactured home shall be certified by the manufacturer under applicable criminal and civil penalties for fraud and misrepresentation to have been constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426, so as to conform to all applicable Federal construction and safety standards, as evidenced by a label or tag affixed to

the manufactured home in accordance with 24 CFR 3280.8.

(2) The lender shall obtain from the dealer a copy of the manufacturer's invoice for retention in the loan file.

(3) During any period of transportation from the factory to the borrower's homesite a manufactured home's structural integrity shall be maintained so that as designed it will be livable and durable. The home's installation or erection on the homesite shall comply with the manufacturer's requirements for its anchoring, support, stability and maintenance. Thereafter the dealer shall inspect the manufactured home and its components for structural damage, and shall test the performance of its plumbing, mechanical and electrical systems.

(d) *Manufacturer's warranty requirements.* (1) To induce the Secretary to insure a Title I loan under this part for the purchase of a new manufactured home and to induce a borrower to purchase such a home, the home manufacturer shall furnish the borrower with a written warranty, duly executed by an authorized representative of the manufacturer on a HUD-approved form. The warranty shall be provided without cost to the borrower. The effective date of the warranty shall be the date of delivery of the manufactured home to the borrower, regardless of when the warranty was executed by the manufacturer or was delivered to the borrower.

(2) The warranty shall obligate the home manufacturer to take appropriate action to correct any nonconformity with the standards prescribed in paragraph (c)(1) and (c)(2) of this section or any defects in materials or workmanship which become evident within one year after the date of delivery. This warranty shall be in addition to, and not in derogation of, all other rights and privileges which the borrower may have under any other law or instrument during such period or thereafter. A copy of the warranty shall be retained in the lender's loan file.

(3) Prior to making a loan involving a new manufactured home, the lender shall investigate whether the home manufacturer is substantially complying with its warranty obligations on other homes financed by the lender under any program. If the lender knows, because of consumer complaints, dealer comments or other information concerning the manufacturer received in the course of business, that consumers have complained about warranty performance, the lender shall ascertain whether such complaints have been resolved. The lender's findings shall be documented in the loan file. Such documentation may reference information or materials contained in other files of the lender, provided that the file contains a written certification signed by a responsible loan officer under applicable criminal and civil penalties for fraud and misrepresentation that the lender's findings are supported by such other information or materials.

(4) If the lender concludes under paragraph (d)(3) of this section that a manufacturer may not be honoring its warranties, the lender shall immediately notify the Secretary in writing, with documentation of the facts and circumstances.

(e) *Manufactured homesite standards.* (1) To assure the suitability of the homesite, the manufactured home shall be placed on a leased site in a manufactured home park or on an individual manufactured home lot or other site owned or leased by the borrower that meets the following standards. A manufactured home may be placed on a site within Indian trust or otherwise restricted lands if the borrower owns or leases the site, or if the borrower obtains written permission acceptable to the Secretary from the trustee or the tribal authority who controls the use of the site.

(2) The manufactured homesite shall be served by adequate public or community water and sewerage systems, unless appropriate local officials certify that either or both such systems are unavailable to provide an adequate level of service to the manufactured homesite. If either or both such systems are not available, the manufactured homesite shall comply with local or State minimum lot area requirements for the provision of onsite water supply and/or sewage disposal.

(3) Where the manufactured home is to be place on a leased site in a manufactured home park, the lender shall obtain directly or through the borrower a certification from the State or local authority which licenses such parks that the park complies with minimum standards relating to site location, vehicular access, water supply, sewage disposal, utility connections, storm drainage, site development and landscaping. Where no State or local licensing authority exists, or where the licensing authority does not establish or enforce minimum standards for park development, the lender shall similarly obtain a certification from a registered civil engineer that the park meets minimum design and construction standards prescribed by the Secretary.

(4) Where the manufactured home is to be placed on an individual manufactured home lot or other site owned or leased by the borrower (or on an Indian land site under paragraph (e)(1) of this section), the lender shall obtain certifications from the appropriate local government officials directly or through the borrower that: (i) The site is zoned to permit the placement of the manufactured home, (ii) adequate public access from a public right-of-way is available to the site, (iii) adequate water supply, sewage disposal and storm drainage facilities are available on the site, and (iv) other minimum local standards for site suitability are met. Where there are no appropriate local officials, or where minimum local standards for vehicular access, water supply, sewage dispoal, storm drainage and site suitability are not established or enforced, the lender shall similarly obtain a certification from a registered civil engineer that the site meets minimum design and construction standards prescribed by the Secretary.

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§ 201.22 Credit requirements for borrowers.

(a) *Credit application and review.* (1) Before making a loan insured under this part, the lender shall exercise prudence and diligence to determine whether the borrower and any co-maker or co-signer is solvent and an acceptable credit risk, with a reasonable ability to make payments on the loan obligation. All documentation supporting this determination and relating to the lender's review of the credit of the borrower and of any co-maker or co-signer shall be retained in the loan file.

(2) The lender shall obtain a separate dated credit application on a HUD-approved form from and executed by the borrower and by any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation for each loan made. The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of the current employment and current income of the borrower and of any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of the person's prior employment and prior income during the two year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's

income during such period of self-employment.

(3) The lender shall also determine the total amount of the borrower's existing and proposed Title I loans to ensure that the loan amounts in § 201.10 are not exceeded.

(4) As part of its credit investigation, the lender shall obtain a consumer credit report stating the credit accounts and payment history of the borrower and of any co-maker or co-signer. Subject to state or local law, the lender shall check with the inquirers concerning all credit inquiries reported within the previous 90 days to determine whether the borrower or the co-maker or co-signer has incurred debts not listed on the credit application. If a consumer credit report is not available or is incomplete, the loan file shall contain other documentation of the lender's diligent investigation of the credit of the borrower or of the co-maker or co-signer.

(5) For any manufacturer home loan, the lender shall obtain written verification of the existence of all funds of the borrower required for the borrower's initial payment.

(6) After a thorough credit investigation and in the absence of information to the contrary, the lender may rely upon all statements of fact made by the borrower or any co-maker or co-signer in a credit application.

(b) *Income requirements for manufactured home loans.* For any manufactured home loan, the credit application and review must establish that the borrower's income will be adequate to meet both the periodic payments required by the loan and to meet other recurring charges. For a borrower's income to be considered adequate, it generally may not exceed maximum percentages of net effective income which the Secretary will publish by Notice in the **Federal Register** based upon generally prevailing interest rates and upon HUD's experience of claims/loan ratios, for prospective use by lenders in approving manufactured home loan applications. Net effective income includes continuing income from all sources which may reasonably be expected to continue during the first two years of the loan obligation. The income percentage limitations will apply to the borrower's total prospective housing expense payments related to the loan (principal, interest, mortgage insurance premium, ground rent or leasehold, hazard insurance, extended warranty or service contract, and realty taxes), as well as to the sum of the prospective housing expense payments and other recurring charges. If either of the published income percentage limitations is exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of other factors with respect to the borrower's income and creditworthiness which support approval of the loan.

(c) *Evidence of delinquency, default or misrepresentation.* Except with the prior approval of the Secretary the lender shall not approve a loan if the lender has knowledge of any of the following circumstances:

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of an obligation owed to or insured or guaranteed by the Federal government, regardless of whether any terms of such obligation have been modified, and the default has not been cured, or the debt has not been discharged or satisfied; or

(2) The borrower has previously made material misstatements of fact on applications for loans or other assistance.

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§ 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for payment in cash of any costs, other than discount points paid by a dealer to a lender under § 201.13, which will not be paid or are not eligible to be paid from the proceeds of the loan. Such costs payable by the borrower may include a loan origination fee, if imposed by the lender, any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges which may not be financed, and any other costs in excess of the maximum loan obligation. No part of such costs payable by the borrower may be borrowed from, or advanced or paid to or for the benefit of the borrower by the dealer, the manufacturer or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application, and any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan. The lender shall analyze any such loan obligation in performing the credit investigation. Documentation of any required downpayment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* (1) In the case of a manufactured home purchase loan for a new home, the borrower shall make a minimum cash downpayment of at least five percent of the first $5,000 and 10 percent of the balance of the purchase price of the home.

(2) In the case of a manufactured home purchase loan for an existing home, the borrower shall make a minimum cash downpayment of at least 10 percent of the purchase price of the home.

(3) Nothing other than the borrower's equity in an existing manufactured home and any attached appurtenances may be traded in on a new home and accepted in lieu of full or partial cash downpayment. The existing manufactured home being traded-in shall be clearly identified, and the method and all computations used to determine the borrower's equity in the home shall be clearly documented.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least 10 percent of the total of the purchase price and development costs for the lot.

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the first $5,000 and 10 percent of the balance of the purchase price of the manufactured home and lot. Where the borrower already owns a lot on which a manufactured home is to be placed, the borrower's equity in the lot (but nothing else) may be accepted in lieu of full or partial cash downpayment on the combination loan.

§ 201.24 Security requirements.

(a) *Property improvement loans.* (1) Any property improvement loan (other than a manufactured home improvement loan) in excess of $2,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple. Where the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. Where the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all interventing contract sellers must execute the mortgage or deed of trust. The lien need not be a first lien on the property, but when the loan proceeds are used to supplement an uninsured loan made by the lender at the same time and in connection with the same property, the lien on the insured loan must have priority over any lien on the uninsured loan.

(2) Any property improvement loan (other than a manufactured home improvement loan) in an amount up to $2,500 shall be similarly secured if, including such loan, the total amount of all outstanding Title I loans obtained by the borrower is more than $2,500.

(3) Manufactured home improvement loans need not be secured.

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the property. The lien shall be a first lien, superior to any other lien on that property, and shall be evidenced by a properly recorded financing statement and security agreement or other acceptable security instrument (mortgage or deed of trust, chattel mortgage, or conditional sales contract), executed by the borrower and any other owner of the property.

(c) *Recording and perfection of security.* The lender shall assure that the legal description of the property as recited in the security instrument is accurate, and that the security instrument creates a valid and enforceable lien on the property in the jurisdiction in which the property is located. The security instrument shall be recorded and perfected in the manner specified by applicable State law in the State where the property is located.

(d) *Substitution or subordination of security.* The Secretary may approve substitution or subordination of security where the security value will not be impaired or reduced.

(e) *Release of liability or lien.* The lender shall not release the borrower or any co-maker or co-signer from any liability under a note or from any lien securing a loan insured under this part without the prior approval of the Secretary.

§ 201.25 Charges to borrower to obtain loan.

(a) *Origination fee.* The lender may require that the borrower pay an origination fee, not to exceed one percent of the loan amount, excluding any amount to refinance the outstanding balance of an existing Title I loan made or held by the lender.

(b) *Fees and charges which may be financed.* (1) The following fees and charges incurred in connection with a property improvement loan may be included in the loan amount, so long as their inclusion does not increase the total principal obligation beyond the loan amounts permitted in § 201.10:

(i) Fees for architectural and engineering services;

(ii) Building permit costs;

(iii) Premiums for flood insurance, where applicable;

(iv) Credit report costs; and

(v) A fee for an actual inspection of the property under § 201.40(b)(2), by the lender or its agent, not to exceed $50, but only where the total principal obligation is $7,500 or more.

(2) The following fees and charges incurred in connection with a manufactured home loan may be included in the loan amount, so long as their inclusion does not increase the total principal obligation beyond the loan amounts permitted in § 201.10:

(i) State and local sales taxes paid by the borrower;

(ii) Premiums paid by the borrower for comprehensive and extended hazard insurance and vendor's single-interest coverage for the first three years, including premiums for flood insurance, where applicable;

(iii) Premiums paid by the borrower for a homeowner's extended warranty contract or extended service contract on the manufactured home, whether offered by the manufacturer or by the dealer for a period not to exceed three years;

(iv) Credit report costs; and

(v) A fee for inspection of the property under § 201.26(b)(7) by the lender or its agent, not to exceed $50.

(c) *Fees and charges which may not be financed.* Except for any discount points to be paid by a dealer to a lender under §201.13, the following fees and charges incurred in connection with a loan insured under this part may be collected in the initial payment by the borrower prior to loan disbursement, but may not be included in the loan amount, or otherwise financed or advanced by the lender, the dealer, the manufacturer (if any), or any other party to the loan transaction:

(1) An origination fee, referenced in paragraph (a);

(2) Any discount points to be paid by the borrower to the lender;

(3) Recording fees, recording taxes, and filing fees;

(4) Documentary stamp taxes;

(5) Title examination and title insurance costs;

(6) Payments into a tax and insurance escrow account for the current year;

(7) Other fees necessary to establish the validity of a lien;

(8) Appraisal fees;

(9) Survey costs;

(10) Handling charges to refinance or modify an existing loan, not to exceed $25; and

(11) Such other items as may be specified by the Secretary.

§ 201.26 Conditions for loan disbursement.

(a) *Property improvement loans.* The lender shall comply with the following applicable requirements before disbursing the proceeds of a property improvement loan.

(1) The lender shall ensure that the borrower is eligible for a property improvement loan in accordance with § 201.20(a), and shall ensure that the title interest of the borrower and all other parties as owners in fee simple is valid, good and marketable through such title evidence as is acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated.

(2) If there is a written contract between the borrower and the contractor, dealer or seller (of goods and services), describing the work to be performed and its estimated cost, the lender shall obtain a copy thereof for retention in the loan file. If there is no contract, in addition to any information contained in the credit application, the borrower shall be required separately to furnish a written description of the work to be performed and its estimated cost.

(3) Where the proceeds are to be used for an historic preservation loan, the lender shall ensure that the proposed improvements have been approved by the State Historic Preservation Officer in accordance with § 201.20(c).

(4) Where the proceeds are to be used for a fire safety equipment loan, the lender shall ensure that the proposed improvements have been approved by the State or local agency having jurisdiction over the fire safety requirements of health care facilities in accordance with § 201.20(c).

(5) In the case of a dealer loan, the lender shall obtain a completion certificate, on a HUD-approved form and signed by the borrower and the dealer under applicable criminal and civil penalties for fraud and misrepresentation, certifying that (i) the improvements are eligible and have been completed in general accordance with the contract or cost estimate furnished to the lender, and (ii) except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of value in excess of $10 from the dealer as an inducement for the consummation of the transaction.

(6) The lender shall assure that the loan file is complete and contains the note, security instrument, and copies of all other documents relating to the property improvement loan transaction.

(b) *Manufactured home loans.* The lender shall comply with the following applicable requirements before

disbursing the proceeds of a manufactured home loan.

(1) The lender shall ensure that the borrower is eligible for a manufactured home loan in accordance with § 201.21(a).

(2) The lender shall assure that the loan file is complete, and shall obtain the following documents for retention in the loan file:

(i) A signed copy of the purchase contract between the borrower and the dealer or seller;

(ii) A copy of the manufacturer's invoice, where the loan involves the purchase of a new manufactured home;

(iii) Copies of itemized statements of other costs, fees and charges, whether paid by the borrower or financed with the loan proceeds;

(iv) Certification by the dealer under applicable criminal and civil penalties for fraud and misrepresentation that neither the dealer nor, to the dealer's knowledge, the manufacturer of any other party to the transaction has loaned, advanced or paid to or for the benefit of the borrower any part of the costs included in the borrower's initial payment under § 201.23, and that the borrower's initial payment was made; and

(v) The note, security instrument and copies of all other documents relating to the loan transaction.

(3) The lender shall obtain certifications from the borrower under applicable criminal and civil penalties for fraud and misrepresentation that:

(i) The borrower's initial payment under § 201.23 was made and that no part of the costs payable by the borrower and included therein was borrowed from or otherwise advanced or paid to or for the benefit of the borrower by the dealer, the manufacturer or any other party to the transaction, and if all or part of such costs were obtained through a loan from someone other than a party to the transaction, the source of and any security for such loan is disclosed on the loan application;

(ii) Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home will be placed on the lot and will be occupied as the borrower's principal residence within six months after the date of the loan;

(iii) If the wheels and axles are purchased as specialty items with loan proceeds (only under a manufactured home purchase loan), the borrower acknowledges that as part of the secured property they may only be sold or otherwise disposed of with the lender's prior approval;

(iv) While any portion of the loan obligation on a manufactured home purchase loan is unpaid, the manufactured home may be moved only to a new site in compliance with § 201.21 (c) and (e), and only with the lender's prior approval;

(v) While any portion of the loan obligation on a combination loan is unpaid, the manufactured home will not be moved to a new site; and

(vi) Prior to disbursement of the proceeds of a manufactured home loan the borrower will pay in full the unpaid balance on any other insured manufactured home loan secured by a different property, unless the Secretary waives this requirement.

(4) In the case of a manufactured home purchase loan or combination loan, the lender shall obtain a placement certificate on a HUD-approved form, and executed under applicable criminal and civil penalties for fraud and misrepresentation as follows:

(i) By the borrower, stating that the manufactured home is to be occupied as the borrower's principal residence;

(ii) By the borrower and the dealer, stating that, except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than a nominal value of $10 from the manufacturer or dealer as an inducement for the consummation of the transaction; and

(iii) By the dealer, stating that: (A) The manufactured homesite meets the requirements of § 201.21(e); (B) the manufactured home's installation or erection on the homesite complies with the manufacturer's requirements for its anchoring, support, stability and maintenance; (C) the dealer has performed the inspection and tests required under § 201.21(c)(3) and that as installed or erected the manufactured home and any options, furniture and speciality items delivered with the home to the homesite have sustained no damage and contain no defects; and (D) that any discount points to be paid by the dealer to the lender under § 201.13 are from the dealer's own resources and will not be reimbursed by the borrower, manufacturer or any other party.

(5) The lender shall obtain and file the certifications by local officials or a civil engineer which are required under § 201.21(e) to document the suitability of the manufactured homesite.

(6) The lender shall disburse loan proceeds to a dealer or seller only under the following procedures:

(i) In the absence of information to the contrary, the lender may accept and rely upon a certification by the dealer or seller under applicable criminal and civil penalties for fraud and misrepresentation that the manufactured home, any options (appliances, built-in items and equipment), any furniture supplied by the manufacturer, and any other specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered to and properly installed or erected on the site, and that any other work to be accomplished at the site and financed with loan proceeds has been completed. The lender then may disburse 100 percent of the loan proceeds without basing its decision upon the results of a site inspection under paragraph (b)(7) of this section.

(ii) If the dealer or seller can only provide the lender with a partial certification under paragraph (b)(6)(i) because some items included in the purchase price of the home or to be financed with loan proceeds have not been delivered or completed, the lender shall disburse into escrow the greater of 10 percent of the loan proceeds or the cost to the borrower of such items as specified by the dealer or seller, and disburse the balance to the dealer or seller. The escrowed proceeds shall not be released to the dealer or seller until the lender receives an acceptable certification concerning the delivery or completion of such missing items, or until the lender finds that disbursement is justified after conducting a site inspection under paragraph (b)(7) of this section.

(iii) If the lender is unable to determine, through such certification or site inspection, that within 30 calendar days after disbursement of loan proceeds the dealer or seller has delivered and completed all items included in the purchase price of the manufactured home or to be financed with loan proceeds, the following requirements apply to the loan:

(A) If without the undelivered or uncompleted items the manufactured home as installed or erected on the site is durable and liveable under standards prescribed by the Secretary, and is acceptable to the borrower, the loan shall immediately be rewritten in an amount which reflects the deletion of the undelivered or uncompleted items but with terms and conditions which otherwise remain the same, the borrower's required investment shall be adjusted accordingly, the borrower shall indicate acceptance by executing the new note and security instrument, and the loan as rewritten shall be reported for insurance; or

(B) If the manufactured home does not meet the requirements of paragraph (b)(6)(iii)(A), in that without the undelivered or uncompleted items the manufactured home as installed or erected on the site is durable and liveable but is not acceptable to the borrower, or is not durable and liveable, the loan is not insurable under this part. Pursuant to a limited recourse agreement under § 201.27(b)(2), the lender thereafter may require the dealer or seller to purchase the uninsured loan.

(7) The lender or its agent may conduct a site-of-placement inspection as referenced in this paragraph to verify that: (i) The terms and conditions of the purchase contract have been met, (ii) the manufactured home, options if any, furniture if supplied by the manufacturer, and any other specialty items included in the purchase price of the home or to be financed with loan proceeds have been delivered and completed, (iii) the certification by the dealer or seller under paragraph (b)(6) is correct, and (iv) the placement certificate executed by the borrower and the dealer or seller is in order. If an inspection is conducted, the results of the inspection shall be documented in the loan file.

(8) If as a result of an inspection, the lender determines that the dealer or seller falsely or erroneously certified under paragraph (b)(6) that any items included in the purchase price of the manufactured home or to be financed with loan proceeds were delivered and completed, the lender shall immediately notify the Secretary with written documentation of the facts and circumstances.

(9) Where a manufactured home purchase loan involves a manufactured home which is to be located on Indian trust or otherwise restricted lands, the lender shall obtain written permission from the trustee or the tribal authority who controls the site for the lender to repossess the home in the event of default by the borrower and acceleration of the loan.

(10) If disbursement of the loan proceeds is to be made to anyone other than the borrower, the lender shall mail or personally deliver a written notice to the borrower of its intent to disburse not less than six calendar days prior to such disbursement.

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§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender shall approve only those dealers which, on the basis of any experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply otherwise with the requirements of this part. The lender's approval of a dealer shall be documented on a HUD-approved dealer approval form, signed and dated by the dealer and the lender under applicable criminal and civil penalties for fraud and misrepresentation, and containing information supplied by the dealer on its trade name(s), place(s) of business, type of ownership, type of business, and names and employment history of the principal individuals and other parties who control or manage the business. The lender shall require each dealer to apply annually for reapproval. The lender shall require a current financial statement and credit report on the dealer, and may require such other documentation as the lender deems necessary to support its approval or reapproval of the dealer.

(2) The lender shall supervise and monitor each approved dealer's activities with respect to Title I dealer loans involving the dealer that are insured under this part. The lender shall visit each approved dealer's place(s) of business periodically during the year to review its Title I performance and compliance. The lender shall maintain a file on each approved dealer which contains the executed dealer approval form and supporting information required under paragraph (a)(1), together with documentation of the lender's experience with Title I loans involving the dealer. Such documentation shall include information about borrower defaults on such loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrowers' complaints and their resolution, and records of the lender's periodic review visits to dealer premises. If the lender determines that pertinent dealer records relating to one or more Title I transactions are needed to enable the lender to review the dealer's Title I performance and compliance, whether acting at the Secretary's request, or in connection with a periodic review visit or when considering the dealer's request for reapproval, the lender shall require the dealer to furnish such records to the lender.

(3) The lender shall terminate a dealer's approval if the dealer does not satisfactorily perform its contractual obligations to borrowers or comply otherwise with Title I program requirements, or when the dealer is unresponsive to the lender's supervision and monitoring requirements. The lender may in its discretion terminate the approval of a dealer for other reasons at any time. Upon termination of a dealer's approval, the lender shall immediately notify the Secretary with written documentation of the facts and circumstances. A dealer whose approval is terminated shall not be reapproved without prior written approval from the Secretary.

(4) The lender shall require each approved (or reapproved) dealer to provide written notification of any material change in its trade name(s), place(s) of business, type of ownership, type of business, or principal individuals who control or manage the business. The dealer shall furnish such notification to the lender within 30 days after the date of any material change.

(5) As a condition of manufactured home dealer approval (or reapproval), the lender may require a manufactured home dealer to execute a written agreement that, if requested by the lender, the dealer will resell any manufactured home repossessed by the lender under a Title I insured manufactured home purchase loan approved by the lender as a dealer loan involving that dealer.

(b) *Provision for full or partial recourse.* (1) In the case of a dealer-originated manufactured home purchase loan or combination loan, the lender and the dealer may agree to a provision in the loan documents for partial or full recourse against the dealer, to reduce or eliminate the lender's loss in the event of foreclosure or repossession. Such recourse provision shall specify that, for a default occurring within a period of not more than three years from the date of the loan, the dealer shall reimburse the lender for a fixed percentage of the unpaid amount of the loan obligation, after deducting the proceeds from the sale of the property and any amounts received or retained by the lender after the date of default. However, the extent of the dealer's liability may not exceed 100 percent of the unpaid amount of the loan obligation prior to such deductions. When a claim is filed, the lender shall notify the Secretary if the loan was subject to a recourse agreement and whether the recourse agreement has been honored. If without the lender's approval a dealer has failed to honor its recourse obligation, the lender shall notify the Secretary and shall assign the recourse obligation to the Secretary in filing an insurance claim.

(2) The lender also may negotiate a limited recourse agreement with a dealer or seller providing that if a manufactured home purchase loan or a

combination loan previously approved by the lender is uninsurable under § 201.26(b)(6)(iii)(B), the lender may require the dealer or seller to purchase the loan from the lender.

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§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

(a) No property improvement loan or manufactured home loan shall be eligible for insurance under this part if the property securing repayment of the loan is located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulation thereunder (44 CFR Parts 59-79) or less than a year has passed since FEMA notification regarding such hazards, and flood insurance on the property is obtained by the borrower in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a). The amount of such insurance need not exceed the unpaid balance of the Title I loan, but the insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and the lender shall be named as a loss payee of insurance benefits.

(b) *Hazard insurance.* No manufactured home purchase loan or combination loan shall be eligible for insurance under this part unless hazard insurance on the manufactured home is obtained by the borrower and the lender is named as a loss payee of insurance benefits. Such insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and in an amount at least equal to the unpaid balance of the loan or the actual cash value of the home, or home and lot in combination, whichever is lesser. If the borrower fails to maintain such insurance, the lender shall obtain it at the borrower's expense. If the home is not insured against hazards and sustains damage which would normally be covered by such insurance during the borrower's ownership, the appraised value of the home for claim purposes will be adjusted in accordance with § 201.51(b)(3). Upon acquiring title to the property through repossession or foreclosure, the lender shall maintain hazard insurance upon the property in the amount prescribed above until its disposition and sale.

(c) No Title I insurance shall be made available under this part for any property improvement loan or manufactured home loan except pursuant to a loan application approved before October 18, 1982, with respect to any property within the Coastal Barriers Resources System established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

§ 201.29 Ineligible participants.

No loan may be insured under this part where the lender has been advised in writing by HUD or otherwise knows that any participant in the transaction as a dealer, home manufacturer, contractor, supplier, or broker, or as its agent or representative, has been suspended or debarred, or has otherwise been determined by HUD to be ineligible to participate in the Title I program.

Subpart D—Insurance of Loans

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on the prescribed form to the Secretary within 31 days from the date of the loan's origination or purchase for any loan to be registered for insurance under this part. Any loan refinanced under § 201.10(f) and § 201.11(c) shall likewise be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report will be required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee or repurchase agreement. If, after it is reported for insurance, a manufactured home purchase loan or combination loan is determined to be uninsurable under § 201.26(b)(6)(iii)(B), the lender shall report to the Secretary within 31 days from determining the loan's uninsurability.

(b) *Late reports.* The Secretary may accept a late report on a loan where the lender certifies that the obligation is not in default.

(Approved by the Office of Management and Budget under OMB Control number 2502-0328.

§ 201.31 Insurance charge.

(a) *Rate.* The lender shall pay to the Secretary an insurance charge equal to 0.50 percent per annum of the net proceeds of any eligible property improvement loan reported and acknowledged for insurance, and 0.54 percent per annum of the net proceeds of any eligible manufactured home loan reported and acknowledged for insurance. In computing the insurance charge, no charge shall be made for a period of 14 days or less, and a charge for a full month shall be made for a period of more than 14 days.

(b) *When payable.* On loans having a maturity of 25 months or less, payment of the insurance charge for the entire term of the loan is due and shall be received from the lender within 25 days after the date the Secretary acknowledges the loan report. On loans having a maturity in excess of 25 months, the insurance charge is due and payable in annual installments. The first installment shall be received from the lender within 25 days after the date of the Secretary's acknowledgement of the loan report, and the second and succeeding installments shall be received from the lender within 25 days after the date of billing by the Secretary on an annual basis.

(c) *Late charge.* Insurance charges not received from the lender within the time period specified in paragraph (b) of this section shall be assessed a late charge of four percent of the amount of the payment. Insurance charges received from the lender more than 30 days after the time period specified in paragraph (b) of this section shall also be assessed daily interest at a rate established by the Department of the Treasury (current value of funds rate), as published periodically in the **Federal Register.** However, no later charge or daily interest shall be assessed if the Secretary fails to acknowledge receipt of the loan report or fails to issue a proper billing to the lender for the insurance charges.

(d) *Adjustment on notes transferred.* Where there is a transfer of loan obligations between lenders and the insurance charges on such obligations have already been paid, any adjustment of such charges shall be made by the lenders involved. Any unpaid installments of the insurance charge shall be paid by the purchasing lender.

(e) *Refund or abatement of insurance charges.* A lender shall be entitled to a refund or abatement of insurance charges only in the following instances:

(1) Where the loan obligation has been refinanced, the unearned portion of the charge on the original obligation shall be credited to the charge on the refinanced loan.

(2) Where the loan obligation is prepaid in full or an insurance claim is filed, charges falling due after such prepayment or claim shall be abated.

(3) When a loan (or portion thereof) is found to be ineligible for insurance,

charges paid on the ineligible portion shall be refunded, except where the Secretary determines that there was fraud or misrepresentation by the lender in the loan transaction. Such refund shall be made only if a claim is denied by the Secretary or the ineligibility is reported by the lender promptly upon discovery and confirmed by the Secretary. In no event shall a charge be refunded on the basis of loan ineligibility where the application for refund is made after the loan is paid in full. If a loan or claim has been denied and is subsequently resubmitted, the refunded amount of the insurance charge plus any accrued insurance charge shall be repaid.

(f) *Lender passing insurance charge on to borrower.* The insurance charge may be passed on to the borrower, provided that such charge is fully disclosed to the borrower.

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* The Secretary shall establish an insurance coverage reserve account (formerly known as an "insurance reserve") for each lender holding a valid Title I Contract of Insurance and approved under HUD regulations at 24 CFR Part 202 and this part to originate and purchase Title I loans. The amount of insurance coverage in the reserve account shall equal 10 percent of the amount disbursed, advanced or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses of such loans, and less the amount of any annual adjustment made in accordance with paragraph (b) of this section and shall be maintained with no earmarking.

(b) *Annual adjustment of insurance coverage.* (1) Except for deductions for any insurance claim payments to the lender and transfers of insurance coverage amounts pursuant to paragraphs (c) and (d) of this section, the Secretary shall not make any adjustment to a lender's insurance coverage reserve account during the first five years of the Title I contract of insurance issued to a newly approved lender (one not so approved previously, or one formerly approved whose previous Title I contract of insurance was terminated but not reinstated by the Secretary during the five year period preceding the issuance date of the new Title I insurance contract). On the first day of October following the expiration of a period of 60 months after the date a Title I insurance contract is issued to a newly approved lender, and on October 1 of each year thereafter, the Secretary shall adjust the amount of insurance coverage in the lender's reserve account by deducting 10 percent of the amount of insurance coverage contained in the reserve account as of that date, provided that such adjustment shall not reduce the amount of insurance coverage in the reserve account to less than $50,000.

(2) No such annual adjustment to a lender's reserve account shall be made after the termination of the Secretary's authority to insure loans under Section 2 of Title I of the Act, or after the termination by the Secretary of a Title I insurance contract except pursuant to this paragraph.

(3) If within the five year period following the termination of an insurance contract the Secretary reinstates the insurance contract or issues a new insurance contract to the lender, the Secretary then shall make any annual adjustments to the lender's insurance coverage reserve account that would have occurred if such previous insurance contract had not been terminated. The amount of insurance coverage accruing thereafter under such a reinstated or new insurance contract shall be subject to the annual adjustment in insurance coverage prescribed by this paragraph.

(4) A sale, assignment or transfer by a lender of any loans held under a terminated but not reinstated insurance contract and a transfer by the Secretary of insurance coverage with respect to such loans shall comply with the applicable requirements of paragraphs (c) and (d) of this section.

(c) *Transfer of insured loans.* The lender shall not sell, assign or otherwise transfer any insured loan or loan reported for insurance to a transferee lender not approved to originate and purchase Title I loans under a valid Title I contract of insurance. Nothing contained herein shall be construed to prevent the pledging of such a loan as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(d) *Transfer of insurance coverage.* Not more than $5,000 in insurance coverage shall be transferred to or from a lender's reserve account during any fiscal year (October 1 through September 30) without the prior approval of the Secretary. Except in cases involving the sale, assignment or transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, the Secretary shall transfer insurance coverage to or from a lender's reserve account to accompany the loan transfers reported by lenders under § 201.30.

(1) In all cases involving the sale, assignment or transfer of loans sold without recourse, guaranty, guarantee, or repurchase agreement, the Secretary shall transfer insurance coverage to the reserve account established for the transferee lender in an amount equal to 10 percent of the actual purchase price or the net unpaid principal balance, whichever is lesser, but not to exceed the amount of insurance coverage in the transferor lender's reserve account prior to the transfer. Insurance coverage shall be transferred without earmarking and shall be added to the existing amount of insurance coverage in the transferee lender's reserve account.

(2) In cases involving the transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, no insurance coverage will be transferred and no reports will be required.

(e) *Recovery shall not affect insurance coverage reserve account.* Amounts which may be recovered by the Secretary after payment of an insurance claim shall not be added to the amount of insurance coverage remaining in a lender's reserve account.

Subpart E—Loan Administration

§ 201.40 Post-disbursement loan requirements.

(a) *Discovery of misstatements of fact.* If, after a loan has been made, the lender discovers any material misstatement of fact or that the loan proceeds have been misused by the borrower, dealer or any other party, it shall promptly report this to the Secretary. In such case, the insurance of the loan shall not be affected unless such material misstatement of fact or misuse of loan proceeds was caused by or was knowingly sanctioned by the lender or its employees (see § 201.31(e)(3)), provided that the validity of any lien on the property has not been impaired.

(b) *Requirements on property improvement loans.* (1) After receiving the proceeds of a direct property improvement loan, and after the work is completed to the borrower's satisfaction, the borrower shall submit a completion certificate to the lender, on a HUD-approved form and signed by the borrower and the contractor or seller, certifying under applicable criminal and civil penalties for fraud and misrepresentation that: (i) The improvements have been completed, (ii) the amount borrowed has been spent on improvements eligible under § 201.20(b)

and in accordance with the contract or cost estimate furnished to the lender prior to disbursement of the loan proceeds, and (iii) the borrower has not obtained and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of value in excess of $10 from the contractor or seller as an inducement for the consummation of the transaction. The borrower shall submit the completion certificate promptly upon the work's completion, but not later than six months after the disbursement of the loan proceeds, with one six-month extension if necessary.

(2) For all loan applications approved on or after the effective date of these regulations, the lender or its agent shall conduct an on-site inspection on any property improvement loan where the principal obligation is $7,500 or more, and on 10 percent of its property improvement loans where the principal obligation is less than $7,500. The inspection shall be conducted after receipt of the completion certificate. If no completion certificate is received for a property improvement loan, the lender or its agent shall conduct an inspection not later than 12 months after the disbursement of the loan proceeds. The purpose of the inspection is to verify the eligibility of the improvements and whether the work has otherwise been completed.

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§ 201.41 Loan servicing.

(a) *Generally.* The lender shall service loans in accordance with accepted practices of prudent lending institutions. It shall have adequate facilities for contacting the borrower in the event of default, and shall otherwise exercise diligence in collecting the amount due. The lender shall remain responsible to the Secretary for proper collection efforts, even though actual loan servicing and collection may be performed by an agent of the lender. The lender shall have an organized means of identifying, on a periodic basis, the payment status of delinquent loans to enable collection personnel to initiate and follow-up on collection activities, and shall document its records to reflect its collection activities on delinquent loans.

(b) *Partial payments.* The lender shall accept any partial payment (inclusive of late charges) under an executed modification agreement or an acceptable repayment plan, and either apply it to the borrower's account or hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment, they shall be applied to the borrower's account, thus advancing the date of the oldest unpaid installment. If a partial payment is received more than 60 days after the date of default and was not submitted under a repayment plan or a modification agreement, the partial payment may be returned to the borrower, with a letter of explanation.

§ 201.42 Bankruptcy, insolvency or death of borrower.

The lender shall file a proof of claim with the court having jurisdiction in cases where the lender has timely information that a borrower is involved in bankruptcy or insolvency proceedings, or is deceased, and the loan is in default and subject to acceleration. Documentation of such proof of claim shall be retained in the lender's loan file. In addition, where a borrower has declared bankruptcy, the notice of bankruptcy shall be retained in the loan file.

§ 201.43 Administrative reports and examinations.

The Secretary may call upon a lender for any reports deemed necessary in connection with the regulations in this part and may inspect the loan files, records, books and accounts of the lender as they pertain to the loans reported for insurance.

Subpart F—Default Under the Loan Obligation

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower prior to acceleration and foreclosure or repossession.* The lender shall undertake foreclosure or repossession of the property securing a Title I loan only after it has timely serviced the loan with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Prior to taking action to accelerate the maturity of the loan in the event of default, the lender or its agent shall arrange for a face-to-face meeting with the borrower, or make a reasonable effort to do so, so as to assist the borrower either to cure the default by bringing the loan account current immediately or to agree to a modification agreement or repayment plan for bringing the loan account current by a later date. If the lender is unable to arrange for a face-to-face meeting, it may discuss the default with the borrower by telephone and attempt to secure the borrower's agreement to curing the default, executing a modification agreement, or agreeing to an acceptable repayment plan. If the borrower cannot be located or indicates a refusal to meet or discuss the default, or refuses to consent to its cure, or to a modification agreement or repayment plan, the lender may proceed with actions under paragraphs (b) and (c) of this section. The lender shall document its actions, including in the file a copy of any modification agreement or any letter to the borrower reflecting an acceptable repayment plan.

(b) *Notice of default and acceleration.* Unless the borrower brings the loan account current or agrees to a modification agreement or repayment plan, the lender shall provide the borrower with written notice that the loan is in default and that the loan maturity is accelerated, under this paragraph. In addition to complying with applicable State or local notice requirements, the notice shall be sent by registered or certified mail and shall contain:

(1) A description of the obligation or security interest held by the lender;

(2) The nature of the default claimed;

(3) A demand upon the borrower to cure the default by making full payment to the lender of the unpaid principal and earned interest due on the note as of the date 30 days from the date of the notice in a stated amount, or otherwise to agree to a modification agreement or payment plan by such date;

(4) A statement that if the borrower fails to cure the default, or refuses by such date to agree to a modification agreement or repayment plan, the maturity of the loan is accelerated and payment of all amounts due under the loan is required as of the date 30 days from the date of the notice;

(5) A statement that if the default persists the lender will report the default to an appropriate credit reporting agency; and

(6) Any other requirements prescribed by the Secretary.

(c) *Reinstatement of the loan.* After the loan maturity is accelerated, if the borrower requests that the loan be reinstated, the lender may agree to rescind the acceleration upon receipt of a full payment from the borrower to cure the default or upon the borrower's execution of a modification agreement or agreement to an acceptable repayment plan.

(d) *Notice to credit reporting agency.* If the loan maturity is accelerated and the loan is not reinstated, the lender shall report the default to an appropriate credit reporting agency.

(Approved by the Office of Management and Budget under OMB control number 2502-0328.)

§ 201.51 Proceeding against the loan security.

(a) *Property improvement loans.* (1) After acceleration of maturity on a defaulted secured property improvement loan, the lender may either proceed against the loan security under its Title I security instrument or make claim under its contract of insurance. If the lender proceeds against the loan security, the lender may not submit an insurance claim.

(2) If a lender holds one or more mortgages or other security instruments senior to a secured property improvement loan, and if the borrower defaults on any such instrument or on the property improvement loan, the lender may both proceed against the secured property under such senior security instrument(s) and later submit a claim under its Title I contract of insurance only if:

(i) After acceleration of maturity on the defaulted loan the lender obtains a HUD-approved appraisal of the property;

(ii) In proceeding against the secured property the lender complies with all applicable State and local laws;

(iii) The lender takes all actions necessary to preserve its rights to obtain a valid and enforceable deficiency judgment; and

(iv) The lender calculates its claim for loss on the property improvement loan in accordance with § 201.55(b).

(3) After acceleration of maturity on a defaulted unsecured property improvement loan, the lender may submit a claim under its contract of insurance.

(b) *Manufactured home loans.* (1) When a manufactured home loan is in default, and the lender cannot contact the borrower during the notice period under § 201.50, the lender shall make a visual inspection of the property, determine whether the property is vacant or abandoned, and prepare a report on its condition for placement in the loan file. In any case of vacancy or abandonment, the lender shall take reasonable steps to preserve and maintain the property, including any items of removable personal property covered by the loan, if such action does not constitute trespass.

(2) After acceleration of maturity on a defaulted manufactured home loan, the lender shall proceed against the loan security by foreclosure or repossession, as appropriate, in compliance with all applicable State and local laws, and shall acquire good, marketable title to the property securing the loan. The lender shall also take all actions necessary under State and local law to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.

(3) The lender shall obtain a HUD-approved appraisal of the property, preferably on the site, as soon after repossession as possible or earlier with the permission of the borrower. The appraisal should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area, as listed in a current value rating publication acceptable to the Secretary. Where the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and shall assure that the appraised value is based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

(Approved by the Office of Management and Budget under OMB control number 2502-0328)

§ 201.52 Acquisition by voluntary conveyance or surrender.

The lender may accept a voluntary conveyance of title to or ownership of the property securing a manufactured home loan which is in default, provided that (a) the lender accepts the conveyance in full satisfaction of the borrower's obligation, and (b) no claim is submitted under its contract of insurance.The lender may accept voluntary surrender of the property without satisfaction of the borrower's obligation, provided that if the lender intends thereafter to submit a claim under its contract of insurance, the lender shall acquire title to or ownership of the property and then dispose of and sell the property in compliance with State and local law, so as to assure that it can assign a valid and enforceable obligation, including any deficiency against the borrower, to the Secretary when submitting its claim.

§ 201.53 Disposition of manufactured home loan property.

Where the lender obtains title to property securing a manufactured home loan by repossession or foreclosure, the property shall be sold for the best price obtainable before making an insurance claim. In the case of a combination loan, the manufactured home and lot shall be sold in a single transaction and the manufactured home may not be removed from the lot, unless the prior approval of the Secretary is obtained for a different procedure. The best price obtainable shall be the greater of (a) the actual sales price of the property, less the cost of repairs to make the property marketable, or (b) the appraised value of the property before repairs (as determined by a HUD-approved appraisal), obtained under § 201.51(b)(3).

§ 201.54 Insurance claim procedure.

(a) *Claim application.* A claim for reimbursement for loss on any eligible loan shall be made on a HUD-approved form executed by a duly qualified officer of the lender under applicable criminal and civil penalties for fraud and misrepresentation. The insurance claim shall be fully documented and itemized, and shall be accompanied by the complete loan file pertaining to the transaction, including all documents and materials required to be retained in the file under this part. The loan file shall contain all documents required under this part, except that where State or local law requires retention of the original note, security instrument and any related documents, the lender may submit copies. As appropriate, the claim application shall be supported by the following:

(1) Documentation of the lender's efforts to effect recourse against any dealer in accordance with any recourse agreement under § 201.27(b) between the lender and the dealer and contained in the loan documents;

(2) Certification under applicable criminal and civil penalties for fraud and misrepresentation that the lender has complied with all applicable State and local laws in carrying out any foreclosure or repossession, including copies of all notices served upon the borrower or published in connection with such foreclosure or repossession; and

(3) Where a borrower has declared bankruptcy or insolvency, or is deceased, the notice of bankruptcy, and evidence that the lender has filed a proof of claim with the court having jurisdiction.

(b) *Maximum claim period.* A claim shall be filed no later than the following dates:

(1) For property improvement loans—9 months after the date of default.

(2) For manufactured home purchase loans—12 months after the date of default.

(3) For combination loans and manufactured home lot loans—18 months after the date of default.

(c) *Extensions of the claim period.* Upon presentation of the facts of a particular case within the allowable maximum claim period, the Secretary may extend the maximum claim period. In computing the claim, no interest will be allowed for the period of the extension.

(d) *Assignment of lender's rights to the United States.* Upon the filing of the insurance claim, the lender shall assign its entire interest in the loan note (or in a judgment in lieu of the note), in any security held, and in any claim filed in probate, bankruptcy or insolvency proceedings, to the United States of America. The assignment shall be made in the form provided in paragraph (g) of this section, provided that if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable in the jurisdiction where the judgment or security was taken shall be used. The assignment shall be recorded in that jurisdiction prior to filing the insurance claim.

(e) *Valid and enforceable obligation when assigned.* The loan obligation evidenced by the note must be both valid and enforceable against the borrower at the time the note is assigned to the United States of America. Upon notification to the lender that for stated reasons the obligation may not be either valid or enforceable against the borrower, the Secretary may reassign the loan note to the lender and require the lender to obtain a valid and enforceable judgment against the borrower for the balance of the loan. If the Secretary has paid a claim and subsequently discovers that the obligation is not both valid and enforceable against the borrower, the Secretary may require the lender to repurchase the loan obligation and accept reassignment of the loan note. Upon obtaining an assignable judgment against a borrower, the lender may resubmit such a reassigned or repurchased note in a new insurance claim to the Secretary for payment.

(f) *Form of assignment.* A lender shall use the following form of assignment, or one generally acceptable in the jurisdiction involved, properly dated, to assign the lender's entire interest in a loan note, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any security, in making an insurance claim:

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the loan qualifies for insurance) to the United States of America (HUD).

(Financial Institution)_____

By: _____

Title: _____

Date: _____

If the assignment does not appear on the note or other instrument that is assigned, it shall be duly executed on an allonge which is attached to such note or other instrument.

(g) *Denial of insurance claim.* The Secretary may deny a claim for insurance in whole or in part based upon a violation of these regulations, unless a waiver of compliance with the regulations is granted under § 201.5.

(h) *Incontestability of insurance claim payment.* Any insurance claim payment on a Title I loan shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of the lender, unless a demand for repurchase of the loan obligation is made on behalf of the United States prior to the expiration of the two-year period.

(Approved by the Office of Management and Budget under OMB control number 2502-0328)

§ 201.55 Calculation of insurance claim payment.

The lender will be reimbursed in an amount not to exceed 90 percent of its loss on any eligible loan up to the amount of insurance coverage in the lender's insurance coverage reserve account established by the Secretary under § 201.32, if the insurance claim is made in accordance with the requirements of this part. The amount of the insurance claim payment shall be computed as follows:

(a) *Property improvement loans.* For property improvement loan insurance claims certified for payment on or after the effective date of these regulations, the insurance claim payment shall be 90 percent of the sum of the following amounts:

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the terms of the note executed for any loan application that is approved prior to the effective date of these regulations, and calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations). Where the lender has proceeded against the secured property under § 201.51(a)(2), the unpaid amount of the loan obligation shall be reduced by the greater of: (i) The amount by which any proceeds from the property's sale or disposition exceed the balance(s) due on any obligation(s) senior to the Title I loan obligation or (ii) the amount by which the property appraisal exceeds the balance(s) due on any obligation(s) senior to the Title I loan obligation.

(2) The unpaid amount of interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

(3) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.

(4) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed $500.

(5) The amount of expenses for recording the assignment of the security to the United States.

(b) *Manufactured home loans.* For manufactured home loan insurance claims certified for payment on or after the effective date of these regulations, the insurance claim payment shall be 90 percent of the sum of the following amounts:

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the actuarial method), after deducting the following amounts:

(i) The best price obtainable for the property after lawful repossession or foreclosure, as determined in accordance with § 201.53;

(ii) All amounts to which the lender is entitled after the date of default from any source relating to the property, including but not limited to such items as rent, other income, recourse recovery against the dealer, hazard insurance benefits, and rebates on prepaid insurance premiums; and

(iii) Amounts retained by the lender after the date of default, including amounts held or deposited to the account of the borrower or to which the lender is entitled under the loan transaction, and which have not been applied in reduction of the borrower's indebtedness.

(2) The unpaid amount of interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. In the case of a manufactured home purchase loan interest shall not be paid for any period greater than nine months from the date of default unless within such period the lender in writing requests an extension not to exceed an additional three

months, and the Secretary finds good cause for granting such extension. Interest shall not be paid for any period greater than 18 months in the case of a combination loan or a manufactured home lot loan.

(3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including payment of hazard insurance premiums, personal property taxes and site rental, where appropriate), plus actual costs not to exceed $600 per module of removing and transporting the home to a dealer's lot or other off-site location.

(4) The amount of a sales commission paid to a dealer, real estate agent or other third party for the resale of the repossessed or foreclosed manufactured home and/or lot. Where the home is resold on-site, the commission shall not exceed 10 percent of the sales price. Where the home is resold off-site, the commission shall not exceed seven percent of the sales price.

(5) For manufactured home lot loans, and for combination loans where both the foreclosed manufactured home and lot are classified as realty, the amount of:

(i) State or local real estate taxes, ground rents, and municipal water and sewer fees or liens, prorated to the date of disposition of the property;

(ii) Special assessments which are noted on the loan application or which become liens after the insurance is issued, prorated to the date of disposition of the property; and

(iii) Transfer taxes imposed upon any deeds or other instruments by which the property was acquired by the lender.

(6) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.

(7) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed $500.

(8) The amount of expenses for recording the assignment of the security to the United States, and for costs of repossession or foreclosure other than attorney's fees and those incurred under paragraph (b)(3), but not to exceed costs which are customary and reasonable in the jurisdiction where the repossession or foreclosure takes place, as determined by the Secretary.

Dated: October 17, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-25302 Filed 10-24-85; 8:45 am]

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Friday
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Part IV

Department of Education

Office of Elementary and Secondary Education and Office of Postsecondary Education

34 CFR Parts 76 and 208 and Ch. VI

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Office of Postsecondary Education

34 CFR Parts 76 and 208 and Ch. VI

State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary issues final regulations for the program of State grants for strengthening the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning and for increasing the access of all students to that instruction. The final regulations implement sections 201–211 and 213 of Title II of the Education for Economic Security Act. Under this program, assistance is provided to State educational agencies to strengthen elementary and secondary education programs and to State agencies for higher education to strengthen higher education programs.

EFFECTIVE DATE: These regulations take effect 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Allen Schmieder, Chief Math/Science Section, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2011, FOB–6, Mail Stop 6264), Washington, DC 20202. Telephone (202) 755–0410.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1984, the President signed into law the Education for Economic Security Act (Pub. L. 98–377), 98 Stat. 1267, 20 U.S.C. 3901 *et seq.* The Act is designed to improve the quality of mathematics and science teaching and instruction in the United States. Title II of the Act authorizes the Secretary to make financial assistance available to States to improve the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning and to increase the access of all students to that instruction. Title II also authorizes the Secretary to make discretionary grants for programs of national significance in mathematics and science instruction, computer learning, and instruction in critical foreign languages.

The final regulations in Part 208 do not apply to the Secretary's discretionary grants authorized under section 212 of Title II. Rather, these final regulations implement the program of formula grants to States authorized by sections 201–211 and 213 of Title II. These formula grants States include funds for elementary and secondary education programs and funds for higher education programs.

To receive funds under Part 208, a State must file with the Secretary an application that designates the State educational agency (SEA) as the agency responsible for the administration and supervision of elementary and secondary education programs, and the State agency for higher education (SAHE) as the agency responsible for higher education programs. For the second year for which funds are available under Part 208, a State must file an assessment of need.

For Fiscal Year 1985, Congress appropriated $100,000,000 for all programs authorized under Title II. This amount includes the funds required to be expended under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages authorized under section 212 of Title II.

Summary of Provisions in These Final Regulations

Regulations That Apply to Programs Under Part 208

Section 208.2 indicates that, with two exceptions, the final regulations apply to all programs for which the Secretary provides financial assistance under Part 208. Those exceptions are the regulations in Subpart B, which do not apply to higher education programs authorized under section 207 of Title II, and the regulations in Subpart C, which do not apply to elementary and secondary education programs authorized under section 206 of Title II. In addition, as § 208.2 indicates, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities) apply to programs under Part 208.

State Application Procedures

Sections 208.11–208.13 implement sections 208 and 209 of Title II. As indicated in § 208.11, a State that desires to receive a grant under Part 208 must have on file with the Secretary an application and, for the second year for which funds are made available, an assessment of need. Sections 208.12 and 208.13 contain the requirements for State applications and State assessments of need, respectively. As those sections indicate, both the State application and the State assessement of need may be submitted in any form that the State determines is appropriate, provided they contain certain specified provisions.

Under § 208.13, a State does not have to file its assessment of need in order to receive its first grant award. Rather, no later than nine months after the date for which funds first become available for obligation by the State under Part 208, the State must, after examining the local assessments submitted under § 208.33, prepare and make available to local educational agencies (LEAs) within the State a preliminary assessment of the status of mathematics, science, foreign languages, and computer learning within the State's public and private elementary and secondary schools and institutions of higher education (IHEs). The State must prepare a final version of this assessment for submission to the Secretary not later than twelve months after the date for which funds become available for obligation by the State under Part 208. This assessment of need must be submitted to the Secretary before the State may receive funds for the second year.

A State must file an application under § 208.12 with the Secretary in order to receive its first grant award under Part 208. This application, however, does not have to be resubmitted for the State to receive future payments. Instead, the State need only submit any needed amendments in accordance with 34 CFR 76.140–76.141. In addition, for the second year for which funds are available under Part 208, the State must amend the program description in its application, in accordance with § 208.12(b)(2), to describe how the services provided in the State address unmet needs identified in the final State assessment of need.

Allotment Procedures

Sections 208.21–208.24, which implement sections 204 and 205 of Title II, contain the Secretary's procedures for allotting funds appropriated for use under Part 208. Under § 208.21, the Secretary determines the amount of funds to be allotted to a State for each

fiscal year on the basis of the number of children aged five to seventeen, inclusive, within the State compared to the total number of those children in all the States. In no case, however, may the amount a State is eligible to receive be less than 0.5 percent of the amount of funds available for grants to States under Part 208. From the amount of funds a State is eligible to receive, the Secretary allots to the State seventy percent for use in elementary and secondary education programs and thirty percent for use in higher education programs.

From the amount available for purposes of section 204(c) of Title II for each fiscal year, the Secretary allots, under § 208.23, up to one-half of that amount among the Insular Areas according to their respective needs. The Secretary allots, under § 208.24, not less than one-half of the amount available for purposes of section 204(c) to the Bureau of Indian Affairs for programs under this part for children in elementary and secondary schools operated for Indian children by the Department of the Interior.

Elementary and Secondary Education Program Requirements

Sections 208.31–208.36 implement sections 206, 209, and 210 of Title II. As indicated in § 208.31(a), an LEA must submit to the SEA an application and an assessment of need in order to receive funds under Part 208. Sections 208.32(a) and 208.33 describe the content of the application and the assessment of need, respectively. As § 208.33(c) indicates, an LEA's assessment of need must reflect the needs of children and teachers in both public and private elementary and secondary schools in the LEA.

In order that an LEA may participate as soon as possible in programs under Part 208, the Secretary anticipates that the LEA will submit these documents, and therefore be eligible to receive funds, prior to receipt of the State's preliminary assessment of need, which is required to be provided to the LEA under § 208.13(a)(1). The LEA's application and assessment of need do not have to be resubmitted. However, § 208.32(b) does require submission of certain information in order for the LEA to receive a renewal of funds under Part 208. In order to describe under § 208.32(b)(2) how the services to be provided by the LEA in the second year address unmet needs described in the State's assessment of need, the LEA should examine the State's preliminary assessment of need provided to the LEA under § 208.13(a)(1).

Under § 208.34, an SEA must distribute to LEAs within the State not less than seventy percent of the funds available for elementary and secondary education. Fifty percent of those funds must be distributed under § 208.34(a)(1) according to the relative number of children enrolled in public and private schools within the school districts of the LEAs. The remaining fifty percent of the funds must be distributed under § 208.34(a)(2) according to the same proportion as funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) are distributed to LEAs. The Secretary recognizes that there may be States in which not all LEAs receiving Chapter 1 funds will choose to participate in Title II. In those States, the SEA should allocate Title II funds under § 208.34(a)(2) on the basis of the proportion of Chapter 1 funds an LEA receives to the total Chapter 1 funds received by all the LEAs participating under Title II.

Section 208.35 describes the permissible uses of funds by LEAs. As § 208.35(a) indicates, an LEA must first use the funds it receives under Part 208 to satisfy the needs the LEA has identified for the expansion and improvement of inservice training and retraining in mathematics and science of teachers and other appropriate school personnel in public and private schools. If the LEA determines that it does not need some or all of the funds it receives under Part 208 to meet those needs, the LEA may request the SEA to waive the provisions in § 208.35(a) in order that the LEA may use the funds not needed for retraining and inservice training in mathematics and science for computer learning and instruction, foreign language instruction, and instructional materials and equipment related to mathematics and science.

In granting the LEA's request for a waiver, the SEA must ensure that the LEA will meet the requirements for the equitable participation of children and teachers in private schools. As the Secretary envisions the waiver provision in § 208.35(b), a waiver would be able to be received if public and/or private school teacher training needs in mathematics and science are met. The waiver would apply only to that segment in which the needs are met. For example, if the mathematics and science training needs of public school teachers are met, a waiver could be granted to permit training of public school teachers in foreign languages. That waiver would not extend to private school teachers, however, unless their needs in mathematics and science are also met. The converse would also be true.

Higher Education Program Requirements

Sections 208.41–208.43 implement section 207 of Title II. The regulations describe the procedures for the allocation of funds between the SAHE and IHEs, and discuss the use of funds by those agencies.

Supplement, Not Supplant

Section 209(b)(6) of Title II provides that funds made available under Part 208 may be used only to supplement and, to the extent practicable, to increase the level of funds that would, in the absence of funds made available under Part 208, be available for the purposes described in sections 206 and 207 of Title II. As indicated in § 208.51, the Secretary interprets section 209(b)(6) of Title II to prohibit the supplanting of funds from non-Federal sources.

Participation of Children and Teachers in Private Schools

Section 208.61 implements the requirements in section 211(a)–(b) of Title II for the equitable participation of private school children and teachers in the purposes and benefits of Title II. As indicated in § 208.61(a), the requirement for the equitable participation of children applies to SEAs and LEAs. To make the requirement for the equitable participation of teachers in section 211(b) of Title II consistent with other statutory provisions, § 208.61(b) makes that requirement applicable to SEAs, LEAs, and SAHEs. Section 208.61 and 34 CFR 76.651–76.662 implement the equitable participation requirements.

If an SEA, LEA, or SAHE is prohibited by law from providing, or if the Secretary determines that an agency has substantially failed or is unwilling to provide, for this equitable participation, section 211(c) of Title II requires the Secretary to arrange to provide benefits under Part 208 through a bypass. Sections 208.62–208.68 implement section 211(c) of Title II. These sections contain the procedures for a bypass, including notice of the Secretary's intent to implement a bypass, the appointment of a hearing officer, hearing and post-hearing procedures, and judicial review.

Summary of Significant Changes from the NPRM

Section 208.3 Definitions that apply to programs under this part.

The definitions in § 208.3(c) have been revised in two significant respects. First, the definition of "private, nonprofit organizations" has been changed to "nonprofit organizations" to allow both public and private nonprofit

organizations to participate in programs under Title II. Second, a definition of "magnet school programs for gifted and talented students" has been added to explain the reference to those programs in § 208.36(a)(2)(ii). As that definition indicates, "magnet school programs for gifted and talented students" may be programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. For the purpose of Title II, a magnet school is a school or education center that offers a special curriculum, including but not limited to schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

Section 208.34 Allocation of funds.

Paragraph (a)(2) has been revised to require an SEA to distribute fifty percent of the funds available for LEAs under § 208.34(a) according to the same proportion as funds under Chapter 1 of the ECIA are distributed to LEAs.

Section 208.36 Use of funds by SEAs.

Paragraph (a)(2)(ii) has been revised to indicate that special projects for gifted and talented students sponsored by an SEA under § 208.36(a)(2) may include assistance to magnet school programs for those students. As the definition in § 208.3(c) indicates, those programs may be programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools.

Section 208.62 Bypass—General.

Paragraph (c) concerning the withholding of funds pending final resolution of an investigation or a complaint that could result in a bypass has been added to implement section 211(c) of Title II.

Section 208.68 Judicial review of bypass actions.

Section 208.68 concerning judicial review of bypass actions has been added to implement section 211(c) of Title II.

Public Participation

On November 20, 1984, a notice of proposed rulemaking (NPRM) was published in the **Federal Register** at 49 FR 45834. During the forty-five day comment period, approximately eighty-two comments and recommendations were received. The Secretary has carefully considered all comments received and has made changes to the proposed regulations warranted by those comments. A summary of the comments, the Secretary's response to those comments, and the changes made is contained in the appendix to these regulations. The appendix will not appear in the Code of Federal Regulations.

Other Changes

In addition to the changes made in response to comments received on the NPRM, the Secretary has made changes in several other sections. In § 208.34 concerning the allocation of Title II funds by SEAs, the Secretary has revised paragraph (a)(2) to require a SEA to distribute fifty percent of the funds available for LEAs under § 208.34(a) according to the same proportion as funds under Chapter 1 of the ECIA are distributed to LEAs. This change is in complete accord with the legislative history accompanying Title II. According to the Senate Report, one-half of the Title II funds available for LEAs should be allocated "on the basis of relative allocations for Chapter 1. . . . The Committee believes that all districts will demonstrate need for assistance in mathematics and science instruction, but that poor districts, as manifested by the Chapter 1 allocations, will need additional help." S. Rept. 151, 98th Cong., 1st Sess. 13–14 (1983).

The Secretary made the change in paragraph (a)(2) in response to a number of oral comments from SEAs which stated that the reference in section 206(b)(2)(B) to section 111 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA) poses serious implementation problems for SEAs due to section 111's reliance on census data. These problems have been remedied in Chapter 1 of the ECIA, which also references section 111 of Title I of the ESEA, by permitting SEAs to allocate Chapter 1 funds to LEAs on the basis of the best available data on the number of children from low-income families in the school districts of the LEAs. *See* 34 CFR 200.22(b). Thus, the change in paragraph (a)(2) meets the intent of Congress by conforming the Title II regulations with the regulations for distributing funds to LEAs under Chapter 1 of the ECIA.

The Secretary has also made a change in § 208.36(a)(2)(ii) to indicate that special projects for gifted and talented students sponsored by an SEA under § 208.36(a)(2) may include assistance to magnet school *programs* for those students, rather than restricting assistance to magnet schools for gifted and talented students. Although the Secretary did not receive comments on the reference to magnet schools for gifted and talented students in § 208.36(a)(2)(ii), the Secretary did receive comments on a similar reference in 34 CFR 755.13(a)(1) implementing the Secretary's discretionary program under section 212 of Title II. Those commenters expressed concern that the level of funding under Title II would not support establishing magnet schools for gifted and talented students. Moreover, the commenters believed that limiting assistance to magnet schools for gifted and talented students unduly restricted the assistance that could be provided. The Secretary believes that the reference in § 208.36(a)(2)(ii) should be consistent with the reference in 34 CFR 744.13(a)(1). Moreover, the Secretary believes that the revision in § 208.36(a)(2)(ii) is fully consistent with section 206(d) of Title II, which states that the "programs for gifted and talented students may include assistance to magnet schools for such students." The Secretary has included a definition of "magnet school programs for gifted and talented students" in § 208.3(c) and 34 CFR 755.4(c).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 76

Education, Grant programs—education, Grants administration, State-administered programs.

34 CFR Part 208

Colleges and universities, Education, Education of disadvantaged, Elementary and secondary education, Foreign languages, Grant programs—education, Private schools, Reporting and recordkeeping requirements, Science and technology, Teachers, Training program, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provisions of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.164, State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction)

Dated: October 22, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 76, adds a new Part 208, and amends Chapter VI of Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for Part 76 continues to read as follows:

Authority: Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

2. In the table following § 76.1, Section A. Elementary and Secondary Education Programs, and Section D. Higher Education Programs, are amended by adding a new entry at the end of Section A and a new entry at the end of Section D, to read as follows:

§ 76.1 Programs to which Part 76 applies.

* * * * *

Name of program	Authorizing statute	Implementing regulations (34 CFR)	CFDA No.
A. Elementary and Secondary Education Programs			
* * * * * *			
State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.	Sections 201-208, 208-211, 213 of Title II of the Education for Economic Security Act (20 U.S.C. 3961-3966, 3968-3971, 3973).	Part 208 (except Subpart C).	84.164
* * * * * *			
D. Higher Education Programs			
* * * * * *			
State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.	Sections 201-205, 207-211, 213 of Title II of the Education for Economic Security Act (20 U.S.C. 3961-3965, 3967-3971, 3973).	Part 208 (except Subpart B).	84.164
* * * * * *			

3. Section 76.102 is amended by redesignating paragraph (aa) as paragraph (bb) and adding a new paragraph (aa) to read as follows:

§ 76.102 Definition of "State Plan" for Part 76.

* * * * *

(aa) *Math-science programs.* The State application under Section 209 of Title II of the Education for Economic Security Act.

* * * * *

4. Section 76.103 is amended by removing the "and" after paragraph (c)(2), by removing the period and adding "; and" after paragraph (c)(3), and by adding a new paragraph (c)(4) to read as follows:

§ 76.103 Three-year State plans.

* * * * *

(c) * * *

(4) The State application under Section 209 of Title II of the Education for Economic Security Act.

* * * * *

5. In the table following § 76.125, Other Elementary and Secondary Programs is amended by adding the following language at the end:

§ 76.125 What is the purpose of these regulations?

* * * * *

CFDA No. and name of program	Authorizing legislation	Implementing regulations Title 34 CFR (Part)
* * * * *		
Other Elementary and Secondary Programs		
84.164 State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.	Title II of the Education for Economic Security Act (20 U.S.C. 3961-3971, 3973).	208

6. Section 76.401 is amended by adding a new paragraph (a)(8) to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) * * *

(8) State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.

* * * * *

7. The table in § 76.563 is amended by adding the following languages at the end:

§ 76.563 Restricted indirect cost rate—programs covered.

* * * * *

Program	Authorizing statute
* * * * *	
State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.	Sections 201-211, 213 of Title II of the Education for Economic Security Act.

* * * * *

8. A new Part 208 is added to read as follows:

PART 208—STATE GRANTS FOR STRENGTHENING THE SKILLS OF TEACHERS AND INSTRUCTION IN MATHEMATICS, SCIENCE, FOREIGN LANGUAGES, AND COMPUTER LEARNING AND FOR INCREASING THE ACCESS OF ALL STUDENTS TO THAT INSTRUCTION

Authority: Secs. 201–211, 213 of Title II, Education for Economic Security Act (20 U.S.C. 3961–3971, 3973), unless otherwise noted.

Subpart A—How States Obtain Funds for Programs Under This Part

General

§ 208.1 Purpose.

The Secretary provides financial assistance under this part to States to—

(a) Improve the skills of teachers and instruction in mathematics, science, foreign languages, and computer learning; and

(b) Increase the access of all students to that instruction.

(20 U.S.C. 3961)

§ 208.2 Regulations that apply to programs under this part.

The following regulations apply to programs for which the Secretary provides financial assistance under this part:

(a) The regulations in this part, except that—

(1) Subpart C does not apply to elementary and secondary education programs authorized under section 206 of Title II; and

(2) Subpart B does not apply to higher education programs authorized under section 207 of Title II.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 3961–3971, 3973)

§ 208.3 Definitions that apply to programs under this part.

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in sections 3 and 202 of the Education for Economic Security Act:

Area vocational education school
Elementary school
Governor
Institution of higher education
Junior or community college
Local educational agency
Secondary school
Secretary
State
State agency for higher education
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Fiscal Year
Nonprofit
Private
Public

(c) *Additional definitions.* The following terms are used in this part:

"Critical foreign languages" means languages designated by the Secretary in a notice published in the **Federal Register** as critical to national security, economic, or scientific needs.

"ECIA" means the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3801 *et seq.*

"EESA" means the Education for Economic Security Act, 20 U.S.C. 3901 *et seq.*

"Gifted and talented student," for the purpose of Title II, means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics, science, foreign languages, or computer learning.

"Historically underrepresented and underserved populations" include females, minorities, handicapped persons, persons of limited-English proficiency, and migrants.

"Magnet school programs for gifted and talented students," as used in § 208.36(a)(2)(ii), means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. For the purpose of Title II, a magnet school is a school or education center that offers a special curriculum, including but not limited to schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

"Nonprofit organizations" include, but are not limited to, museums, libraries, educational television stations, professional science, mathematics, foreign language and engineering societies and associations, associations for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages, and other organizations that meet the definition of "nonprofit" in 34 CFR 77.1.

"Title II" means Title II of the Education for Economic Security Act.

(20 U.S.C. 3902, 3961–3971, 3973)

§§ 208.4–208.10 [Reserved]

State Application Procedures

§ 208.11 Conditions a State must meet to receive funds.

A State that desires to receive funds under this part shall have on file with the Secretary—

(a) An application that meets the requirements in § 208.12; and

(b) For the second year for which funds are made available, a State assessment of need submitted in accordance with the requirements in § 208.13.

(20 U.S.C. 3968, 3969)

§ 208.12 State application.

(a) *Contents.* A State application may be submitted in any form that the State determines is appropriate, provided the application—

(1) Designates the—

(i) State educational agency (SEA) as the agency responsible for the administration and supervision of the elementary and secondary education programs described in Subpart B of this part; and

(ii) State agency for higher education (SAHE) as the agency responsible for the administration and supervision of higher education programs described in Subpart C of this part;

(2) Describes the programs for which funds will be used under this part;

(3) Provides assurances that payments will be distributed by the State in accordance with the provisions of §§ 208.34 and 208.41;

(4) Provides procedures for—

(i) Submitting applications for the programs described in Subparts B and C of this part; and

(ii) Approval of applications by the appropriate State agency, including appropriate procedures to ensure that the appropriate State agency will not disapprove an application without notice and opportunity for a hearing in accordance with 34 CFR 76.401. The Secretary does not interpret disapproval of an application to include a determination by a SAHE as to the relative merit of a competing application under § 208.41(a);

(5) Provides assurances that—

(i) The State will prepare and submit the assessment of need required under § 208.13;

(ii) In the second year for which funds are available under this part, the State will use funds for purposes consistent with the findings of the State assessment of need;

(iii) For programs described in Subpart B of this part, the provisions of section 210 of Title II will be carried out; and

(iv) To the extent feasible, evaluations of the programs assisted will be performed;

(6) Provides assurances that funds made available under this part will be used to supplement and not supplant non-Federal funds in accordance with § 208.51;

(7) Provides assurances for the equitable participation of private school children and teachers in the purposes and benefits of Title II in accordance with § 208.61; and

(8) Provides fiscal control and accounting procedures to—

(i) Ensure proper accounting of funds made available under this part; and

(ii) Ensure the verification of the programs assisted under this part.

(b) *Amendments.* (1) A State shall amend its application as necessary in accordance with the provisions in 34 CFR 76.140–76.141.

(2)(i) For the second year for which funds are made available under this part, the State shall amend the program description required under paragraph (a)(2) of this section to describe how the services provided in the State address unmet needs identified in the final State assessment of need required under § 208.13(a)(2).

(ii) To meet the requirement in paragraph (b)(2)(i) of this section, the State may cross-reference the program description in § 208.13(b)(2) if that description includes the information required in paragraph (b)(2)(i) of this section.

(c) *Approval.* The Secretary approves any State application that meets the requirements of this section.

(Approved by the Office of Management and Budget under Control Number 1810-0515)

(20 U.S.C. 3969)

§ 208.13 State assessment of need.

(a) A State shall—

(1) After examining the local assessments submitted under § 208.33, prepare and make available to local educational agencies (LEAs) within the State a preliminary assessment of the status of mathematics, science, foreign languages, and computer learning within the State's public and private elementary and secondary schools and institutions of higher education (IHEs) not later than nine months following the date for which funds first become available for obligation by the State under this part; and

(2) Prepare a final version of the assessment for submission to the Secretary not later than twelve months after the date for which funds under this part become available for obligation by the State.

(b) The State assessment may be submitted in any form that the State determines is appropriate, provided the assessment—

(1) Describes and provides a five-year projection of—

(i) The availability of qualified mathematics, science, foreign languages, and computer learning teachers at the secondary and postsecondary education levels within the State;

(ii) The qualifications of teachers in mathematics, science, foreign languages, and computer learning at the secondary and postsecondary education levels;

(iii) The qualifications of teachers at the elementary level to teach mathematics, science, foreign languages, and computer learning;

(iv) The State standards for teacher certification, including any special exceptions currently made, for teachers of mathematics, science, foreign languages, and computer learning;

(v) The availability of adequate curricula and instructional materials and equipment in mathematics, science, foreign languages, and computer learning; and

(vi) The degree of access to instruction in mathematics, science, foreign languages, and computer learning of historically underrepresented and underserved populations and of the gifted and talented; and

(2) Describes the programs, initiatives, and resources committed or projected to be undertaken within the State to—

(i) Improve teacher recruitment and retention in the fields of mathematics, science, foreign languages, and computer learning;

(ii) Improve teacher qualifications and skills in the fields of mathematics, science, foreign languages, and computer learning;

(iii) Improve curricula in mathematics, science, foreign languages, and computer learning, including instructional materials and equipment; and

(iv) Improve access for historically underrepresented and underserved populations and for the gifted and talented to instruction in mathematics, science, foreign languages, and computer learning.

(c) The State assessment must be—

(1) Developed in consultation with the Governor, State legislature, State Board of Education, LEAs within the State, and representatives within the State of—

(i) Vocational secondary schools and area vocational education schools;

(ii) Public and private IHEs;

(iii) Teacher organizations;

(iv) Private industry;

(v) Other nonprofit organizations; and

(vi) Private elementary and secondary schools; and

(2) Submitted jointly by the SEA and the SAHE.

(Approved by the Office of Management and Budget under Control Number 1810-0512)

(20 U.S.C. 3968)

§§ 208.14—208.20 [Reserved]

Allotment Procedures

§ 208.21 Allotment to States.

(a)(1) From ninety (90) percent of the funds appropriated under Title II for each fiscal year, the Secretary calculates for each State an amount that bears the same ratio to the ninety (90) percent as the number of children aged five to seventeen, inclusive, in the State bears to the number of those children in all States, except that the amount for any State will not be less than 0.5 percent of the amount available under this section in any fiscal year.

(2) For purposes of this section—

(i) The term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(ii) The Secretary determines the number of children aged five to seventeen, inclusive, on the basis of the most recent satisfactory data available to the Secretary.

(b) From the amount of funds that a State is eligible to receive under paragraph (a) of this section, the Secretary allots to the State—

(1) Seventy (70) percent of those funds for use in elementary and secondary education programs under section 206 of Title II and Subpart B of this part; and

(2) Thirty (30) percent of those funds for use in higher education programs under section 207 of Title II and Subpart C of this part.

(20 U.S.C. 3964(a), 3965)

§ 208.22 Reallotment to States.

(a) If, after consultation with a State, the Secretary determines for any fiscal year that the full amount the State receives under § 208.21 is not required for that fiscal year to carry out the purposes of this part, the Secretary reallots the excess funds to other States in proportion to the original allotments to those States under § 208.21 for that year.

(b) If the Secretary determines that the amount to be reallotted to a State under paragraph (a) of this section exceeds the amount the State needs and will be able to use for that year, the Secretary reduces the amount for that State and reallots the excess funds proportionately among the remaining States.

(c) Any funds realloted to a State are considered part of the State's allotment under § 208.21 for that year.

(20 U.S.C. 3964(b))

§ 208.23 Allotment to the Insular Areas.

(a)(1) From the amount available for carrying out section 204(c) of Title II for each fiscal year, the Secretary allots up to one-half of that amount among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective needs.

(2) The Secretary determines respective needs according to the relative number of children aged five to seventeen, inclusive, within each Insular Area. To make this determination, the Secretary uses the most recent satisfactory data available to the Secretary.

(b) An Insular Area may include the funds it is eligible to receive under paragraph (a) of this section in its consolidated grant application in accordance with 34 CFR 76.125–76.137.

(20 U.S.C. 3964(c); S. Rept. 151, 98th Cong., 1st Sess. 12 (1984))

§ 208.24 Allotment to the Bureau of Indian Affairs.

(a) From the amount available for carrying out section 204(c) of Title II for each fiscal year, the Secretary allots not less than one-half of that amount to the Bureau of Indian Affairs for programs under this part for children in elementary and secondary schools operated for Indian children by the U.S. Department of the Interior.

(b) The Bureau of Indian Affairs does not have to comply with the requirements for higher education programs in section 207 of Title II and Subpart C of this part.

(20 U.S.C 3964(c); S. Rept. 151, 98th Cong., 1st Sess. 12 (1984))

§§ 208.25–208.30 [Reserved]

Subpart B—Elementary and Secondary Education Program Requirements

§ 208.31 Conditions an LEA must meet to receive funds.

(a) For the first year for which funds are made available under this part, an LEA that desires to receive an allocation of funds shall submit to the SEA an—

(1) Application that meets the requirements of § 208.32(a); and

(2) Assessment of need that meets the requirements of § 208.33.

(b) To receive a renewal of funds under this part, the LEA shall submit to the SEA the information required in § 208.32(b).

(20 U.S.C. 3966(b)(3), 3969(b)(4), 3970)

§ 208.32 LEA application and renewal.

(a) *Application.* Each LEA application must include—

(1) Information the SEA may require describing the LEA's proposed activities and expenditures of funds for those activities under § 208.35;

(2) Any assurances the SEA may require to ensure that the LEA will comply with the provisions of Title II and this part; and

(3) An assurance that programs of inservice training and retraining will take into account the need for greater access to and participation in mathematics, science, and computer learning programs and careers for students from historically underrepresented and underserved populations.

(b) *Renewal.* To receive a renewal of funds under this part, an LEA shall submit to the SEA—

(1) Evidence that shows the LEA is implementing the programs assisted under this part so that—

(i) A substantial number of teachers in public and private schools in the LEA are being served; and

(ii) Several grade levels of instruction are involved in the LEA's program;

(2) A description of how the services assisted will address unmet needs described in the State's assessment of need in § 208.13; and

(3) Any other information required by the SEA.

(Approved by the Office of Management and Budget under control number 1810–0525)

(20 U.S.C. 3966(b)(1), (3), 3969(b)(4), 3970(b))

§ 208.33 LEA assessment of need.

(a) Each LEA assessment must include the need for assistance in—

(1) Teacher training, retraining, and inservice training and the training of appropriate school personnel in the areas of mathematics, science, foreign languages, and computer learning, including a description of—

(i) The availability and qualifications of teachers at the secondary level in the areas of mathematics, science, foreign languages, and computer learning; and

(ii) The qualifications of teachers at the elementary level to teach those areas;

(2) Improving instructional materials and equipment related to mathematics and science education; and

(3) Improving the access to instruction in mathematics, science, foreign languages, and computer learning of students from historically underrepresented and underserved populations and of gifted and talented students based on an assessment of the current degree of access to instruction of these students.

(b) The assessment of need must include a description of—

(1) The types of services to be provided under § 208.35(a) and (c); and

(2) How the services assisted will meet the program needs of the LEA.

(c) The assessment of need under this section must reflect the needs of children and teachers in public and private elementary and secondary schools in the LEA.

(Approved by the Office of Management and Budget under control number 1810-0525)

(20 U.S.C. 3970, 3971)

§ 208.34 Allocation of funds.

(a) *Funds for LEAs.* An SEA shall distribute to LEAs within the State for use under § 208.35 not less than seventy (70) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) as follows:

(1) Fifty (50) percent of the funds must be distributed according to the relative number of children enrolled in public and private schools within the school districts of the LEAs.

(2) Fifty (50) percent of the funds must be distributed according to the same proportion as funds under Chapter 1 of the ECIA are distributed.

(b) *Funds for SEAs.* An SEA shall reserve for use in accordance with § 208.36 not more than thirty (30) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1).

(20 U.S.C. 3966(b); S. Rept. 151, 98th Cong., 1st Sess. 13-14 (1983))

§ 208.35 Use of funds by LEAs.

(a) Except as provided in paragraphs (b) and (c) of this section, an LEA shall use the funds it receives under § 208.34(a) for the expansion and improvement of inservice training and retraining in the fields of mathematics and science of teachers and other appropriate school personnel, including vocational education teachers who use mathematics and science in teaching vocational education courses.

(b)(1) If an LEA determines that it does not need some or all of the funds it receives under this part to meet the needs identified in its assessment of need for the training and retraining specified in paragraph (a) of this section, the LEA may request the SEA to waive to the extent necessary the provisions in paragraph (a) of this section in order that the LEA may use funds not needed under paragraph (a) of this section for programs under paragraph (c) of this section.

(2)(i) If the SEA determines that the LEA does not need some or all of the funds the LEA receives under this part to meet the needs identified in the LEA's assessment of need for the training and retraining specified in paragraph (a) of this section, the SEA shall grant the LEA's request for a waiver.

(ii) In granting a waiver, the SEA shall ensure that the LEA will meet the requirements for the equitable participation of children and teachers in private schools in accordance with section 211 of Title II and 34 CFR 76.651-76.662.

(c)(1) Except as provided in paragraph (c)(2) of this section, if an LEA receives a waiver under paragraph (b) of this section, the LEA shall use funds not needed under paragraph (a) of this section for—

(i) Computer learning and instruction;

(ii) Foreign language instruction; and

(iii) Instructional materials and equipment related to mathematics and science instruction.

(2) Of the funds an LEA receives under § 208.34(a), an LEA may not use more than—

(i) Thirty (30) percent for the purchase of computers and computer-related instructional equipment; and

(ii) Fifteen (15) percent to strengthen instruction in foreign languages.

(d) An LEA may carry out the training and instruction under this section—

(1) Through agreements with public agencies, private industry, IHEs, and nonprofit organizations; and

(2) In conjunction with one or more LEAs within the State, with the SEA, or with both LEAs and the SEA.

(20 U.S.C. 3966 (b), (c), 3970(c), 3971)

§ 208.36 Use of funds by SEAs.

(a)(1) Subject to the requirement in paragraph (a)(2) of this section, an SEA shall use not less than twenty (20) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) for the benefit of children in public and private elementary and secondary schools for programs in the fields of mathematics, science, foreign languages, and computer learning for—

(i) Demonstration and exemplary programs for—

(A) Teacher training, retraining, and inservice upgrading of teacher skills;

(B) Instructional materials and equipment and necessary technical assistance; and

(C) Special projects that meet the requirements in paragraph (a)(2) of this section; and

(ii) The dissemination of information relating to demonstration and exemplary programs to all LEAs within the State.

(2) The SEA shall use not less than twenty (20) percent of the funds used to meet the requirement in paragraph (a)(1) of this section for special projects in mathematics, science, foreign languages, and computer learning for—

(i) Students from historically underrepresented and underserved populations; and

(ii) Gifted and talented students. The projects for gifted and talented students may include assistance to magnet school programs for those students.

(b) An SEA shall use not less than five (5) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) to provide technical assistance to LEAs and, if appropriate, IHEs and nonprofit organizations that are conducting programs under § 208.35.

(c) An SEA may not use more than (5) percent of the funds made available for elementary and secondary education programs under § 208.21(b)(1) for—

(1) The State assessment of need required by § 208.13; and

(2) The costs incurred by the SEA for administering and evaluating programs assisted under this part in the State.

(20 U.S.C. 3966 (d)-(f), 3971)

§§ 208.37—208.40 [Reserved]

Subpart C—Higher Education Program Requirements

§ 208.41 Allocation of funds.

(a) *Funds for IHEs.* (1) A SAHE shall distribute on a competitive basis to IHEs within the State that apply for payments not less than seventy-five (75) percent of the funds made available for higher education programs under § 208.21(b)(2).

(2) The SAHE shall make every effort to ensure equitable participation of private and public institutions of higher education.

(b) *Funds for SAHEs.* A SAHE shall reserve for use in accordance with § 208.42 not more than twenty-five (25) percent of the funds made available for higher education programs under § 208.21(b)(2).

(20 U.S.C. 3967(b))

§ 208.42 Use of funds by SAHEs.

(a)(1) Subject to the requirement in paragraph (a)(2) of this section, a SAHE shall use not less than twenty (20) percent of the funds made available for higher education programs under § 208.21(b)(2) for cooperative programs among IHEs, LEAs, SEAs, private industry, and nonprofit organizations for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages.

(2) In carrying out the requirement in paragraph (a)(1) of this section, the

SAHE shall give special consideration to programs involving consortial arrangements that include LEAs.

(b) A SAHE may not use more than five (5) percent of the funds made available for higher education programs under 208.21(b)(2) for—

(1) The State assessment of need required by § 208.13; and

(2) The costs incurred by the SAHE for administering and evaluating programs assisted under this part in the State.

(20 U.S.C. 3967 (c), (d), 3971(b))

§ 208.43 Use of funds by IHEs.

(a) Subject to the requirement in paragraph (b) of this section, an IHE shall use the funds awarded under § 208.41(a) for—

(1) Establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level;

(2) Retraining secondary school teachers, who specialize in disciplines other than the teaching of mathematics and science, to specialize in the teaching of mathematics, science, or computer learning, including provision of stipends for participation in institutes authorized under Title I of the EESA; and

(3) Inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics, science, and computer learning, including stipends for participation in institutes authorized under Title I of the EESA.

(b) To receive funds for programs under paragraphs (a) (2) and (3) of this section, an IHE shall enter into an agreement with an LEA, or a consortium of LEAs, to provide inservice training and retraining for elementary and secondary school teachers in public and private schools in the LEA or LEAs.

(c) Each IHE receiving funds under § 208.41(a) shall assure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics, science, and computer learning and careers for—

(1) Students from historically underrepresented and underserved populations; and

(2) Gifted and talented students.

(20 U.S.C. 3967(b))

§§ 208.44—208.50 [Reserved]

Subpart D—Fiscal Requirements

§ 208.51 Supplement, not supplant.

Any grantee or subgrantee that receives funds under this part—

(a) May use those funds only to supplement and, to the extent practicable, to increase the level of funds from non-Federal sources that would, in the absence of funds made available under this part, be made available for the purposes described in sections 206 and 207 of Title II; and

(b) May not use funds made available under this part to supplant funds from non-Federal sources.

(20 U.S.C. 3969(b)(6))

§§ 208.52—208.60 [Reserved]

Subpart E—Participation of Children and Teachers in Private Schools

§ 208.61 Participation of children and teachers in private schools.

(a) *Participation of children.* To the extent consistent with the number of children in the State or an LEA who are enrolled in private elementary and secondary schools, an SEA or LEA, after consultation with appropriate private school representatives, shall provide services and arrangements for the benefit of these children to ensure their equitable participation in the purposes and benefits of Title II.

(b) *Participation of teachers.* (1) To the extent consistent with the number of children in the State or an LEA who are enrolled in private elementary and secondary schools, and SEA, LEA, or SAHE, after consultation with appropriate private school representatives, shall provide teacher training, retraining, and inservice training to ensure the equitable participation of private school teachers in the purposes and benefits of Title II.

(2) To receive funds for programs under § 208.43(a) (2)–(3), an IHE shall meet the requirements in § 208.43(b) for serving teachers in private elementary and secondary schools.

(c) *Applicable requirements.* In fulfilling the equitable participation requirements in paragraphs (a) and (b) of this section, an SEA, LEA, or SAHE shall comply with the provisions in 34 CFR 76.651–76.662.

(20 U.S.C. 3966(b)(3), 3967(b)(3), 3971(a), (b))

§ 208.62 Bypass—General.

(a) The Secretary implements a bypass if an SEA, LEA, or SAHE—

(1) Is prohibited by law from providing the services under this part for private school children and teachers on an equitable basis as required in § 208.61; or

(2) Has substantially failed or is unwilling to provide the services under this part for private school children and teachers on an equitable basis as required in § 208.61.

(b) If the Secretary implements a bypass, the Secretary waives the responsibility of the SEA, LEA, or SAHE for providing Title II services for private school children and teachers and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the Title II services for private school children and teachers under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Title II funds. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected SEA, LEA, or SAHE the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(20 U.S.C. 3971(c))

§ 208.63 Notice by the Secretary.

(a) Before taking any final action to implement a bypass, the Secretary provides the affected SEA, LEA, or SAHE with written notice.

(b) In the written notice, the Secretary—

(1) States the reason for the proposed bypass in sufficient detail to allow the SEA, LEA, or SAHE to respond;

(2) Cites the requirement with which the SEA, LEA, or SAHE has allegedly failed to comply; and

(3) Advises the SEA, LEA, or SAHE that it has at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and to request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the SEA, LEA, or SAHE by certified mail with return receipt requested.

(20 U.S.C. 3971(c))

§ 208.64 Bypass procedures.

Sections 208.65–208.67 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(20 U.S.C. 3971(c))

§ 208.65 Appointment and functions of a hearing officer.

(a) If an SEA, LEA, or SAHE requests a show cause hearing, the Secretary

appoints a hearing officer and notifies appropriate representatives of the affected private school children and teachers that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the SEA, LEA, SAHE, and representatives of the private school children and teachers of the time and place of the hearing.

(20 U.S.C. 3971(c))

§ 208.66 Hearing procedures.

(a) At the hearing a transcript is taken. The SEA, LEA, SAHE, and representatives of the private school children and teachers each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the SEA, LEA, SAHE, representatives of the private school children and teachers, or Department of Education officials.

(20 U.S.C. 3971(c))

§ 208.67 Post-hearing procedures.

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the SEA, LEA, SAHE, representatives of the private school children and teachers, and the Secretary.

(b) The SEA, LEA, SAHE, and representatives of the private school children and teachers each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(20 U.S.C. 3971(c))

§ 208.68 Judicial review of bypass actions.

If an SEA, LEA, or SAHE is dissatisfied with the Secretary's final action after a proceeding under §§ 208.64–208.67, it may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(20 U.S.C. 3971(c))

§§ 208.69—208.70 [Reserved]

CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION

9. A cross-reference is added at the end of the table of contents to read as follows:

Cross-Reference. Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of all Students to That Instruction, 34 CFR Part 208.

Appendix—Summary of Revisions, Comments, and Responses

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

The following paragraphs summarize public comments received on the notice of proposed rulemaking (NPRM) implementing the program of State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction under Title II of the Education for Economic Security Act, and the Secretary's responses to those comments. The comments are organized according to the order of the sections in the final regulations.

General

Comment. One commenter suggested that the title of the regulations implementing Title II be amended to include "And For Increasing The Access Of All Students To Such Instruction."

Response. A change has been made. The title of the final regulations has been changed to reflect the statutory purpose in section 201 of Title II, as suggested by the commenter.

Comment. One commenter questioned when the list of critical foreign languages will be published and whether consultation with the specified officials as stipulated by section 212(d) of Title II will occur before the list is published.

Response. The proposed list of critical foreign languages was published for public comment in a notice in the Federal Register on April 15, 1985 at 50 FR 14743. As section 212(d) of Title II requires, the Secretary consulted with the Secretaries of State, Defense, and Health and Human Services and the Director of the National Science Foundation before publishing the proposed list. The Secretary published the final list of critical foreign languages in the **Federal Register** on August 2, 1985, at 50 FR 31412.

Section 208.3 Definitions That Apply to Programs Under This Part

Comment. Several commenters questioned why the definition of "gifted and talented student" was limited to the disciplines specified in Title II. The commenters recommended that § 208.3(c) include the broader definition in the Gifted and Talented Children's Education Act of 1978 rather than the more narrow definition.

Response. No change has been made. The definition of "gifted and talented children" contained in the Gifted and Talented Children's Education Act of 1978 includes children, for example, who possess demonstrated or potential abilities in the performing and visual arts and who demonstrate leadership ability. The Secretary does not believe it is appropriate to include the broader definition in a program that is aimed specifically at improving teaching and instruction in mathematics, science, foreign languages, and computer learning. All gifted and talented children, like other children, will benefit from such improved teaching and instruction.

Comment. One commenter questioned why the only place libraries, museums, and educational television stations are mentioned in the proposed regulations is in the definition of "private nonprofit organizations" in § 208.3(c). The commenter believed that this would preclude the involvement of public libraries, for example, thereby eliminating the great majority of libraries.

Response. A change has been made. Title II is internally inconsistent regarding the public or private nature of organizations authorized to participate in Title II programs. For example, section 206(b)(1) of Title II refers to "nonprofit private organizations." Section 206(e), on the other hand, refers to "nonprofit organizations," which would include public organizations. Section 207(c)(1) refers to "private nonprofit organizations," whereas section 208(c)(1)(E) refers to "public organizations." All of these sections list libraries, museums, and educational television stations, at a minimum, as examples of the types of organizations that are appropriate.

The legislative history of Title II is equally inconsistent. *See, e.g.*, S. Rept. 151, 98th Cong., 1st Sess. 7–8, 16 (1983); 130 Cong. Rec. S6638, S6649 (daily ed. June 6, 1984). In the discussion of section 207 of Title II, for example, the Senate Report speaks of the valuable services provided by public broadcasting programs even though section 207(c)(1)

refers to "private nonprofit organizations, including . . . educational television stations. . . ." S. Rept. 151, 98th Cong., 1st Sess. 16 (1983).

There is no persuasive evidence in either the statute or the legislative history that Congress sought to preclude either public or private libraries, museums, educational television stations, and other appropriate organizations from participating in Title II. Moreover, there is no indication that Congress intended only private libraries and museums, for example, to participate in programs under section 206(b)(1) of Title II while limiting involvement in the State's needs assessment process to only their public counterparts. Consequently, to promote competition, to enhance flexibility, and to recognize the valuable contributions both public and private organizations can make toward accomplishing the purposes of Title II, the Secretary has revised the regulations to refer to "nonprofit organizations," thereby permitting involvement by appropriate public and private organizations.

Comment. One commenter questioned why the definition of "private nonprofit organizations," which includes specific entities, does not include the term "other appropriate institutions" included in section 206(b) of Title II.

Response. A change has been made. The definition of "nonprofit organizations" in § 208.3(c) includes the phrase "other organizations." The Secretary believes the addition of this phrase addresses the commenter's concern and permits the potential for participation by any nonprofit organization interested in the purposes and programs of Title II.

Comment. One commenter requested that the definition of "private nonprofit organizations" be extended to include "institutions and centers whose primary purpose is to improve the educational opportunities of historically underrepresented and underserved groups."

Response. No change has been made. The entities listed in the definition in § 208.3(c) are only examples and in no way constitute an exhaustive list. As a result, the definition, particularly as revised, is sufficiently broad to include the organizations suggested by the commenter.

Comment. One commenter requested that § 208.3(c) be amended to include the definition for "handicapped children" found in Part B of the Education of the Handicapped Act.

Response. No change has been made. The Secretary has decided that to define "handicapped children" or any of the other groups of children classified as historically underrepresented or underserved would unduly restrict the flexibility of grantees under Title II to serve children who may not fit within the Federal definition.

Section 208.12 State application

Comment. One commenter suggested that § 208.12 prescribe specific criteria for submitting a State's application similar to the criteria contained in § 208.13. Another commenter recommended that separate applications be required from the SEA and the State agency for higher education (SAHE).

Response. No change has been made. Section 209(a) of Title II requires a State to file *an* application. Section 208.12 does not prescribe a precise format for that application in order to permit the State maximum flexibility to submit an application that best meets the State's needs. For example, a State may file an application consisting of two parts: one part completed by the SEA and one part completed by the SAHE. Another State may submit an application in which the elementary and secondary programs and the higher education programs are described together. Either format is acceptable, as long as the application meets the requirements of § 208.12(a).

Comment. One commenter questioned the requirement in § 208.12(a)(4)(i) that requires the State application to provide procedures for submitting applications for both the elementary and secondary portion and the higher education portion of the program. The commenter pointed out that section 209(b)(4))(A) of Title II only requires procedures for submitting applications for the elementary and secondary portion of the program.

Response. No change has been made. Although section 209(b)(4)(A) of Title II only specifically mentions "programs described in Section 206," several other aspects of section 209(b)(4) support the Secretary's decision to require a State's application to describe the procedures regarding the submission of applications for higher education programs as well as for elementary and secondary education programs.

First, section 209(b)(4)(A) refers to applications by "local educational agencies, institutions of higher education, junior or community colleges, and other organizations for programs described in section 206. . . ." Although it is possible that institutions of higher education (IHEs), junior or community colleges, and other organizations may apply for the funds the SEA reserves under section 206, nearly three-fourths of the funds for elementary and secondary programs must be distributed to LEAs. As a result, it would appear unnecessary for section 209(b)(4)(A) to include procedures for submitting applications from IHEs, for example, unless the section includes procedures for submitting applications for higher education programs.

Second, section 209(b)(4)(B) requires a State's application to describe the procedures "for approval of applications by the *appropriate State agency*" (emphasis added). Thus, section 209(b)(4)(B) clearly includes procedures for both the SEA and the SAHE. It seems anomalous to limit § 208.12(a)(4)(i) to applications concerning elementary and secondary education programs when § 208.12(a)(4)(ii) clearly applies to applications for higher education programs too.

Comment. One commenter requested that LEAs be apprised of what would constitute rejection of an LEA application.

Response. No change has been made. In accordance with an SEA's supervisory and administrative responsibilities in § 208.12(a)(1)(i), the SEA is responsible for developing LEA application requirements and for assisting LEAs in submitting successful applications. Because LEAs are entitled to receive funds on a noncompetitive formula basis under Title II, it is unlikely that LEA applications that meet the SEA's requirements will be rejected. If an SEA does decide to reject an LEA's application, section 209(b)(4)(B) of Title II and § 208.12(a)(4)(ii) of the regulations require the SEA to provide the LEA notice and an opportunity for a hearing before disapproving the application.

Comment. One commenter questioned why the term "appropriate" was omitted before the terms "procedures" and "State agency" in § 208.12(a)(4)(ii).

Response. A change has been made. The term "appropriate" precedes the terms "procedures" and "State agency" in §208.12(a)(4)(ii). This change makes § 208.12(a)(4)(ii) consistent with section 209(b)(4)(B) of Title II.

Comment. One commenter, noting that § 208.12(a)(4)(ii) requires the use of Federal hearing procedures, questioned the legislative authority for this requirement.

Response. No change has been made. Section 209(b)(4)(B) of Title II and § 208.12(a)(4)(ii) of the regulations require a State agency to provide an applicant notice and opportunity for a hearing before disapproving an application. The hearing procedures referenced in § 208.12(a)(4)(ii) are contained in 34 CFR 76.401 of the Education Department General Administrative Regulations (EDGAR). 34 CFR Part 76 of EDGAR, which governs

most of the Department's State-administered programs, applies to Title II. *See* § 208.2(b). Thus, the hearing procedures in 34 CFR 76.401 also apply. As indicated in 34 CFR 76.401(d), an SEA must follow prescribed procedures before disapproving an application. Those procedures are required by section 425(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1231b-2(a). A SAHE, however, is not required to use those procedures. *See* 34 CFR 76.401(e). Thus, the requirement in § 208.12(a)(4)(ii) to use Federal hearing procedures actually only affects SEAs, which are required by statute to use those procedures.

Comment. One commenter recommended that § 208.12(a)(4)(ii), which requires notice and opportunity for a hearing prior to disapproval of an application, not apply to the ranking of applications from IHEs.

Response. No change has been made. As § 208.12(a)(4)(ii) specifically states, the "Secretary does not interpret disapproval of an application to include a determination by a SAHE as to the relative merit of a competing application under § 208.41(a)." Thus, § 208.12(a)(4)(ii) does not require notice and opportunity for a hearing for unsuccessful applicants after a SAHE ranks and selects successful applications from IHEs.

Comment. One commenter requested that a clarification be included in §§ 208.12(a)(4)(ii), 208.12(a)(5)(i) and (iv), and 208.13(a)(1) and (2) to provide for the specific involvement of teachers.

Response. No change has been made. As written, the regulations accurately reflect the statutory requirements. Moreover, the regulations include sufficient flexibility to permit the specific involvement of teachers, if a State so chooses. Sections 208.12(a)(5)(i) and 208.13(a)(1) and (2), in particular, already involve teachers because teacher organizations are one of the groups listed in § 208.13(c) with which the State must consult in developing its needs assessment.

Comment. One commenter questioned why the assurance required in section 209(b)(5)(C) of Title II, which requires a State to assure that the LEA needs assessments will be carried out, is not included in § 208.12.

Response. No change has been made. The assurance regarding LEA needs assessments is contained in § 208.12(a)(5)(iii).

Section 208.13 State assessment of need

Comment. Several commenters requested the dates when funds become available for obligation and when the preliminary needs assessment is due.

Response. No change has been made. Funds are presently available. Grants will be awarded as soon as a properly completed State application is submitted to the Department, reviewed, and approved. The preliminary needs assessment must be prepared not later than nine months after a State receives its Title II grant.

Comment. One commenter, interpreting § 208.13(a)(1) to require a State to make its preliminary needs assessment available to LEAs after the LEAs have submitted their needs assessments and the State has examined those assessments, questioned whether this interpretation is correct.

Response. No change has been made. Section 210(a) of Title II requires an LEA to submit its needs assessment to the SEA in order to receive a grant award under Title II. Section 208(a) of Title II, on the other hand, permits a State to prepare its preliminary needs assessment within nine months after it receives a grant award under Title II. Thus, § 208.13(a)(1) accurately reflects these statutory provisions when it requires a State to examine the LEAs' needs assessments in preparing its preliminary assessment. This provision is supported by the Senate Report, which states that "it is expected that the state assessments will incorporate the findings of the local educational agency assessments required under section 210, but will in fact be more comprehensive than those local assessments." S. Rept. 151, 98th Cong., 1st Sess. 16–17 (1983). A State must make its needs assessment available to LEAs to enable the LEAs to meet the requirement in section 210(b) of Title II that, for the second year for which funds are available, the LEAs address unmet needs described in the State's needs assessment.

Comment. One commenter requested that § 208.13(a)(2) require a State to include with its final State assessment of need the methodology used for the State's needs assessment. The commenter suggested that the Department publish these methodologies in the **Federal Register** or print them in a report.

Response. No change has been made. Section 208 of Title II contains no requirement that a State submit to the Department the methodology it used to conduct its needs assessment. Such information may be obtained by contacting the individual States.

Comment. One commenter requested that the term "appropriate" precede "instruction" in §§ 208.13(b)(2)(iv) and 208.33(a)(3) to assure improved access to appropriate instruction for the handicapped.

Response. No change has been made. Sections 208.13(b)(2)(iv) and 208.33(a)(3) accurately reflect the statutory language.

Comment. One commenter requested clarification of the phrase "developed in consultation with" in § 208.13(c)(1). In particular, the commenter questioned whether the phrase involves design of the assessment as well as the collection, analysis, and presentation of the assessment data.

Response. No change has been made. Section 208(c)(1) of Title II appears to comtemplate consultation at all stages of the needs assessment process. There is no requirement, however, that representatives of every group listed in § 208.13(c)(1) participate in all phases of that process. Thus, § 208.13(c)(1) provides maximum flexibility to a State to establish a level of involvement that meets the State's needs and is commensurate with the wishes of the individuals and groups involved.

Comment. One commenter questioned whether the requirement in § 208.13(c)(1) that the State needs assessment be developed in consultation with representatives of various entities refers to both the preliminary needs assessment and the final needs assessment or only to the final needs assessment.

Response. No change has been made. Section 208(c)(1) of Title II does not appear to limit the consultation required by that section to only the State's final needs assessment. As a result, the consultation requirement in § 208.13(c) applies to both the preliminary and final needs assessments. Consultation, however, does not have to be conducted through a State advisory committee. Rather, the consultation can occur directly with representatives of the entities listed in § 208.13(c)(1).

Comment. One commenter suggested that the SEA should control the needs assessment process and should be responsible for determining who should be consulted in its development.

Response. No change has been made. Section 208 of Title II and § 208.13 of the regulations place responsibility on the *State* for completing the assessment of need. Section 208(c)(2) of Title II and § 208.13(c)(2) of the regulations indicate that the assessment must be submitted jointly by the SEA and the SAHE. Of course, a State could assign responsibility to the SEA for conducting the needs assessment process.

Comment. One commenter questioned the addition of "private nonprofit organizations" in § 208.13(c)(1)(v) when that term was not included in section 208(c)(1)(E) of Title II. Another

commenter recommended modifying "public and private nonprofit organizations" to include libraries, museums, educational television stations, and professional scientific and mathematics associations as section 208(c)(1)(E) of Title II specifies.

Response. A change has been made. Section 208.13(c)(1)(v) has been revised to refer to "other nonprofit organizations." The reason for this change is explained in the response under § 208.3 concerning the definition of "nonprofit organizations."

Comment. One commenter requested that "private firms engaged in computer hardware manufacturing and computer software development" be added to the list of entities in § 208.13(c)(1) that must be consulted in the development of the State needs assessment.

Response. No change has been made. The entities listed in § 208.13(c)(1) are those required by section 208(c)(1) of Title II. Rather than add an entity not required to be consulted by the statute, the Secretary believes that the term "private industry" in § 208.13(c)(1)(iv) is sufficiently inclusive to permit representation of the firms suggested by the commenter.

Section 208.22 Reallotment to States.

Comment. One commenter requested that the Department utilize State needs assessments prior to reallocating funds under § 208.22 to assure equity and maximum benefits.

Response. No change has been made. If it is ever necessary for the Secretary to reallocate funds because States do not need the full amount to which they are entitled under § 208.21, the Secretary will rely on the States' needs assessments and any other information the Secretary may have available.

Comment. One commenter requested that the funding level not be reduced for a State that has met the needs identified in its needs assessment without that State being given an opportunity to develop an amended needs assessment that would utilize the State's full allocation.

Response. A change has been made. Section 208.22(a) has been revised to indicate that the Secretary will not reallocate a State's Title II funds without consulting with the State. Thus, the State will have sufficient opportunities to justify its need for its full allocation under Title II before the Secretary reallocates any of that allocation to other States.

Section 208.23 Allotment to the Insular Areas.

Comment. One commenter stated that, under § 208.23, the Secretary allots "up to one-half" to the Insular Areas whereas, under § 208.24, he allots "not less than one-half" to the Bureau of Indian Affairs (BIA). The commenter recommneded that the Insular Areas be given the same consideration as the BIA.

Response. No change has been made. The language in §§ 208.23 and 208.24 accurately reflects section 204(c) of Title II. At the present time, as the allocation tables indicate, the Secretary intends to allot one-half of the amount available for carrying out section 204(c) of Title II to the Insular Areas and one-half to the BIA.

Comment. One commenter recommended that, if an Insular Area consolidates its Title II entitlement, the Insular Area be required to reserve 30 percent of that entitlement for higher education activities.

Response. No change has been made. Title II funds have been deemed eligible for consolidation. As a result, those funds can be used to achieve any of the purposes to be served by the programs that are consolidated. Only if an Insular Area chooses to use some or all of its consolidated grant on programs under Title II would the Insular Area be required to expend 30 percent of those funds for higher education programs.

Section 208.24 Allotment to the Bureau of Indian Affairs.

Comment. One commenter suggested that the regulations in Part 208, particularly those dealing with the State application, assessment of need, and use of funds to improve access for historically underrepresented and underserved populations, also apply to the BIA.

Response. No change has been made. Like other programs in which the Secretary makes grants to the BIA, the Secretary will enter into a Memorandum of Understanding with the BIA regarding the BIA's responsibilities under Title II.

Section 208.32 LEA application and renewal.

Comment. One commenter suggested that § 208.32(a)(3) be revised to include a requirement that a teacher remain in the LEA for a specified period of time in exchange for retraining or inservice training.

Response. No change has been made. There is nothing in Title II that would authorize the Secretary to impose such a requirement on teachers participating in training programs under Title II.

Comment. One commenter questioned why the information pertaining to unmet needs is required by §§ 208.32(b)(2) to be in the application rather than in the needs assessment as required by section 210(b) of Title II.

Response. No change has been made. Section 206(b)(3) of Title II requires an LEA to submit certain information to the SEA to receive a renewal of funds for the second year of the Title II program. Thus, because the LEA is already required to submit additional evidence to receive Title II funds for the second year, the Secretary determined that it would be most efficient for the LEA to include in that submission the description required by section 210(b) of Title II concerning how the services provided with Title II funds in the second year of the program would address unmet needs described in the State's assessment of need. Otherwise, the LEA would have to submit two documents to the SEA for the second year.

Comment. One commenter requested that § 208.32 allow LEAs broad flexibility in developing their applications.

Response. No change has been made. As indicated in § 208.12(a)(1)(i), the SEA is the agency responsible for the administration and supervision of the elementary and secondary education programs under Title II. Accordingly, § 208.32(a) properly places the responsibility on the SEA for determining the contents of its LEAs' applications.

Comment. One commenter suggested that LEAs which choose to "share responsibilities" should not be required to submit individual applications and to conduct individual needs assessments. Rather, the commenter suggested that intermediate school districts would be better able to carry out these responsibilities.

Response. No change has been made. Only LEAs are eligible to receive grants under § 208.34. To receive those funds, and LEA must submit an application and an assessment of need. If the intermediate school district qualifies as an LEA and has been selected by a group of LEAs to provide services under Title II, then the intermediate district, rather than the individual districts, may apply for Title II funds and conduct the needs assessment. There may not be a "double" application for funds, however, by the intermediate unit and by the individual LEAs.

Section 208.33 LEA assessment of need.

Comment. One commenter requested an amendment to § 208.33(a)(1) to include guidance counselors under the category of "appropriate school personnel."

Response. No change has been made. Guidance counselors would certainly be

included under the term "appropriate school personnel."

Comment. One commenter suggested amending § 208.33(c) to reflect the needs of children and teachers in private schools that choose to participate in the Title II program. The commenter noted that it may be difficult to obtain information from private schools that do not choose to have their children and teachers participate.

Response. No change has been made. An LEA's needs assessment should be as comprehensive as possible. If private schools choose not to participate or to provide information to the LEA, however, the LEA would not be able, or be required, to include information about the teachers and children in those schools in its need assessment.

Section 208.34 Allocation of funds.

Comment. One commenter questioned whether the funds generated by the children specified in § 208.34(a)(2) had to be used for services to those students or whether the funds could be used for services to benefit all students.

Response. No change has been made. There is no requirement in Title II that the funds generated by children from low-income families in § 208.34(a)(2) be used for programs for only those children.

Section 208.35 Use of funds by LEAs.

Comment. One commenter requested inclusion of a "miscellaneous" category for innovative programs to stimulate more creative approaches.

Response. No change has been made. Flexibility for those programs is inherent in the regulations.

Comment. One commenter requested the specific inclusion of special education teachers of mathematics and science in § 208.35(a).

Response. No change has been made. Section § 208.35(a) accurately reflects the statutory language in section 206(b)(1)(A) of Title II. Nothing in this language in any way excludes special education teachers of mathematics and science from receiving the retraining and inservice training to be provided under § 208.35(a).

Comment. One commenter inquired why the waiver provision in § 208.35(b) differs slightly from that found in the statute. According to the commenter, the statute permits a waiver if an LEA has met its training and retraining needs; the regulations permit a waiver if an LEA does not need some or all of the funds to meet the needs for training and retraining.

Response. No change has been made. The Secretary believes that § 208.35(b) is wholly consistent with the statute. Like section 210(c) of Title II, § 208.35(b) of the regulations requires an LEA to meet fully its training and retraining needs in mathematics and science. However, if the LEA can fully meet those needs without using all of the funds it receives under Title II, § 208.35(b) makes clear that the LEA can request a waiver so that it can use the remaining Title II funds for the purposes in § 208.35(c).

Comment. One commenter recommended amending § 208.35(c)(1) to delete the use of funds to purchase equipment and instructional materials.

Response. No change has been made. Section 206(b)(1)(B) of Title II specifically authorizes an LEA to use Title II funds for instructional materials and equipment related to mathematics and science instruction after the LEA's training and retraining needs in mathematics and science have been met.

Comment. One commenter requested that LEAs be allowed to determine specific percentage ceilings for the purchase of instructional materials and equipment.

Response. No change has been made. The percentages limiting the purchase of instructional materials and equipment in § 208.35(c)(2)(i) are stipulated in section 206(c)(1) of Title II.

Comment. One commenter recommended that § 208.35(d) be changed to require LEAs to enter into agreements with IHEs to carry out training and instruction. The proposed regulations make such agreements optional.

Response. No change has been made. Section 208.35(d) accurately reflects the statutory language in section 206(b)(1) of Title II that makes agreements with IHEs permissible but not mandatory.

Section 208.36 Use of funds by SEAs.

Comment. One commenter questioned the constitutionality of establishing a set-aside of Title II funds that must be used for private nonprofit schools.

Response. No change has been made. Section 208.36 does not contain a set-aside of Title II funds that must be used for private schools. Rather, § 208.36(a), consistent with section 211 of Title II, requires an SEA to use the Title II funds reserved for its use to provide benefits for children and teachers in both public and private schools.

Comment. One commenter requested that § 208.36(a)(2) be amended to include an explanation of the types of projects which are intended for the historically underrepresented and underserved.

Response. No change has been made. This decision should be determined by the SEAs. However, the Senate Report accompanying Title II contains several examples:

> These programs could include, (1) counseling programs and career workshops to increase knowledge of and access to scientific and technical careers, such as the "Women in Medicine" currently being operated by the Harvard Medical School, (2) extracurricular activities, such as after-school programs offering hands-on or practical experience with computers and other equipment, or, (3) programs for counselors, teachers, students, and parents to increase awareness of the status of underrepresented groups in mathematics and science programs and of the need for mathematics and science in future careers.
>
> S. Rept. 151 98th Cong., 1st Sess. 14 (1983).

Comment. One commenter inquired why the phrase "if appropriate" was added in § 208.36(b) in referring to IHEs and nonprofit organizations when this phrase was not included in the statute.

Response. No change has been made. The phrase "if appropriate" was included in § 208.36(b) to indicate to SEAs that technical assistance may not be necessary for IHEs and nonprofit organizations because those institutions and organizations may not be conducting programs under § 208.35. Section 208.35 is primarily directed at LEA activities.

Section 208.41 Allocation of funds.

Comment. One commenter recommended that the reference to IHEs in § 208.41(a)(1) be modified to require those institutions to be State-authorized.

Response. No change has been made. According to section 3(6) of Title II, the term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965, as amended. That definition includes a requirement that, to be considered an IHE, the institution must be legally authorized within a State to provide a program of education beyond secondary education.

Comment. One commenter suggested that the rules for applying for funds for higher education programs under Title II state that those funds are to be made available on a competitive basis only.

Response. No change has been made. Section 208.41(a)(1) clearly states that a "SAHE shall distribute *on a competitive basis* to IHEs within the State that apply for payments" not less than 75 percent of the funds made available for higher education programs (emphasis added).

Comment. One commenter requested clarification of the competitive process for higher education programs under § 208.41(a)(1) since § 208.41(a)(2) and section 207(b)(1)(B) of Title II call for the

equitable participation of private and public IHEs.

Response. No change has been made. In order to meet the equitable participation requirement in section 207(b)(1)(B) of Title II and § 208.41(a)(2) of the regulations and still make awards to IHEs on a competitive basis, a SAHE must ensure that private and public institutions are provided every opportunity to apply and compete for funds. The awards, however, must be made on a competitive basis, as required by section 207(b)(1)(B) and § 208.41(a)(1) of the regulations, without consideration of the private or public nature of the institution.

Comment. One commenter recommended involvement of the faculty in procedures, assessments, and program implementation by IHEs funded under Title II.

Response. No change has been made. The degree of faculty involvement in procedures, assessments, and program implementation is an institutional prerogative. Since the awards under this program are competitive, however, IHEs would most likely involve their faculties in order to improve the quality of their proposals.

Section 208.42 Use of funds by SAHEs.

Comment. One commenter suggested that LEAs be permitted to be the lead agency in contracting with IHEs to establish consortial arrangements under § 208.42(a).

Response. No change has been made. Section 208.42(a)(1) requires a SAHE to use a portion of its Title II funds for cooperative programs among IHEs, LEAs, SEAs, private industry, and nonprofit organizations. Depending on how the State agency structures its use of those funds, it is entirely possible that an LEA could be the lead agency in developing a cooperative program. Moreover, as provided in § 208.35(d), an LEA may carry out training and instruction through agreements with private industry, IHEs, and nonprofit organizations. Under these circumstances, the LEA would be the lead agency.

Section 208.43 Use of funds by IHEs.

Comment. One commenter expressed concern that higher education grants would be limited to teacher-training institutions and suggested that consideration also be given to institutions without schools of education.

Response. No change has been made. Funds for IHEs are in no way restricted to teacher-training institutions. Any IHE in a State may apply.

Comment. One commenter suggested that IHEs be permitted to use Title II funds to procure mathematics, science, and computer equipment in order to conduct training and retraining programs.

Response. No change has been made. Section 208.43 accurately reflects the authorized uses of funds by IHEs contained in section 207(b) of Title II. IHEs may expend Title II funds to procure equipment if that equipment is an integral part of the proposal funded through the competitive process.

Comment. One commenter noted that there are no criteria for selecting teachers for traineeship programs that may be established by IHEs under § 208.43(a)(1) and asked if teachers applying for those programs are to secure their own placement or be sponsored by LEAs.

Response. No change has been made. Section 207(b)(2)(A) of Title II does not prescribe any criteria for selecting teachers for traineeship programs that may be funded by IHEs. As a result, it appears that IHEs may establish their own criteria, which they would most likely describe in their applications for Title II funds. Although not expressly required, there is nothing is section 207(b)(2)(A) of Title II or section 208.43(a)(1) of the regulations to prohibit an IHE from entering into an agreement with an LEA or LEAs, which would sponsor teachers to be trained.

Comment. One commenter requested that the subgroups in § 208.43(c)(1) and (2) be combined or that § 208.43(c)(1) be expanded to include all entities that are described under the term "underrepresented" in section 207(b)(2).

Response. No change has been made. The definition of "historically underrepresented and underserved populations" in § 208.3(c) adequately describes all of the entities that are included in section 207(b)(2). The use of subgroups is not meant to signify any greater importance of gifted and talented students than of the populations defined as historically underrepresented and underserved.

Section 208.61 Participation of children and teachers in private schools.

Comment. One commenter requested that SEAs assist LEAs to cover their administrative costs in determining the needs of private school children and teachers.

Response. No change has been made. Sections 206(f) of Title II and 208.36(c) of the regulations prohibit and SEA from using more than five percent of the funds made available for elementary and secondary education programs in the State for the State assessment of need and the costs incurred by the SEA for administering and evaluating elementary and secondary programs under Title II. Thus, it is doubtful that SEAs will be of assistance to LEAs concerning administrative costs. An LEA may use its own Title II funds to pay for reasonable administrative costs for providing Title II services to private school children and teachers as well as to public school children and teachers. The rate for charging those costs, however, must be applied equally to the amounts of Title II funds available for services to public and private school children and teachers.

Comment. One commenter requested information pertaining to the specific responsibilities of LEAs in meeting the needs of teachers and children in private elementary and secondary schools.

Response. No change has been made. As indicated in § 208.16(c), in fulfilling the equitable participation requirements in section 211 of Title II, and LEA must comply with the provisions in 34 CFR 76.651–76.662 of EDGAR.

Comment. One commenter requested that § 208.61 include a broader definition of private schools to include those serving handicapped and gifted children.

Response. No change has been made. "Private," as defined in 34 CFR 77.1 of EDGAR, means a school that "is not under Federal or public supervision or control." "Elementary school" and "secondary school," as defined in section 198(a)(7) of the Elementary and Secondary Education Act of 1965, are dependent upon how State law defines elementary and secondary education. Provided that a private entity serving handicapped or gifted children provides elementary or secondary education under State law, that school would be included under the definition of private school in Title II.

Comment. One commenter requested a more detailed definition of the term "equitable participation" as it refers to the participation of teachers in private schools. In particular, the commenter expressed concern that an LEA cannot conduct activities under § 208.35(c) until the LEA has assured that *all* teachers, including private school teachers, are trained in mathematics and science.

Response. No change has been made. As stated in § 208.61(c), the provisions in 34 CFR 76.651–76.662 of EDGAR contain the requirements for "equitable participation." As the Secretary envisions the waiver provision in § 208.35(b), however, a waiver would be able to be received if public and/or

private school teacher training needs in mathematics and science are met. The waiver would apply only to that segment in which the needs are met. For example, if the mathematics and science training needs of private school teachers are met, a waiver could be granted to permit training of private school teachers in foreign languages. That waiver would not extend to public school teachers, however, unless their needs in mathematics and science are also met. Obviously, the converse would also be true.

Sections 208.62–208.68 Bypass procedures

Comment. One commenter requested information on the origin of the bypass procedures and asked if the procedures were identical to those used in any other programs.

Response. No change has been made. Bypass procedures were originally developed to implement bypass provisions in Titles I and IV of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2740(b); 3086(d)–(h)). Those procedures were in 34 CFR 201.90–201.97 (1981) (Title I) and 34 CFR 774.81–774.82 (1981) (Title IV). Currently, bypass provisions are contained in five programs: Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3806(b)); Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3862(d)–(i)); Part B of the Education of the Handicapped Act (EHA) (20 U.S.C. 1413(d)(1)); the Follow Through Act (42 U.S.C. 9861(b)); and the Bilingual Education Act (20 U.S.C. 3231(j)). Bypass procedures virtually identical to those proposed in Part 208 implement the Chapter 1 bypass provision (34 CFR 200.80–200.85 (1984)) and the Chapter 2 bypass provision (34 CFR 298.31–298.36 (1984)). The bypass procedures for the EHA (to be codified in 34 CFR Part 300) are generally similar, although they have been adopted to conform to that statute's specific requirement. Follow Through and the bilingual program do not have regulatory bypass procedures.

Comment. One commenter requested that a process, similar to that provided to ensure the equitable participation of private school children and teachers in the purposes of Title II, also be provided for children and teachers in public schools.

Response. No change has been made. Title II requires the equitable participation of private school children and teachers in the purposes and benefits of Title II. Whether equitable participation is being provided is determined through the due process procedures in §§ 208.62–208.68 by comparing the benefits provided to private school children and teachers with those provided to public school children and teachers. Because the LEA operates the program, there is no need for similar due process procedures for public school children and teachers.

Comment. One commenter questioned why there is no discussion of the provisions relating to withholding and judicial review that are described in section 211(c) of Title II.

Response. A change has been made. Provisions regarding the withholding of funds pending final resolution of a bypass and judicial review of the Secretary's decision regarding a bypass are contained in §§ 208.62(c) and 208.68, respectively.

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Friday
October 25, 1985

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 98

Importation of Certain Animal Embryos; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 85-078]

Importation of Certain Animal Embryos

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. These regulations provide a mechanism to allow the importation of such embryos without presenting a significant risk of introducing infectious animal diseases.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. D.E. Herrick, Senior Staff Veterinarian, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on October 22, 1984 (49 FR 41257-41261), proposed to establish regulations governing the importation of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. In essence, the proposal set forth provisions to allow the importation of embryos only if certain determinations are made concerning the disease status of the donor sire and the donor dam, and only if adequate measures are taken to prevent contamination of the embryo. Based on the rationale set forth in the proposal and in this document, the provisions of the proposal have been adopted as a final rule with certain changes explained below.

The document of October 22, 1984, invited the submission of written comments on or before December 21, 1984. In a document published in the **Federal Register** on January 14, 1985 (50 FR 1863), the comment period was extended until July 15, 1985. Also, in accordance with a notice published in the **Federal Register** on April 2, 1985 (50 FR 13042), a public hearing was held in Kansas City, Missouri, on May 15, 1985.

Fifteen persons made statements at the public hearing. Also, thirty-three additional written comments were submitted in response to the proposal. Comments were received from representatives of the embryo transfer industry, the zoological community, cattle breed registry organizations, veterinary associations, a State Department of Agriculture, a national animal health organization, a group of animal health authorities representing several European countries, and other interested individuals. Comments submitted in response to the proposal have been carefully considered and are discussed below.

The final rule, consistent with the proposed rule, defines an "embryo" as:

> The initial stage of an animal's development after collection from the natural mother, while it is capable of being transferred to a recipient dam, but not including an embryo that has been transferred to a recipient dam.

Such embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses are referred to below as "embryos" (or "embryo" if in the singular).

Washing of Bovine Embryos

As noted above, the regulations established by this document provide for determinations concerning the disease status of embryos to be based on the disease status of the donor sire and the donor dam. Several commenters asserted that determinations concerning the disease status of bovine embryos should be based on "washing" the embryos and testing the wash fluids for evidence of disease organisms. In this connection, it was asserted that many viruses are unable to penetrate the zona pellucida of preimplantation embryos, and that, although disease agents may adhere to the zona pellucida, embryos with intact zona pellucida can be washed to render them free of bacterial and viral contamination. One commenter asserted further that "present data suggests it [the proposed rule] is not as safe a way to move embryos" as the "washing" provisions suggested by the commenters and, therefore, that the adoption of the proposed provisions "could be endangering our national herds."

No changes are made in this final rule based on these comments. No evidence has been presented to the Department to establish that allowing the importation of embryos into the United States based on the concepts contained in the proposed rule would present a significant risk of introducing infectious animal diseases. Further, based on the rationale set forth in the proposal and in this document, it has been determined that embryos imported into the United States in compliance with the provisions of this final rule would not present a significant risk of introducing infectious animal diseases. Also, it should be noted that the Department is considering whether changes should be made in the regulations established by this document to allow the disease status of embryos to be determined under conditions similar to those suggested by these commenters as an alternative to those conditions established by this document. Any action to amend the regulations in this regard would be the subject of a future rulemaking proceeding.

Intact Zona Pellucida

One commenter suggested as an additional condition for the importation of bovine embryos that they be required to have an intact zona pellucida. Although the suggested change was limited to bovine embryos, it has been determined that an intact zona pellucida at the time the embryo is placed into its immediate container (straw or ampule) for shipping should be required for embryos of all species in order to help ensure that there is no bacterial or viral contamination on the embryo. Therefore, the final rule includes, as a condition of importation, a requirement that the embryo was determined, based on microscopic examination, to have an intact zona pellucida at the time it was placed into its immediate container (straw or ampule) for shipping. Also, it should be noted that such examinations are already routinely being performed prior to placing embryos in such immediate containers.

Embryos Conceived as a Result of Natural Breeding

It was proposed as a condition of importation of embryos, that, among other things,

> The embryo was conceived as a result of artificial insemination with semen collected from a donor sire at an approved artificial insemination center; [and]
>
> The donor dam conceived the embryo after being inseminated in an approved embryo transfer unit with semen collected at an approved artificial insemination center.

Several commenters suggested that natural breeding be allowed as an alternative to artificial insemination. Some of these commenters also suggested that natural breeding be allowed to take place at locations other than an approved embryo transfer unit. These commenters asserted that ignorance of the reproductive biology and reproductive cycles of many species, coupled with the need for chemical immobilization for both sire and dam to obtain semen and

subsequent insemination makes the artificial insemination requirement both impractical and oftentimes risky for some species. These commenters asserted further that requiring the use of an approved embryo transfer unit would cause the disruption of a stable animal population and put much more strain on the wild and captive populations.

The proposed provisions concerning an approved artificial insemination center and an approved embryo transfer unit were designed to provide added protection against the presence of infectious animal diseases in either the donor sire at the time of collection of the semen or the donor dam at the time of collection of the embryo. As indicated in the proposal at 49 FR 41258, "[t]hese facilities use isolation, testing, and security measures to help ensure the disease-free status of donor sires and donor dams. Such facilities must also meet the legal requirements concerning disease prevention of the countries in which they are located." It has been determined that embryos produced as a result of natural breeding would have similar protection against the presence of animal diseases in either the donor sire at the time of natural breeding or in the donor dam at the time of natural breeding and at the time of collection of the embryo if these activities were conducted at an approved embryo transfer unit. Therefore, the final rule allows the importation of embryos conceived as a result of natural breeding at an approved embryo transfer unit. The final rule does not provide for such natural breeding to take place at other than an approved embryo transfer unit since there is no assurance that the protections referred to above would be available other than at an approved embryo transfer unit.

Also, it should be noted that there is nothing in the regulations to preclude the use of mobile approved embryo transfer units. Mobile units approved by the country in which they are located could provide the flexibility needed to keep disruption of animal populations at a minimum while still providing the safeguards necessary to prevent the introduction of infectious animal diseases into the United States.

Approval of Artificial Insemination Centers and Embryo Transfer Units

Several commenters questioned whether foreign zoos could be approved as artificial insemination centers or as approved embryo transfer units. An approved artificial insemination center is defined in § 98.1 of the final rule as "[a] facility approved or licensed by the government of the country in which the facility is located to collect and process semen under the general supervision of such government." An approved embryo transfer unit is defined in § 98.1 of the final rule as "[a] facility approved or licensed by the government of the country in which the facility is located for the artificial insemination of donor dams or for conception as a result of natural breeding by the donor sire and for collecting and processing embryos for export under the general supervision of such government." The regulations do not preclude a zoo that meets the requirements of the government of the country in which the facility is located from being approved or licensed as either an artificial insemination center or an embryo transfer unit.

One commenter incorrectly assumed that the approval of artificial insemination centers and embryo transfer units would be granted by the United States government. The final rule, consistent with the proposed rule, provides that the government of the country in which a facility is located is responsible for approving or licensing the facility.

Importation of Embryos From Countries Where Foot-and-Mouth Disease or Rinderpest Exists

The regulations in 9 CFR Part 92 currently provide a mechanism for the importation of wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists if such animals are intended for exhibition in an approved zoological park and if certain specified requirements are met. One commenter suggested that the embryos of these animals be allowed to be imported under conditions similar to those required for the importation of such wild ruminants and wild swine.

No changes are made in this final rule based on this comment. The Department is considering whether changes should be made in the regulations established by this document to provide special provisions similar to those suggested by the commenter. Any action to amend the regulations in this regard would be the subject of a future rulemaking proceeding.

Leptospirosis

Two commenters suggested that a final rule not be established until additional research is completed on the potential for transmission of leptospirosis (a bacterial infection) by embryo transfer. No changes are made based on these comments. A donor dam infected with leptospirosis could contaminate an embryo. As noted above, the regulations established by this document provide for the disease status of embryos to be based on determinations concerning the donor sire and the donor dam. Under the regulations an embryo would not be allowed to be imported if there is a basis for denying an import permit for the donor sire or the donor dam. Clinical signs of leptospirosis would constitute a basis for denying an import permit. However, the Department does not currently require the testing of animals imported into the United States for leptospirosis. Leptospirosis is not the type of disease that presents a risk of causing an epidemic in the United States. Also, antibiotics are an effective treatment for leptospirosis. Therefore, it does not appear necessary to postpone allowing the importation of embryos pending the completion of a study on this disease.

Suggestions for Additional Requirements for Determining Disease Status

Commenters suggested that additional requirements for the importation of animal embryos be included in the final rule. In this connection, the following additional requirements were suggested:

(1) That the donor dam be a resident of the exporting country for at least six months prior to the collection of the embryo,

(2) That there has been no clinical, microbiological, or serological evidence of brucellosis or tuberculosis or clinical evidence of any disease exotic to the United States on the premises holding the donor dam or at the approved embryo transfer unit for at least six months prior to the collection of the embryo,

(3) That the donor dam be vaccinated for brucellosis and similar diseases,

(4) That the donor dam remain at the approved embryo transfer unit until the offspring is born, and

(5) That the offspring meet certain health requirements at birth and at 30 days of age.

No changes are made based on these comments.

This document allows the importation of animal embryos only if certain determinations are made concerning the disease status of the donor sire and the donor dam and only if adequate measures are taken to prevent contamination of the embryo. Under the provisions of the final rule, the donor sire and donor dam must be eligible for a health certificate required as a condition for the importation into the United States and there must not be a basis for denying an import permit for the donor sire or donor dam.

The requirements suggested by the commenters are not currently necessary

to obtain a health certificate or an import permit. Further, it does not appear that any of the suggested requirements on the importation of animal embryos would provide significant additional protection against the introduction of infectious animal diseases into the United States.

Undesirable Genetic Characteristics

One commenter suggested that the final rule contain an additional provision requiring that the donor dam and the donor sire be free of undesirable genetic characteristics, "such as red hair in the Holstein breed." No changes are made based on this comment. The Department has legal authority to regulate the importation of embryos in order to prevent the introduction or dissemination of infectious animal diseases. However, the Department does not have authority to regulate the importation of embryos based on determinations concerning undesirable genetic characteristics of the donor dam and donor sire.

Sealing of the Shipping Container

One commenter suggested that the embryos be required to be shipped in sealed containers as a condition of entry into the United States. It has been determined that the commenter's suggested requirement should be included in the final rule. It has been determined that this would help ensure that the shipping container has not been tampered with during shipment. The final rule also provides that the official seal is to be affixed to the shipping container by a full-time salaried veterinarian of the national animal health service of the country of origin or by a veterinarian authorized to do so by the national animal health service of the country of origin.

Health Certificate

The proposal provided that a health certificate was to be "issued or endorsed by a full-time salaried veterinarian of the national animal health service of the country of origin." The final rule provides that a health certificate is to be issued by a full-time salaried veterinarian of the national animal health service of the country of origin *or* signed by a veterinarian authorized by the national animal health service of the country or origin and endorsed by a salaried veterinarian of the national animal health service of the country of origin (the endorsement representing that the veterinarian signing the certificate was authorized to do so). This is a clarification which more clearly reflects what was intended.

Comments on Executive Order 12291 and the Regulatory Flexibility Act Statements

The proposed rule stated at 49 FR 41260:

> It is anticipated that if the proposed regulations were adopted almost all of the embryos imported would be embryos from cattle. Further, it is anticipated that the embryos from cattle would represent less than one percent of the total number of embryos, calves, and older cattle imported into the United States.
>
> Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Two commenters asserted that the number of embryos imported into the United States would be more than one percent of the total number of embryos, calves, and older cattle imported into the United States and disagreed with the conclusion that this action would not have a significant economic impact on a substantial number of small entities. The proposed rule also stated at 49 FR 41259 that "[t]he Department has determined that his action would not have an effect on the economy of $100 million or more. . . ." One commenter disagreed with this statement. No data was submitted to support these assertions. Further, based on information available to the Department, it appears that the statements made in the proposed rule are correct.

During the past three years there has been an average of less than 50 inquiries a year relating to the importation of embryos (mostly cattle embryos) into the United States. Although there may be an initial flurry of activity when the final rule becomes effective, it is anticipated that the number of import permits that will be issued annually will not significantly exceed the average number of inquiries that were received during the past three years. Also, based on the information contained in the inquiries it can be estimated that an average of approximately 30 embryos would be imported pursuant to each import permit. During fiscal year 1984 approximately 788,000 calves and older cattle were imported into the United States from throughout the world. It is not anticipated that these annual figures will change drastically. Also, it is anticipated that the retail value of embryos imported into the United States will range from approximately $300 to $4,500 (this would include the cost of shipping).

Under these circumstances, it appears that the total number of embryos from cattle that would be imported annually under the final rule would represent less than one percent of the total number of embryos, calves, and older cattle imported annually into the United States. Also, based on the information set forth above concerning an estimated number of embryos that would be imported, it appears that the final rule will have effect on the economy of considerably less than $100 million.

International Marketing of Embryos

Several commenters expressed approval for the proposed regulations, based on the assertion that the regulations would enhance international marketing of embryos by the United States livestock industry. Other commenters objected to the proposed regulations, based on the assertion that the regulations would result in "counter-regulations" by other countries, thereby hampering the international marketing of embryos from the United States. No changes are made based on these comments. The restrictions on the importation of embryos contained in the final rule are those restrictions that have been determined to be necessary at this time to protect against the introduction into the United States of infectious animal diseases. As indicated elsewhere in this document, the Department is considering whether to take action to amend the regulations established by this document to also allow the importation of embryos under other conditions. It should also be noted that many countries already have more stringent restrictions on the importation of animal embryos than the restrictions contained in this final rule.

Miscellaneous

It was proposed that the regulations concerning the importation of animal embryos be contained in 9 CFR Part 93. For administrative reasons, it has been determined that these regulations should be established in a new 9 CFR Part 98.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0040.

Executive Order 12291 and Regulatory Flexibility Act

This rule had been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have an effect on the economy of $100 million or more; will not cause a major increase

in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that almost all of the embryos imported will be embryos from cattle. Further, it is anticipated that the embryos from cattle will represent less than one percent of the total number of embryos, calves, and older cattle imported into the United States.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 98

Animal diseases, Animal embryos, Imports, Livestock and Livestock products, Transportation.

Accordingly, Chapter I, Subchapter D, of 9 CFR is amended by adding a new Part 98 to read as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS

Sec.

Authority: 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 98.1 Definitions.

The following terms, when used in this part, shall be construed as defined. Those terms used in the singular form in this part shall be construed as the plural form and vice versa, as the case may demand.

Animal. Any cattle, sheep, goats, other ruminants, swine, horses, or asses.

Approved artificial insemination center. A facility approved or licensed by the government of the country in which the facility is located to collect and process semen under the general supervision of such government.

Approved embryo transfer unit. A facility approved or licensed by the government of the country in which the facility is located for the artificial insemination of donor dams or for conception as a result of natural breeding by a donor sire and for collecting and processing embryos for export under the general supervision of such government.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator, Veterinary Services, or any official in the Veterinary Services unit of the Animal and Plant Health Inspection Service of the Department to whom authority has been delegated or may hereafter be delegated to act in the Deputy Administrator's stead.

Embryo. The initial stage of an animal's development after collection from the natural mother, while it is capable of being transferred to a recipient dam, but not including an embryo that has been transferred to a recipient dam.

Enter (entered, entry) into the United States. To introduce into the commerce of the United States after release from governmental detention at the port of entry.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Inspector. An employee of Veterinary Services who is authorized to perform the function involved.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other legal entity.

United States. All of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other territories and possessions of the United States.

Veterinary Services. The Veterinary Services unit of the Animal and Plant Health Inspection Service of the Department.

§ 98.2 Prohibition.

An embryo shall not be imported or entered into the United States unless in accordance with the provisions of this part.

§ 98.3 General conditions.

An embryo shall not be imported into the United States unless:

(a) The embryo is exported to the United States from the country in which it was conceived;

(b) The embryo was conceived as a result of artificial insemination with semen collected from a donor sire at an approved artificial insemination center, or the embryo as conceived as a result of natural breeding by a donor sire at an approved embryo transfer unit;

(c) If artificially inseminated, the donor dam conceived the embryo after being inseminated in an approved embryo transfer unit with semen collected at an approved artificial insemination center;

(d) At the time of collection of the semen used to conceive the embryo or at the time of natural breeding, the donor sire met all requirements the donor sire would have to meet under Part 92 of this chapter for a health certificate required as a condition of importation into the United States;

(e) At the time of collection of the embryo from the donor dam, the donor dam met all requirements the donor dam would have to meet under Part 92 of this chapter for a health certificate required as a condition of importation into the United States;

(f) There is no basis for denying an import permit for the donor sire or donor dam under § 92.4(a) (2) or (3) of this chapter;

(g) The embryo is collected and maintained under conditions determined by the Deputy Administrator to be adequate to protect against contamination of the embryo with infectious animal disease organisms; and

(h) The embryo was determined, based on microscopic examination, to have an intact zona pellucida at the time the embryo was placed into its immediate container (straw or ampule) for shipping.

(i) The embryo is contained in a shipping container which at the time of offer for entry is sealed with an official seal which was affixed to the shipping container by a full-time salaried veterinarian of the national animal health service of the country of origin or by a veterinarian authorized to do so by the national animal health service of the country of origin.

§ 98.4 Import permit.

(a) An embryo shall not be imported into the United States unless accompanied by an import permit issued by Veterinary Services and unless imported into the United States within 14 days after the proposed date of arrival stated in the import permit.

(b) An application for an import permit must be submitted to Import-Export Animals and Products Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782. An application form for an import permit may be obtained from this staff.

(c) The completed application shall include the following information:

(1) The name and address of the person intending to export an embryo from the country of origin.

(2) The name and address of the person intending to import an embryo,

(3) The species, breed, and number of embryos to be imported,

(4) The purpose of the importation,

(5) The country in which the embryo is conceived,

(6) The port of embarkation,

(7) The mode of transportation,

(8) The route of travel,

(9) The port of entry in the United States,

(10) The proposed date of arrival in the United States,

(11) The name and address of the person to whom the embryo will be delivered in the United States, and

(12) The measures to be taken to ensure that the embryo is collected and maintained under conditions adequate to protect against contamination of the embryo with infectious animal disease organisms.

(d) After receipt and review of the application by Veterinary Services, an import permit indicating the applicable conditions under this part for importation into the United States shall be issued for the importation of embryos described in the application if such embryos appear to be eligible to be imported. Even though an import permit has been issued for the importation of an embryo, the embryo may be imported only if all applicable requirements of this part are met.

§ 98.5 Health certificate.

An embryo shall not be imported into the United States unless accompanied by a health certificate issued by a full-time salaried veterinarian of the national animal health service of the country of origin *or* signed by a veterinarian authorized by the national animal health service of the country of origin and endorsed by a salaried veterinarian of the national animal health service of the country of origin (the endorsement representing that the veterinarian signing the health certificate was authorized to do so), certifying:

(a) The dates, places, types, and results of all examinations and tests performed on the donor sire and donor dam as a condition for importation of the embryo, and the names and addresses of persons or laboratories conducting the examinations or tests, and a statement that any other requirements established by § 98.3 have been complied with,

(b) The name and address of the consignor and consignee,

(c) The name and address of the approved artificial insemination center where the semen for the embryo was collected, if applicable,

(d) The name and address of the approved embryo transfer unit where the donor dam was inseminated or bred and the embryo was collected, and

(e) The measures taken to ensure that the embryo was collected and maintained under conditions adequate to protect against contamination of the embryo with infectious animal disease organisms.

§ 98.6 Ports of entry.

An embryo shall not be imported into the United States unless at a port of entry listed in § 92.3 of this chapter.

§ 98.7 Declaration upon arrival.

Upon arrival of an embryo at a port of entry, the importer or the importer's agent shall notify Veterinary Services of the arrival by giving an inspector a document stating:

(a) The port of entry,

(b) The date of arrival,

(c) Import permit number,

(d) Carrier, and identification of the means of conveyance,

(e) The name and address of the importer,

(f) The name and address of the broker,

(g) The country of origin of the embryo,

(h) The number, species, and purpose of importation of the embryo, and

(i) The name and address of the person to whom the embryo will be delivered.

§ 98.8 Inspection.

Any embryo offered for entry into the United States and documents accompanying the embryo shall be subject to inspection by an inspector at the time the embryo is offered for entry in order to determine whether the embryo is eligible for entry. The import permit and the health certificate shall be given to the inspector.

§ 98.9 Embryos refused entry.

Any embryo refused entry into the United States for noncompliance with the requirements of this part shall be removed from the United States within a time period specified by the Deputy Administrator or abandoned by the importer for destruction, and pending such action shall be subject to such safeguards as the inspector determines necessary to prevent the possible introduction into the United States of infectious animal diseases. If such embryo is not removed from the United States within such time period, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of as the inspector determines necessary to prevent the possible introduction into the United States of infectious animal diseases.

§ 98.10 Other importations.

Notwithstanding other provisions in this part, the Deputy Administrator may in specific cases allow the importation and entry into the United States of embryos other than as provided for in this part under such conditions as the Deputy Administrator may prescribe to prevent the introduction into the United States of infectious animal diseases.

Done at Washington, DC, this 23rd day of October 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 158/Pub. L. 99-128

Designating February 1986 as "National Community College Month". (Oct. 22, 1985; 99 Stat. 522) Price: $1.00

H.R. 2410/Pub. L. 99-129

Health Professions Training Assistance Act of 1985 (Oct. 22, 1985; 99 Stat. 523) Price: $1.00