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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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WHEN: June 16; at 9:00 a.m.
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First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Maxine Hill, 202–523–5229

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 953 and 958

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will authorize expenditures and establish assessment rates under Marketing Orders 953 and 958 for the 1988–89 fiscal period established for each order. This action will enable the Southeastern Potato Committee and Idaho-Eastern Oregon Onion Committee to incur expenses that are reasonable and necessary to administer these marketing order programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1988 through May 31, 1989 (§ 953.245) and July 1, 1988 through June 30, 1989 (§ 958.232).

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 953 (7 CFR Part 953) and 958 (7 CFR Part 958), regulating the handling of potatoes grown in Southeastern States and onions grown in Idaho-Eastern Oregon. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs of handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 15851, May 4, 1988). That document contained a proposal to add §§ 953.245 and 958.232 to establish expenses and assessment rates for the Southeastern Potato Committee and the Idaho-Eastern Oregon Onion Committee, respectively. That rule provided that interested persons could file comments through May 16, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 953 and 958

Marketing agreements and orders, Potatoes (Virginia, North Carolina) Onions (Idaho, Oregon).

For the reasons set forth in the preamble, §§ 953.245 and 958.232 are added as follows:

1. The authority citation for both 7 CFR Parts 953 and 958 continues to read as follows:

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

2. New §§ 953.245 and 958.232 are added to read as follows (these sections prescribe annual assessment rates and will not be published in the Code of Federal Regulations):

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.245 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized and an assessment rate of $0.01 per hundredweight of potatoes is established for the fiscal period ending May 31, 1989. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

§ 958.232 Expenses and assessment rate.

Expenses of $1,038,500 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal year period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 23, 1988.

Robert C. Keeney,

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

[FR Doc. 88–11919 Filed 5–25–88; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, California; Increase in Expenses for 1987–88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the California Date Administrative Committee established under Marketing Order 987 for the 1987–88 fiscal year. The expenses will be increased from

$386,267 to $411,267. The increase is needed to cover the salary, and travel expenses of an executive director the committee plans to hire to manage its market promotion program.

EFFECTIVE DATES: October 1, 1987 through September 30, 1988 (§ 987.332).

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

A final rule establishing expenses in the amount of $386,267 for the California Date Administrative Committee for the fiscal period ending September 30, 1988, was published in the **Federal Register** on January 7, 1988 (53 FR 402). That action also fixed the assessment rate to be levied on date handlers during the 1987–88 fiscal period. At a meeting held on April 6, 1988, the California Date Administrative Committee voted unanimously to increase its budget of expenses from $386,267 to $411,267.

The increase is needed to cover the hiring, salary, and travel expenses of an executive director who will manage the California Date Administrative Committee's market promotion program. This person will direct the advertising agency, manage the promotion program, and make calls on the trade to stimulate buyer interest in package and product quality dates.

A proposed rule inviting comments on this increase was issued on April 25, 1988, and published in the **Federal Register** on April 29, 1988 (53 FR 15402). The comment period ended on May 9, 1988. No comments were received.

Adequate funds are available to cover the increased expenses for the California Date Administrative Committee. Hence, no change in the assessment rate is necessary because of the increase.

Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found that the increased expenses are reasonable, and that such expenses will tend to effectuate the declared policy of the Act.

Prompt approval of the budget increase is necessary because the committee needs to have authority to cover the additional expenses associated with hiring someone to manage its market promotion program, and it wants to hire this person as soon as possible. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 987

Marketing agreement and order, Dates, California.

For the reasons set forth in the preamble, § 987.332 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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

2. Section 987.332 is amended as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 987.332 [Amended]

Section 987.332 is amended by changing "$386,267" to "$411,267."

Dated: May 23, 1988.

Robert C. Keeney,

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

[FR Doc. 88–11918 Filed 5–25–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[T.D. 8165]

Excise Tax on Excess Distributions From Retirement Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on Thursday, December 10, 1987 (52 FR 46747). The rules relate to excess distributions from qualified plans, individual retirement plans, section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

DATES: The regulations generally apply to calendar years beginning after December 31, 1986, except as otherwise specified in the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, 202–566–3715 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections amend the Pension Excise Tax Regulations (26 CFR Part 54) to provide temporary rules under section 4981A of the Internal Revenue Code of 1986. The regulations reflect the addition of section 4981A to the Code by section 1133 of the Tax Reform Act of 1986.

Need For Corrections

As published, Treasury Decision 8165 contains a number of typographical errors that, if not corrected, could cause confusion to taxpayers and practitioners.

List of Subjects in 26 CFR Part 54

Excise taxes.

PART 54—[AMENDED]

Corrections of Publication

Accordingly, the publication of temporary regulations (T.D. 8165), which was the subject of FD 87–28401, is corrected by amending 26 CFR Part 54 as follows:

Par. 1. Under the heading "Supplementary Information", on page 46747, third column, printed line 42 from the top, the reference to "402(a)(4)" should be corrected to read: "403(a)(4)".

Par. 1a. The authority citation for Part 54 continues to read, in part:

Authority: 26 U.S.C. 7805. * * * Section 54.4981A–IT is also issued under 26 U.S.C. 4981.

§ 54.4981A–IT [Corrected]

Par. 2. § 54.4981A–IT, b–10: A., the reference to "Q&A a–5 through a–10" is revised to read: "Q&A b–5 through b–9".

Par. 3. § 54.4981A–1T, b–14: A., Example 1, the dollar figure that reads: "$562,000" should be corrected to read: "$562,500".

Par. 4. § 54.4981A–1T, Q&A b–14, Example 2, the language "is 462 months and on December 31, 1987, is 476 months." should be removed and the language "is 471 months and on December 31, 1987, is 488 months." should be added in its place.

Par. 5. In the same example, the number "42" should be corrected to read: "51".

Par. 6. In the same example, the number "56" should be revised to read: "68".

Par. 7. § 54.4981A–1T, Q&A c–1 (d) *Examples.*, Example (4)(c), the language "IRA X" should be corrected to read" "IRA Y".

Par. 8. In the same example, the parenthetical language "($1,000 minus $925,000)" should be revised to read: "($1,000,000 minus $925,000)".

Par. 9. In the same Q&A, Example (5)(b), the parenthetical "(15 percent of $111,000)." should be changed to read: "(15 percent of $111,111)."

Par. 10. § 54.4981A–1T, Q&A c–4(b), Example (1), the language "72 (t) and 4981A is $18,500" should be revised to read: "72(t) and 4981A is $22,500".

James J. McGovern,

Director, Employee Benefits and Exempt Organizations Division.

[FR Doc. 88–11612 Filed 5–25–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–88–04]

Special Local Regulations; International Bay City River Roar-Saginaw River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Bay City River Roar to be held on the Saginaw River. This event will be held on 5, 6 and 7 August 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 5 August 1988 and terminate on 7 August 1988.

FOR FURTHER INFORMATION CONTACT: CWO Patrick M. Farrell, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 02 May, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

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). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

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.

Drafting Information

The drafters of this regulation are CWO Patrick M. Farrell, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Saginaw River on 5, 6 and 7 August 1988. This event will have an estimated 70 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Saginaw River, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

PART 100—[AMENDED]

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

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

2. Part 100 is amended to add a temporary § 100.35–0904 to read as follows:

§ 100.35–0904 International Bay City River Roar—Saginaw River

(a) *Regulated Area.* That portion of the Saginaw River from Liberty Bridge on the north to Vets Bridge on the South.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 9:30 a.m. (local time) until 4:00 p.m. on 5 August 1988, from 9:30 a.m. to 4:30 p.m. on 6 August 1988 and from 8:30 a.m. to 5:30 p.m. on 7 August 1988.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

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

(4) Effective Dates: These regulations will become effective on 5 August 1988 and terminate on 7 August 1988.

Dated: May 17, 1988.

A.M. Danielsen,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88–11867 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–88–27]

Special Local Regulations for Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.504.

SUMMARY: This notice implements 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event held by the City of Ocean City, New Jersey, that will be held on July 16, 1988. These special local regulations are needed to provide for the safety of participants and spectators on navigable waters during this event. The

effect will be to restrict general navigation in the regulated area for the safety of participants in the parade.

EFFECTIVE DATES: The regulations in 33 CFR 100.504 are effective from 6:00 p.m. to Midnight, on July 16, 1988.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade on July 16, 1988. The parade will start at Ship Channel Buoy C, cruise down the channel through Great Egg Waterway to Daybeacon 28 and return to Great Egg Waterway Buoy 2. Since this event is the type of event contemplated by these regulations and the safety of the participants would be enhanced by the implementation of the special local regulations for the regulated area.

The event is sponsored by the Ocean City, New Jersey, and will consist of approximately 150 vessels ranging from 70 feet or less. Commercial vessels will be permitted to transit the regulated area as the parade progresses, and thus commercial traffic should not be severely disrupted at any given time.

Dated: May 13, 1988.

A.D. Breed,

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

[FR Doc. 88–11870 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD08 88–11]

Special Local Regulations; Blessing of the Fleet; Pascagoula River—Between Pascagoula River Day Beacon Number 7 and the Seaboard System Railroad (L&N) Bridge

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for a Blessing of the Fleet to be held in the Pascagoula River Between the Pascagoula River Day Beacon number 7 and the Seaboard System Railroad (L&N) Bridge. This event will be held on 29 May 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective from 12:00 PM until 5:00 PM, 29 May 1988.

FOR FURTHER INFORMATION CONTACT: LTJG Steven D. Poulin; (205) 690–2231.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until 25 April 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event nor to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG Steven D. Poulin, Project Officer, Coast Guard Group Mobile, AL, and LCDR J. J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulations

The event requiring this regulation is a boat parade sponsored by Our Lady of Victories Catholic Church in Pascagoula, MS. A boat parade consisting of approximately 150 boats will be transiting the Pascagoula River between Day Beacon number 7 and the Seaboard System Railroad (L&N) Bridge. Commanding Officer, Coast Guard Group Mobile, Al., is establishing this Marine Event Regulation because of the need to regulate vessel traffic in this area during the event.

List of Subjects in 44 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 110.35–8 11 is added to read as follows:

§ 100.35–8 11 Pascagoula River.

(a) *Regulated Area.* Pascagoula River between Day Beacon number 7 and the Seaboard System Railroad (L&N) Bridge.

(b) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants of official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No vessel shall enter the regulated area unless cleared for such entry by or through an official regatta patrol vessel.

(2) All northbound traffic shall be restricted to transiting the westside of the centerline of the Pascagoula River and all southbound traffic shall transit along the eastside. The speed of all vessels in the area shall be restricted to a non-wake producing speed or 7 knots, whichever is lower.

(3) No spectators or participants shall block, loiter in, or impede the through transit of participants of official regatta patrol vessels in the regulated area during the effective date.

(4) Between the hours of 1:00 PM and 5:00 PM the following activities are strictly prohibited:

(i) Swimming.

(ii) Anchoring, except those vessels designated and authorized by the Coast Guard Patrol Commander.

(5) During the course of the event, participants and spectators shall not raise sails or otherwise impede the vision of any vessel operator. Any fishing vessels participating in the event shall rig in any gear extending from the sides of the vessel. Any vessel in tow shall be excluded from the regulated area.

(6) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a participant or spectator vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in a detention, citation, or arrest for failure to comply.

(7) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time if it is deemed necessary for the protection of life and property. The Patrol Commander may be reached on VHF Channel 16 (156.8MHz) when required, by the call sign "PATCOM".

(c) *Effective Dates.* These regulations are effective from 12:00 PM until 5:00 PM, 29 May 1988.

Dated: May 12, 1988.

A.E. Henn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 88-11869 Filed 5-25-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 88-026]

Special Local Regulations; Freeport Grand Prix, Long Beach, NY

AGENCY: Coast Guard; DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Freeport Grand Prix high performance powerboat race being sponsored by South Bay Performance Association. The regulations will be in effect on June 11, 1988 and will place operating restrictions on watercraft operating on the Atlantic coastal waters south of Long Beach, Long Island, New York.

EFFECTIVE DATE: These regulations are effective from 11:00 am to 3:00 pm on June 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Negotiations between the Coast Guard and the sponsor created a delay and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. The regulations will be published in the First Coast Guard District Local Notice to Mariners.

Drafting Information

The drafters of these regulations are LT L. Brown, project officer, First Coast Guard District Boating Affairs Branch and CDR M. A. Leone, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Freeport Grand Prix is a high performance, Indy 500 type, powerboat race around an eight (8) mile rectangular course situated approximately one and one quarter (1¼) miles south of Long Beach, Long Island, New York. There will be up to 50 vessels participating. The sponsoring organization will provide eight to 12 patrol boats along with turning and finishing mark boats. The purpose of this regulation is to close a portion of the Atlantic coastal waters south of Long Beach, Long Island, New York to all traffic except law enforcement vessels; regatta participants; and official regatta patrol vessels. No vessels other than race participants and patrol craft will be allowed to enter the regulated area which is described below. The regulated area and immediately adjacent waters will be patrolled by several Coast Guard and Coast Guard Auxiliary vessels which will be assisted by local law enforcement authorities and the sponsor provided patrol boats.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Regulations

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

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

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

2. A temporary § 100.35-01-26 is added to read as follows:

§ 100.35-01-26 Freeport Grand Prix, Long Beach, New York.

(a) Regulated Area. The regulated area is a trapezoidal area on the coastal Atlantic waters of Long Island to the south of Long Beach, New York. The racing area is one and one quarter (1¼) miles south of Long Beach and three and one quarter (3¼) miles north of the northern boundary of Ambrose Channel. The regulated area will be specifically bounded as follows:

(1) Northeast Corner: approximately one and one quarter (1¼) miles southwest of Jones Inlet breakwater at coordinates 40-33-42 North; 073-35-42 West

(2) Southeast Corner: southwest of Jones Inlet Approach Buoy (R "2"; Light List Number 685) at coordinates 40-31-45 North; 073-36-19 West

(3) Southwest Corner: east of East Rockaway Approach Buoy (R "4"; Light List Number 690) at coordinates 40-31-31 North; 073-42-21 West

(4) Northwest Corner: 40-33-30 North; 073-40-57 West

(b) Special Local Regulations. Vessels not participating in, or operating as a safety/rescue patrol shall:

(1) Not operate within the regulated area

(2) Immediately follow any specific instructions given by Coast Guard patrol craft.

(3) Exercise extreme caution when operating near the regulated area.

(c) Effective Dates. These regulations become effective at 11:00 am on June 11, 1988 and terminate at 3:00 pm on June 11, 1988.

Dated: May 17, 1988.

R.L. Johanson,

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

[FR Doc. 88-11871 Filed 5-25-88; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 140 and 143

[CGD 84-098a]

Self-Inspection of Fixed OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the inspection of fixed facilities on the Outer Continental Shelf (OCS) to require the owner or operator to conduct the annual scheduled inspection rather than the Coast Guard. The owner or operator is required to report the results of that inspection to the Coast Guard. This amendment is necessary in order to provide for statutorily mandated inspection of all fixed OCS facilities. This program will improve safety by providing at least one inspection annually of all fixed OCS facilities and by allowing the Coast Guard to focus the efforts of its available marine inspectors on inspections of manned fixed facilities, particularly those which have a poor safety record. The Coast Guard will perform additional inspections of other fixed OCS facilities sufficient to provide oversight of the self-inspection program.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: LCDR Anthony Dupree, Jr., Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-2307.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) (50 FR 9290) entitled "Revision of the Regulations on Outer Continental Shelf Activities". One of several subjects discussed in the ANPRM concerned inspection of fixed OCS facilities. On July 7, 1987, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (52 FR 25392) entitled "Self-Inspection of Fixed OCS Facilities" (CGD 84-098a). That NPRM proposed regulations that

would require the owner or operator of fixed OCS facilities to conduct annual inspections of their facilities and report the results of those inspections to the Coast Guard. The comment period for the NPRM closed on August 27, 1987. Fifteen comment letters were received. A public hearing was not requested and was not held.

Drafting Information

The principal persons involved in drafting this Final Rule were LCDR Anthony Dupree, Jr., Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Objectives

The principal objective of this Final Rule is to produce an overall improvement in safety. The Coast Guard, by allowing industry to perform the mandated annual inspections, will be able to focus its resources on those fixed OCS facilities that are manned, have a poor safety record, or are the subject of worker complaints. Further, the Coast Guard will be conducting oversight inspections (spot-checks) of randomly selected manned and unmanned facilities. The number of facilities inspected by the Coast Guard and the number of Coast Guard inspections per facility will be adjusted from year to year to assure that safety is not jeopardized and that the effectiveness of the self-inspection program is not compromised.

Additionally, inspection reports and casualty reports will be reviewed for inconsistencies and analyzed by the Coast Guard. This will allow the Coast Guard to better evaluate the safety performance of individual operators and will provide a mechanism whereby industry trends may be identified or predicted.

Discussion of Comments and Changes to the Regulations

A total of fifteen letters were received on the NPRM. Fourteen letters generally supported the proposed regulations and one opposed them. The comments and the resulting changes are discussed below.

1. One comment letter stated that self-inspections tend to be self serving and lack objectivity and that only fully qualified Coast Guard approved inspectors who are independent of the facility's owners and operators should be allowed to conduct the inspections. Such a program was considered by the Coast Guard but was rejected because the resources required to develop and administer an approval program would reduce the Coast Guard's ability to focus its attention on specific problem areas. The use of Coast Guard approved inspectors would not reduce the need for Coast Guard oversight inspections. Furthermore, limiting inspectors to those who are independent of the owner/operator would unnecessarily increase costs to owners/operators who prefer to use their own qualified employees.

2. One comment suggested that the self-inspection concept be extended to offshore supply vessels (OSVs) and another suggested that it be extended to mobile offshore drilling units (MODUs). The MODU inspection requirements (Subchapter I–A of 46 CFR Chapter I) and the OSV inspection requirements (Subchapter I of 46 CFR Chapter I) are based on statutes which generally would not permit the regulatory extension of self-inspection to these vessels.

3. One comment stated that "new facility" as used in §§ 140.101 and 140.103 should be defined. The Coast Guard agrees with this suggestion and has modified §§ 140.101 and 140.103 accordingly.

4. One comment questioned whether an unannounced inspection by the Coast Guard would restart the 12 month cycle prescribed in § 140.103(a). Under § 140.103(b), only the initial Coast Guard inspection of a new facility can be counted as a required annual inspection.

5. One comment suggested that § 140.103(a) be changed to permit one inspection per calendar year with the time between inspections not to exceed 18 months. The Coast Guard interprets 43 U.S.C. 1348 as requiring one scheduled on site inspection every 12 months. Therefore, this section remains unchanged in the Final Rule.

6. One comment stated that § 140.103(c) is not clear as to whether inspections by a third party contractor employed by the owner or operator are permitted. Section 140.103(c) has been reworded to avoid implications that the inspection must be performed only by employees of the owner or operator.

7. Four comments stated that the 10 day requirement in the proposed § 140.103(c) for submitting the Form CG–5432 would not allow sufficient time for the form to clear company channels. Therefore, "10 days" has been changed to "30 days."

8. Two comments suggested that Form CG–5432 be retained by the company rather than forwarded to the Coast Guard, as required in § 140.103(c). The Coast Guard needs the information contained on the forms in order to evaluate the effectiveness of the program and to verify compliance with 33 CFR Part 140. The inspection forms along with casualty reports, will be used to better evaluate the safety performance of individual operators. Therefore, this suggestion was not adopted.

9. Five comments suggested that § 140.103(d) be revised to allow facility owners/operators, rather than the Officer in Charge, Marine Inspection, (OCMI), to develop the annual inspection schedule for their existing facilities. The comments stated that this will allow the owner to carry out the inspections in a more effective and cost efficient manner. The Coast Guard agrees and has revised the paragraph to allow owners/operators to develop their own inspection schedules. However, because the OCMI is now excluded from the process, a provision has been added to require owners/operators to submit a list of the proposed inspection dates for each of their facilities to the OCMI. This information is needed to assist the Coast Guard in timing unannounced inspections and in allocating resources to process inspection forms.

10. Two comments objected to § 140.105(a) which requires the mutilation of defective or unrepairable lifesaving or firefighting equipment. The comments stated that company or third party inspectors may not have the expertise to determine if the equipment is repairable and that, in some cases, mutilation may be difficult and hazardous. The old regulations required that defective or unrepairable lifesaving and firefighting equipment be destroyed or rendered unusable in the presence of the inspector making the determination. The Coast Guard continues to believe that this is necessary in order to prevent the inadvertent or intentional use of defective lifesaving or firefighting equipment by subsequent users, whether on or off the facility. Therefore, the requirement remains unchanged in the final rule. To assist inspectors in determining the acceptability of firefighting and lifesaving equipment, the Coast Guard publishes a series of circulars which are identified in paragraph five of "Discussion of Comments and Changes to Form CG–5432" in this preamble.

11. Five comments suggested that the regulations provide definite timeframes for correction of the deficiencies under § 140.105. One of the comments also suggested that, in order to reduce the flow of paperwork and to provide a more efficient method of establishing timeframes for correction of deficiencies, § 140.105(c) be revised to permit the owner or operator to specify on Form CG–5432 when the outstanding deficiencies are to be corrected, subject to approval by the Coast Guard. The Coast Guard believes that it is not

necessary to provide a timeframe for the correction of deficiencies in the regulations. With the expansion of the reporting period to 30 days, the vast majority of Forms CG–5432 will be submitted with no outstanding deficiencies. The owners/operators should be able to correct most deficiencies found during the inspections within the 30 day period allowed for submission of the report to the OCMI. In some instances, an acceptable time for correction of the deficiency may be less than the time it takes for the Coast Guard to process the proposed deficiency correction letter to the owner or operator. Therefore, the Final Rule now requires the owners or operators, in instances where lifesaving or firefighting equipment deficiencies cannot be corrected within the 30 day reporting period, to contact the OCMI for a determination of an appropriate timeframe for repair and to indicate the same on Form CG–5432. This contact must be made prior to submitting Form CG–5432 and in time to comply with the 30 day inspection reporting requirement contained in § 140.103(c).

Discussion of Comments and Changes to Form CG–5432

The Fixed OCS Facility Inspection Report, Form CG–5432, as published in the NPRM, has not been changed. Certain minor changes to the instructions printed with the form were made in response to comments requesting further clarification. A copy of the form with instructions will be available from OCMIs. Comments and changes are discussed below.

1. One comment stated that it could be cumbersome to identify all partners who are owners of a lease on Form CG–5432. The comment suggested that only the operating partner be required to be identified on the form. The Coast Guard agrees that in some instances the list of owners could be quite lengthy. Therefore, the instructions for the form have been changed to permit the listing of either the owners or the operating partner.

2. Two comments questioned the need to include the number of fire extinguishers in item seven of Form CG–5432 and suggested that the instructions for item seven be clarified with respect to the type of information necessary. In order to ascertain whether the amount of equipment is in compliance with the regulations, the Coast Guard needs to know the number of extinguishers on board the facility. The instructions for item seven have been revised to clarify what information is needed about the facility's portable, semi-portable, and fixed firefighting equipment.

3. One comment stated that the total number of life preservers, workvests, and ringbuoys called for on Form CG–5432 is immaterial and suggested that only the minimum number required should be reported. Under 33 CFR 146.15, all emergency equipment on a facility is required to be maintained in good condition at all times. The Coast Guard believes that an inspection of all the lifesaving equipment on board the facility is an important part of ensuring compliance with this requirement. The total number of life preservers, workvests, and ring buoys on board the facility must be included on the form in order for the Coast Guard to determine what equipment is on the facility and whether the emergency equipment complies with 33 CFR 146.15. Therefore, this suggestion was not adopted.

4. Two comments suggested that Form CG–5432 be altered to provide for the name, title, and phone number of the individual performing the inspection. For the purposes of Coast Guard recordkeeping, the identity of the individual making the inspection is not necessary and will not be required to be included on the form. However, owners or operators may enter the identity of the inspector under the comment section of the form if they so desire.

5. Two comments suggested that the Coast Guard should develop a short inspection guideline booklet to include the pertinent provisions of Parts 141, 142, 143, 144, and 146. One of the comments stated that it is not reasonable to expect the inspector to have these references available. One comment stated that Form CG–5432 is not sufficiently detailed to serve as either a guide or a checklist for the actual inspection. The Coast Guard does not believe it is necessary to provide a separate guideline booklet for the inspection of fixed OCS facilities. Parts 141 through 146 are all contained in the same volume of the Code of Federal Regulations which is readily available from the Government Printing Office (GPO) for a small cost. All the items required to be checked for a Coast Guard inspection are referenced on Form CG–5432. Inspection guidance in the form of Navigation and Vessel Inspection Circulars (NVCs) on the inspection of lifesaving equipment (NVC 2–63, 5–77, 1–80, 4–80, 9–80, 4–85, 3–86) and firefighting equipment (NCV 6–70, 7–70, 8–73, 13–86) are readily available from the Coast Guard's Marine Safety Center, 2100 Second Street SW., Washington, DC 20593–0001 for a small cost. For the other items referenced on Form CG–5432, the cited regulations contain sufficient information for carrying out the inspection. Therefore, this suggestion was not adopted.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 267–2307, from 8 a.m. to 3 p.m. Copies may also be obtained by contacting that office. The economic impact of the final rule will be minimal for many fixed OCS facilities because virtually all owners and operators already conduct some degree of self-inspection on their facilities. However, some owners and operators lack in-house expertise to properly conduct a self-inspection and will have to contract with a third party to conduct all or part of the self-inspection program. We estimate that the self-inspection program will cost the industry an additional $196,000 annually for personnel.

The primary means of transportation is expected to be by helicopter, although available vessels may be used for transportation to unmanned facilities in close proximity to other facilities equipped with helicopter decks. Transporation to and from facilities for inspections is expected to be provided by existing transportation 70% of the time. Transportation for the remaining 30% of the inspections is expected to be provided by dedicated helicopters resulting in an additional annual transportation cost of approximately $295,000.

It will take an annual expenditure of approximately 980 man-days to conduct the inspections of 3,074 facilities and thereby collect the information necessary to complete Form CG–5432. Additionally, we estimate that it would take between 15 and 30 minutes to complete Form CG–5432. The total information collection burden is estimated to be 9,400 man-hours. The dollar cost to collect the information is included in the estimated inspection costs. The maximum additional cost to complete the form is estimated to be $39,000 annually.

The total annual economic burden of the self-inspection program is estimated to be the total of additional transportation costs, additional personnel costs, and costs to complete the Form CG–5432. This total is $530,000.

For the Coast Guard to conduct scheduled inspections of all OCS facilities, the annual cost would be approximately $760,000. This is in addition to inspections of MODU's, inspections in response to worker complaints, and unannounced inspections conducted as oversight of the OCS safety program, and reflects the operational economies achieved by scheduling multiple inspections wherever practicable. Under the Final Rule, the Coast Guard will not require the $760,000 to conduct scheduled inspections but will need to increase unannounced inspections to ensure that the self-inspection program is being carried out properly. It is estimated that $190,000 would be required annually to achieve approximately 25% inspections. The degree of oversight may be reduced after experience is gained with the self-inspection program.

The net result of the final rule will be to shift a function that would require the expenditure by the government of approximately $760,000 to the industry, at an estimated cost to industry of $530,000. Increased oversight inspections to ensure program reliability will require estimated annual government expenditures of $190,000 initially, but may be reduced in the future.

Specific comments on Coast Guard cost estimates were solicited in the NPRM from all interested and knowledgeable parties. One comment letter on the cost of the program was received. The comment stated that the Coast Guard cost figures had underestimated the average inspection time per facility. The comment also stated that the Coast Guard estimated average cost may be too low. The comment estimated the total cost to the industry to be in excess of $4.5 million, rather than the $530,000 estimated by the Coast Guard. The $4.5 million estimate was based on the incorrect assumption that the Coast Guard is responsible for inspecting the entire structure. Under the 1980 Memorandum of Understanding between the Minerals Management Service (MMS) and the Coast Guard, the Coast Guard is responsible for lifesaving, firefighting, and occupational safety and health items; MMS is responsible for all items relating to drilling, production, workover, and well control including the inspection of the structure itself. The failure to take into account this division of responsibility is the principal reason for the discrepancy between the cost estimates. However, the Coast Guard also reexamined its cost estimates for inspections required by this rulemaking and concluded that the Coast Guard estimates are reasonable.

The majority of the owners or operators are expected to combine the required annual inspection with other inspections, maintenance visits, or operational tests already being performed by the owner/operator. Further, although some platforms may require several hours to inspect, the majority of the platforms lcoated on the U.S. OCS are unmanned and have minimal equipment that would require inspection under this rule. These rules would not affect State and local governments and would have a negligible effect on costs to consumers.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard considered whether the Final Rule is likely to have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These regulations will affect owners and operators of fixed OCS facilities. Because of the extremely high costs of these facilities, their owners and operators tend to be major corporations or subsidiaries of major corporations.

For the above reasons, the Coast Guard certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Comments were solicited in the NPRM from those who felt that this rule would have a significant impact on their small business. No comments on this issue were received.

Paperwork Reduction Act

This rulemaking contains information collection requirements in §§ 140.103 and 140.105. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements have been approved and have been assigned OMB No. 2115–0569.

Categorical Exclusion Statement has been prepared and is on file in the rulemaking docket.

List of Subjects

33 CFR Part 140

Administrative practice and procedure, Authority delegation, Continental shelf, Incorporation by reference, Law enforcement, Marine safety, Reporting and recordkeeping.

33 CFR Part 143

Continental shelf, Incorporation by reference, Marine safety.

In consideration of the foregoing, Parts 140 and 143 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 140—GENERAL

1. The authority citation for Part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

2. In § 140.101, the section heading and paragraph (b) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 140.101 Inspection by Coast Guard marine inspectors.

* * * * *

(b) Under the direction of the Officer in Charge, Marine Inspection, marine inspectors may inspect units engaged in OCS activities to determine whether the requirements of this subchapter are met. These inspections may be conducted with or without advance notice at any time deemed necessary by the Officer in Charge, Marine Inspection.

* * * * *

(d) Coast Guard inspections of foreign units recognize valid international certificates accepted by the United States, including Safety of Life at Sea (SOLAS), Loadline, and Mobile Offshore Drilling Unit (MODU) Code certificates for matters covered by the certificates, unless there are clear grounds for believing that the condition of the unit or its equipment does not correspond substantially with the particulars of the certificate.

(e) Coast Guard marine inspectors conduct an initial inspection of each fixed OCS facility installed after June 27, 1988, to determine whether the facility is in compliance with the requirements of this subchapter.

§ 140.102 [Removed]

3. By removing § 140.102, Foreign units.

4. By revising § 140.103 to read as follows:

§ 140.103 Annual inspection of fixed OCS facilities.

(a) The owner or operator of each fixed OCS facility shall ensure that the facility is inspected, at intervals not to exceed 12 months, to determine whether the facility is in compliance with the requirements of this subchapter.

(b) Except for initial inspections under § 140.101(e), inspections by Coast Guard Marine inspectors do not meet the requirements for an inspection under paragraph (a) of this section.

(c) Except for initial inspections under § 140.101(e), the results of the inspection must be recorded on Form CG–5432. Forms CG–5432 may be obtained from the Officer in Charge, Marine Inspection. The owner or operator shall submit the completed Form CG–5432 to the Officer in Charge, Marine Inspection, within 30 days after completion of the inspection.

(d) For facilities installed on the OCS after June 27, 1988, the 12 month period under paragraph (a) of this section begins with the initial inspection under § 140.101(e). For facilities on the OCS on June 27, 1988, the 12 month period begins upon completion of the first inspection under paragraph (a) of this section, which inspection must be completed within 12 months after June 27, 1988. Before September 26, 1988, the owner or operator shall notify the Officer in Charge, Marine Inspection, of the proposed inspection date for each facility.

5. By revising § 140.105 to read as follows:

§ 140.105 Correction of deficiencies and hazards.

(a) Lifesaving and fire fighting equipment which is found defective during an inspection and which, in the opinion of the inspector, cannot be satisfactorily repaired must be so mutilated in the presence of the inspector that it cannot be used for the purpose for which it was originally intended. Lifesaving and fire fighting equipment subsequently determined to be unrepairable must be similarly mutilated in the presence of the person making that determination.

(b) Any deficiency or hazard discovered during an inspection by a Coast Guard marine inspector is reported to the unit's owner or operator, who shall have the deficiency or hazard corrected or eliminated as soon as practicable and within the period of time specified by the Coast Guard marine inspector.

(c) Deficiencies and hazards discovered during an inspection of a fixed OCS facility under § 140.103(a) must be corrected or eliminated, if practicable, before the Form CG–5432 is submitted to the Officer in Charge, Marine Inspection (OCMI). Deficiencies and hazards that are not corrected or eliminated by the time the Form is submitted must be indicated on the Form as "outstanding." For lifesaving and firefighting equipment deficiencies that cannot be corrected before the submission of Form CG–5432, the owner or operator shall contact the OCMI to request a time period for repair of the item. The owner or operator shall include a description of the deficiency and the time period specified by the OCMI for correction of the deficiency in the comment section of Form CG–5432. Upon receipt of a Form CG–5432 indicating outstanding deficiencies or hazards, the OCMI informs, by letter, the owner or operator of the fixed OCS facility of the deficiencies or hazards and the time period specified to correct or eliminate the deficiencies or hazards.

(d) Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in Charge, Marine Inspection, initiates appropriate enforcement measures.

PART 143—DESIGN AND EQUIPMENT

6. The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); 49 CFR 1.46.

7. By revising § 143.210 to read as follows:

§ 143.210 Letter of compliance.

(a) The Officer in Charge, Marine Inspection, determines whether a mobile offshore drilling unit which does not hold a valid Coast Guard Certificate of Inspection meets the requirements of §§ 143.205 or 143.207 relating to design and equipment standards and issues a letter of compliance for each unit which meets the requirements. Inspection of the unit may be required as part of this determination.

(b) A letter of compliance issued under paragraph (a) of this section is valid for one year or until the MODU departs the OCS for foreign operations, whichever comes first.

Dated: March 2, 1988.

J.C. Irwin,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 88–11868 Filed 5–25–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 88–11–12]

Security Zone Regulations; Ports of Los Angeles/Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone within 100 yards of the USS FLORIDA while underway or moored within the ports of Los Angeles and Long Beach. This security zone is required to safeguard the vessel from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on 19 May 1988. It terminates on 23 May 1988.

FOR FURTHER INFORMATION CONTACT: LT R. M. Miles at (213) 499–5580.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessel.

Drafting Information

The drafters of this regulation are LT R. M. Miles, project officer for the Captain of the Port, and LT G. R. Wheatly, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin on 19 May 1988. This security zone is necessary to ensure the security of the U.S.S. FLORIDA while underway or moored within the ports of Los Angeles and Long Beach. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1177 is added to read as follows:

§ 165.T1177 Security Zone: Ports of Los Angeles/Long Beach, CA.

(a) *Location.* The following area is a security zone: A 100 yard radius around the U.S.S. FLORIDA while underway or moored within the ports of Los Angeles and Long Beach.

(b) *Effective Date.* This regulation becomes effective 19 May 1988. It terminates at 23 May 1988.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, no one may enter, remain in, or transit the security zone without the permission of the Captain of the Port.

Dated: May 18, 1988.

R. A. Janecek,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 88-11866 Filed 5-25-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202-233-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending § 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan Programs—housing and community development, Manufactured homes, Veterans.

Approved: May 20, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, *Loan Guaranty*, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(1) Effective May 23, 1988, 13 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective May 23, 1988, 12½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective May 23, 1988, 12½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

(Authority: 38 U.S.C. 1819(f))

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10½ per centum per annum, effective May 23, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¾ per centum per annum, effective May 23, 1988, the interest rate of any graduated payment mortgage loan guaranteed or issued wholly or in part on or after such date may not exceed 10¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective May 23, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1960, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10½ per centum per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12 percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

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[FR Doc. 88-11771 Filed 5-25-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3384-5]

Prevention of Significant Deterioration; Delegation of Authority to State Agency; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The United States Environmental Protection Agency (USEPA) has delegated full authority to the State of Wisconsin to implement and enforce the Federal Prevention of Significant Deterioration (PSD) Program. Wisconsin was granted a partial delegation on August 19, 1980. USEPA has determined that the technical, administrative, and enforcement elements of the State air program are adequate to implement a fully delegated PSD program.

DATE: The effective date of the full delegation of authority to the State of Wisconsin is November 13, 1987.

ADDRESSES: Copies of the delegation of authority agreement and background information are available for inspection at the following addresses. (It is recommended that you telephone Maggie Greene, at (312) 886-6029, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster Street, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On October 28, 1986, the Secretary of the Wisconsin Department of Natural Resources (WDNR) requested full delegation of authority for the Prevention of Significant Deterioration (PSD) program. A partial delegation, published in the January 29, 1981, Federal Register at 46 FR 9585, was made to Wisconsin effective on August 19, 1980. A full delegation of authority to implement and enforce the PSD program became effective on November 13, 1987, in accordance with the terms and conditions of the following letter:

November 4, 1987.

Certified Mail

Return Receipt Requested

Carroll D. Besadny,

Secretary, Wisconsin Department of Natural Resources, Box 7921, Madison, Wisconsin 53707

Dear Mr. Besadny: In response to your October 28, 1986, request and your August 18, 1987, commitments related to receiving a full delegation of authority to implement the Prevention of Significant Deterioration (PSD) Program, we have prepared this amended agreement which outlines the terms and conditions of such a delegation to Wisconsin. Pursuant to your request, commitments, and subsequent discussions with Wisconsin Department of Natural Resources (WDNR) staff, Region V staff has evaluated the permitting requirements in Chapter NR 405 Wisconsin Administrative Code and the practices, procedures, and authority used by staff of the WDNR for reviewing construction permit applications. The United States Environmental Protection Agency (USEPA) has determined that the technical, administrative, and enforcement elements of the State air program are adequate to implement a fully delegated PSD program.

Therefore, in accordance with 40 CFR 52.21(u), the USEPA hereby delegates to the State of Wisconsin authority and responsibility to implement the PSD

regulations found in 40 CFR 52.21, as they may be amended and in accordance with the permit review requirements in 40 CFR 124 Subparts A and C. This delegation is also subject to all USEPA policy guidance and determinations on 40 CFR 52.21 and other applicable regulations.

The delegation is based upon the following terms and conditions:

1. Authority is delegated to the State of Wisconsin for all sources located in the State subject to review for PSD. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act. With respect to PSD permits issued by the USEPA, this delegation does not include authority to implement the technical, administrative, and enforcement provisions of the PSD regulations, nor does it include authority to make permit amendments. This delegation does not include any authority found in 40 CFR 52.21(g) with respect to changing area classifications.

2. The primary responsibility for implementation and enforcement of the PSD regulations in the State of Wisconsin will rest with the WDNR.

a. The WDNR will enforce the provisions and regulations that pertain to the PSD program, except in those cases where the rules or policy of the State are more stringent; in which case, the State may elect to implement the more stringent requirement.

b. WDNR will follow the new source review guidance which has been provided to the State, including the guidance in the October 1980 *PSD Workshop Manual*, as well as all future guidance representing national policy.

c. If the State enforces the delegated provisions in a manner inconsistent with the terms and conditions of this delegation or the Clean Air Act, USEPA may exercise its enforcement authority contained in the Clean Air Act with respect to sources within the State of Wisconsin subject to the PSD provisions.

d. This delegation may be amended by the Regional Administrator at any time to assure the implementation of national policy or regulation changes.

3. If the Regional Administrator determines that the State is not implementing or enforcing the PSD program or has not implemented the requirements or guidance with respect to a specific permit in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation may be revoked in whole or in part, after consultation with the WDNR. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the State. Nothing in this paragraph shall preclude USEPA from exercising its enforcement authority, as provided in paragraph 2.c., above.

4. The permit appeal provisions in 40 CFR 124.19 shall apply to all appeals to the Administrator on permits issued by the WDNR under this delegation.

5. For purposes of implementing the Federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by WDNR is required to contain statements which indicate that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the final decision to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The WDNR shall inform Region V in accordance with conditions 9.f. and 12 when there is a public comment requesting a change in a preliminary determination or in draft permit conditions. Failure by WDNR to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

6. Permits issued under this delegation are required to contain language stating that the PSD permit is issued after determining that the Federal PSD requirements have been satisfied.

7. The WDNR must allow for the provisions of 40 CFR 52.21(u)(4) to be met with regard to sources or modifications constructing in Class III areas.

8. Prior USEPA concurrence is to be obtained on any matter involving the interpretation of Sections 160–169 of the Clean Air Act, of 40 CFR 52.21, and of 40 CFR 124 to the extent that implementation, review, administration or enforcement of these Sections have not been covered by USEPA determinations or guidance sent to the WDNR.

9. The WDNR and USEPA will develop a communication system which accomplishes the following:

a. The USEPA will inform the WDNR of the compliance status at the time of this delegation of sources in the State of Wisconsin which have been issued a PSD permit by USEPA.

b. The WDNR will report to the USEPA the compliance status on a continuing basis of sources which have received a PSD permit from either WDNR or USEPA. The existing quarterly reporting system should be used.

c. The WDNR will: (1) Forward by certified mail to the USEPA before the public comment period a summary of the findings related to each PSD application and the justification for the WDNR preliminary determination, and (2) forward by certified mail to USEPA a copy of the PSD application immediately when an application has been determined to be complete. Should there be comments or concerns about the pending PSD permit, USEPA will communicate these comments and concerns to the WDNR, as soon as possible, before the closing of the public comment period. Failure by WDNR to comply with the terms of this paragraph shall render the subject permit to be invalid for Federal PSD purposes.

d. The WDNR will forward to USEPA copies of the final actions on PSD permit applications on the day of issuance, and notify a USEPA representative by telephone that the final action has been sent.

e. A copy of all regulation applicability determinations shall be forwarded to Region V by certified mail within 15 days of the end of each quarter.

f. A copy of all public comments, except for USEPA comments, with respect to a preliminary determination or draft permit, conditions shall be forwarded to Region V upon the issuance of a permit with attention called to any request to change a draft preliminary determination or draft permit conditions.

10. The State will at no time grant any waivers to the permit requirements, approve any compliance schedule, or issue any administrative order which violates any presently effective PSD provision.

11. With respect to PSD, this delegation supersedes the previously delegated authority contained in the August 19, 1980, letter from the Regional Administrator.

12. In the event that the State is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the WDNR will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude USEPA from exercising its enforcement authority.

If the State of Wisconsin agrees to implement the PSD program in accordance with the terms and conditions of this delegation, please sign in the space provided below and return this document to me.

A notice announcing this delegation will be published in the **Federal Register** in the near future.

Sincerely yours,
Valdas V. Adamkus,
Regional Administrator.

On behalf of the State of Wisconsin and the Wisconsin Department of Natural Resources, I accept the delegation of Federal Prevention of Significant Deterioration authority, pursuant to the terms and conditions of this delegation and the requirements of the Clean Air Act.

Dated: November 13, 1987.
Carroll D. Besadny,
Secretary, Wisconsin Department of Natural Resources.

The mailing address for material related to PSD permits remains the same as published in 40 CFR 52.2581(c).

Under section 307(b)(1) of the Clean Air Act, judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within 60 days of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought to enforce the permit requirements. For the above actions, the appropriate court is the U.S. Court of Appeals for the Seventh Circuit. A petition for review must be filed with that court on or before July 25, 1988.

Authority: 42 U.S.C. 7401–7642.

Dated: May 13, 1988.
Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 88–11832 Filed 5–25–88; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Parts 52, 60, and 61

[FRL–3384–8]

Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants; Indiana, Minnesota and Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is hereby amending 40 CFR Parts 52, 60 and 61 to reflect changes in the list of mailing addresses for Prevention of Significant Deterioration (PSD) permit applications, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) documents in the States of Indiana, Minnesota, and Ohio.

DATE: This rule is effective on May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6029.

SUPPLEMENTARY INFORMATION: At the time of USEPA's delegation of PSD, NSPS, and NESHAP authority to the States of Indiana, Minnesota, and Ohio, USEPA codified the mailing addresses for the appropriate agencies in 40 CFR Parts 52, 60, and 61, respectively. Subsequent to USEPA's codifications, these addresses have changed. USEPA today is updating the mailing addresses for PSD applications in the States of Indiana and Minnesota. It is also updating the mailing addresses for NSPS and NESHAP documents for the States of Indiana, Minnesota, and Ohio. Because EPA considers today's action noncontroversial, routine, and procedural in nature, we are approving it today without prior proposal.

List of Subjects in 40 CFR Parts 52, 60, and 61

Air pollution control, Air toxics, Intergovernmental relations, Prevention of significant deterioration.

Dated: May 13, 1988.
Frank M. Covington,
Acting Regional Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Parts 52, 60 and 61 of the Code of Federal Regulations are amended as set forth below.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATIONS PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.793 is amended by revising paragraph (c) to read as follows:

§ 52.793 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of Indiana shall be submitted to the Commissioner, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

3. Section 52.1234 is amended by revising paragraph (c) to read as follows:

§ 52.1234 Significant deterioration of air quality.

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of Minnesota shall be submitted to the Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

4. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

5. Section 60.4 is amended by revising paragraphs (b)(P), (b)(Y), and (b)(KK) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(P) State of Indiana, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

* * * * *

(Y) Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

* * * * *

(KK) State of Ohio—

(i) Medina, Summit and Portage Counties; Director, Akron Regional Air Quality Management District, 177 South Broadway, Akron, Ohio 44308.

(ii) Stark County; Director, Air Pollution Control Division, Canton City Health Department, City Hall Annex Second Floor, 218 Cleveland Avenue S.W., Canton, Ohio 44702.

(iii) Butler, Clermont, Hamilton and Warren Counties: Director, Southwestern Ohio Air Pollution Control Agency, 2400 Beekman Street, Cincinnati, Ohio 45214.

(iv) Cuyahoga County: Commissioner, Division of Air Pollution Control Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, Ohio 44115.

(v) Belmont, Carroll, Columbiana, Harrison, Jefferson, and Monroe Counties: Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, Ohio 43952.

(vi) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties:

Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, Ohio 45402.

(vii) Lucas County and the City of Rossford (in Wood County): Director, Toledo Environmental Services Agency, 26 Main Street, Toledo, Ohio 43605.

(viii) Adams, Brown, Lawrence, and Scioto Counties: Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, Ohio 45662.

(ix) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except City of Rossford), and Wyandot Counties: Ohio Environmental Protection Agency, Northwest District Air Pollution Unit 1035 Dezlac Grove Drive, Bowling Green, Ohio 43402.

(x) Ashtabula, Holmes, Lorain, and Wayne Counties: Ohio Environmental Protection Agency, Northeast District Office, Air Pollution Unit, 2110 East Aurora Road, Twinsburg, Ohio 44087.

(xi) Athens, Coshocton, Gallia, Guernsey, Hocking, Jackson, Meigs, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties: Ohio Environmental Protection Agency, Southeast District Office, Air Pollution Unit, 2195 Front Street, Logan, Ohio 43138.

(xii) Champaign, Clinton, Highland, Logan, and Shelby Counties: Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, East Fourth Street, Dayton, Ohio 45402.

(xiii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties: Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, Ohio 43266–0149.

(xiv) Geauga and Lake Counties: Lake County General Health District, Air Pollution Control, 105 Main Street, Painesville, Ohio 44077.

(xv) Mahoning and Trumbull Counties: Mahoning-Trumbull Air Pollution Control Agency, 9 West Front Street, Youngstown, Ohio 44503.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.04 is amended by revising paragraphs (b)(P), (b)(Y), and (b)(KK) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(P) State of Indiana, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

* * * * *

(Y) Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

* * * * *

(KK) State of Ohio—

(i) Medina, Summit and Portage Counties: Director, Akron Regional Air Quality Management District, 177 South Broadway, Akron, OH 44308.

(ii) Stark County: Director, Air Pollution Control Division, Canton City Health Department, City Hall Annex Second Floor, 218 Cleveland Avenue S.W., Canton, OH 44702.

(iii) Butler, Clermont, Hamilton and Warren Counties: Director, Southwestern Ohio Air Pollution Control Agency, 2400 Beekman Street, Cincinnati, OH 45214.

(iv) Cuyahoga County: Commissioner, Division of Air Pollution Control, Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, OH 44115.

(v) Belmont, Carroll, Columbiana, Harrison, Jefferson, and Monroe Counties: Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, OH 43952.

(vi) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties: Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, OH 45402.

(vii) Lucas County and the City of Rossford (in Wood County): Director, Toledo Environmental Services Agency, 26 Main Street, Toledo, OH 43605.

(viii) Adams, Brown, Lawrence, and Scioto Counties: Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, OH 45662.

(ix) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van West, Williams, Wood (except City of Rossford), and Wyandot Counties: Ohio Environmental Protection Agency, Northwest District Office, Air Pollution Unit, 1035 Dezlaz Grove Drive, Bowling Green, OH 43402.

(x) Ashtabula, Holmes, Lorain, and Wayne Counties: Ohio Environmental Protection Agency, Northeast District Office, Air Pollution Unit, 2110 East Aurora Road, Twinsburg, OH 44087.

(xi) Athens, Coshocton, Gallia, Guernsey, Hocking, Jackson, Meigs, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties: Ohio Environmental Protection Agency, Southeast District Office, Air Pollution Unit, 2195 Front Street, Logan, OH 43138.

(xii) Champaign, Clinton, Highland, Logan, and Shelby Counties: Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, East Fourth Street, Dayton, OH 45402.

(xiii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties: Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, OH 43266–0149.

(xiv) Geauga and Lake Counties: Lake County General Health District, Air Pollution Control, 105 Main Street, Painesville, OH 44077.

(xv) Mahoning and Trumbull Counties: Mahoning-Trumbull Air Pollution Control Agency, 9 West Front Street, Youngstown, OH 44503.

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[FR Doc. 88–11831 Filed 5–25–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, 485, and 498

[BERC–451–CN]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

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

ACTION: Final rule; correction.

SUMMARY: On March 1, 1988, we published a final rule concerning organ procurement organizations and protocols (53 FR 6526). In it were some clerical and typographical errors; we are correcting them in this notice.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (301) 966–4669.

SUPPLEMENTARY INFORMATION: In Federal Register Document 88–4431, beginning on page 6526, in the issue of March 1, 1988, make the following corrections:

Page 6542, col. 3:

1. In the first paragraph of the Response, line 4: change "the" to "a". "The" may imply to some readers that hospitals may not deal with any designated OPO with which it wishes to deal.

PART 413—[AMENDED]

Page 6548, col. 3:

§ 413.178 [Corrected]

2. In § 413.178, paragraph (d)(1), line 5: Change "an " to "a".

3. In § 413.178, paragraph (d)(2), line 3: Insert "or" between "OPO" and "laboratory".

Page 6549:

4. Col. 1, § 413.178, paragraph (e)(2), line 2: Change "an" to "a".

PART 482—[AMENDED]

§ 482.12 [Corrected]

5. Col. 3, line 2: Add "and" at end of the line in § 482.12(c)(5)(i)(B).

PART 485—[AMENDED]

6. Col. 3, authority citation for Part 485 (in item 5.a.), line 3: Add "1320b–8," after "1302".

7. Col. 3, Subpart D, table of contents, in the heading for § 485.305, "procurement and transplantation network" should read "Procurement and Transplantation Network" and in the heading for § 485.306, "Organ Procurement Organizations" should read "organ procurement organizations".

Page 6550, Col. 3:

§ 485.304 [Corrected]

8. In § 485.304, paragraph (g)(1), line 6: Remove the words "that have" the first time they appear so that the line reads "and that have an operating".

9. In § 485.304, paragraph (m), line 1: Change "makes" to "make".

Page 6551, Col. 1:

§ 485.305 [Corrected]

10. In the heading of § 485.305, capitalize "procurement": "Procurement".

§ 485.306 [Corrected]

11. In the heading of § 485.306, "Organ Procurement Organizations" should read "organ procurement organizations".

(Catalog of Federal Domestic Assistance Programs No. 13.714—Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 20, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88–11779 Filed 5–25–88; 8:45 am]

BILLING CODE 4120–01–M

Office of Child Support Enforcement

45 CFR Parts 303 and 305

Provision of Services in Interstate IV–D Cases—OMB Control Number for Approved Information Collection Requirements

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Technical amendment.

SUMMARY: Section 3512 of the Paperwork Reduction Act of 1980 and the Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.5(b) require that all information collection requirements contained in regulations and approved by OMB must display the valid OMB control number. This document satisfies this requirement for the information collection requirements in the final rule, Provision of Services in Interstate IV–D cases, that appeared in the **Federal Register** on February 22, 1988 (53 FR 5246).

EFFECTIVE DATE: May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce Linder (202) 245–1773.

List of Subjects in 45 CFR Parts 303 and 305

Child welfare, grant programs, social programs.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. 45 CFR Part 303 is amended by adding the OMB control number at the end of § 303.7 as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * *

(Approved by the Office of Management and Budget under control number 0970–0085.)

PART 305—[AMENDED]

4. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

5. 45 CFR Part 305 is amended by adding the OMB control number at the end of § 305.32 as follows:

§ 305.32 Provision of services in interstate IV–D cases.

* * * * *

(Approved by the Office of Management and Budget under control number 0970–0085.)

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: May 18, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88–11684 Filed 5–25–88; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–154; RM–4968, RM–5068 and RM–5360 et al.]

Radio Broadcasting Services; Conway, Hot Springs, Wrightsville, Fairfield Bay, Perryville, and Maumelle, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a joint petition for reconsideration to the extent of deleting Channel 290C2 from Perryville, Arkansas, allotting Channel 290C1 to Hot Springs, Arkansas and allotting Channel 291C2 to Fairfield Bay, Arkansas. The earlier *Report and Order* had allotted Channel 290C2 to Perryville over the conflicting proposal to allot Channel 290C1 to Hot Springs. The Commission concurred with the petition for reconsideration that the earlier determination, which was based on a comparison of the respective populations which would receive service, was inaccurate. This document also modifies the license of Station KLAZ, Hot Springs to specify operation on Channel 290C1 and the license of Station KFFB, Fairfield Bay to specify operation on Channel 291C2. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86–154, adopted May 10, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying

during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 290C2 from Perryville.

3. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 292A and adding Channel 290C1 at Hot Springs.

4. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 292A and adding Channel 291C2 at Fairfield Bay.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11875 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–434; RM–6021; RM–6191, and RM–6192]

Radio Broadcasting Services; Scranton and Surfside Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, pursuant to the separate request of Broadcasting of Scranton and Scranton Communications, allots Channel 275A to Scranton, South Carolina, as the community's first local FM service. Channel 275A can be allotted to Scranton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33–55–06 and West Longitude 79–44–36. The mutually exclusive request of Jones, Eastern of the Grand Strand, Inc. to substitute Channel 276C2 for Channel 276A at Surfside Beach, South Carolina, and modification of its license for Station WYAK–FM to specify the higher powered channel, is denied. With this action, this proceeding is terminated.

DATES: Effective July 1, 1988. The window period for filing applications will open on July 5, 1988, and close on August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–434, adopted April 15, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by adding the following entry: Scranton, Channel 275A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11876 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 70639–8060]

Critical Habitat; Hawaiian Monk Seal; Endangered Species Act

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

ACTION: Notice of final rule.

SUMMARY: NMFS is extending critical habitat for Hawaiian monk seals from 10 to 20 fathoms in all areas previously designated as critical. NMFS believes the designation of critical habitat to 20 fathoms will benefit the species because it includes additional areas that may require special management consideration or protection. Also, NMFS is adding Maro Reef to the areas designated as critical in the Northwestern Hawaiian Islands (NWHI).

DATE: This rule becomes effective on June 27, 1988.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Terminal Island, CA 90731, 213–548–2518; or Margaret Lorenz, Protected Species Management Division, NMFS, Washington, DC 20235, 202–673–5349.

SUPPLEMENTARY INFORMATION:

Background

After the final rule designating critical habitat out to 10 fathoms was issued (April 30, 1986, 51 FR 16047), NMFS continued to examine the basis for its decision. Of particular concern was whether areas beyond 10 fathoms were in need of special management consideration or protection either now or in the reasonably forseeable future.

After inviting comments on whether the area between 10 to 20 fathoms around the islands may require special management consideration or protection and reviewing our earlier decision, NMFS proposed regulations that would extend the designation of critical habitat out to 20 fathoms in all areas currently designated as critical and would include Maro Reef (January 8, 1988).

All commenters on the proposed rule, except the State of Hawaii, favored extending critical habitat out to 20 fathoms and including Maro Reef in the areas designated as critical. The State believes there is insufficient evidence to show that waters from 10 to 20 fathoms deep, or around Maro Reef, are particularly critical, and they believe there is no legal basis for the proposed rulemaking. The State did not agree with the original designation of critical habitat in the NWHI. In this case, the State believes that, to date, there has been no convincing demonstration through the best available scientific evidence of a need for critical habitat designation. However, based on the best scientific data available, NMFS believes that there is sufficient justification to designate critical habitat out to 20 fathoms and to include Maro Reef in the designation. The components of monk seal habitat identified in the FEIS include foraging and breeding areas, pupping and major haul-out sites, and

nearshore waters used by females and pups.

Comments favoring the extension of critical habitat were received from the U.S. Department of the Interior, the Humane Society of the United States, the Sierra Club Legal Defense Fund, Greenpeace, the Committee for Humane Legislation, the Center for Environmental Education and one individual. However, Interior stated that they disagreed with the assessment contained in the proposed rule that the Minerals Management Service is one of the Federal agencies most likely to be affected by the designation of critical habitat. Interior believes the contention that there may be conflicts between deep seabed mining and monk seal critical habitat is not supported by any available scientific and commercial data.

NMFS agrees that deep seabed mining itself probably will not affect monk seals. However, the development of on- or near-shore support facilities may affect monk seals. If so, and if these facilities were subject to Interior's jurisdiction, it would be necessary for MMS to consult with NMFS.

The action NMFS is taking is described in Alternative One of the Final Environmental Impact Statement—Proposed Designation of Critical Habitat for the Hawaiian Monk Seal in the Northwestern Hawaiian Islands (May 1986). NMFS especially focused on the extensive comments regarding the areas that may need special management consideration or protection. The designation of critical habitat to 20 fathoms affords substantial protection for the Hawaiian monk seal and includes areas that are both essential and in need of special management consideration or protection. The additional areas incorporated in this designation consist primarily of foraging habitat.

To determine what portion of the monk seal's range contains habitat that is consistent with the definition of "critical habitat," NMFS reviewed the available biological information, comments on the Supplemental Environmental Impact Statement, the management recommendations made by the Recovery Team and the Marine Mammal Commission, the comments received in response to the advance notice and the proposed rule and the record of Endangered Species Act Section 7 consultations on Federal activities in the NWHI.

There are no inherent restrictions on human activities in an area designated as critical habitat. However, when an area is designated as critical, all activities that take place in that area are affected if they are authorized, funded, or carried out by Federal agencies. Critical habitat designation notifies Federal agencies that a listed species depends on a particular area for its continued existence and that any Federal action that may affect that area is subject to the consultation requirements of Section 7 of the ESA. Any Federally controlled activity may be conducted in an area designated as critical habitat if the authorizing Federal agency determines through the Section 7 consultation process that the activity is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. Activities that are conducted by state agencies or the private sector without Federal involvement may be carried out without regard to Section 7 although other provisions of the ESA and other Federal and State laws may impose prohibitions on activities resulting in the taking of endangered or threatened species.

Hawaiian Monk Seal Biology

The biology of the Hawaiian monk seal is discussed in the Supplemental and Final Environmental Impact Statements. The discussion includes the history of exploitation, trends in population size, current status of the population, life history parameters, habitat requirements, and biological problems confronting the species. Further information is available from the Draft Environmental Impact Statement, the Recovery Plan, and the 5-year Status Review for the Hawaiian monk seal. A summary of research studies concerning habitat requirements of the Hawaiian Monk Seal was provided in the proposed rule.

This final rule designates as critical habitat for the Hawaiian monk seal all beach areas, including all beach crest vegetation to its deepest extent inland, lagoon waters, and ocean waters out to a depth of 20 fathoms, around Kure Atoll, Midway Islands (except Sand Island and its harbor), Pearl and Hermes Reef, Maro Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island. References to beaches or beach areas include all sand spits and islets.

Effect of the Rulemaking

This action directly affects only Federal agencies and those who need Federal authorization or funding for their actions. It does not affect State and local government activities or private actions which do not depend on or are not limited by Federal authorization, permits or funds, although other law may prohibit actions that result in the taking of endangered or threatened species. However, many of the activities in the NWHI are subject to some Federal control and could be affected. Section 7 of the ESA requires Federal agencies to consult with NMFS to ensure that any activity funded, authorized, or undertaken by them is not likely to jeopardize the continued existence of endangered species or result in the destruction or adverse modification of critical habitat.

Currently, Federal agencies are required to consult on actions that may affect Hawaiian monk seals. The extension of designated critical habitat requires Federal agencies to evaluate their activities with respect to critical habitat to ensure that these activities are not likely to result in the destruction or adverse modification of the critical habitat. In most situations, consultations are required even if critical habitat has not been designated because actions that affect critical habitat are also likely to affect the monk seal. Therefore, expanding the designation of critical habitat does not substantially add to the Federal agencies' responsibilities and does not have any significant adverse economic impacts on State or private entities including small businesses. Extending the designation of critical habitat will assist Federal agencies in evaluating the potential effects of their activities on monk seals and in determining when consultation with NMFS would be required. The Federal agencies most likely to be affected by this designation include the U.S. Coast Guard, U.S. Navy, U.S. Fish and Wildlife Service, Minerals Management Service, Western Pacific Regional Fishery Management Council, and NMFS.

This final rule is not expected to have any direct impact on fisheries in the NWHI. The only direct economic costs are those associated with more extensive monitoring of Federal activities by NMFS or when other Federal agencies, after a review of their activities in the NWHI, must take certain administrative actions. Since Federal agencies are required to conduct Section 7 consultations for activities that may affect Hawaiian monk seals and conform to National Environmental Policy Act (NEPA) requirements for actions that significantly affect the quality of the human environment, any additional costs are expected to be minimal.

Classification

For reasons discussed in **Effects of the Rulemaking**, the NOAA Administrator has determined that this is not a major

rule requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.

Further, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required. This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

National Environmental Policy Act

Draft, draft supplemental, and final environmental impact statements were prepared on the action to designate critical habitat out to 10 fathoms. This proposed action to extend critical habitat to 20 fathoms is analyzed as Alternative One in the FEIS.

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife, marine mammals.

Dated: May 19, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

PART 226—[AMENDED]

Accordingly, Part 226 of Chapter II of Title 50 of the Code of Federal Regulations is amended as follows.

1. The authority citation for Part 226 continues to read as follows

Authority: 16 U.S.C. 1533.

2. Section 226.11 under Subpart B is revised to read as follows:

§ 226.11 Northwestern Hawaiian Islands.

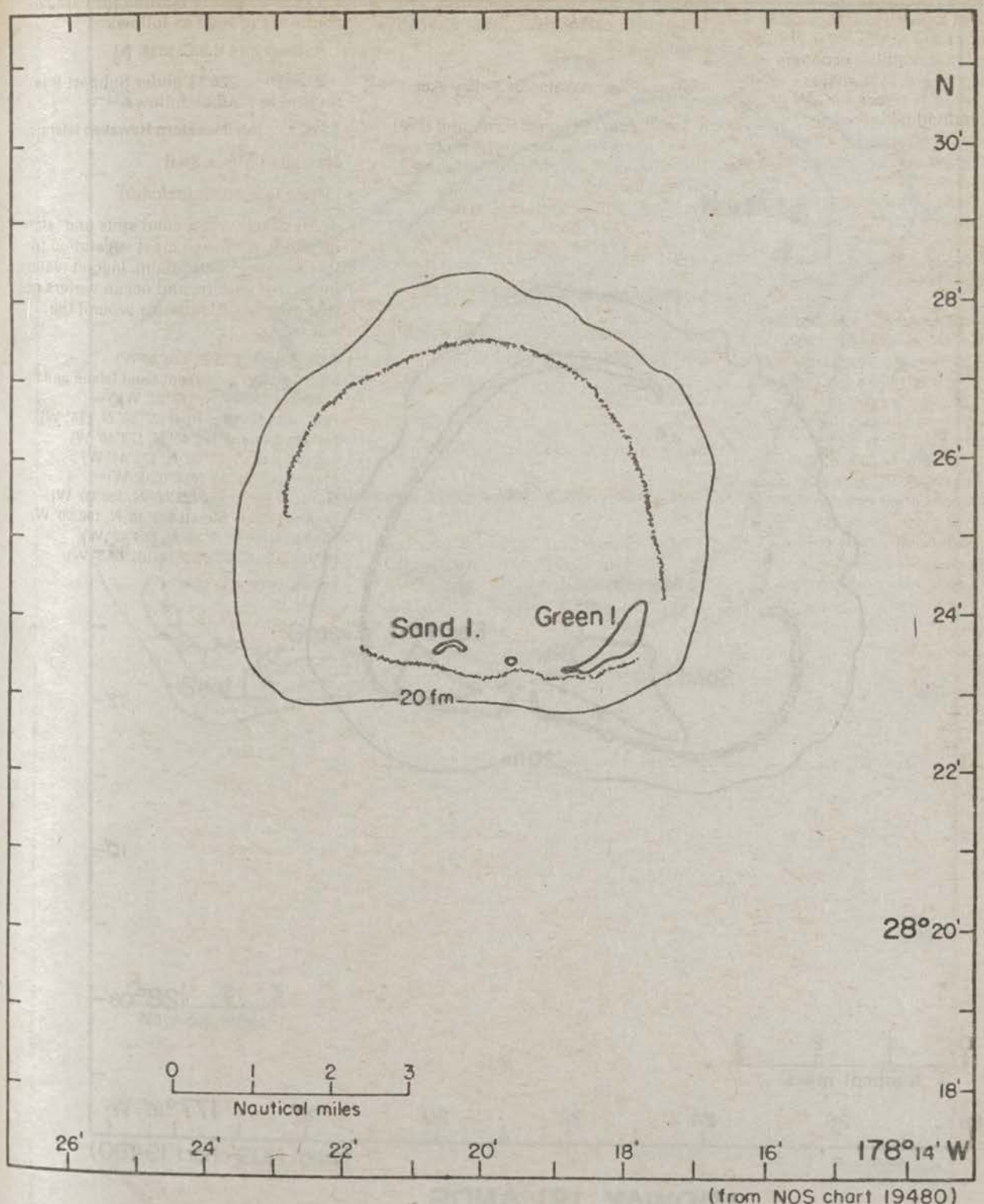
Hawaiian Monk Seal

(*Monachus schauinslandi*)

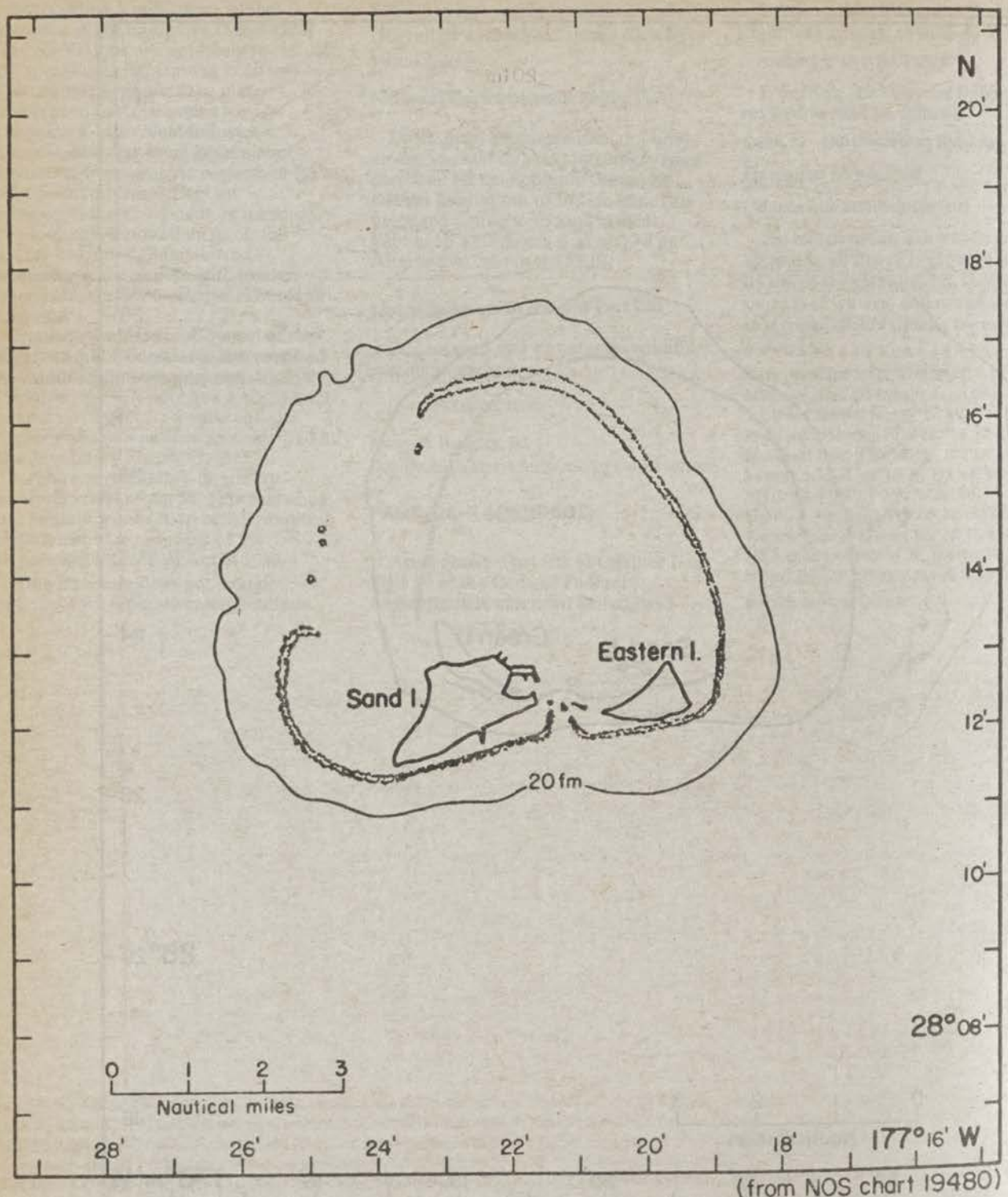
All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

Kure Atoll (28°24′N, 178°20′W)
Midway Islands, except Sand Island and its harbor (28°14′ N, 177°22′ W)
Pearl and Hermes Reef (27°55′ N, 175° W)
Lisianski Island (26°46′ N, 173°58′ W)
Laysan Island (25°46′ N, 171°44′ W)
Maro Reef (25°25′ N, 170°35′ W)
Gardner Pinnacles (25°00′ N, 168°00′ W)
French Frigate Shoals (23°45′ N, 166°00′ W)
Necker Island (23°34′ N, 164°42′ W)
Nihoa Island (23°03.5′ N, 161°55.5′ W).

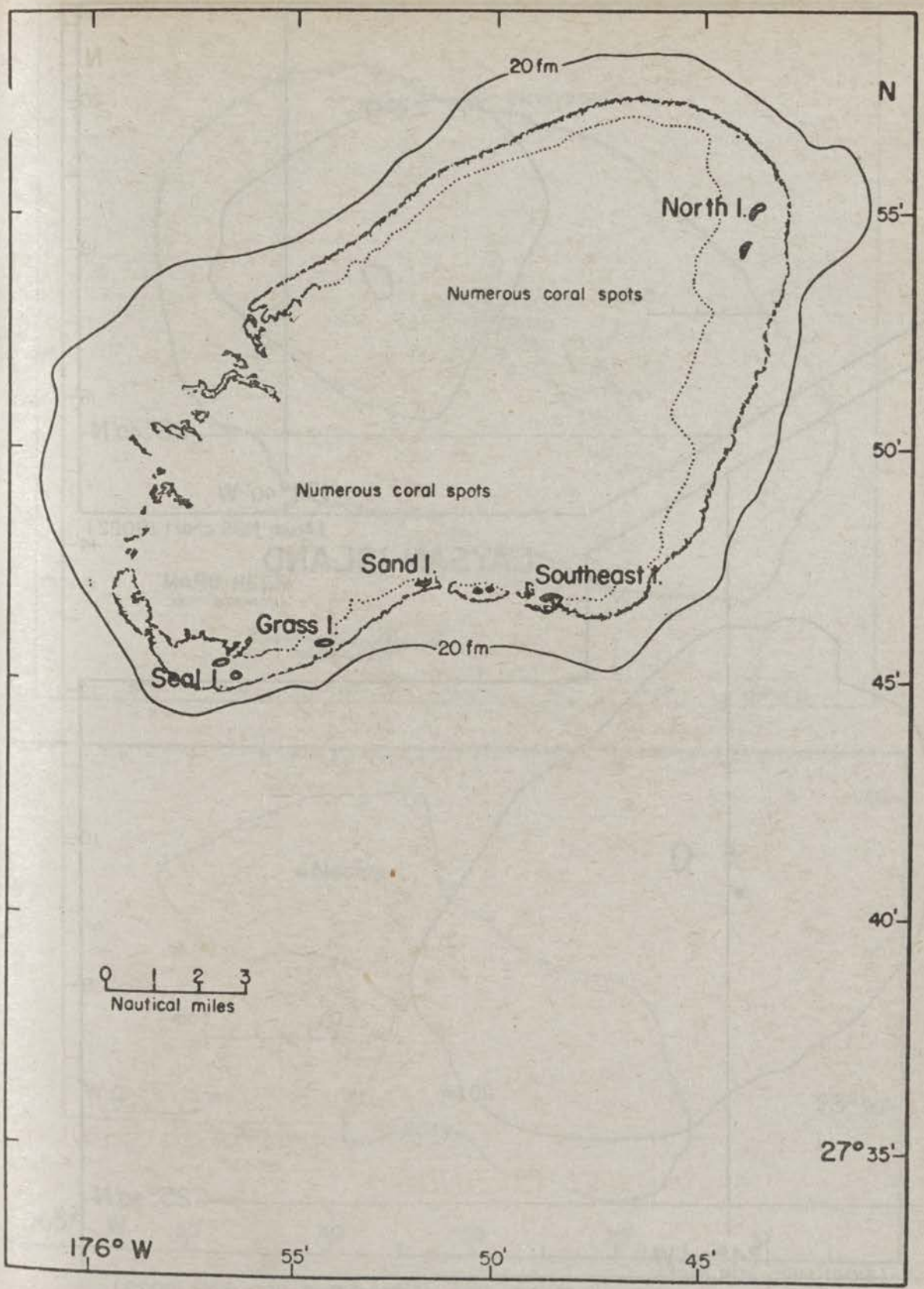
BILLING CODE 3510-22-M


N
30'
28'
26'
24'
22'
28°20'
18'
Sand I.
Green I.
20 fm
0 1 2 3
Nautical miles
26'
24'
22'
20'
18'
16'
178°14' W
(from NOS chart 19480)

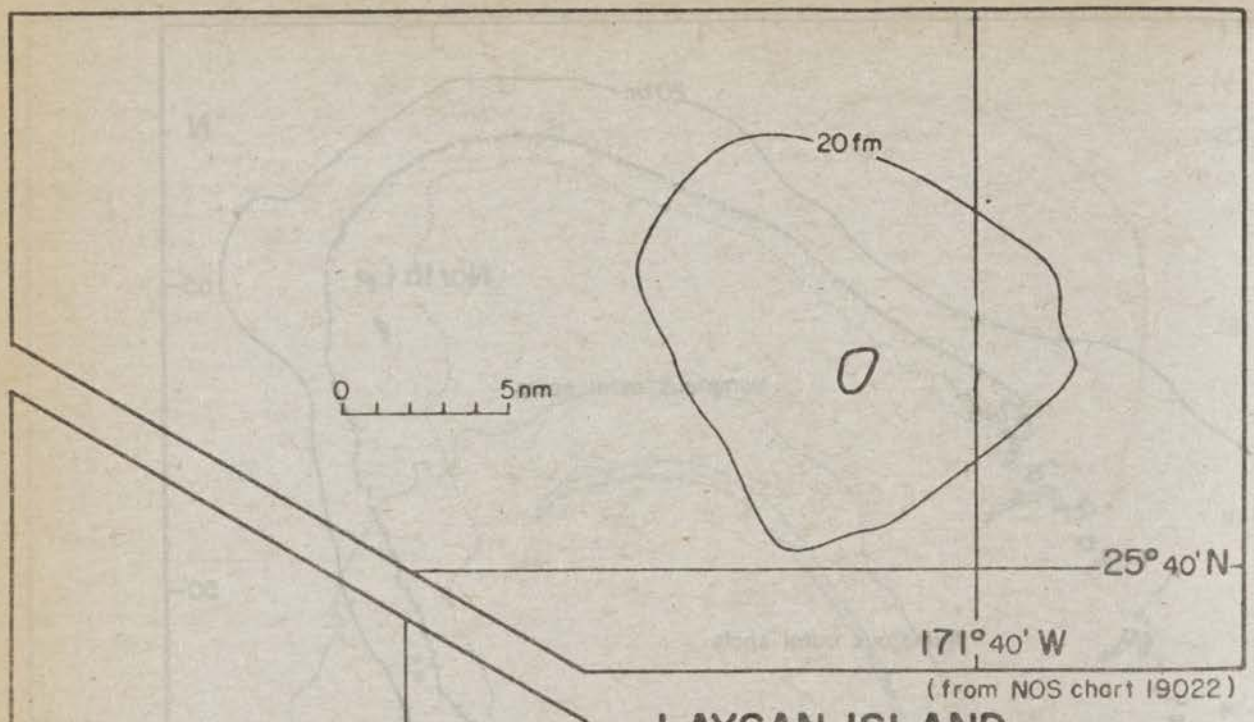
KURE ATOLL



MIDWAY ISLANDS

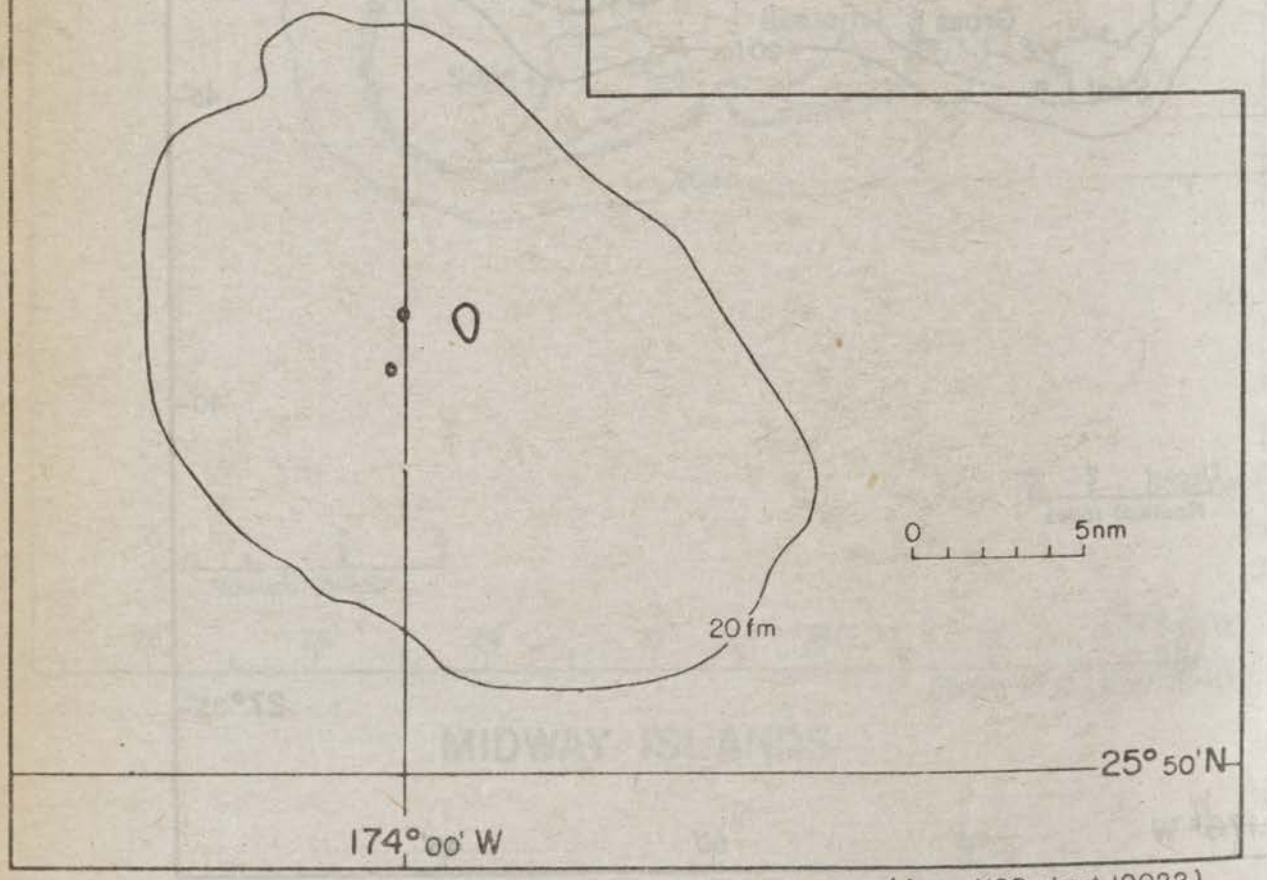


PEARL and HERMES REEF



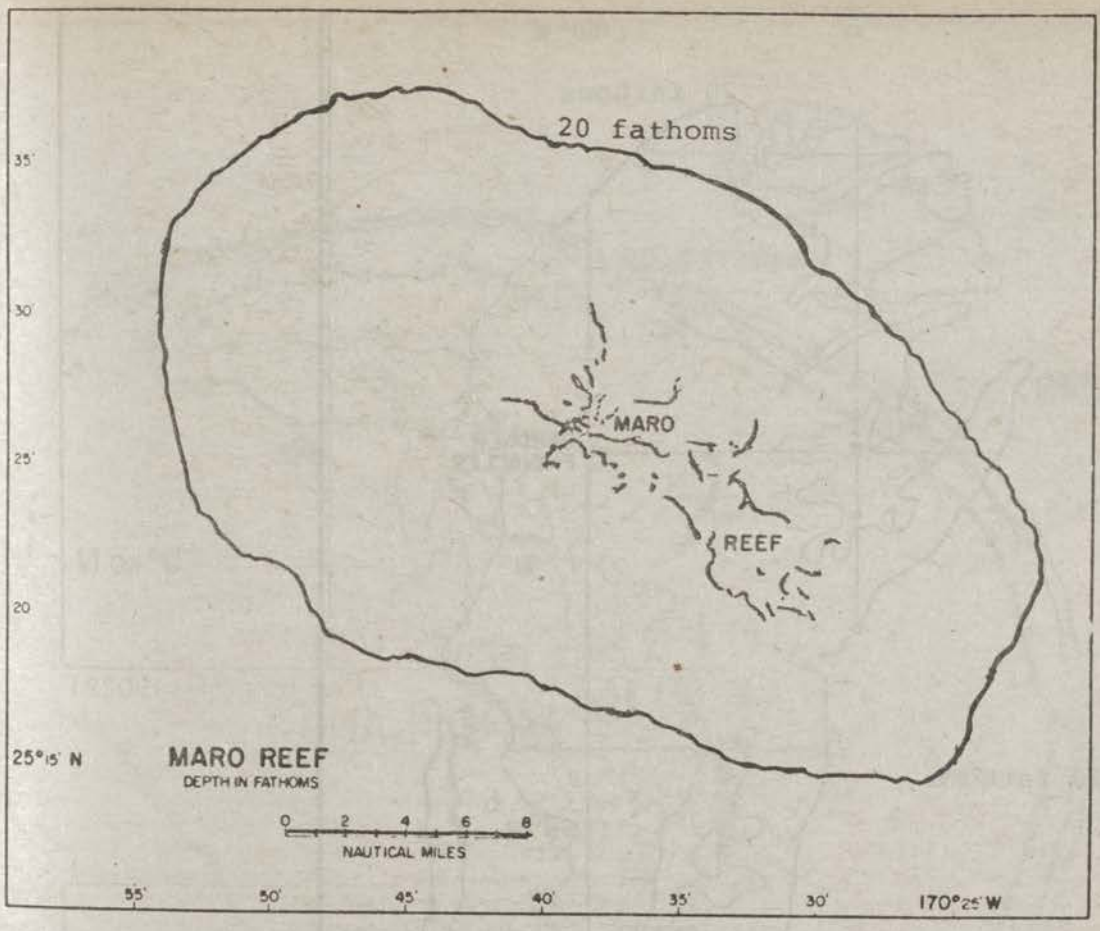
(from NOS chart 19022)

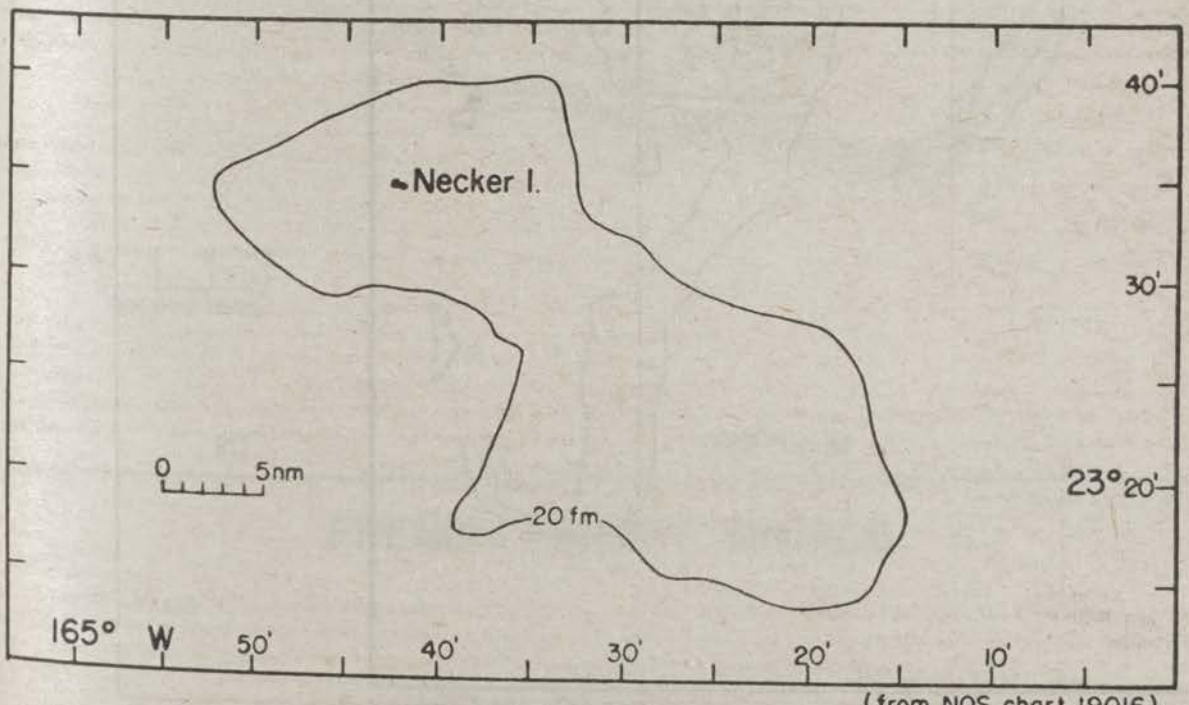
LAYSAN ISLAND



(from NOS chart 19022)

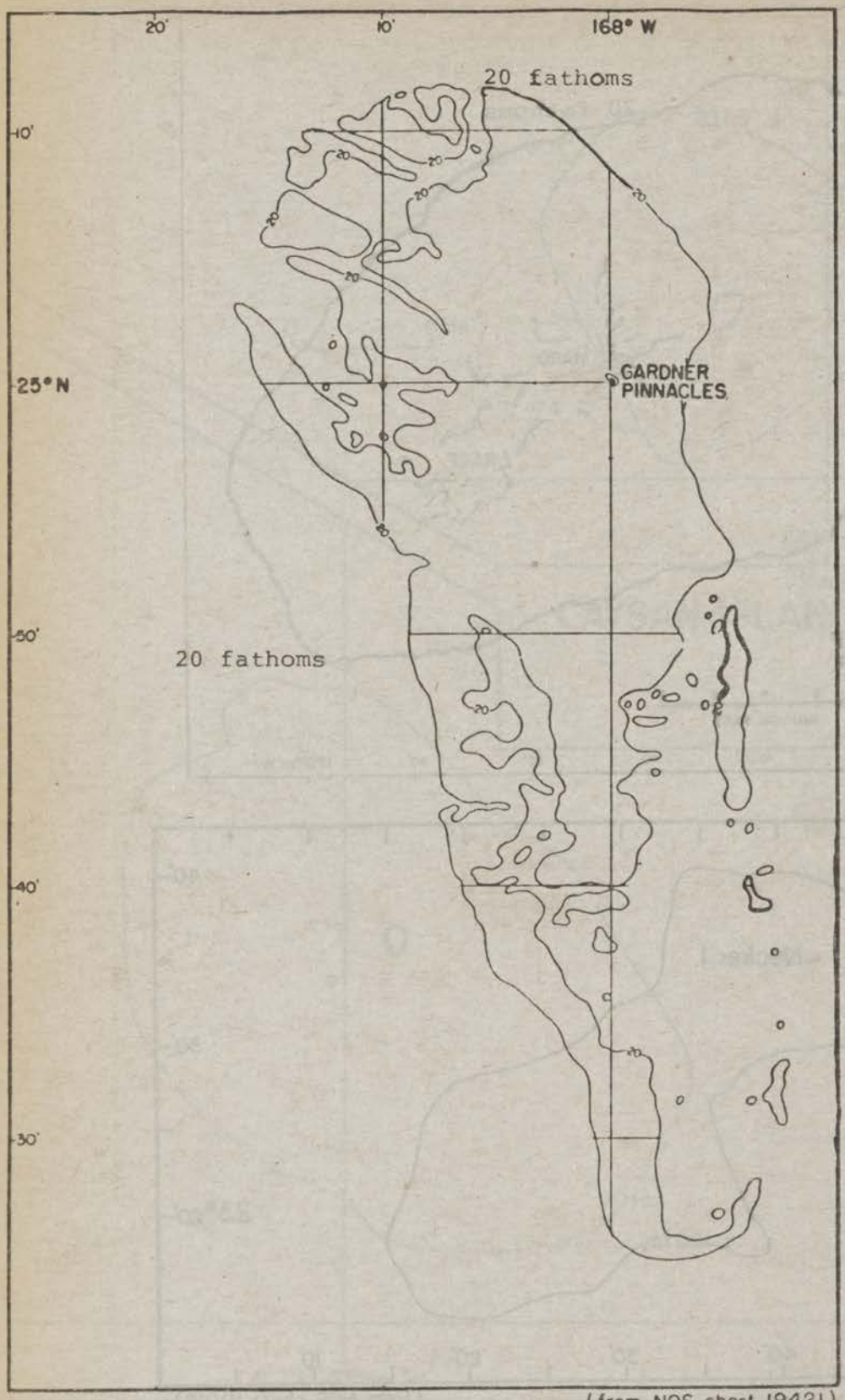
LISIANSKI ISLAND





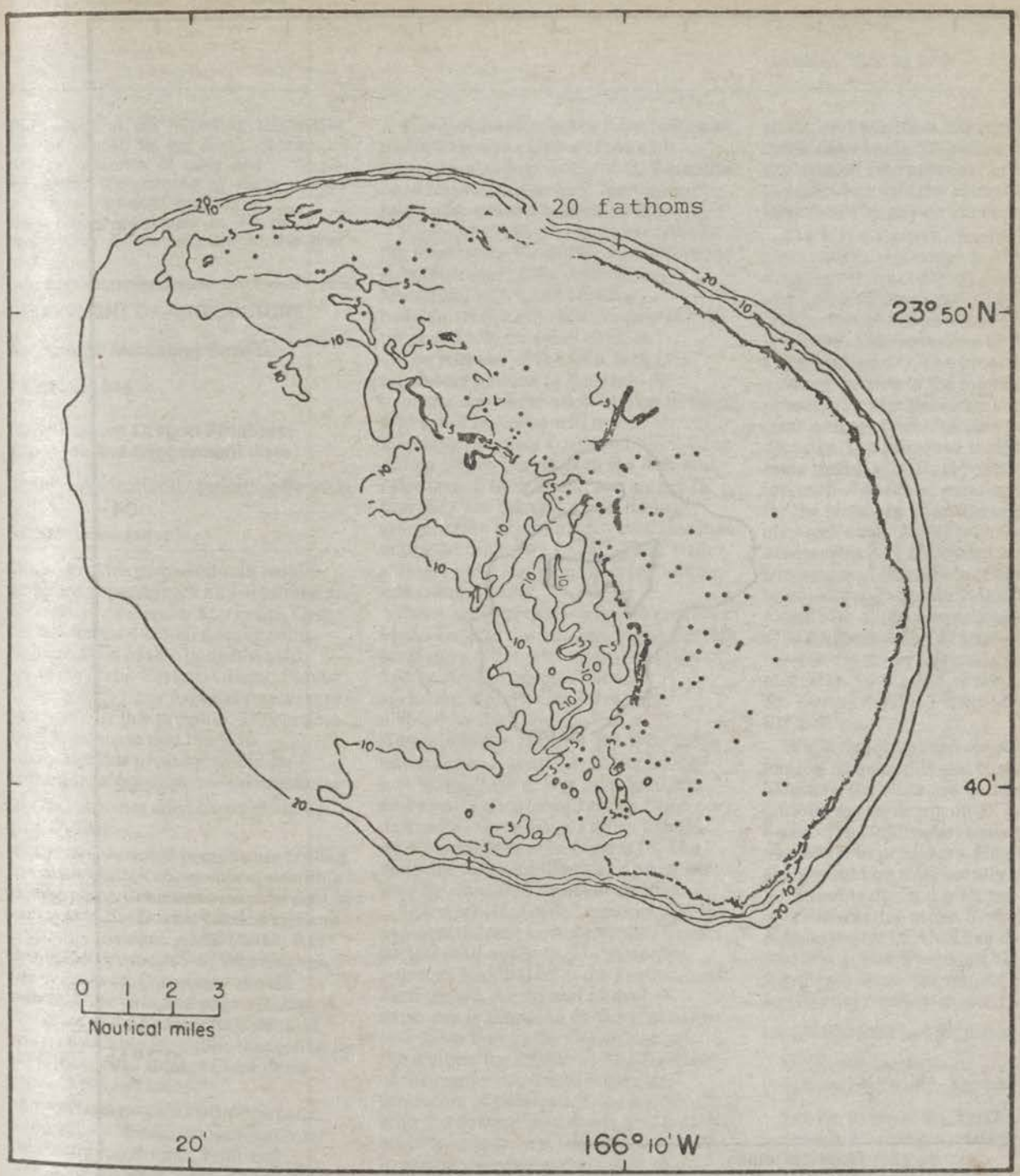
(from NOS chart 19016)

NECKER ISLAND



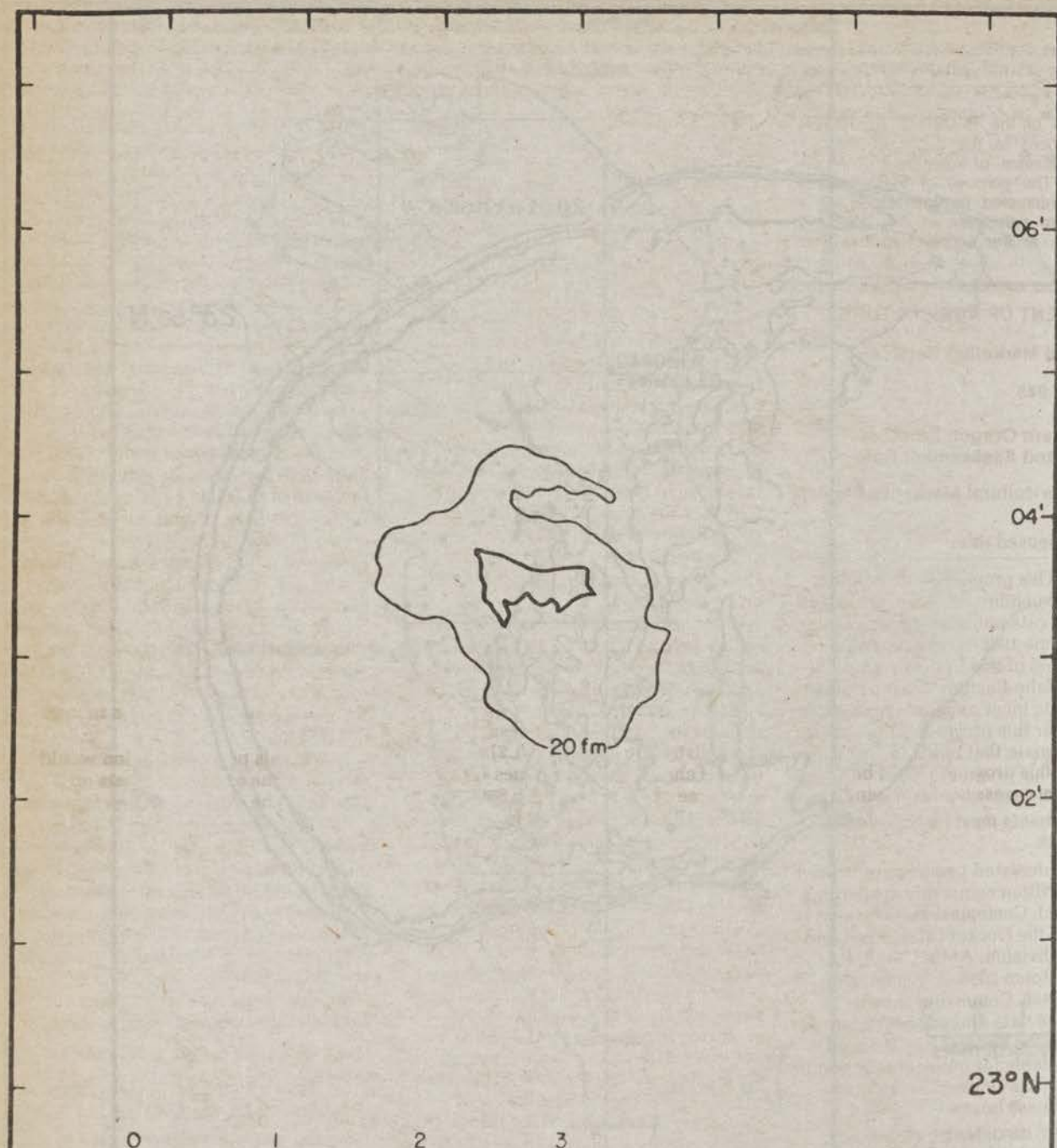
(from NOS chart 19421)

GARDNER PINNACLES



(from U.S.F.W.S.)

FRENCH FRIGATE SHOALS



NIHOA ISLAND

[FR Doc. 88-11643 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 945 for the 1988–89 fiscal period. Authorization of this budget would allow the Idaho-Eastern Oregon Potato Committee to incur expenses necessary to administer this program. This action would designate that funds to administer this program would be derived from assessments on handlers.

DATE: Comments must be received by June 27, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk durig regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Adminstration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 945 (7 CFR Part 945) regulating the handling of potates grown in designated counties in Idaho and Malheur County, Oregon. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon pototes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The recommended assessment rate is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Idaho-Eastern Oregon Potato Committee's recommended budget for the 1988–89 fiscal period totals $76,900 and an assessment rate of $0.0026 per hundredweight of potatoes is being proposed. This compares to the 1987–88 budget of $66,470. The proposed assessment rate is the maximum permitted under the order and has remained the same for over two decades. The proposed budget is $10,430 more than last year, reflecting an increase of $1,900 in salaries and $7,300 for the purchase of an automobile for the manager's use. At the proposed assessment rate of $0.0026, anticipated fresh market shipments of 20 million hundredweight would yield $52,000. This along with approximately $1,200 in fees, $700 in interest and $23,000 from the reserve would be adequate for budgeted expenses. By the end of the fiscal period the reserve fund is expected to total $23,000.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, it is proposed that § 945.241 be added as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

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

2. A new § 945.241 is added to read as follows:

§ 945.241 Expenses and assessment rate.

Expenses of $76,900 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 23, 1988.

Robert C. Keeney,

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

[FR Doc. 88-11920 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 998

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Expenses, Assessment Rate, and Indemnification Reserve for the Peanut Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures for administration and indemnification, establish an assessment rate, and authorize monetary additions to the indemnification reserve under Marketing Agreement 146 for the 1988–89 crop year. The proposed actions are needed for the committee to incur expenses and collect funds to pay its expenses during the 1988–89 crop year, which will facilitate program operations. Funds to administer this program are derived from assessements on handlers.

DATE: Comments must be received by June 6, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular hours.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530-S, Washington, DC 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposded under Marketing Agreement 146 [7 CFR Part 998] regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Markeing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disporportionately burdened.

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,950 producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and the majority of producers may be classified as small entities.

Under the marketing agreement the assessement rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e. July 1). An annual budget of expenses is prepared by the Peanut Administrative Committee and submitted to the Department of Agriculture for approval. The members of the administrative committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services and personnal for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts from July 1. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget, rate of assessment, and the continuation of an indemnification reserve were acted upon by the committee on April 14 and 15, 1988, and expenses are incurred on a continuous basis. Therefore, this budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses starting on July 1, 1988.

The Peanut Administrative Committee unanimously recommended a 1988–89 budget of administrative expenses of $816,000, or $34,000 more that budgeted last year. The increase from last year is necessary to cover increases in the salary and benefits of the committee's staff, hire another field man, cover additional staff travel expected during the 1988–89 crop year, and to cover increases in office rent and parking.

The recommended assessment rate for the 1988–89 crop year is $2.48 per ton, of which $0.48 is for administrative expenses and $2.00 is for indemnification expenses. Last year $0.46 was fixed for administrative expenses and $3.00 was fixed for indemnification expenses. The 1988–89 assessable tonnage was estimated at 1.7 million tons, the same as last year. Applicable of the proposed assessment rates to this estimate would result in $816,000 for administration and $3.4 million for indemnification.

An estimated $4.9 million of 1987–88 indemnification funds would be carried forward into the 1988–89 crop year as a reserve under the agreement to meet 1988–89 indemnification expenses. The reserve is within the limits authorized by the agreement. Funding for the indemnification account also will be generated from interest on time deposits.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all hanlders signatory to the agreement. Some of the additional costs may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing agreement. Further, there are few small entities in the domestic peanut industry. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of

less than 30 days is appropriate because the budget and assessment rate approval and the authorization to continue an indemnification reserve for this program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, it is proposed that § 998.401 be added as follows:

PART 998–MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 continues to read as follows:

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

2. New § 998.401 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 998.401 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1988, shall be in the amount of $816,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1988 crop, effective July 1, 1988, are expected to be about $5.1 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the committee, in accordance with § 998.48 of the marketing agreement, an assessment rate at the rate of $2.48 per net ton of farmers' stock peanuts received or acquired other than from the described in § 998.31(c) and (d). A total of $0.48 shall be for administrative expenses and a total of $2.00 shall be for indemnification expenses.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to the § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate and not expended in providing indemnification on the 1988 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: May 23, 1988.

Robert C. Keeney,

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

[FR Doc. 88–11921 Filed 5–25–88; 8:45 am]

BILLING CODE 3410–02–M

POSTAL SERVICE

39 CFR Part 111

Use of Sampling Process for Indemnity Claims

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Under this proposal, the Domestic Mail Manual (DMM) would provide for an optional, and more efficient, sampling procedure for mailers who file large numbers of COD claims annually. More specifically, the procedure is targeted for mailers filing 2,000 or more claims annually. Adjudication would be handled by the St. Louis Postal Data Center instead of Postal Service Headquarters. The use of sampling procedures would reduce administrative costs for both the Postal Service and for most mailers filing large numbers of claims.

DATE: Comments must be received on or before June 25, 1988.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Steele, (202) 268–5312.

SUPPLEMENTARY INFORMATION: On June 19, 1987, the Postal Service published a notice in the **Federal Register** (52 FR 23308) soliciting comments on a proposal that would have made mandatory the sampling procedures that are now optional for mailers who submit 2,000 or more COD claims annually. No comments were received on the proposal. The Postal Service has, nevertheless, reconsidered the proposal, revised it in various respects, and is republishing the revised version for comment. Under the revised proposal, the sampling process would not be mandatory, but would remain optional. The revised regulations would also specify the method for computing the payment due a claimant, instead of leaving this matter to the discretion of the Postal Data Center. In addition, partial payments would be payable, generally within 45 to 60 days after the claims have been sent to the addressee post office for verification.

Currently, when mailers desire to file a large number of COD indemnity claims, they are contacted by the Postal Service to have the claims processed through a sampling procedure. To use the sampling procedure, mailers must sign an agreement with the Postal Service. All of the arrangements to process the claims, including adjudication, are made at Postal Service Headquarters.

While there is no requirement that mailers with large numbers of COD claims accept the sampling procedures, processing claims individually, by comparison, is much more costly to the Postal Service. A significant number of workhours is required both at the post office accepting the claims and at other post offices nationwide. Use of the sampling procedures will not only reduce the Postal Service's costs, but will allow the following benefits to mailers:

1. The mailer will need to present fewer individual claims. Since claims filed by most large mailers are computer-generated, the savings to them may be significant.

2. The mailer will not have to file inquiries or follow-up claims.

3. The mailer's total open accounts for the time period covered by the sample can be closed more quickly than when claims are filed individually.

4. A partial payment will be made to mailers approximately 45 to 60 days from the beginning of a sampling. This means that the mailers will receive a portion of the monetary compensation due for their claims prior to completion of a sampling. Final payment would be made when the sampling has been completed.

With a sampling, the Postal Service is able to avoid a number of costs as well as satisfy the customer's claims with a minimum amount of time and resources. Postal Service costs affect the fees charged for COD service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c),) regarding proposed rule making by 39 U.S.S. 410(a), the Postal Service invites public comment on the following proposed amendments to the

Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation of 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Renumber 149.6 through 149.8 as 149.7 through 149.9, respectively. Add new 149.6 reading as follows:

PART 149—INDEMNITY CLAIMS

149.6 Sample Claims.

149.61 Who may file

.611 Any C.O.D. mailer may request permission from the Manager, Claims & Inquiry Branch, Postal Data Center, P.O. Box 14677, St. Louis, MO 63180–9990, to file under alternative procedures. The manager will approve the request when this is found to be the most cost-efficient method of processing the mailer's claims, according to the standards set forth in 149.612. Mailers are encouraged to participate in this program, because of the following benefits:

a. Fewer individual claims need to be presented by the mailer. Since claims filed by most large mailers are computer-generated, the savings to them may be significant.

b. No inquiries or follow-up claims have to be filed by the mailer. This saves the mailer time, and also reduces overall costs incurred in filing claims.

c. The use of sampling procedures in lieu of processing individual claims minimizes the costs to the Postal Service.

.612 If the Manager, Claims & Inquiry Branch, determines that use of the sampling procedure is not the most effective and efficient method of processing the mailer's claims, the manager will notify the mailer, and instruct the post office to process the claims individually. The general criteria to be considered in making the decision include:

a. Expense to the mailer;

b. Expedition of the claims process;

c. Availability of labor and resources to process the claims at the accepting post office;

d. Whether use of the sampling procedure will result in an accurate determination of the Postal Service's responsibility for indemnification of the claimant;

e. Other interests of the Postal Service.

Claimants have the right to appeal the determination of the manager in accordance with 149.91.

.613 Mailers who file claims under the provisions of this section are deemed to have consented to adjudication of those claims as prescribed in 149.64.

149.62 Procedures for Filing Claims Under a Sampling Agreement

.621 List of Claims and Number of Articles Mailed. The claimant must present a list of all COD items eligible for adjudication to the Claims and Inquiry Section of any post office, or the employee in a post office who has been designated to handle insurance claims. The list must conform with the following conditions:

a. For each claimed item, the list must contain the COD number followed by the name and address of the addressee, date of mailing, postage, fee, and amount due sender. All items must be listed by COD number, in ascending numerical order.

b. The list must cover all claims within a specific time frame, and additional claims for articles mailed during that time frame may not be submitted. No additional claims may be filed under these procedures until any previous claims under these procedures have been completed. A mailer may not submit more than three groups of claims under these procedures annually.

c. The list must contain a summary sheet showing the total number of claims and total amount due sender.

d. The claimant must submit a statement showing the total number of COD articles mailed during the time period represented by the sample.

.622 Computing the Number of Claims to be Sampled. The postmaster will send a memorandum containing the name and address of the mailer, the total number of claims on the listing, and the name(s) and phone number(s) of the employee(s) primarily responsible for processing the sample to:

General Manager, Systems Development Division, Office of Revenue & Cost Systems, Rates & Classification Department, Washington, DC 20260–5331, *and*

Manager, Claims & Inquiry Branch, Postal Data Center, P.O. Box 14677, St. Louis, MO 63180–9000.

In addition, the postmaster will include in the memorandum submitted to the St. Louis PDC a copy of the mailer's statement showing the total number of COD articles mailed during the time period represented by the sample.

Upon receipt of the memorandum, the Systems Development Division will apply the sampling method commonly referred to as "Sampling For Estimation of Proportions" to determine the number of claims to be sampled, the first claim to be sampled and the sampling interval to identify the subsequent claims to be sampled.

Note: Under the procedure, "Sampling for Estimation of Proportions", an assumed approximate proportion, confidence level (95 percent), and target precision level allow a computation of a required sample size from a finite universe of specific size. A systematic random sampling procedure is effected, with the sampling interval being the largest integer not exceeding the ratio of universe to sample size.

The General Manager will issue a memorandum to the postmaster showing the total number of claims to be sampled, the first claim on the list to be sampled, and the interval for sampling the remaining claims. The General Manager will also send a copy to the Postal Data Center. Upon receipt, the postmaster will provide a copy of the memorandum to the claimant. The Manager, Claims and Inquiry Branch, at the St. Louis PDC, will coordinate the sample, and will provide additional instructions to the post office.

.623 Marking the List of Claims. The claims and inquiry employee will mark the list showing all claims which will be sampled, starting with the first claim specified by the memorandum. The marked list will be returned to the mailer.

.624 Completion of Claim Forms. Using the marked list, claimants must complete the portions of the claim form (PS Form 3812, *Request for Payment of Domestic Postal Insurance*) normally completed by customers who file individual claims (see 149.313). Information on the claim form must be identical to the entries on Form 3877, *Firm Mailing Book for Registered, Insured, C.O.D., Certified and Express Mail*, or its facsimile. The actual date of mailing must be used. In addition, the claimant will be required to complete other portions of the form (for example, inserting the claim number and special identificaiton marking by computer).

Note: The name and address of the mailer shown on the Form 3877 and Form 3812 must be the same as the name and address of the mailer shown on the COD tags.

.625 Submission of Claim Forms. Mailers should return the marked list and completed claim forms (along with proof of mailing) within two weeks of receipt of the marked list. Claim forms

must be submitted in the order on which they appear on the list. At the same time, mailers must also provide a separate listing of the claims to be sampled. In addition, mailers are encouraged to proivide the post office with a set of address labels showing the complete names and addresses of the addressees. This will expedite sending the inquiry portion of the claim form to the addressee.

.63 Partial Payment. A partial payment, based on those C.O.D. claims which can be verified by the addressee post office, will generally be made 45 to 60 days after the claims have been sent to the addressee post office for verification.

.631 In determining partial payment, the PDC will follow the guidelines for adjudication outlined in 149.641 and 149.642.

.64 Adjudication

.641 Computation of Payable Claims. The St. Louis PDC is responsible for determining the number of payable and non-payable C.O.D. claims under the sampling procedures, after receipt of the verification process completed by the local post office.

a. The PDC will determine the payment due claimant by multiplying the percentage of claims found to be payable by the number of claims submitted, and then multiplying the result by the average value of payable claims sampled. For the partial payment, the PDC will determine the partial payment due claimant by multiplying the percentage of claims found to be payable at that time by the number of claims submitted, and then multiplying the result by the *lowest* value of payable claims sampled.

b. Before determining payment due claimant, the PDC will adjust the total number of claims by: (1) subtracting any articles or contents returned to sender without a C.O.D. tag; (2) subtracting from the total due sender checks made out to the mailer. These checks will count as payable claims and will be given to the mailer.

.642 Notification of results. The St. Louis PDC will prepare a report to the mailer showing the following:

a. Number of claims submitted by the mailer;

b. Number of claims deducted from the total number submitted by the mailer and the reason for the deduction;

c. Number of payable claims in the sample;

d. Number of nonpayable claims in the sample;

e. Percent of payable claims;

f. Number of payable claims from the total number of claims submitted by the mailer;

g. Average value of claims in the sample less the COD fee;

h. Number and dollar value of any checks and money orders submited by COD recipients;

i. Total amount due the mailer;

j. Partial payment already made;

k. Balance due mailer.

.643 Mailer Review. The Postal Data Center will issue a check for the balance due to the mailer along with the report provided in 149.642. Upon review of the report, the claimant has the option of reviewing the results of the addressee post office's search of delivery records shown on disallowed completed claim forms. The mailer must exercise this option within two weeks of receipt of the report and check from the PDC. Failure to do so will constitute the claimant's concurrence with the report provided by the PDC. Photocopies of completed claim forms or delivery records cannot be provided to mailers. This review of the non-payable claims must take place with postal personnel at the post office where the claims were filed prior to the issuance of a check. If a discrepancy is noted, the check should be returned to the Postal Data Center showing the reason for the discrepancy. The Postal Data Center will reissue a check after the discrepancy is resolved. The cashing of the check for the balance due by the mailer constitutes the claimant's concurrence with the report provided by the PDC.

.644 Appeal. If any discrepancies cannot be resolved, the mailer may appeal the decision in accordance with 149.91.

.65 Exhibit 149.6 contains a sample schedule for completion of this process. Any individual claim may take more or less time to complete each stage of the process.

Exhibit 149.6—Time Limits for Completing Claims Sample

Action	*Time limit*
1. Mailer submits list of claims.	Within 1 yr. of date of mailing.
2. Post office sends memorandum to Headquarters and St. Louis PDC.	Within 3 days of receipt of list of claims from mailer.
3. Headquarters responds.	Within 1 week of receipt of notification.
4. Post office provides copy of response to mailer.	Immediately upon receipt.
5. Post office marks list of claims and returns to mailer.	Within 1 week of receipt of response.
6. Mailer completes claim forms and returns claims and list to post office.	Within 2 weeks from receipt of marked list.
7. Verification of claim forms.	Immediately upon receipt.
8. Initial processing of claims by accepting post office.	Within 2 weeks of receipt from mailer.
9. Duplicate claims completed and processed by accepting post office.	30 days after last claim is processed, complete and process immediately.
10. Partial payment issued.	Within 45 to 60 days from beginning of sampling.
11. Final claims action.	2 weeks after last duplicate claim is processed, begin telephone inquiries.
12. Adjudication and preparation of report and check by St. Louis PDC.	2 weeks.
13. Mailer review of report.	Immediately upon receipt.
14. Mailer review of claim forms (optional).	Within 2 weeks of notification to St. Louis PDC.
15. Issuance of check.	Immediately.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-11785 Filed 5-25-88; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-195, RM-5810]

Radio Broadcasting Services; Onawa, IA and Vermillion, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Barnco requesting the substitution of Channel 272C1 for Channel 272A at Onawa, Iowa, and the modification of its permit for Station KOOO to specify the higher powered channel, and the substitution of Channel 292A for Channel 272A at Vermillion, South Dakota, and the modification of its license for Station KVRF to specify Channel 292A. An *Order to Show Cause* is directed to Vermillion Radio, Inc. as to why its license should not be so modified. Channel 292A can be allocated to Vermillion, South Dakota, and can be used at Station KVRF's present transmitter site and Channel 272C1 can be allocated to Onawa and used at Station KOOO's present transmitter site. The coordinates for Channel 272C1 at Onawa are North Latitude 42-01-41 and West Longitude 96-11-11. The coordinates for Channel 292A at Vermillion are North Latitude 42-47-32 and West Longitude 97-00-03.

DATES: Comments must be filed on or before July 7 1988, and reply comments on or before July 22, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William M. Barnard, Esq., Mark Van Bergh, Esq., Kenkel, Barnard & Edmundson, 1220 19th Street NW., Suite 202, Washington, DC 20035 (Counsel to Barnco).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–195, adopted April 6, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11881 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–198, RM–6313]

Radio Broadcasting Services; Harbeck-Fruitdale, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Carl Wilson proposing the allocation of Channel 252A to Harbeck-Fruitdale, Oregon, as the community's first local FM service. Channel 252A can be allocated to Harbeck-Fruitdale in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 42–24–53 and West Longitude 123–19–53.

DATES: Comments must be filed on or before July 7, 1988, and reply comments on or before July 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl Wilson, 778 NW. 4th Street, Suite 4, Grants Pass, Oregon 97526 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–198, adopted April 18, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1204(g) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–11879 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–197, RM–6297]

Radio Broadcasting Services; Crockett, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James H. Gibbs, d/b/a Pioneer Broadcasting, licensee to Station KIVY–FM, proposing the substitution of Channel 224C2 for Channel 224A at Crockett, Texas, and modification of its station's license to specify operations on the higher class co-channel. The station's current transmitter site will meet the Commission's mileage separation requirements, at coordinates 31–18–20 and 95–27–06.

DATES: Comments must be filed on or before July 7, 1988, and reply comments on or before July 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stanley G. Emert, Jr., Esquire, Watson, Erickson & Emert, Suite 2108, Plaza Tower, Post Office Box 131, Knoxville, TN 37901 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–197, adopted April 13, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11878 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-196, RM-6212]

Radio Broadcasting Services; Haltom City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bluebonnet Radio Broadcasters, Inc., proposing the allocation of Channel 227C2 to Haltom City, Texas, as that community's first local FM service. A site restriction of 8.8 kilometers (5.5 miles) north of the community is required. The coordinates for the proposed site are 32-52-38 and 97-14-05.

DATES: Comments must be filed on or before July 7, 1988, and reply comments on or before July 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry C. Martin, Esquire, Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-196, adopted April 6, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11880 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-249, RM-6336]

Television Broadcasting Services; Cochran, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to delete channel *15 from Cochran, Georgia, and substitute Channel *29+, in response to a request from the Georgia Public Telecommunications Commission and the United States Department of Defense. Channel *29+ can be allotted to Cochran, Georgia, in compliance with the Commission's minimum distance separation requirements, at the present site of Station WDCO. We also propose to modify the license of Station WDCO to specify operations on Channel *29+ at coordinates 32-28-11 and 83-15-17.

DATES: Comments must be filed on or before July 8, 1988, and reply comments on or before July 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Georgia Public Telecommunications Commission, c/o Theodore P. Frank, Esq., Arent, Fox, Kintner, Plotkin, and Kahn. 1050 Connecticut Ave. NW., Washington, DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Karl A. Kensinger, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule, MM Docket No. 88-249, adopted May 9, 1988, and released May 17, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-11877 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket 86-144]

Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action, requested by the Consumer Electronics Group of the Electronic Industries Association, extends by 60 days the comment and reply comment periods for the *Further Notice of Proposed Rule Making*, in MM Docket 86-144. That further notice (53 FR 10259, March 30, 1988) proposes

revised minimum distance separation requirements for FM broadcast stations on IF-related channels.

DATES: Comments are due July 12, 1988 and replies are due July 27, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order Granting Motion for Extension of Time for Filing Comments* in MM Docket 86–144, adopted on May 9, 1988 by the Chief, Mass Media Bureau under delegated authority and released on May 16, 1988. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Order Granting Motion for Extension of Time for Filing Comments

1. On March 22, 1988, the Commission released a *Further Notice of Proposed Rule Making* (*"Further Notice"*) in the captioned matter (53 FR 10259, March 30, 1988). In the *Further Notice,* the Commission proposes revised minimum distance separation requirements for FM broadcast stations on IF-related channels. Comments on the proposal were to be filed on or before May 13, 1988 and replies on or before May 31, 1988. On May 4, 1988, the Consumer Electronics Group of the Electronic Industries Association ("EIA-CEG") filed a motion requesting that the comment period be extended by 60 days.

2. In support of its request, EIA/CEG states that as of May 4, 1988, a technical memorandum referenced by the *Further Notice* ("Laboratory Test Results of the FM–IF Interference in Broadcast Receivers, Project EEB–86–8", OET Technical Memorandum, FCC/OET TM87–4, June 1987, by J. Ray Hallman and Kenneth R. Nichols) was neither in the Commission's docket file nor available from the Commission's copy contractor. EIA/CEG believes that review of this memorandum is essential for it to be able to file useful comments. EIA/CEG further states that the nature of the FM broadcast receiver industry is such that the review of technical data and the formulation of a consensus necessarily require communications with overpass parties. Thus, significantly more time is needed to prepare comments.

3. The Commission does not routinely grant extensions of time for filing comments in rule making proceedings. In this case, however, we believe that the requested extension is justified. We fully intended to make the aforementioned technical memorandum available for reference to commenters in this proceeding, and we have taken steps to insure that a copy of it will be placed in the docket file for public inspection. Furthermore, allowing additional time for EIA/CEG to collect comprehensive technical data from foreign as well as domestic sources will enhance the value of its expected filing. Good cause having been shown, we will grant the requested 60 days extension.

4. Accordingly, it is ordered that the Motion for Extension of Time submitted by the Consumer Electronics Group of the Electronic Industies Association is granted and that the dates for filing comments and replies are extended to July 12, 1988, and July 27, 1988, respectively.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

Federal Communications Commission.
Alex D. Felker,
Chief, Mass Media Bureau.

[FR Doc. 88–11882 Filed 5–25–88; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

Department of Defense Federal Acquisition Regulation Supplement; Security of Government Contractor Telecommunications

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to DFARS Subpart 204.5 and DFARS 252.204–7008 to require contractors and subcontractors to furnish and utilize Government approved telecommunications security equipment, techniques and/or services as appropriate when communicating classified or sensitive information or when required to protect certain telecommunications systems.

DATE: Comments must be received by the DAR Council at the address shown below on or before July 25, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 86–76D in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Fernandez, Office of Industrial Relations, National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755-6000 (301/688-5267).

SUPPLEMENTARY INFORMATION:

A. Background

In response to National Communications Security Instruction (NACSI) 6002, "Protection of Government Contractor Telecommunications" and in an effort to improve the communications security posture of Department of Defense (DoD) contractors, DoD issued DoD Directive 5210.74, which requires all DoD components to identify telecommunications security requirements for all contract-related telecommunications, and states that the costs associated with securing contractor telecommunications shall be allowable in the same manner as other security costs. Through new programs sponsored by the NSA, telecommunications security equipment is now available to Government contractors either as Government Furnished Property (GFP), Contractor-Acquired Property, or plant equipment.

The Defense Acquisition Regulatory Council now proposes to add to the DoD FAR Supplement the requirements for contracting officers to identify telecommunications security requirements, if any, for all DoD contracts, and to ensure the implementation of telecommunications security as necessary and appropriate.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the data required to evaluate status as a small business and the reasonableness of an assertion of inability to acquire the necessary equipment is already required to determine their status in respect to the Government contract. An initial regulatory flexibility analysis has been performed and submitted to the Chief Counsel for Advocacy for the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 204 and 252

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 204 and 252 as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. A new Subpart 204.5, consisting of sections 204.500 through 204.503, is added to read as follows:

SUBPART 204.5—SECURITY OF CONTRACTOR TELECOMMUNICATIONS

Sec.
204.500 Scope of subpart.
204.501 Definitions.
204.502 Policy.
204.503 Contract clause.

SUBPART 204.5—SECURITY OF CONTRACTOR TELECOMMUNICATIONS

§ 204.500 Scope of subpart.

This subpart prescribes requirements for securing telecommunications between Department of Defense agencies and their contractors and subcontractors.

204.501 Definitions.

"Securing", as used in this subpart, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors, to transmit (a) classified or sensitive information; (b) matters involving

intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or (c) matters critical to the direct fulfillment of military or intelligence missions.

204.502 Policy.

(a) National policy provides the basis for agency regulations concerning the security of Government contractor telecommunications systems.

(b) Technical or requirements organizations initiating purchase requests shall identify to the Contracting Officer:

(1) The nature and extent of information requiring security during telecommunications and the requirement for the contractor to secure telecommunications systems for each contract;

(2) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques or services must be interoperable; and

(3) The approved telecommunications security equipment, devices, techniques or services such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(c) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts. Except as provided in paragraph (d) below, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with Part 45 of the FAR. In some cases, such as for communications security (COMSEC) equipment designated as a Controlled Cryptographic Item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(d) The agency head or designee may agree to provide the necessary facilities as Government Furnished Property or authorize their acquisition as Contractor Acquired Property if: (1) the contractor or subcontractor is ineligible to own COMSEC equipment; or (2) the conditions of FAR 45.302–1(a) are met.

204.503 contract clause.

The Contracting Officer shall insert the clause at 252.204–7008, Telecommunications Security Equipment, Devices, Techniques and Services in solicitations and contracts when securing telecommunications is required in performance of a contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.204–7008 is added to read as follows:

252.204–7008 Security of contractor telecommunications.

As prescribed in 204.503 insert the following clause:

TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES AND SERVICES (DATE)

(a) Definitions.

"Securing", as used in this clause, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this clause, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this clause, means voice, record, and data communications including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors to transmit (a) classified or sensitive information; (b) matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or (c) matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and the requirement for the Contractor to secure telecommunication systems. The Contractor agrees to secure information and systems identified in

_____

(insert the location in solicitation/contract).

(c) To provide the secrity, the Contractor shall use Government-approved telecommunications security equipment, devices, techniques or services, as identified in

_____

(insert location in solicitation/contract). Equipment, devices, techniques or services used by the Contractor must be compatible or interoperable with

_____

(insert location in solicitation/contract listing any telecommunications security equipment, device, techniques or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as provided in DFARS 204.502(d), Contractors shall furnish all telecommunications security equipment, devices, techniques or services necessary to perform this contract. Contractors must meet ownership eligiblity conditions for COMSEC equipment designated as Controlled Cryptographic Items (CCI).

(e) This clause, including this paragraph (e), shall be included in all subcontracts

which require securing telecommunications, suitably modified to reflect the relationship of the parties.

(End of clause)

[FR Doc. 88-11889 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Subcontract Pricing Considerations

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to DFARS 215.804, 215.805 and 215.806 concerning subcontract policies and procedures.

DATE: Comments must be received by the DAR Council at the address shown below on or before July 25, 1988, to be considered in developing a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 84-96D in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory (DAR) Council is considering these changes as a result of increased management visibility in subcontract pricing and to ensure that the Government pays fair and reasonable prices for its needs. Subcontracts often account for more than 50% of a prime contract price. Therefore, scrutiny of these prices is a good management practice and a reasonable action.

B. Regulatory Flexibility Act

The proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 215

Government Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Part 215 as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

215.804-6 [Amended]

2. Section 215.804-6 is amended by removing paragraph (g)(3).

215.805-5 [Amended]

3. Section 215.805-5 is amended by removing paragraphs (i) and (j).

4. Sections 215.806-2 and 215.806-3 are added to read as follows:

215.806-2 Prospective subcontractor cost or pricing data.

(e)(4) The contract clause shall also give to the contracting officer a unilateral right, subject to the Disputes procedure, to determine the prime contract adjustment, if agreement on such price cannot be reached by the parties within a reasonable time.

215.806-3 Field pricing reports.

(a) If in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractor's cost estimates at the subcontractor's plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the ACO having cognizance of the prime contractor before being initiated. The contracting officer's need to complete negotiations in a timely manner should be strongly considered before initiating additional reviews. If a review of a subcontractor's proposal is necessary, the ACO for the prime contractor shall forward the request to the ACO for the subcontractor with an informational copy to the auditor for the subcontractor. In the event a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the ACOs at the higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract ACO to the prime ACO with an information copy to the prime auditor.

(b) The appropriate contract administration activities will be notified by the PCO when review and evaluation of subcontractor's proposals will require extensive field pricing assistance in connection with acquisition of a major weapon system, or require special or expected action by field pricing personnel and such action is being, or has been delayed.

[FR Doc. 88-11926 Filed 5-25-88; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

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

Animal and Plant Health Inspection Service

[Docket No. 88-086]

Boll Weevil Eradication Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that the Animal and Plant Health Inspection Service (APHIS) intends to prepare an environmental impact statement (EIS) for the Federal/cooperative Boll Weevil Eradication program. The impacts on the environment of the eradication of boll weevil will be evaluated in the EIS.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Environmental Specialist, BECS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-7602.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil was introduced to the United States in 1892 near Brownsville, Texas. From that point of introduction the weevil spread quickly, and by 1922, it had completely infested a 15-State region known since then as the Boll Weevil Belt. This area involves nearly 11 million acres of cotton.

As the boll weevil spread eastward and westward from its point of origin, it caused more damage than any other cotton pest. It is currently the most important agricultural pest in the United States, responsible for more than $300 million in annual losses and control costs for cotton. The damage caused by the boll weevil and other pests has been estimated to be 7 to 20 percent of the U.S. cotton crop.

In infested areas, economic losses are traditionally prevented only by intensive use of chemicals by cotton growers. Frequently, these chemicals must be applied repeatedly throughout the growing season to control weevils and any resulting secondary pests. Within the proposed program area, the boll weevil may be indirectly responsible for much of the damage caused by the bollworm, the tobacco budworm, and spider mites, because insecticides used to control the boll weevil destroy many of the natural enemies of these species. This, in turn, often results in higher crop losses and even more intensive use of insecticides to protect the crop from these pests. This boll weevil cycle results in very few options for growers using pest management control strategies against other pests.

APHIS initiated a Boll Weevil Eradication Trial in North Carolina and Virginia during 1978 through 1982. That trial demonstrated that boll weevil can be eradicated, and, further, that the eradication of the boll weevil can also increase the value of land not previously planted for cotton production. Using county acreage figures, a regression model, and adjusting for other factors, cotton acreage increased from 50 to 60 percent due to the Boll Weevil Eradication Trial.

The success of this trial program on nearly 40,000 acres resulted in program expansion to other cotton producing areas. A significant benefit of the program is the decline in cotton insecticide application for the eradication zone following the program. The decline in pesticide usage was estimated to be 55 percent. In the buffer zone, private insect control expenditures also declined by about 14 percent.

APHIS has cooperated in three isolated Boll Weevil Eradication programs: Southeast, Texas High Plains, and Southwest. In the majority of these programs, APHIS has provided technical advice, and has participated only in the collection and distribution of survey and monitoring information. In the Southeast program, however, APHIS has been responsible for managing and supervising the entire supression program in four States: Alabama, Florida, Georgia, and South Carolina. Because of the success of the trial program and the relative success of the three cooperative programs, and the desire to instill more uniformity in the boll weevil eradication effort, APHIS proposes to implement a boll weevil eradication effort that covers the entire Boll Weevil Belt. The scope of that program, and the multi-year nature of the endeavor, triggers the need for a comprehensive, programmatic EIS.

Alternatives

The following five alternative methods of control for boll weevil will be considered in the EIS: (1) No Action, (2) Sterile Insect Technique (SIT), (3) Cultural, (4) Chemical, and (5) Integrated Pest Management (IPM).

Major Issues

The following are some of the major issues to be discussed in the EIS:

(1) Impacts of the alternatives on the biological environment, including target and nontarget species;

(2) Impacts of the alternatives on the physical environment, including soil, water quality, and air quality.

(3) Impacts of the alternatives on other aspects of the human environment, such as wilderness areas, domestic animals, recreation, public health and safety, the cultural environment, public attitudes, energy, and the economy.

Public Input and Scoping Meetings

Public input is a continuing process. Public written comments are requested on any issues or concerns of the proposed Boll Weevil Eradication program for use by APHIS in focusing the EIS analysis. The time and place for scoping meetings to allow for public involvement in the EIS scoping process will be provided in a subsequent Federal Register notice.

Done in Washington, DC, this 20th day of May 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-11922 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Child Nutrition Programs; Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1988—June 30, 1989. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, and Child Care Food Program and by commodity schools. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29112, June 24, 1983.) This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612), and thus is exempt from the provisions of that Act.

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1733(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), commodity schools (7 CFR Part 210), and the guidelines for free milk in the Special Milk Program (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, social security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from considerations as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1988 through June 30, 1989. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the 1988 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

BILLING CODE 3410-30-M

INCOME ELIGIBILITY GUIDELINES

July 1, 1988 - June 30, 1989

Household Size	Reduced Price Meals - 185%			Free Meals - 130%			Federal Poverty Guidelines		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	10,675	890	206	7,501	626	145	5,770	481	111
2	14,301	1,192	276	10,049	838	194	7,730	645	149
3	17,927	1,494	345	12,597	1,050	243	9,690	808	187
4	21,553	1,797	415	15,145	1,263	292	11,650	971	225
5	25,179	2,099	485	17,693	1,475	341	13,610	1,135	262
6	28,805	2,401	554	20,241	1,687	390	15,570	1,298	300
7	32,431	2,703	624	22,789	1,900	439	17,530	1,461	338
8	36,057	3,005	694	25,337	2,112	488	19,490	1,625	375
For each add. family member	+3,626	+303	+70	+2,548	+213	+49	+1,960	+164	+38
ALASKA									
1	13,339	1,112	257	9,373	782	181	7,210	601	139
2	17,871	1,490	344	12,558	1,047	242	9,660	805	186
3	22,404	1,867	431	15,743	1,312	303	12,110	1,010	233
4	26,936	2,245	518	18,928	1,578	364	14,560	1,214	280
5	31,469	2,623	606	22,113	1,843	426	17,010	1,418	328
6	36,001	3,001	693	25,298	2,109	487	19,460	1,622	375
7	40,534	3,378	780	28,483	2,374	548	21,910	1,826	422
8	45,066	3,756	867	31,668	2,639	609	24,360	2,030	469
For each add. family member	+4,533	+378	+88	+3,185	+266	+62	+2,450	+205	+48
HAWAII									
1	12,303	1,026	237	8,645	721	167	6,650	555	128
2	16,465	1,373	317	11,570	965	223	8,900	742	172
3	20,628	1,719	397	14,495	1,208	279	11,150	930	215
4	24,790	2,066	477	17,420	1,452	335	13,400	1,117	258
5	28,953	2,413	557	20,345	1,696	392	15,650	1,305	301
6	33,115	2,760	637	23,270	1,940	448	17,900	1,492	345
7	37,278	3,107	717	26,195	2,183	504	20,150	1,680	388
8	41,440	3,454	797	29,120	2,427	560	22,400	1,867	431
For each add. family member	+4,163	+347	+81	+2,925	+244	+57	+2,250	+188	+44

BILLING CODE 3410-30-C

Authority: (42 U.S.C. 1758(b)(1)).

Dated: May 20, 1988.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 88-11851 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-30-M

Foreign Agricultural Service

Sunflower Oil Assistance Program (SOAP)

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that USDA will use $10,000,000 to purchase sunflower seed oil. This sunflower seed oil will be made available through fiscal year 1989 as a bonus to U.S. exporters to facilitate additional sales of sunflower seed oil in targeted world markets.

ADDRESS: Comments and proposed alternate systems should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250. A request to receive copies of the announcements under the program may be made by writing to the Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, Phone (202) 447-6225 or William Hawkins, Agricultural Marketing Specialist, of the same Division, Phone (202) 447-3241.

SUPPLEMENTARY INFORMATION: Section 637 of the Rural Development, Agriculture and Related Agencies Appropriations Act, 1988, as contained in section 101(k) of Pub. L. 100-202, directed the Secretary of Agriculture to purchase $10 million of sunflower seed oil, using funds available under section 32 of Pub. L. 74-320, in order to facilitate additional export sales of sunflower seed oil during fiscal years 1988 and 1989, for the purpose of competing with other countries that export vegetable oil. The export promotion activity of the Sunflower Oil Assistance Program (SOAP) created under this authority will be administered by the General Sales Manager, Foreign Agricultural Service. The program will be designed to increase export sales of sunflower seed oil to those markets where U.S. exporters have been subjected to unfair competition by nations that subsidize their exports of vegetable oil.

The program will have two distinct parts. First, the Department of Agriculture will, from time to time, issue an Invitation for Bids to purchase sunflower seed oil. Second, sunflower seed oil will be made available to U.S. exporters in the form of bonuses for the purpose of increasing export sales of sunflower seed oil.

Periodically, the General Sales Manager will issue announcements and invitations for bonus offers containing the terms and conditions of the SOAP. These will specify, among other things, the quantity of sunflower seed oil that may be sold to foreign buyers and the country to which the sunflower seed oil must be exported.

In general, it is anticipated that the export part of the program will work as follows:

(1) U.S. exporters must qualify before they may enter into an agreement with the General Sales Manager. Interested U.S. exporters may contact the CCC Operations Division at the above address to obtain the specific qualifications requirements established for the program.

(2) Exporters participating under the program will be required to furnish an adequate performance security prior to entering into an agreement with the General Sales Manager.

(3) Upon issuance of an announcement and invitation by the General Sales Manager, an exporter may enter into a contract to sell sunflower seed oil overseas in accordance with the terms and conditions of the announcement. This contract may provide that the export sale is contingent upon the acceptance by the General Sales Manager of the exporter's bonus offer.

(4) After entering into a sales contract with a foreign buyer, an exporter may submit a bonus offer to the General Sales Manager. Each invitation will state whether the bonus offer should specify the amount of sunflower seed oil requested for a bonus in terms of (a) the dollar value of sunflower seed oil, (b) Units of quantity of the sunflower seed oil or (c) both, and will also state the process for submitting bonus offers. The bonus offer should be for only the amount that is needed to make the exporter's sale competitive with export sales from other suppliers of vegetable oil to the country specified in the invitation.

(5) Bonus offers, which comply with the terms and conditions of the applicable announcement and invitation, will be reviewed by the General Sales Manager on a competitive basis, considering the bonus requested, the sale price, and the sales prices of competitor countries in the same market. The General Sales Manager will reserve the right to reject any and all offers for a bonus.

(6) If the exporter's bonus offer is accepted, the exporter will be notified in writing.

(7) The exporter must furnish evidence that the sunflower seed oil has been exported in accordance with the terms and conditions of the agreement. The exporter may then request delivery of the bonus.

(8) After the General Sales Manager has determined that the exporter has complied with all the terms and conditions of the agreement, the performance security(ies) will be released.

The General Sales Manager invites the public to comment on this system and to propose alternate systems at any time during the course of the program. The operation of the program is subject to review and change at any time after comments are received, and in light of experience gained in operating the program.

Signed at Washington, DC, on May 6, 1988.

Melvin E. Sims,

General Sales Manager and Associate Administrator, FAS.

[FR Doc. 88-11916 Filed 5-24-88; 8:45 am]

BILLING CODE 3410-10-M

Soil Conservation Service

Beverly City Waterfront Critical Area Treatment (CAT) RC&D Measure, Burlington County, New Jersey

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Beverly City Waterfront Critical Area Treatment (CAT) RC&D Measure, Burlington County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant

local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Beverly City Waterfront Critical Area Treatment (CAT) RC&D Measure, New Jersey

Notice of a Finding of No Significant Impact

The measure concerns a plan for providing bank protection to control shoreline erosion along the waterfront.

The planned work of improvement includes the gradng and installation of precast concrete revetment panels.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Enviornmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until June 27, 1988.

Dated: May 20, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Barbara T. Osgood,

State Conservationist.

[FR Doc. 88-11786 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-16-M

Madison High School Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Madison High School Critical Area Treatment (CAT) RC&D Measure, Morris County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Madison High School Critical Area Treatment (CAT) RC&D Measure, New Jersey Notice of a Finding of No Significant Impact

The measure concerns a plan for providing surface and subsurface water measures to control gully erosion on slopes adjacent to ballfields.

The planned works of improvement include the installation of a diversion, surface inlet, underground unlet, grading, and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until June 27, 1988.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 20, 1988.

Barbara T. Osgood,

State Conservationist.

[FR Doc. 88-11787 Filed 5-25-88; 8:45 am]

BILLING CODE 3410-16-M

Carpentersville Road Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Carpentersville Road Critical Area Treatment (CAT) RC&D Measure, Warren County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246-1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Carpentersville Road Critical Area Treatment (CAT) RC&D Measure, New Jersey Notice of a Finding of No Significant Impact

The measure concerns a plan for providing for the installation of an underground outlet to control gully erosion along a roadside.

The planned works of improvement include the installation of 42" pipe, surface inlets, grading and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse

review of Federal and federally assisted programs and projects is applicable.)

Barbara T. Osgood,

State Conservationist.

Date: May 16, 1988.

[FR Doc. 88-11769 Filed 5-26-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Colorado 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 the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m., on June 20, 1988, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894-3427, (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 Division office at least (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, May 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-11796 Filed 5-25-88; 8:45 am]

BILLING CODE 6335-01-M

Kentucky 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 a subcommittee, composed of new appointees, of the Kentucky Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 5:00 p.m., on June 24, 1988, at the Seelbach Hotel, 500 4th Avenue, Louisville, Kentucky. The purpose of the meeting is to brief new members on the policies and procedures of the Commission and to discuss current civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 19, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-11797 Filed 5-25-88; 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 the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on June 16, 1988, at the Red Lion, 18740 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Washington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division, (213) 894-3437, (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 Division office at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted purusant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 18, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-11798 Filed 5-25-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. 80103-8095]

Allocation of Duty-Exemptions for Calendar Year 1988 Among Watch Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Allocation of duty-exemptions for calendar year 1988 among producers located in the Virgin Islands and Guam.

SUMMARY: This action allocates 1988 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Pub. L. 97-446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the insular possessions and the Northern Mariana Islands. The total quantity of watches and watch movements which may be entered free of duty from the insular possessions and the Norther Mariana Islands is 6,700,000 units. Of this amount, 4,700,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (53 F.R. 17924).

The criteria for the calculation of the 1988 duty-exemption allocations among insular producers are set forth in Sec. 303.14 of the regulations (15 CFR Part 303) as amended on May 19, 1988 (53 F.R. 17924).

The Departments have verified the data submitted on application form ITA-334P by producers in the territories and inspected the current operations of all producers in accordance with Sec. 303.5 of the regulations.

The verification established that in calendar year 1987 the Virgin Islands watch assembly firms shipped 3,243,334 watches and watch movements into the customs territory of the United States under Headnote 6 of Schedule 7, Part 2, Subpart E of the Tariff Schedules of the United States. The dollar amount of creditable corporate income taxes paid

by Virgin Islands producers during calendar year 1987 plus the creditable wages paid by the industry during calendar year 1987 to residents of the territory totalled $6,024,457.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information.

The calendar year 1988 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam and are made in accordance with the formula governing the allocation of the duty-exemptions set forth in Sec. 303.14 of the regulations which includes a set-aside of 500,000 units for new entrant firms in each territory. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form—334P) as a result of the Departments' verification and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to Sec. 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1988 in the Virgin Islands are as follows—

Name of firm:	Annual allocation
1. Belair Quartz, Inc	500,000
2. Hampden Watch Co., Inc	300,000
3 Master Time Co., Inc	660,000
4. Progress Watch Co., Inc	618,548
5. Unitime Industries, Inc	871,452
6. Tropex, Inc	500,000
7. Timex V.I., Inc	750,000

The duty-exemption allocation for Guam is as follows—

Timewise Ltd	500,000

Joseph A. Spetrini,

Deputy to the Deputy Assistant Secretary for Import Administration.

Mark Hayward,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 88-11908 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-DS-M; 4310-93-M

DEPARTMENT OF COMMERCE

International Trade Administration

Caribbean Basin Business Promotion Council; Open Meeting

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: This is the second meeting of the Caribbean Basin Business Promotion Council (Council). The Council consists of 28 private sector members and eight U.S. Government representatives and was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice will also be forwarded to the interagency CBI Task Force.

Time and place: June 17, 1988 from 8:30 a.m. to approximately 5:30 p.m. The meeting will take place at the Hotel Condado Beach, Ashford Avenue, San Juan, Puerto Rico. Actual meeting room locations will be posted in the hotel's lobby.

Proposed Agenda:

1. Discussion of Puerto Rico's Caribbean Development (936) Program as it relates to economic development in the Caribbean Basin.

2. Investment climate reviews of Barbados, Costa Rica, Dominica, Grenada, Jamaica, and St. Lucia provided by country government representatives.

3. Analysis of CBI investment survey conducted by the U.S. Department of Commerce.

4. Review of Council's work plan and country visit assignments by Council members.

5. Discussion on Congressional and Administration outlook for CBI.

Public participation: The meeting will be open to public participation and a period will be set aside for oral comments or questions, beginning on or around 5:00 p.m. on June 17. Any member of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. Seating is available to the public. Seating will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Paul D. Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3020, Washington, DC 20230. Telephone (202) 377-0703. Copies of the minutes of the Council's meeting will also be available at the above office 30 days after the meeting.

Dated: May 18, 1988.

Gordon Studebaker,

Director, CBI Center.

[FR Doc. 88-11907 Filed 5-25-88; 8:45 am]

BILLING CODE 3510-FP-M

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses under Article 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than June 6, 1988.

ADDRESS: Send all comments to John A. Richards, Director, Office of Industrial Resource Administration, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration, Department of Commerce, Room 3878, Washington, DC 20230, (202) 377-3984.

SUPPLEMENTARY INFORMATION: Article 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses for the importation of machine tools covered by the Agreement. Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request to import 72 lathes from Japan. The machines have the following technical specifications:

SB-I Machine

Base: Bed flat configuration, swing over bed 400 mm (15.748"); *Headstock:* Spindle diameter 80 mm (3.150"), spindle bore 47 mm (1.850"), spindle chuck 3-jaw 8" hydraulic, spindle speed 35-3500 rpm, spindle motor AC 5.5/7.5 KW; *Slides:* Longitudinal travel (z-axis) 250 mm (9.843"), cross travel (x-axis) 300mm (11.811"), rapid rates z-axis/x-axis 10m/minute (393.7" per minute), feed rates (z-axis/x-axis) 1-5000 mm/minute to 0.000/500 mm/rev.;

The machine includes an optional center drilling capability through the spindle bore of the headstock. This center drill shall have a stroke capacity of 36.5 mm and shall be controlled via program. In this feature, the drill is stationary while the work piece rotates.

Accuracies

Bed level in longitudinal and traverse direction z-axis direction (in vertical plane) .02 mm/meter, bed concave not more than .02 mm/meter, straightness of bed slide ways z-axis direction (in

horizontal plant) for center distance up to 1000 mm, maximum .005 mm, spindle flange runout OD/ID not to exceed .003 mm, parallelism of spindle center line with z-axis direction movement, test bar in spindle-vertical/horizontal planes .005 mm maximum/300 mm, spindle flange surface runout (face) not to exceed .005 mm, squareness of x-axis direction movement with spindle centerline .006 mm total/300 mm, repeatability x-axis and z-axis not to exceed .003 mm in 420 consecutive cycles.

SB–II Machine

Base: Bed slant bed configuration, swing over bed 440 mm (17.323")
Headstock: Spindle diameter 90 mm (3.543"), spindle bore 50 mm (1.969"), spindle speed 25–2500 rpm, spindle motor AC 11/15 kw (30 minute).
Slide: Longitudinal travel (z-axis) 300 mm (11.811"), cross travel (x-axis) 400 mm (15.748"), rapid rates (z-axis) 12 m/minute (472"/minute), (x-axis) 8m/minute (314"/minute), feedrates (z-axis/x-axis) 1–5000 mm/minute or 0.0000/500 mm/rev.
Aux. Slide: Travel stroke 15 mm (0.59"), rapid feed 2 m/minute (78.74"), feed rates 1–2000 mm/minute or 0.01–78.74"/minute);
Tailstock: Travel stroke 200 mm (7.874"), range of tailstock move on machine base 420 mm (16.535"), diameter of quill 90 mm (3.543"), center taper #5 MT, distance between center and headstock flange, minimum 42 mm (1.654), maximum 662 mm (26.063"), tailstock shall be operated manual, programmable or foot switch.

The machine described herein shall have the ability to turn non-concentric outside diameters (oval shapes) in a single setting for the production of various piston shapes. In addition, the machine must be capable of tilting the cutting axis +/−3 degrees from the x-axis to form the ring grooves and chamfers.

Accuracies

Bed level in longitudinal and traverse direction, z-axis direction (in vertical plane) .02 mm/meter, bed concave not more than .02 mm/meter, straighteners of bed slide ways z-axis direction (in horizontal plane) for center distance up to 1000 mm, maximum .005 mm, spindle flange runout OD/ID not to exceed .003 mm, parallelism of spindle centerline with z-axis direction movement—test bar in spindle—vertical plane .005 mm maximum 300 mm, horizontal plane .003 mm maximum/300 mm, spindle flange surface runout (face) not to exceed .005 mm, squareness of x-axis direction movement with spindle centerline .006 mm total/300 mm, parallelism of carriage movement with tailstock spindle in vertical plane .0/mm in 150 mm (must be high at free end), in horizontal plane +/−.003 mm in 150 mm, vertical alignment of headstock center with tailstock center maximum .01 mm (must be high at tailstock end, repeatability x-axis and z-axis not to exceed .003 mm in 420 consecutive cycles.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than June 6, 1988.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address, (202) 377–1248.

May 23, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–11909 Filed 5–25–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, May 25, 1988, at 8 a.m., at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA (telephone: 412–391–4600), to discuss the stock assessment workshop; the National Oceanic and Atmospheric Administration (NOAA) attorneys; and Exclusive Economic Community (EEC) representatives' meetings, habitat issues, and other fishery management and administrative matters. The public meeting will adjourn on the afternoon of May 26 but may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION, CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: May 23, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–11923 Filed 5–25–88; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's subcommittee of the Council Performance Select Group and the Council's Limited Entry Committee will convene separate public meetings at the Council's office, (address below), as follows:

Subcommittee of the Council Performance Select Group—on June 9, 1988, at 1:30 p.m., in Room 330, will develop initial recommendations for improving the Council's March management option development and display process for salmon. Recommendations developed by the subcommittee will be reviewed by the Council at its July 12–14, 1988, meeting. Oral or written statements pertaining to the March salmon management process will be accepted at appropriate times during the meeting. The meeting will continue on the following day as necessary to complete the subcommittee's work.

Limited Entry Committee—on June 7, 1988, at 8 a.m., is scheduled to meet in conjunction with the Council's Technical Advisory Group to finalize the Limited Entry Committee report. The public meeting will adjourn on June 8.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 200 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: May 23, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, Marine Fisheries Service.

[FR Doc. 88–11924 Filed 5–25–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Japan

May 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: May 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 314 is being reduced for carryforward used during the previous restraint period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49470, published in the **Federal Register** on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 27, 1988, the directive of December 28, 1987 is hereby amended to reduce to 26,480,827 square yards [1] the previously established limit for cotton textile products in Category 314, as provided under the terms of the current bilateral agreement between the Governments of the United States and Japan.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11862 Filed 5–25–88; 8:45 am]

BILLING CODE 3510-DR-M

Extension of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

May 23, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: May 27, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended: sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: Inasmuch as no mutually agreed solution has been reached and to avoid continued market disruption, the limit for Categories 342/642 is being extended for the twelve-month period which begins on May 27, 1988 and extends through May 26, 1989. Overshipments of the previous restraint period will be charged to the limit established in this directive. Current data show overshipments in the amount of 94,478 dozen. This amount, plus the amount currently in embargo, may fill the limit upon opening.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Turkey, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the *Correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 43097, published in the **Federal Register** on November 9, 1987, and 53 FR 165 and 53 FR 166, published on January 5, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 23, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 27, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in Turkey and exported during the twelve-month period which begins on May 27, 1988 and extends through May 26, 1989, in excess of 126,723 dozen.

Goods in excess of the previous limit shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–11906 Filed 5–25–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc.; Proposed Amendments Relating to the Copper Futures Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Commodity Exchange, Inc. ("Comex" or "Exchange") has submitted for its copper futures option contract a proposal to change the futures contract underlying that option to the "Grade 1 copper" futures contract from the currently traded "copper" futures contract. In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before June 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the Comex copper futures option contract.

FOR FURTHER INFORMATION CONTACT: Contact Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The Comex recently has proposed to phase out its existing copper futures contract (Grade 2 copper) and to activate its Grade 1 copper futures contract which has not yet been listed for trading.[1] Under the Exchange's proposal, no new Grade 2 copper futures delivery months will be listed for trading after June 30, 1988, and delivery months in the Grade 1 copper futures contract will be listed for trading beginning on July 29, 1988. Ten Grade 1 futures delivery months will be listed initially, starting with the January 1989 delivery month.[2] The last Grade 2 futures delivery month will be May 1990. Therefore, under this implementation plan, both Grade 1 and Grade 2 copper futures contracts will be listed for the same delivery months from January 1989 through May 1990.

In connection with the phase-out of the Grade 2 copper futures contract and its replacement with the Grade 1 futures contract, the Exchange is proposing to change the designated futures contract which will underlie its copper futures option. With the proposed rule amendments to Chapter 17 of the copper option, holders of Comex copper futures options will have the right to buy (for calls) or sell (for puts) one Grade 1 copper futures contract, rather than one Grade 2 copper futures contract, at a specified price by a certain expiration date. No other terms or conditions of the Comex's copper option are affected by this proposal. The proposed amendments would apply only to newly listed option contracts. Existing option contracts would not be affected.

The Comex has indicated that on July 29, 1988, when the Grade 1 copper future is first listed for trading, the March and May 1989 Grade 1 copper options will be listed. The Grade 2 copper option will be gradually phased out beginning July 29, 1988, by not listing any additional months after that date and by delisting any existing Grade 2 option months for which open interest becomes zero on or after that date. On that date, the existing Grade 2 option months would be September and December 1988 and March and May 1989.[3] Thus, both Grade 1 and Grade 2 copper options will be listed for March and May 1989.

The Division requests comment on the acceptability of the Comex's proposal to change the futures contract underlying the copper option and the plan of implementation.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, view or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC, on May 23, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–11912 Filed 5–25–88; 8:45 am]

BILLING CODE 6351–01–M

[1] The Comex Grade 1 copper futures contract, which was designated by the Commission in October 1986, provides for the delivery of Grade 1 copper cathodes exclusively. The Comex's actively traded Grade 2 copper futures contract, which is being phased out, specifies par delivery of Grade 2 copper cathodes, electrolytic copper in wire bars, and fire refined copper in ingot bars. In addition, Grade 1 copper cathodes are deliverable on that contract, at a 1½-cent per pound premium, as well as electrolytic copper in ingot bars, at a ¼-cent per pound premium, and fire refined copper assaying 99.88% copper (plus silver) in ingot bars, at a ⅛-cent per pound discount.

[2] Delivery months for copper futures are the current calendar month, the following two calendar months and every January, March, May, July, September, and December for a 23-month period from the current calendar month.

[3] Pursuant to existing Comex rules, trading in copper futures options is conducted in the nearest four of the following copper futures delivery months—March, May, July, September, and December.

Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to Tariffs for the Handling and Storage of Frozen Concentrated Orange Juice Deliverable on the Frozen Concentrated Orange Juice Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted a proposed amendment to the frozen concentrated orange juice ("FCOJ") futures contract establishing a 50-cent-per-hundredweight maximum fee on tariffs that Exchange-licensed facility operators may charge for storing or handling FCOJ for delivery on the FCOJ futures contract. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of

major significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before June 27, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendment to the CANYCE FCOJ futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposed amendment to the FCOJ futures contract would provide that tariffs charged by Exchange-licensed facility operators for the storage or handling of FCOJ for futures contract deliveries may not exceed $.50 (50 cents) per hundredweight. This maximum fee of 50 cents per hundredweight would apply separately to each of the tariffs charged for handling in, handling out, or storage for one month. The current terms of the FCOJ futures contract provide that tariffs charged by Exchange-licensed facility operators must be satisfactory to the Exchange, though those terms do not currently specify what the Exchange deems to be satisfactory tariffs.

According to the Exchange, Rule 31(e) has been amended to include the policy decision of the CANYCE that a tariff for storage or handling in excess of 50 cents per hundredweight could not be deemed satisfactory. The Exchange believes that the proposed 50-cent-per-hundredweight maximum fee for handling or storage tariffs reflects current cash market practices, including the practices of facilities licensed for futures deliveries. The CANYCE also indicated that, with respect to individual requests for tariff increases, its current rules will continue to permit the Board of Directors of the Exchange to declare any such tariff increase request unsatisfactory independently of this proposed maximum fee. The Exchange indicates that the proposed amendment will be made effective immediately following receipt of notice of Commission approval for application to existing and new applications for tariff chanrges received by the Exchange.

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendment should send such comments to Jean A. Web, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on May 23, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–11913 Filed 5–25–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Invitation to comment on procedural change to weighing procedures for professional books, papers and equipment (PBP&E).

SUMMARY: Present wording in DOD 4500.34–R requires a carrier to weigh PBP&E separately on either a platform or bathroom scale. When these types of scales are not available, a constructive weight of 40 pounds per cubic foot may be used. Experience with PBP&E indicates that scales are seldom available, and if they are, the carrier sometimes uses an arbitrary lift weight (what he thinks it weighs from lifting the box). Also, bathroom scales are neither practical nor calibrated to provide a reliable weight. To simplify weighing procedures and to eliminate a potential adverse impact on a member's entitlement, i.e., not recording actual weight of PBP&E, the Military Services concur that constructuve weights should be used to determine the weight of all PBP&E.

All applicable paragraphs in the Personal Property Traffic Management Regulation (PPTMR), including Appendix A, Tender of Service, would be changed to read as follows:

A constructive weight of 40 pounds per cubic foot will be used to determine the weight of all PBP&E. The cubic feet of each box and/or item will be annotated on the inventory. Carriers will multiply the cubic feet by 40 pounds and annotate the weight on the PPGBL. This weight will not be subtracted from the total shipment net weight.

DATE: Submit written comments by June 30, 1988, to: HQ Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–PPQ–O, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: HQ Military Traffic Management Command, ATTN: MT–PPQ–O (Barbara Yarbrough), 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1654.

Kenneth L. Denton,

Alternate Liaison Officer With the Federal Register.

[FR Doc. 88–11802 Filed 5–25–88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management of Trip-Leased Equipment

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Notice of final ruling on the use of trip-leased equipment with or without drivers to transport DOD freight.

SUMMARY: DOD prohibits carriers from trip leasing equipment with or without drivers to transport DOD freight except upon prior approval from the Military Traffic Management Command (MTMC). Leases of less than 30 days are considered trip leases.

It is essential that DOD have control over all shipments and, therefore, will no longer tender shipments to carriers on trip leases without specific authorization by MTMC. The vehicles used must be owned or leased under a valid agreement by the company transporting the shipment, and the vehicle drivers must be full-time employees or under the direct control and responsibility of that company. Current DOD policy prohibits trip leasing for shipments requiring a Transportation Protective Service.

Service is the primary concern when shipping Government freight. The Freight Carrier Performance Program was established by MTMC to ensure a satisfactory level of service is provided

by carriers transporting DOD freight. Since the Interstate Commerce Commission has allowed for the expanded use of trip leasing, the majority of serious service complaints concered trip-leased loads. Among the major concerns are the loss of control by the authorized carrier, the susceptibility for payment disputes between the lessor and the lessee leading to delay or loss of DOD freight, and the carrier's lack of adequate screening of trip-leased drivers.

DATE: Effective 1 October 1988, only carriers approved by MTMC will be able to trip lease equipment to transport DOD freight.

ADDRESS: Requests for trip-lease approval should be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Sours or Ms. Patricia McCormick, HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (703) 756–1565/1887.

SUPPLEMENTARY INFORMATION: All carriers desiring to trip lease equipment to transport DOD freight must be approved by MTMC and have a signed agreement on file with MTMC authorizing the carrier to trip lease. Requests for approval to trip lease should be sent to Commander, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF. In order to be considered for approval, carriers must provide proof of their common-carrier authority and provide a copy of their standard lease agreement to HQMTMC. In addition, carriers must have their insurance companies forward HQMTMC original certificate(s) of insurance for public liability and cargo insurance. The certificate holder block of the form will identify HQMTMC, Directorate of Inland Traffic, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, to be notified 30 days in advance of any change or cancellation. In addition to the minimum public liability insurance requirements identified in 49 CFR 387.9, MTMC's current cargo insurance requirements are based on the released value rare of the cargo. Lease agreements must include an equipment inspection checklist to be completed by the company transporting the shipment and must meet the requirements specified in 49 CFR 1057, such as:

(a) Lease shall be written.

(b) Lease shall be signed by the authorized carrier and the owner of the equipment.

(c) Lease shall specify the time and date or the circumstances on which the lease begins and ends.

(d) Lease shall provide that the authorized carrier has exclusive possession, control, and use of equipment, and shall assume complete responsibility for the operation of the equipment.

(e) Lease or the addendum attached to the lease will specify the amount paid by the authorized carrier for equipment and the driver's sservices.

(f) Lease shall specify which party will remove identification devices from the equipment.

(g) Lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier.

(h) Lease shall specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public.

(i) During the terms of the lease, the carrier shall identify the equipment in accordance with 49 CFR 1058.

An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease. The lease carried on the equipment must have original signatures of both the lessor and the lessee. Facsimile copies of the lease are unacceptable.

Carriers failing to have trip-lease approval from MTMC and/or failing to execute proper leases in accordance with 49 CFR 1057 will be considered as providing improper or inadequate equipment and may be nonused or disqualified by MTMC or the shipping activity. Also, the shipping activity reports may be considered in evaluating overall performance by a general freight board either at the area command level or headquarters level which could result in a maximum 3-years nationwide disqualification.

Agreement Between the Military Traffic Management Command and Motor Common Carriers For Approval To Trip Lease Equipment To Transport Department of Defense Freight

1. The undersigned, who is duly authorized and empowered to act on behalf of ———, hereinafter called the carrier, as a prerequisite for approval to trip lease equipment with or without drivers to transport freight for the account of the Department of Defense (DOD), agrees to comply with all conditions and requirements as set forth in this Agreement.

2. All lease agreements between the carrier and the owner of the equipment shall comply with requirements specified in 49 CFR 1057 and shall also include an equipment inspection checklist. All equipment will be inspected by the carrier prior to executing the lease. Copies of leases maintained on the equipment shall not be facsimiled and shall have original signatures of both parties.

3. Carrier will ensure their lease agreements are uniform and a copy of thier lease format and any subsequent revisions are on file with the Military Traffic Management Command (MTMC).

4. Carrier will ensure thier insurance companies file with MTMC an original certificate of insurance for public liability and cargo insurance. The certificate holder block of the form will identify HQMTMC, Directorate of Inland Traffic, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF to be notified 30 days in advance of any change or cancellation to the policy. Carrier will maintain at least the minimum public liability insurance required by 49 CFR 387.9 and the minimum cargo insurance required by MTMC.

5. Carrier will not trip lease equipment to transport any shipments requiring transportation protective services. Master leases between commonly owned companies are considered trip leases for shipments which require a transportation protective service.

6. Failure to comply with this agreement may result in revocation of the carrier's approval to trip lease equipment to transport DOD freight and/or carrier performance actions as specified in Chapter 42 of the Defense Traffic Management Regulation and MTMC Regulation No. 15–1, Transportation and Travel Procedure for Disqualifying and Placing Carriers in Nonuse.

_____

Signature of Carrier Official

_____

Title

_____

Date SCAC

_____

Name of Carrier

_____

Carrier Address

_____

Operating Authority Number

_____

Signature of MTMC Official

Title

Date

Kenneth L. Denton,

Alternate Liaison Officer With the Federal Register.

[FR Doc. 88–11801 Filed 5–25–88; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR); for the Proposed Batiquitos Lagoon Enhancement Project; San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, and City of Carlsbad; DOD.

ACTION: Notice of Intent to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR).

SUMMARY: A joint Environmental Impact Statement/Environmental Impact Report will be prepared to evaluate alternatives to the proposed Batiquitos Lagoon Enhancement Project.

1. Alternatives. The proposed project consists of deepening Batiquitos Lagoon and the removal of sediment at the mouth of the lagoon to enhance natural tidal flow to the lagoon. Construction of lest tern nesting sites, including fences would also be implemented in the project. The project would also provide recreational benefits upon completion of walkways within the lagoon boundary. Alternatives would be limited to: (1) No project; (2) other alternatives which would provide a fully tidal system with varying acreage of restoration and dredging to create subtidal, intertidal, salt marsh and freshwater marsh habitat; and (3) restoration of the lagoon to an intermittent tidal condition. In addition there are several alternative components being examined for each project alternative including beach disposal in combination with various other planned disposal sites, sediment basins and different construction techniques.

2. Scoping Process. A scoping meeting will be held to obtain community input to assure that all concerns are identified and addressed in the EIS/EIR. A separate public scoping notice will be sent to the public to identify time and location of the meeting and to solicit public comment. An additional public meeting will be held during the review period of the draft Environmental Impact Statement/Environmental Impact Report. The specific date, time, and location of that meeting will be published in local newspapers.

3. Potentially Significant Issues. Potentially significant issues identified to date include impacts to water quality, biological resources, endangered species, and esthetics.

4. Availability of Joint EIS/EIR. The Draft Environmental Impact Statement/Environmental Impact Report is expected to be available to the public in December 1988.

5. Comments. Comments and Questions regarding the project may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Attn: Lisa Kiebel, CESPL–PD–RP, P.O. Box 2711, Los Angeles, CA 90053–2325, (213) 894–0237.

Dated: May 18, 1988.

Tadahiko Ono,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–11928 Filed 5–25–88; 8:45 am]

BILLING CODE 3710–KF–M

Defense Logistics Agency

Announcement of Direct Conversion to Contract Performance of Commercial Activities Function

AGENCY: Defense Logistics Agency (DLA).

ACTION: Notification of Intent to Effect Direct Conversion to Contract Performance of DLA CA Function.

SUMMARY: The publication of decisions to directly convert commercial activities (CA) to contract performance is required by Supplement to OMB Circular No. A–76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures."

Based on a Simplified Cost Comparison conducted 20 January 1988, the Defense Logistics Agency will issue a solicitation to directly convert to contract performance the box assembly function at the Defense Depot Richmond of the Defense General Supply Center (DGSC), Richmond, Virginia. The box assembly function supports the small parcel packing operation by shaping and taping boxes used for packing.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Hodges, DGSC–PE, Directorate of Contracting and Production (DGSC–PE), Richmond, Virginia 23297–5000, (804) 275–4076.

Interested commercial concerns should refer to announcements in the Commerce Business Daily (CBD) to be made as part of the contract solicitation process.

William J. Cassell,

Comptroller, Defense Logistics Agency.

[FR Doc. 88–11803 Filed 5–25–88; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning and Technology Base Task Force will meet August 1–2, 1988 from 9 a.m. to 5 p.m. each day, in San Diego, California. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussion of key issues regarding the integration of technology management with strategic planning and requirements definition, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–11772 Filed 5–25–88; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee

Radio-Electronic Battle Management Task Force will meet June 14–15, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–11773 Filed 5–25–88; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet July 26–27, 1988 from 9 a.m. to 5 p.m. each day, in Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to the employment of Naval forces in armed conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–11774 Filed 5–25–88; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet June 20–21, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: May 19, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–11775 Filed 5–25–88; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C App.), notice is hereby given that the Naval Research Advisory Committee Panel on Importance of Environmental Data will meet on June 14–15, 1988. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, VA. The meeting will commence at 8:30 a.m. and terminate at 4:00 p.m. on June 14 and 15, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on the significance of quantitative knowledge of environmental parameters to naval weapons and warfare. The agenda will include technical briefings and discussions addressing the environment in the weapons evaluation process, submarine operations, tactical use of the environment, environmental requirements for the battle force information management system, limitations in assessing warfighting utility of environment and determining the effect of environmental elements on naval weapon systems. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000.

Date: May 17, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–11776 Filed 5–25–88; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Automation of Ship Systems and Equipment will meet on June 16–17, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 N. Quincy Street, Arlington, VA. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on June 16 and 17, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members

of shipboard automation and manpower requirements for future surface combatants. The agenda will include technical briefings and discussions addressing the Department of the Navy's perspective on automation of ship systems and equipment. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000.

Date: May 17, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 88–11777 Filed 5–25–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 88–11; Certification Notice–16]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
CNG Energy Company, Pittsburg, PA	5–09–88	Cogeneration Combined Cycle	240	Lakewood, NJ

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on May 18, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–11799 Filed 5–25–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP88–21–000]

Texas Utilities Fuel Co.; Petition for Declaratory Order

May 23, 1988.

Take notice that, on May 10, 1988, Texas Utilities Fuel Company (TUFCO) filed a petition with the Commission seeking an order declaring that certain proposed transactions will not render TUFCO subject to the Commission's Natural Gas Act (NGA) jurisdiction. TUFCO proposes to purchase non-jurisdictional gas produced in the State of Oklahoma and transport that gas to Texas by an interstate pipeline under section 311(a)(1) of the Natural Gas Policy Act (NGPA). TUFCO will then sell the gas to an affiliated end-user in Texas.

TUFCO states that it is an intrastate natural gas pipeline operating solely within the State of Texas and a wholly-owned subsidiary of Texas Utilities Company, an investor-owned holding company for an electric utility system (TU System). The TU System provides electric service to approximately one-third of the population of the State of Texas through its subsidiary, Texas Utilities Electric Company (TU Electric). The rates and services of TU Electric are regulated by the Public Utility Commission of Texas. All gas purchased and acquired by TUFCO is held for the benefit of, and in trust for, TU Electric until the gas is delivered. Gas purchased by TUFCO is delivered into its intrastate pipeline system and is transported to the electric generation stations of TU Electric. None of TUFCO's current transactions are subject to the jurisdiction of the Commission under the NGA. According to its contracts with TU Electric and various other intrastate pipelines, TUFCO is prohibited from taking any action which would be subject to the Commission's jurisdiction under the NGA.

TUFCO further states that in order to obtain access to additional supplies of gas for TU Electric and to ensure the availability of gas supplies in the future, TUFCO proposes, for the first time, to purchase natural gas produced from outside the State of Texas. Such purchases would be "first sales" as defined in the NGPA, of gas which was not committed or dedicated to interstate commerce as of the day before the date of enactment of the NGPA, or gas for which final well category determinations have been received under NGPA sections 102(c), 103(c), or 107(c)(1–4). Therefore, the sale of the gas would not fall within the Commission's jurisdiction under the NGA by reason of sections 601(a)(1) (A) and (B) of the NGPA.

TUFCO has contracted to purchase supplies of a gas produced in Oklahoma from Sunrise Energy Company (Sunrise), a natural gas marketing company. Sunrise would purchase such gas from

various producers located in the State of Oklahoma. Transportation of the gas is to be performed by an interstate pipeline from a point in Oklahoma for delivery into TUFCO's existing intrastate pipleline system in Texas pursuant to section 311(a)(1) of the NGPA. In some instances an intrastate pipeline in Oklahoma may be utilized to transport the gas from the wellhead or gathering lines to the interstate pipeline. Additionally, an intrastate pipeline may be utilized in Texas to transport the gas from the interstate pipeline to the pipeline facilities of TUFCO. If an intrastate pipeline transports such gas either to or from the interstate pipeline, the intrastate pipeline will do so pursuant to section 311(a)(2) of the NGPA. After receipt of the gas into its system, TUFCO would transfer legal title to and deliver the gas directly to TU Electric, delivering it along with the rest of its system supply for use in TU Electric's electric generating stations. TUFCO does not propose, nor will it be required, to add any facilities to its system in order to implement the arrangement herein described. The transaction with Sunrise is subject to the receipt by TUFCO of a final order from the Commission granted in accordance with this petition and in a form acceptable to TUFCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1987)) within 15 days of publication of this notice in the **Federal Register**. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-11910 Filed 5-25-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3386-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Indoor Air Quality Diagnostic and Mitigation Firms. (EPA ICR #1448).

Abstract: Survey of companies in the private sector that offer services related to the prevention, diagnosis, and mitigation of indoor air quality (IAQ) problems in residences, schools, and commercial/public buildings. Survey results will be used to evaluate the private sector's ability to solve IAQ problems; the results will also be reported to Congress.

Respondents: Indoor Air Quality Diagnostic and Mitigation Firms.

Estimated Burden: 3,000 hours.

Frequency of Collection: One time only.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: May 13, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-11834 Filed 5-25-88; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL-3385-9]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reallotment of funds under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR Part 35, Subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1986 construction grant funds subject to reallotment after September 30, 1987, under section 205 of the Clean Water Act, 33 U.S.C. 1285, and explains the procedure by which the reallotment distribution was determined.

The construction grants program operates under authority of the Clean Water Act (the Act), Pub. L. No. 92-500, as amended. Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of their availability "* * * shall be immediately reallotted by the Administrator * * *". This notice advises the public of the reallotted amounts made available to the eligible States and of $1,000,000 made available to the National Small Flows Clearinghouse as required under section 104(q) of the Act as amended by Pub. L. No. 100-4. Funds reallotted to participating States are added to their allotments for grants for the construction of municipal wastewater treatment facilities. Under section 205(d), these funds are available for obligation until September 30, 1989.

DATE: May 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Richard McDermott, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382-5830.

SUPPLEMENTARY INFORMATION: Sums allotted to a State under section 205 of the Act remain available for obligation during the fiscal year in which appropriated and the following 12 months (40 CFR 35.2010(b)). Funds not obligated at the end of this period of availability are reallotted under section 205(d) to the States which fully obligated their allotments, after funds are made available to the National Small Flows Clearinghouse in accordance with the requirements of section 104(q) of the Act, as amended by Pub. L. No. 100-4. Section 104(q) requires the Administrator to make available to the Small Flows Clearinghouse, from funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. Congress appropriated $600 million in FY 1986 funding for the construction grants program. Subsequent to a sequestration order being applied to these funds, $574.2 million was allotted to the States of the original $600 million. In Pub. L. No. 99-349 Congress appropriated an additional $1.2 billion in FY 1986 construction grants funding. At

the close of the availability period for the FY 1986 allotment (September 30, 1987), 17 States and territories had not obligated $4,600,043 of the $1,774.2 million available in FY 1986 allotments. The $4,600,043 consists of $2,914,175 of funds reserved under section 205(i) for innovative and alternative projects and $1,685,868 of funds reserved for small communities under section 205(h).

As explained below, not all of the unobligated funds remaining after the period of availability are subject to reallotment under section 205(d) as modified by section 104(q). Due to the following exception the total amount reallotted is $4,596,273.

Northern Mariana Islands: Section 3(b)(2) of Pub. L. No. 95–348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1976 " * * * are hereby authorized to remain available until expended." Accordingly, construction grants funds allotted to the NMI which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Because the NMI would have lost $3,770 to reallotment without this statutory provision, section 205(d) prevents the NMI from receiving any funds reallotted from other states.

Reallotment Procedure

To distribute the $4,596,273 that is subject to reallotment in accordance with the requirements of sections 205(d) and 104(q) of the Act the following procedure was used:

1. The sum of $1,000,000 was subtracted from the total subject to reallotment. This amount will be made available to the Small Flows Clearinghouse and reduce the amount for reallotment to the participating States to $3,596,273.

2. The State allotment shares listed in section 205(c) of the Act (as amended by Pub. L. 100–4) were modified to reflect funding reductions resulting from the former Trust Territories of the Pacific Islands' new status as freely associated States under Pub. L. No. 99–239, as amended by Pub. L. No. 99–658. Those shares were then adjusted to reflect the absence of States which did not fully obligate their funds (40 CFR 35.2010(b)).

3. The resulting allotment shares were applied to the $3,596,273 to arrive at each participating State's reallotment amount.

4. The resulting figures (rounded to the nearest $100, except for New York which is used as the balancing factor) are listed in the table which follows in the column titled "Reallotment." The table also identifies the States which did not fully obligate their funds and displays these amounts in the column titled "Subject to Reallotment."

These reallotted funds are available for obligation until September 30, 1989. After that date, unobligated balances will be reallotted under section 205(d) of the Act (40 CFR 35.2010). Grants from these funds may be awarded as of the date that advices of allowance are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: May 10, 1988.

Lee M. Thomas,

Administrator.

SUMMARY OF FISCAL YEAR 1986 CONSTRUCTION GRANTS REALLOTMENT

State	Subject to reallotment	Reallotment
Alabama		$46,900
Alaska		25,100
Arizona		28,300
Arkansas	$335,554	
California		299,800
Colorado		33,500
Connecticut	167,833	
Delaware	694,030	
Dist. Of Columbia	44,045	
Florida	305,230	
Georgia		70,900
Hawaii	560,280	
Idaho		20,600
Illinois		189,600
Indiana		101,000
Iowa		56,700
Kansas		37,800
Kentucky		53,400
Louisiana		46,100
Maine		32,400
Maryland		101,400
Massachusetts		142,300
Michigan		180,200
Minnesota		77,000
Mississippi		37,800
Missouri		116,200
Montana		20,600
Nebraska		21,400
Nevada		20,600
New Hampshire	234,100	
New Jersey	30	171,300
New Mexico	352,308	
New York		462,673
North Carolina		75,700
North Dakota	267,935	
Ohio		236,900
Oklahoma		33,900
Oregon		47,400
Pensylvania		166,000
Rhode Island	226,071	
South Carolina		42,900
South Dakota		20,600
Tennessee		60,900
Texas		191,600
Utah		22,100
Vermont		20,600
Virginia		85,800
Washington	118,445	
West Virginia		65,300
Wisconsin		113,300
Wyoming		20,600
Guam	46,960	
Puerto Rico	1,061,460	
Virgin Islands	75,360	
American Samoa	56,805	
Trust Territories of Pacific Islands	49,857	
Northen Mariana Islands		
National Small Flows Clearinghouse		1,000,000
Total	4,596,273	4,596,273

[FR Doc. 88–11835 Filed 5–25–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3386–3]

Sole Source Aquifer Designation for the Hunt-Annaquatucket-Pettaquamscutt Aquifer Area, Rhode Island

AGENCY: U.S. Environmental Protection Agency (EAP).

ACTION: Notice.

SUMMARY: In response to a petition from the the towns of North Kingstown and East Greenwich, Rhode Island, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Hunt-Annaquatucket-Pettaquamscutt (HAP) Aquifer Area satisfies all determination criteria for designation as a Sole Source Aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The designation criteria include the following: The HAP Aquifer Area is the principal source of drinking water for the residents of that area; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the area's residents. As a result of this action, all federal financially assisted projects proposed for construction within the HAP Aquifer Area will be subject to EPA review to reduce the risk or ground water contamination from these projects.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the **Federal Register.**

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency,

Region I, JFK Federal Building, Water Management Division, WGP–2113, Boston, MA 02203. The designation petition submitted may also be inspected at the North Kingstown Free Library in North Kingstown, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP–2113, Boston, MA 02203, 617–565–3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

> If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On December 30, 1987, EPA received a petition from the towns of N. Kingstown and E. Greenwich, Rhode Island requesting designation of the HAP Aquifer Area as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on March16, 1988, in N. Kingstown, Rhode Island, in accordance with all applicable notification and procedural requirements. A two week public comment period followed the hearing.

II. Basis For Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would create a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area(s), the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the HAP Aquifer Area as a sole source aquifer:

1. The HAP Aquifer Area is the principal source of drinking water to all of the residents within the service area.
2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.
3. EPA has found that the towns of N. Kingstown and E. Greenwich have appropriately delineated the boundaries of the aquifer recharge area, designation area and project review area.
4. Although the quality of the area's ground water is rated as good to excellent, it is highly vulnerable to contamination due to the area's geological characteristics.

Because of this, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from chemical spills, highway, urban and rural runoff, septic systems, leaking storage tanks, both above and underground, road salting operations, saltwater intrusion, and landfill leachate. Since all residents are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard and place a severe financial burden on the service area's residents.

III. Description of the HAP Aquifer Area, Designated Area, and Project Review Area

The HAP Aquifer Area covers 41 square miles in central Rhode Island. It encompasses most of N. Kingstown and E. Greenwich, and portions of Coventry, Exeter, Warwick, W. Greenwich and W. Warwick. It is comprised of three hydrogeologically interconnected aquifers. The aquifers consist of extensive deposits of stratified drift. They are generally located in the lowland areas of the basin. The recharge areas or highland portions of the basin consist of interfingered stratified drift and till deposits. Bedrock outcrops can also be found in these highland areas.

The designated area is defined as the surface area above the aquifer system and its recharge area. For the HAP Aquifer Area the boundary of the designated area coincides with the boundary of the project review area. The northern and southern boundaries of the area are the same as those delineated for the Potowomut-Wickford area in the US Geological Survey Water Supply Paper (WSP) #1775. The western boundary of the HAP Aquifer Area is conterminous with the western boundary of the Potowomut-Wickford area except in two areas. In these two areas, the ground water divide differs from the surface water divide. Using the ground water divide for the boundary includes a larger area than would be included using the surface water divide. Technically it is reasonable to extend the designated and project review area boundaries to the ground water divide because ground water from this area can recharge the aquifer system and therefore should be protected. The eastern boundary was mapped by the RI Department of Environmental Management, and is based upon surface topography. This eastern boundary represents the watershed/surface water divide which separates those areas contributing to the ground water reservoirs from those areas contributing to Narragansett Bay.

The recharge areas are usually comprised of bedrock and/or till which may be interfingered with stratified drift materials. The lowland areas, where the aquifers are located, generally consist of stratified drift. Activities occurring in the upland areas can have a direct impact on the ground water quality of the aquifers. For this reason, the designated area boundary and project review area boundary are coincident.

IV. Information Utilized in Determination

The information utilized in this determination includes: The petition submitted to EPA Region I by the towns of N. Kingstown and E. Greenwich, Rhode Island; additional information requested from and supplied by the petitioners; written and verbal comments submitted by the public; and the technical paper and maps submitted with the petition. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitment by federal agencies for projects which could contaminate the HAP Aquifer Area. EPA

will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's develpers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection mechanisms. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control mechanisms to protect the quality of ground water in the HPA Aquifer Area.

VI. Summary and Discussion of Public Comments

The majority of comments received from the public supported designation of the HAP Aquifer Area as a sole source aquifer. Twelve comments were received from the public. None of these comments expressed opposition to the designation. A few comments raised questions about the implications of the designation. These questions were all answered completely. Notable letters of support were received from state and local governments, as well as letters form environmental organizations and residents. Reasons given for support include: (1) The dependence of the residents on ground water for their drinking water supply; (2) the fact that there are no reasonably available alternative sources; (3) that growth and development in the HAP Aquifer Area threaten the continued purity of the resource; and (4) that the area's designation as a sole source aquifer would heighten public awareness of the vulnerability of the resource, and would encourage further protective efforts.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-11836 Filed 5-25-88; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3386-1]

Water Quality Criteria; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of final ambient water quality criteria document.

SUMMARY: EPA announces the availability and provides a summary of the final ambient water quality criteria document for chloride. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act. These water quality criteria may form the basis for enforceable standards.

Availability of Document: This notice contains: A summary of the final chloride criteria document containing final ambient water quality criteria for the protection of aquatic organisms and their uses. Copies of the complete criteria document may be obtained from the National Technical Information Service (NTIS), 5282 Port Royal Road, Springfield, VA 22161 (phone number ((703) 487-4650)). The NTIS publication order number for the document is published below. This document is also available for public inspection and copying during normal business hours at the Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries. Copies of the document are not available from the EPA office listed below. Requests sent to that office will be forwarded to NTIS or returned to the sender.

1. Ambient Water Quality Criteria for Chloride

EPA 440/5-88-001
NTIS Number PB88-175-047

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-7321.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976 the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), and February 15, 1984 (49 FR 5831), EPA announced the publication of 65 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act.

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for Dissolved Oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on May 1, 1986. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). A final criteria document for zinc was issued on March 2, 1987 (52 FR 6213), and a final criteria document for selenium was issued on January 5, 1988 (53 FR 177).

Today EPA is announcing the availability of a final water quality criteria document for chloride. A draft criteria document for chloride was made available for public comment on October 8, 1987 (52 FR 37655). These final criteria have been derived after consideration of all comments received and after analysis of additional toxicity data which EPA received after the draft document was published.

Dated: May 11, 1988.

Rebecca Hanmer,

Acting Assistant Administrator for Water.

Appendix A—Summary of Water Quality Criteria for Chloride

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of dissolved

chloride, when associated with sodium, does not exceed 230 mg/L more than once every three years on the average and if the one-hour average concentration does not exceed 860 mg/L more than once every three years on the average. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium. In addition, because freshwater animals have a narrow range of acute susceptibilities to chloride, excursions above this criterion might affect a substantial number of species.

Implementation

As discussed in the Water Quality Standards Regulation (U.S. EPA 1983a) and the Foreword to this document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s) (U.S. EPA 1983b, 1987). In each standard a State may adopt the national criterion, if one exists, or, if adequately justified, a site-specific criterion.

Site-specific criteria may include not only site-specific criterion concentrations (U.S. EPA 1983b), but also site-specific, and possibly pollutant-specific, durations of averaging periods and frequencies of allowed excursions (U.S. EPA 1985b). The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants, and "three years" is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions (Stephan et al. 1985; U.S. EPA 1985b). However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Appendix B—Responses to Public Comments on the Draft Criteria Document for Chloride

Introduction—Some "comments" listed below are summaries of individual comments that expressed similar points of view. Comments that concered the National Guidelines, only incidentally concerned chloride, and were previously responded to in the **Federal Register** (Vol. 50, pp. 30784–30796, July 29, 1985; Vol. 52, pp. 6213–6616, March 2, 1987) are not dealt within herein.

1. *Comment*—Too few chronic tests with too few species have been conducted on which to base a valid criterion.

Response—In toxicology, as in many other fields, people can always identify questions that have not been adequately answered or additional data that would be desirable. EPA must decide when enough data are available that criteria are justified and desirable in spite of the arguments for delay. EPA must continually balance the risks and benefits of not regulating a chemical based on available data vs. the risks and benefits of not regulating the chemical. The National Guidelines require acute-chronic ratios with species of aquatic animals in at least three different families for the derivation of a criterion. These guidelines have been accepted by EPA and the Science Advisory Board as providing a reasonable basis for a decision concerning the defensibility of water quality criteria for aquatic life. A criteria document provides a synthesis of available pertinent data and should help people identify additional data that would be particularly useful. EPA will consider new data that become available and will revise criteria when appropriate. In addition, site-specific criteria may be derived whenever adequately justified. EPA feels that enough is known about the effects of chloride on freshwater organisms to justify the criterion.

2. *Comment*—The criterion does not adequately consider the effect of acclimation.

Response—A variety of species has been found to acclimate to a variety of toxicants in acute toxicity tests, but most species also lose such acclimation fairly rapidly. In the real world, most exposures to toxicants that are discharged in effluents are intermittent. Thus, it is usually unwise to use acclimation as a basis for raising criteria. When justified, acclimation can be taken into account in the derivation of site-specific criteria.

3. *Comment*—Populations of fathead minnows are found in Kansas in streams with naturally occurring concentrations of chloride from 500 to 3,000 mg/L, whereas the criteria document suggests that chronic effects could occur near 500 mg/L.

Response—Regulation of chloride in effluents that are discharged in areas of naturally occurring high concentrations of chloride should probably be based on site-specific criteria, rather than national criteria.

4. *Comment*—Criteria for naturally-occurring substances should be stated in terms of a relative change in concentration, rather than as an absolute concentration.

Response—A criterion for a naturally-occurring substance such as chloride could be expressed as a concentration, an increase in the concentration, or as a percent increase in the concentration. Whether one of these possible ways of expressing criteria is more generally useful than the others depends on how much aquatic organisms acclimated to various concentrations of chloride are affected by higher concentrations of chloride.

5. *Comment*—Because of the range of sensitivity within and between species of fishes, a chloride standard should be based on data for an individual stream, not on a number arbitrarily applied to all streams.

Response—As explained in the section on "Implementation" in the criteria document, site-specific criteria may be derived for any body of water of segment thereof. The U.S. EPA does not require that a national criterion be arbitrarily applied to all streams.

6. *Comment*—Enforcement of the proposed criterion for chloride could pose undue hardships on the vegetable brining industry and/or have adverse effects on product quality and safety for human consumption. The vegetable brining industry should be given time to develop methods so that any needed reductions in chloride can be safely made.

Response—Although derivation of water quality criteria cannot take into account such things as economic considerations, such things can be taken into account in the derivation of water quality standards and permit limits and in the development of time tables for compliance.

7. *Comment*—EPA should publish all of the studies upon which the criteria are based as an appendix to the criteria documents and make the studies available for review at EPA Headquarters.

Response—It is not necessary for EPA to publish or make available at Headquarters all the studies upon which the criteria are based. EPA does, however, attempt to fill all requests for documents that are only available from EPA, such as progress reports, memoranda, etc. at no cost to the requestor. On the other hand, EPA does

not distribute copies of articles, books, etc. that are avaiable from libraries, etc.

8. *Comment*—EPA should provide at least a ninety-day comment period, especially where EPA proposes several criteria at once, as it has in this case, by proposing criteria for both chloride and ammonia.

Response—EPA feels that a sixty-day comment period should be adequate for most reviewers of most documents. The comment period will be extended to 90 days if a commentor so requests and provides adequate justification.

9. *Comment*—Extremely low or otherwise suspect values, especially when critical to a criterion, should not be used in the derivation of a criterion unless independently reconfirmed.

Response—All data that might be useful in a criteria document are reviewed and no values deemed to be questionable are used. Some tests are repeated when judged appropriate.

10. *Comment*—EPA has presented no technical or scientific basis for the one-hour and four-day averaging periods.

Response—The basis for the averaging periods are explained in the Introduction to the National Guidelines.

11. *Comment*—The frequency of allowed excursions does not distinguish between large and small excursions.

Response—As explained in the section on Implementation in the criteria document, use of criteria for such things as developing permit limits requires selection of an appropriate wasteload allocation model. Thus, various aspects of water quality criteria, such as the frequency of allowed excursions, must be understood in the context of their use in dynamic and steady-state models. Guidance available from the U.S. EPA on these subjects is referenced in the section on Implementation.

12. *Comment*—EPA must comply with Executive Order No. 12291 because this criterion will (a) have a total annual impact on the U.S. economy of $100,000,000 or more, and (b) have significant adverse impact on competition, employment, investment, and productivity, thus making the criterion a "major rule" as defined by the Executive Order.

Response—As explained in the section on "Implementation" in the criteria document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. In each State standard the State must specify a particular designated use for one or more bodies of water and specify a criterion that is consistent with that use. The criterion specified in the State standard might be the same as the national criterion (if one exists), or, if adequately justified, might be a site-specific criterion. Thus a national criterion, in and of itself, has no regulatory impact and, therefore, is not a "major rule" as defined by Executive Order No. 12291.

[FR Doc. 88-11837 Filed 5-25-88; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51706; FRL-3386-5]

Toxic and Hazardous Substances; 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 the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred sixty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1156, 88-1157—July 5, 1988.

P 88-1161—July 6, 1988.

P 88-1162, 88-1163, 88-1164—July 9, 1988.

P 88-1165, 88-1166, 88-1167, 88-1168, 88-1169, 88-1170, 88-1171, 88-1172, 88-1173, 88-1174, 88-1175, 88-1177, 88-1178, 88-1180, 88-1181, 88-1182, 88-1183, 88-1184, 88-1185, 88-1186, 88-1187, 88-1188, 88-1189, 88-1190—July 10, 1988.

P 88-1191—July 11, 1988.

P 88-1192, 88-1193, 88-1194—July 12, 1988.

P 88-1195, 88-1196—July 6, 1988.

P 88-1197, 88-1198—July 12, 1988.

P 88-1199, 88-1200, 88-1201, 88-1202, 88-1203—July 13, 1988.

P 88-1205, 88-1206, 88-1207, 88-1208, 88-1209, 88-1210, 88-1211, 88-1212, 88-1213, 88-1214, 88-1215, 88-1216—July 16, 1988.

P 88-1217, 88-1218—July 10, 1988.

P 88-1219—July 19, 1988.

P 88-1220, 88-1221, 88-1222—July 17, 1988.

P 88-1225, 88-1226, 88-1227, 88-1228, 88-1229, 88-1230, 88-1231, 88-1232—July 18, 1988.

P 88-1233, 88-1234—July 19, 1988.

P 88-1235—July 20, 1988.

P 88-1236—July 23, 1988.

P 88-1237, 88-1238, 88-1239, 88-1240—July 20, 1988.

P 88-1241, 88-1242, 88-1243, 88-1244, 88-1245, 88-1246—July 23, 1988.

P 88-1247, 88-1248, 88-1249, 88-1250—July 24, 1988.

P 88-1251—July 23, 1988.

P 88-1252, 88-1253, 88-1254, 88-1255—July 25, 1988.

P 88-1256—July 26, 1988.

P 88-1257, 88-1258—July 25, 1988.

P 88-1260—July 26, 1988.

P 88-1261—July 25, 1988.

P 88-1262, 88-1263, 88-1265—July 26, 1988.

P 88-1266, 88-1267—July 27, 1988.

P 88-1268, 88-1269, 88-1270—July 30, 1988.

P 88-1271—July 31, 1988.

P 88-1272, 88-1273—August 1, 1988.

P 88-1274, 88-1275, 88-1276, 88-1277, 88-1278, 88-1279, 88-1281, 88-1282, 88-1284, 88-1285, 88-1286—July 31, 1988.

P 88-1287—August 1, 1988.

P 88-1288, 88-1289, 88-1290, 88-1291—July 31, 1988.

P 88-1292—August 2, 1988.

P 88-1293, 88-1294, 88-1295, 88-1296, 88-1297, 88-1298, 88-1299, 88-1300—July 31, 1988.

P 88-1301, 88-1302, 88-1303, 88-1304, 88-1305, 88-1306, 88-1307, 88-1308, 88-1309, 88-1310, 88-1311, 88-1312, 88-1313, 88-1314, 88-1315, 88-1316, 88-1317, 88-1318, 88-1319, 88-1320—August 2, 1988.

P 88-1321, 88-1322, 88-1323, 88-1324—August 3, 1988.

P 88-1325, 88-1326, 88-1327, 88-1328—August 6, 1988.

P 88-1329—August 8, 1988.

P 88-1330—August 6, 1988.

P 88-1331—August 8, 1988.

Written comments by:

P 88-1156, 88-1157—June 5, 1988.

P 88-1161—June 6, 1988.

P 88-1162, 88-1163, 88-1164—June 9, 1988.

P 88-1165, 88-1166, 88-1167, 88-1168, 88-1169, 88-1170, 88-1171, 88-1172, 88-1173, 88-1174, 88-1175, 88-1177, 88-1178, 88-1180, 88-1181, 88-1182, 88-1183, 88-1184, 88-1185, 88-1186, 88-1187, 88-1188, 88-1189, 88-1190—June 10, 1988.

P 88-1191—June 11, 1988.

P 88-1192, 88-1193, 88-1194—June 12, 1988.

P 88-1195, 88-1196—June 6, 1988.

P 88-1197, 88-1198—June 12, 1988.

P 88-1199, 88-1200, 88-1201, 88-1202, 88-1203—June 13, 1988.

P 88-1205, 88-1206, 88-1207, 88-1208, 88-1209, 88-1210, 88-1211, 88-1212, 88-1213, 88-1214, 88-1215, 88-1216—June 16, 1988.

P 88-1217, 88-1218—June 10, 1988.

P 88-1219—June 19, 1988.

P 88-1220, 88-1221, 88-1222—June 17, 1988.

P 88–1225, 88–1226, 88–1227, 88–1228, 88–1229, 88–1230, 88–1231, 88–1232—June 18, 1988.

P 88–1233, 88–1234—June 19, 1988.

P 88–1235—June 20, 1988.

P 88–1236—June 23, 1988.

P 88–1237, 88–1238, 88–1239, 88–1240—June 20, 1988.

P 88–1241, 88–1242, 88–1243, 88–1244, 88–1245, 88–1246—June 23, 1988.

P 88–1247, 88–1248, 88–1249, 88–1250—June 24, 1988.

P 88–1251—June 23, 1988.

P 88–1252, 88–1253, 88–1254, 88–1255—June 25, 1988.

P 88–1256—June 26, 1988.

P 88–1257, 88–1258—June 25, 1988.

P 88–1260—June 26, 1988.

P 88–1261—June 25, 1988.

P 88–1262, 88–1263, 88–1265—June 26, 1988.

P 88–1266, 88–1267—June 27, 1988.

P 88–1268, 88–1269, 88–1270—June 30, 1988.

P 88–1271—July 1, 1988.

P 88–1272, 88–1273—July 2, 1988.

P 88–1274, 88–1275, 88–1276, 88–1277, 88–1278, 88–1279, 88–1281, 88–1282, 88–1284, 88–1285, 88–1286—July 1, 1988.

P 88–1287—July 2, 1988.

P 88–1288, 88–1289, 88–1290, 88–1291—July 1, 1988.

P 88–1292—July 3, 1988.

P 88–1293, 88–1294, 88–1295, 88–1296, 88–1297, 88–1298, 88–1299, 88–1300—July 1, 1988.

P 88–1301, 88–1302, 88–1303, 88–1304, 88–1305, 88–1306, 88–1307, 88–1308, 88–1309, 88–1310, 88–1311, 88–1312, 88–1313, 88–1314, 88–1315, 88–1316, 88–1317, 88–1318, 88–1319, 88–1320—July 3, 1988.

P 88–1321, 88–1322, 88–1323, 88–1324—July 4, 1988.

P 88–1325, 88–1326, 88–1327, 88–1328—July 7, 1988.

P 88–1329—July 9, 1988.

P 88–1330—July 7, 1988.

P 88–1331—July 9, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS–51706)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. 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 NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88–1156

Importer. Stockhausen Inc.

Chemical. (G) Dialkylaminoalkylacrylamide, polymer with acrylic acid, sodium salt.

Use/Import. (S) Leather auxiliary. Import range: 5,000–10,000 kg/yr.

P 88–1157

Importer. Confidential.

Chemical. (G) Polyarylenesulfide.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data: Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Skin irritation: Negligible species(Rabbit). Mutagenicity: Negative.

P 88–1161

Manufacturer. Confidential.

Chemical. (G) Short oil alkyd resin.

Use-Production. (S) Component for industrial baking alkyd. Prod. range: 21,000–41,000 kg/yr.

P 88–1162

Importer. Confidential.

Chemical. (G) Substituted, substituted-methoxysilanes and silicones.

Use/import. (G) Open, nondispersive use. Import range: Confidential.

P 88–1163

Manufacturer. Confidential.

Chemical. (G) Aliphatic glycol.

Use-Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Inhalation toxicity: LC50 >2,000 mg/1. Static acute toxicity: Time LC50 96 hr>10,000 mg/kg species (Fathead Minnows). Eye irritation: Moderate. Skin irritation: Negligible species(Guines pig).

P 88–1164

Manufacturer.. Confidential.

Chemical. (G) Thermoplastic polyimide precursor.

Use/Production. (G) Composite matrix resin. Prod. range: Confidential.

P 88–1165

Manufacturer. Confidential.

Chemical. (G) Modified cellulose.

Use/Production. (G) Coating material. Prod. range: Confidential.

P 88–1166

Manufacturer. Confidential.

Chemical. (G) Alicyclic polyester.

Use/Production. (S) Intermediate. Prod. range: 250–1500 kg/yr.

P 88–1167.

Manufacturer. Confidential.

Chemical. (G) Modified cellulose.

Use/Production. (G) Coating material. Prod. range: Confidential.

P 88–1168

Manufacturer. Confidential.

Chemical. (G) Modified aliphatic alicyclic polyester.

Use/Production. (G) Industrial coatin componoment. Prod. range: 212,000–248,000 kg/yr.

P 88–1169

Manufacturer. Tennant Company.

Chemical. (G) Monoketimines of an aliphatic primary amine and non-cyclic ketones.

Use/Production. (G) Destructive use. Prod. range: 7,400–14,000 kg/yr.

P 88–1170

Manufacturer. Confidential.

Chemical. (G) Monoketimines of an aliphatic primary amine and non-cyclic ketones.

Use/Production. (G) Destructive use. Prod. range: 130,000–260,000 kg/yr.

P 88–1171

Manufacturer. Tennant Company.

Chemical. (G) The ammonium derivative of a copolymer of polyalkylglycols, diisocyanate and an alkyl polyamine.

Use/Production. (G) Open, nondispersive. Prod. range: 130,000–260,000 kg/yr.

P 88–1172

Manufacturer. Arizona Chemical Company.

Chemical. (G) Fatty acid ester of polyethylene glycol.

Use/Production. (G) Defoamer in paper manufacture. Prod. range: Confidential.

P 88–1173

Manufacturer. GE Plastics.

Chemical. (G) Polymer of an aromatic bisanhydride, an aromatic diamine, and an aromatic anhydride.

Use/Production. (S) Transportation. Prod. range: Confidential.

P 88–1174

Manufacturer. E.I. Du Pont De Nemours & Co. Inc.

Chemical. (G) Oxygen-containing heterocycle.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–1175

Manufacturer. E.I. Du Pont De Nemours & Co. Inc..
Chemical. (G) Polyamic acid.
Use/Production. (S) Protective coating. Prod. range: Confidential.

P 88–1177

Manufacturer. Confidential.
Chemical. (G) Substituted thioamide.
Use/Production. (G) Color former. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 .5–50 g/kg species(Rat. Acute dermal toxicity: LD50 2. 0 gm/ml. Eye irritation: none species(Rabbit).

P 88–1178

Manufacturer. Mazer Chemicals Div of PPG Industries.
Chemical. (G) Amphoteric surfactant.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–1180

Manufacturer. Confidential.
Chemical. (G) Acrylated polyester.
Use/Production. (G) Open use industrial coating. Prod. range: 500,000–1,2000,000 kg/yr.

P 88–1181

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate polyurethane.
Use/Production. (G) Dispersively used coating. Prod. range: 500–3,000 kg/yr.

P 88–1182

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 500,000–1,400,000 kg/yr.

P 88–1183

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 500,000–1,400,000 kg/yr.

P 88–1184

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic polyester.
Use/Production. (G) Industrial coating vehicle. Prod. range: 500,000–1,400,000 kg/yr.

P 88–1185

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicyclic polyurethane.
Use/Production. (G) Industrial coating ingredient. Prod. range: 10,000–50,000 kg/yr.

P 88–1186

Manufacturer. Mazer Chemicals, Div. of PPG Industries.
Chemical. (G) Modified vegetable oil.
Use/Production. (G) Functional florid. Prod. range: Confidential.

P 88–1187

Manufacturer. Werner G. Smith Inc.
Chemical. (S) Mixed monobasic fatty acid esters with monohydric alchols and polyols, oxidized, polymerized.
Use/Production. (S) Metal working lubricant. Prod. range: 450,000–500,000 kg/yr.

P 88–1188

Manufacturer. Alcolac, Inc.
Chemical. (S) Dodecyl hydroxyethyl thioether.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88–1189

Importer. Confidential.
Chemical. (G) Chloro alkyl phosphonate.
Use/Import. (G) Flame retardant for polymers. Import range: Confidential.

P 88–1190

Importer. Confidential.
Chemical. (G) Brominated aromatic compound.
Use/Import. (G) Flame retardant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5000 mg/kg. Eye irritation: Slight species(Rabbit). Skin irritation: Negligible species(Rabbit). Mutagenicity: Negative.

P 88–1191

Manufacturer. Confidential.
Chemical. (G) Crosslinked polyurethane and polyglycol ether polymer.
Use/Production. (G) Metal coating. Prod. range: Confidential.

P 88–1192

Manufacturer. Confidential.
Chemical. (G) Hydroxy acid ester of short chain polyalcohol.
Use/Production. (G) Polymer plasticizer. Prod. range: Confidential.

P 88–1193

Manufacturer. Confidential.
Chemical. (G) Hydroxy acid ester of short chain polyalcohol.
Use/Production. (G) Polymer plasticizer. Prod. range: Confidential.

P 88–1194

Manufacturer. Confidential.
Chemical. (G) Hydroxy acid ester of chain polyalcohol.
Use/Production. (G) Polymer plasticizer. Prod. range: Confidential.

P 88–1195

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic resin.
Use/Production. (S) Molding of plastic articles. Prod. range: Confidential.

P 88–1196

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyurethane thermoplastic resin.
Use/Production. (S) Molding of plastics articles. Prod. range: Confidential.

P 88–1197

Importer: Organic Dyestuff Corporation.
Chemical. (G) Acid orange 116.
Use/Import. (S) Resole to dye industry. Import range: 660–3, 740 kg/yr.

P 88–1198

Manufacturer. Confidential.
Chemical. (G) (Aminoaromatic alkyl) substituted heterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 1800–14,000 kg/yr.

P 88–1199

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Alkaline condensation product of toluenesulfonic acid.
Use/Production. (G) Liquid dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat). Acute dermal toxicity: LD50 >2 g/kg species(Rabbit). Static acute toxcity: time LC50 96 h>1000 mg/1 species(Bluegill Sunfish). Eye irritation: Moderate species(Rabbit). Skin irritation: Slight species(Rabbit).

P 88–1200

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted heterocycle.
Use/Production. (G) Additive for polymer. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5000 mg/kg species(Rat). Acute dermal toxicity: LD50 >2000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: Slight species(Rabbit). Mutagenicity: negative. Skin sensitization: Negative species(Mouse).

P 88–1201

Manufacturer. Confidential.
Chemical. (G) Anhydride-modified methacrylate polymer.

Use/Production. (S) Automative coating. Prod. range: Confidential.

P 88–1202

Manufacturer. Velsicol Chemical Corporation.
Chemical. (G) Benzoate ester.
Use/Production. (G) Solid glycol benzoate. Prod. range: Confidential.

P 88–1203

Manufacturer. Ciba-Geigy Corporation Dyestuffs & Chem.
Chemical. (G) Alkaline condensation product of toluenesulfonic acid.
Use/Production. (G) Liquid dye. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5000 mg/kg species(Rat). Static acute toxicity: Time LC50 96 h>1000 ppm species(Zebra fish). Eye irritation: none species(Rabbit). Skin irritation: Negligible species(Rabbit). Mutagenicity: negative. Skin sensitization: Negative species (Guinea pig).

P 88–1205

Manufacturer. Dow Chemical USA.
Chemical. (G) Alkylated diphenyl oxide.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88–1206

Manufacturer. Dow Chemical USA.
Chemical. (G) Acid form of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–1207

Manufacturer. Confidential.
Chemical. (S) Copolymer of 1,3-butandiene with 2-propenenitrile, alpha,omega-(2-hydroxy-3-2-methylproprnyloxypropyl 4-cyano-4-methylbutyrate.
Use/Production. (G) Flexibilizer for adhesive and plastics. Prod. range: Confidential.

P 88–1208

Manufacturer. Confidential.
Chemical. (S) Terpolymer of 1,3-butadiene with 2-propenenitrile, and acrylic acid alpha, omega-(hydroxy-3-2-methylpropenoyloxy propyl 4-cyano-4-methylbutyrate.
Use/Production. (G) Electromeric modifier thermoplastic resin. Prod. range: Confidential.

P 88–1209

Manufacturer. E.I. Du Pont De Nemours & Co. Inc.
Chemical. (G) Amoniated Styrene acrylate copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1210

Manufacturer. Henkel Process Chemicals, Inc.
Chemical. (G) Aliphatic triol, alkyl ether.
Use/Production. (G) Coatings. Prod. range: Confidential.

P 88–1211

Manufacturer. Henkel Corporation.
Chemical. (G) Alkoxylated polyol alkyl ether acrylate.
Use/Production. (S) Curable coatings/curable inks. Prod. range: Confidential.
Toxicity Data. Skin irritation: Slight species(Rabbit).

P 88–1212

Manufacturer. Dow Chemical USA.
Chemical. (G) Sodium salt of sulfonated, alkylated diphenyl oxide.
Use/Production. (S) Surfactant for cleanser, textile dyeing. Prod. range: Confidential.

P 88–1213

Manufacturer. The Dow Chemical Company.
Chemical. (G) Bisphenol A glycidyl ether, polyglycol reaction product.
Use/Production. (S) Binding agent for epoxy powder coatings. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg. Acute dermal toxicity: LD50 >2,000 mg/kg species(Rabbit). Eye irritation: slight species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–1214

Manufacturer. Confidential.
Chemical. (S) Mixture of polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol and aromatic urethane with methacrylate and groups.
Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 88–1215

Manufacturer. Confidential.
Chemical. (G) Polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol.
Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 88–1216

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Dimethyl terephthalene, diphthalate, alkane polymer.
Use/Production. (S) Resin for toner in reprographics. Prod range: 227,000–909,093 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species(Rat). Skin irritation: negligible species(Rabbit).

P 88–1217

Importer. Organic dyestuffs corporation.
Chemical. (G) Reactive-Yellow 84.
Use/Import. (S) Shading color. Import range: 2,000 kg/yr.

P 88–1218

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Reactive-Red 120.
Use/Import. (S) Shading color. Import range: 2,500–1,136 kg/yr.

P 88–1219

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Basic Red 46.
Use/Import. (S) Shading color. Import range: 1,200–2,500 kg/yr.

P 88–1220

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Acid Red 264.
Use/Import. (S) Shading color. Import range: 2,400–5,000 kg/yr.

P 88–1221

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Direct Blue 189.
Use/Import. (S) Shading color. Import range: 2,200–4,400 kg/yr.

P 88–1222

Manufacturer. Confidential.
Chemical. (G) Bis(phenylamino)sulfonphenylamino disubstituted carbomonocycle, mixed salts.
Use/Production. (S) Intermediate. Prod. range: Confidential.

P 88–1225

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylated, sodium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88–1226

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylate, potassium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88–1227

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylated, mixed potassium sodium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88–1228

Manufacturer. Confidential.
Chemical. (G) Sulfonated polyacrylated, ammonium salt.
Use/Production. (G) Water treatment flocculant. Prod. range: Confidential.

P 88–1229

Manufacturer. Confidential.
Chemical. (G) Alkyl aromatic sulfonic.
Use/Production. (S) Enhanced oil recovery addition. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 /kg species (Rat). Eye irritation: Strong species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 88–1230

Manufacturer. Confidential.
Chemical. (G) Alkyl aromatic hydrocarbon.
Use/Production. Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (Rat). Static acute toxicity: Time LC50 96 h>1 g/1 species (Rainbow) trout). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 88–1231

Manufacturer. Confidential.
Chemical. (G) Alkyl aromatic sulfonic acids.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 88–1232

Manufacturer. Confidential.
Chemical. (G) Modified aliphatic hydrocarbon resin.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 88–1233

Manufacturer. Confidential.
Chemical. (G) Styrene modified acrylic polyol polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1234

Importer. Shin-Estu Siliones of America, Inc.
Chemical. (G) Organosiloxane.
Use/Import. (G) Ingredient for cosmetics. Import. range: 1,000–2000 kg/yr.

P 88–1235

Manufacturer. The Dow Chemical Company.
Chemical. (G) Acetylenic ethers.
Use/Production. (S) Chemical. Prod. range: Confidential.

P 88–1236

Manufacturer. The Dow Chemcial Company.
Chemical. (G) Olefinic and acetylenic ethers.
Use/Production. (G) Adhesive and aerospace composite. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88–1237

Manufacturer. The Dow Checmical Company.
Chemical. (G) Olefinic and acetylenic ethers.
Use/Production. (G) Adhesive and aerospace composite. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >1,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88–1238

Importer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Import. (S) Unsaturated polyester for wood coating formulation. Import range: 910–5,000 kg/yr.

P 88–1239

Manufacturer. Confidential.
Chemical. (G) (Amidoaromatic alkyl) halosubstituted heterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 1,800–14,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Guinea pig). Skin sensitization: positive.

P 88–1240

Manufacturer. E.I. Du Pont De Nemours & Co. Inc.
Chemical. (G) Eydroxy amine aromatic sulfonate salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1241

Importer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Import. (S) Preparing adhesive. Import range: Confidential.

P 88–1242

Manufacturer. Confidential.
Chemical. (G) Modified maleated metal resinate.
Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 88–1243

Manufacturer. 3M.
Chemical. (G) Perfluorochemical.
Use/Production. (G) Isolated intermediate, nondispersive use. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: LD50 >2.0 g/kg species (Rabbit). Static acute toxicity: Time LC50 96 h82 mg/1 species (fathead minnow). Eye irritation: Moderate species (Rabbit). Skin irritation: Strong species (Rabbit).

P 88–1244

Manufacturer. 3M.
Chemical. (G) Nonadecafluorocanoic acid, ammonium salt.
Use/Production. (G) Processing aid. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 >65 mg/kg species (Rat). Acute dermal toxicity: LD50 >2.0 g/kg species (Rabbit). Eye irritation: Moderate species (Rabbit). Skin irritation: Slight species (Rabbit). Mutagenicity: negative.

P 88–1245

Importer. Mitsubishi Chemical Industries Amer. Inc
Chemical. (G) Substituted vinyl chloride—acrylic acid polymer.
Use/Import. (G) Automobile equipment. Import range: Confidential.

P 88–1246

Manufacturer. Confidential.
Chemical. (G) Modified hydrocarbon resin.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1247

Manufacturer. Eastman Kodak Company.
Chemical. (S) 3-(Methoxyphenol)-3-oxopropanoic acid, methyl ester.
Use/Production. (G) Chemical intermediar-te. Prod. range: 700–2,000.
Toxicity Data. Acute oral toxicity: LD50 3536–3969 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit). Skin sensitization: negative species (Guines pig).

P 88–1248

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted-alkylamino substituted-benzoic acid derivate.
Use/Production. (G) Chemical intermediate. Prod. range: 3300–6500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rats). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit).

P 88–1249

Importer. Organic Dyestuff Company.
Chemical. (G) Acid Violet 90.
Use/Import. (S) Shading color. Import range: 400–1,1000 kg/yr.

P88–1250

Importer. Organic Dyestuff Company.
Chemical. (G) Acid Orange 56.
Use/Import. (S) Shading color. Import range: 1,000–2,000 kg/yr.

P 88–1251

Manufacturer. Owens-Corning Fiberglas Corporation.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Contact molding resin. Prod. range: Confidential.

P 88–1252

Importer. Confidential.
Chemical. (G) Urethane/acrylic resin.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 88–1253

Manufacturer. Confidential.
Chemical. (G) Mercaptan terminated polyether polymer.
Use/Production. (S) Polymer for adhesive and sealants. Prod. range: 400,000–1,500,000 kg/yr.

P 88–1254

Manufacturer. Confidential.
Chemical. (G) Substituted alkylsilylurea.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1255

Importer. Confidential.
Chemical. (G) Bis(nitroalkylamino) alkane.
Use/Import. (G) Rubber chemical. Import range: Confidential.

P 88–1256

Manufacturer. Baker Performance Chemicals.
Chemical. (G) Thiocarbamate potassium salt.
Use/Production. (G) Water clarifies. Prod. range: Confidential.

P 88–1257

Importer. Confidential.
Chemical. (G) Polyalkylsiloxane resin with alkoxy and hydroxy groups.
Use/Import. (S) Binder for paint. Import range: Confidential.

Toxicity Data. Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit).

P 88–1258

Importer. Confidential.
Chemical. (G) Fluoro elastomer.
Use/Import. (G) Paint. Import range: Confidential.
Toxicity Data. Mutagenicity: Negative.

P 88–1260

Manufacturer. Wilmington Chemical Corporation.
Chemical. (G) Aqueous aliphatic polyurethane.
Use/Production. (G) Coating, open, nondispersive. Prod. range: Confidential.

P 88–1261

Manufacturer. Confidential.
Chemical. (G) 2-Anthacenesulfonic acid, l-amino-9,10-doxo-4-(substituted phenyl) amino)- aklali salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1262

Manufacturer. E.I. Du Pont De Nemours & Co, Inc.
Chemical. (G) Aliphatic polyester glycol.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Inhalation toxicity: LC50 >3.4 mg/kg species (Rat). Static acute toxicity: Time LC50 96h7.8 mg/l species (fathead minnow). Mutagenicity: Negative.

P 88–1263

Manufacturer. Confidential.
Chemical. (S) Polymer of; pelargonic acid; oleic acid; coconut fatty acid; glycerine; adipic acid.
Use/Production. (S) Industrial coating for paper. Prod. range: 57,000–252,000 kg/yr.

P 88–1265

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Rosin ester dispersion.
Use/Production. (S) Tackifier for pressure sensitive adhesives. Prod. range: Confidential.

P 88–1266

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aromatic ester carbonate.
Use/Production. (S) Thermoplastic resin. Prod. range: Confidential.

P 88–1267

Manufacturer. Confidential.
Chemical. (G) Hydrazine derivative.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 88–1268

Importer. Atlantic Industries.
Chemical. (G) Substituted heterocyclic disazo.
Use/Import. (S) Reactive dispersive dye. Import range: Confidential.

P 88–1269

Manufacturer. Confidential.
Chemical. (G) 5,5',7–indigotrisulfonic acid.
Use/Production. (G) Indicator in water analysis ragout. Prod. range: 1–5 kg/yr.

P 88–1270

Manufacturer. Confidential.
Chemical. (S) Propenedioic acid, neopotassium salt.
Use/Production. (G) Component of buffer. Prod. range: 10–50 kg/yr.

P 88–1271

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: confidential.

P 88–1272

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/km species (Rat).

P 88–1275

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–1274

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (Rat).

P 88–1275

Manufacturer:
BioTechnica Agriculture, Inc.
Microorganism. (G) Genetically engineered microorganism, Parent ____ strain: *Bradyrhizobium japonicum* strain USDA 110; Introduced genes: Streptomycin/spectinomycin resistance gene originated from *Shigella flexneri*

and termination sequences from *Escherichia coli.*

Use/Production. (G) Two small scale field trials: (1) To determine the effect of insertion of the marker genes on competition and symbiotic performance under field conditions; (2) To compare different methods of applying *B. japonicum* to soybean seeds. Production range: 8X10 ^{12} cells per year.

Test data. The wet weight of soybean plants infected with this PMN strain were 12.0% lower than soybean plants infected with the parent strain after 5 weeks of growth in a greenhouse.

Exposure. Human: Production and field application, maximum of 8 people. *Environmental:* Laboratory studies of survival in field soil indicate the log cell number per gram of soil decreased from 7.2 to 6.6 over six weeks in McAllister soil and from 7.2 to 6.0 over six weeks in Chippewa soil.

Environmental release. Production and disposal: Cultures sterilized before disposal in publically owned treatment works, soil and possible groundwater release at field site. *Small-scale field trial*: The microorganisms will be applied directly to the soybean seed prior to planting. The field test plot will be about one acre. The field trial will be conducted in two locations: (1) A 100 acre field at BioTechnica's Chippewa Agricultural Station near Arkansaw in Pepin County, Wisconsin and (2) a 77 acre site at McAllister Seed Company's facilities near Mount Pleasant in Henry County, Iowa.

P 88–1276

Importer. Biotechnica Agriculture, Inc.

Chemical. (G) Bradyrhizobium japonicum.

Use/Import. (S) Soil inoculant. Import range: Confidential.

P 88–1277

Importer. Biotechnica Agriculture, Inc.

Chemical. (G) Bradyrhizobium japonicum.

Use/Import. (S) Soil inoculant. Import range: Confidential.

P 88–1278

Importer. Biotechnica Agriculture, Inc.

Chemical. (G) Bradyrhizobium japonicum.

Use/Import. (S) Soil inoculant. Import range: Confidential.

P 88–1279

Manufacturer. Confidential.

Chemical. (G) Modified maleated calcium resinate.

Use/Production. (S) Publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5 gm/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1281

Importer. Nuodex Inc.

Chemical. (S) Reaction product of branched nonylphenol, ethoxylalate with acetic acid, chloro-, sodium salt, acidified.

Use/Import. (S) Drilling fluids. Import range: 2,000–15,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg species (Rat). Eye irritation: Moderate species (Rabbit). Skin irritation: Moderate species (Rabbit).

P 88–1282

Importer. Nuodex Inc.

Chemical. (S) Reaction product of branched nonanol, ethoxylated, propoxylated with acetic acid, chloro-, sodium salt, acidified.

Use/Import. (S) Drilling fluid. Import range: 10,000–200,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg. Eye irritation: strong species (Rabbit). Skin irritation: Strong species (Rabbit).

P 88–1284

Importer. Nuodex Inc.

Chemical. (S) Butene, trimer.

Use/Import. (S) Viscosity regulator for PVC-poster.

Import range: 50,000–100,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >10,000 mg/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Strong species (Rabbit).

P 88–1285

Importer. Nuodex Inc.

Chemical. Butene, tetramer.

Use/Import. (S) Viscosity regulator for PVC-poster.

Import range: Confidential.

Toxicity Data. Eye irritation: None species (Rabbit). Skin irritation: Slight species (Rabbit).

P 88–1286

Importer. Nuodex, Inc.

Chemical. (S) Reaction product of alcohols, C12–C14, ethoxylated with acetic, chloro, sodium salt, acidified.

Use/Import. (S) Drilling fluids. Import range: 5,000–26,000 kg/yr.

Toxicity Data. Eye irritation: Moderate species (Rabbit). Skin irritation: strong species (Rabbit).

P 88–1287

Importer. Nuodex, Inc.

Chemical. (S) Butene, oligomer, (C20/C24), hydrogenated.

Use/Import. (S) Viscosity regulator. Import range: 50,000–100,000 kg/yr.

Toxicity Data. Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 88–1288

Importer. Nuodex, Inc.

Chemical. (S) Reaction product of alcohols, (C9/C13)-branched, ethoxylated, propoxylated, with acetic acid, chloro-, sodium salt, acidified.

Use/Import. (G) Import range: 5,000–2,500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg species (Rat). Eye irritation: None species (Rabbit).

P 88–1289

Importer. Nuodex, Inc.

Chemical. (S) Reaction product of poly(oxy-1,2-ethanediyl),-alpha-(dinonylphenyl),-omega-hydroxy-, branched with cetic acid, chloro-, sodium salt, acidified.

Use/Import. (S) Drilling fluids. Import range: 5,000–60,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >10,000 mg/kg. Eye irritation: None species (Rabbit). Skin irritation: Moderate species (Rabbit).

P 88–1290

Importer. Confidential.

Chemical. (S) Cylclohexadec-8-en-1-one mixture of cisand trans isomer.

Use/Import. (S) Perfume ingredient. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >10 g/kg species (Rat). Eye irritation: None species (Rabbit). Skin iritation: Negligible species (Rabbit).

P 88–1291

Importer. Atlantic Industries, Inc.

Chemical. (G) Substituted anthrquinone.

Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1292

Importer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Import. (G) Acrylic copolymer for coating. Import range: Confidential.

P 88–1293

Manufacturer. Pitman-Moore, Inc.

Chemical. (S) Complex-ester of neopentyl polyol and ether neopentyl polyol with hydroxyalkanoic acid.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Rabbit). Skin

sensitization: Negative species(guinea pig).

P 88–1294

Manufacturer. Confidential.
Chemical. (G) Vinyl urethane.
Use/Production. (G) Resin. Prod. range: Confidential.

P 88–1295

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (S) Substituted alkenoic acid ester.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88–1296

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (G) Substituted carboxylic acid ester heterocycle salt.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88–1297

Manufacturer. E.I. Du Pont de Nemours & Company, Inc.
Chemical. (G) Substituted carboxylic acid ester heterocycle.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

P 88–1298

Manufacturer. Confidential.
Chemical. (G) Styrene acrylated terpolymer.
Use/Production. (G) Resin for coating. Prod. range: Confidential.

P 88–1299

Manufacturer. Allied-Signal Inc.
Chemical. (G) Polyamide alloy.
Use/Production. (G) Polymer alloy. Prod. range: Confidential.

P 88–1300

Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified polyester resin.
Use/Import. (S) Resin for powder coating. Import range: 12,000–95,000 kg/yr.

P 88–1301

Manufacturer. Confidential.
Chemical. (G) Salt of substituted acrylazo butanamide.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 88–1302

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive used. Prod. range: Confidential.

P 88–1303

Manufacturer. Confidential.
Chemical. (G) Halogenated hydrocarbon.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88–1304

Manufacturer. Confidential.
Chemical. (G) Polypiperidinol acrylate-methacrylate.
Use/Production. (S) UV stabilizer for thermoplastics. Prod. range: Confidential.

P 88–1305

Manufacturer. The Dow Chemical Company.
Chemical. (G) Alkyl phenyl ether.
Use/Production. (G) Confidential. Prod. range: Confidential.

P 88–1306

Importer. Confidential.
Chemical. (S) 4-(((2-chloro, 4-nitro) phenyl) azo (N-2-cyano ethyl N-ethyl)aniline.
Use/Import. (S) Reaction dye for textiles. Import range: Confidential.

P 88–1307

Importer. Confidential.
Chemical. (S) 2-propyl amino-4- (((2-bromo-4-nitro-6-cyano) phenyl) azo)-nn-diethyl aniline.
Use/Import. (S) dispersive for textiles. Import range: Confidential.

P 88–1308

Importer. Confidential.
Chemical. (G) NN-daiacetoxy-ethyl aniline.
Use-Import. (S) Dispersive dye for textile. Import range: Confidential.

P 88–1309

Importer. Confidential.
Chemical. (S) Nitrobenzene, 4- ((4-NN-diacetoxyethyl, 2-chloro) phenyl) azo).
Use/Import. (S) Dispersive for textiles. Import range: Confidential.

P 88–1310

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1311

Manufacturer. Confidential.
Chemical. (G) Salt of substituted arylazo butanamide.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1312

Importer. Confidential.
Chemical. (S) 9,10-anthracene-dione-1,5-diamino-bromo-4,8-dihydroxy.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1313

Importer. Confidential.
Chemical. (S) 3-(((2-bromo-4,6-dintro) phenyl) azo) 5-nn-diacetoxy ethyl, 4-methoxy, acetanilide.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1314

Importer. Confidential.
Chemical. (S) 2-(((2-chloro,4-nitro) phenyl) azo-5-(nn-diacetoxy ethyl) acetanilide.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1315

Importer. Confidential.
Chemical. (S) 4- (((2-chloro,4-nitro) phenyl) azo) (n-2-cyano ethyl, N-2-acetoxy ethyl) aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1316

Importer. Confidential.
Chemical. (S) 4- (((2-cyano, 4-nitro) phenyl) azo), (n,2-cyano ethyl, N-ethyl) aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1317

Importer. Confidential.
Chemical. (S) 3- (2-chloro propyl) amino-4- (((2-cyano-4-nitro) phenyl axo)-n,n-diethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1318

Importer. Confidential.
Chemical. (S) 9,10-Antracenedione 1,4-diamino-2,3-diphenyoxy.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1319

Importer. Confidential.
Chemical. (S) 9, 10-anthracene dione, 1-amino-4-hydroxy-2-(hexamethylene-1-yloxo-6-hydroxy).
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1320

Importer. Confidential.
Chemical. (S) 4-(((2-bromo, 4-nitro, 6-chloro) phenyl) azo) 3-chloro, nn-dihydroxy ethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1321

Manufacturer. Confidential.
Chemical. (G) Styrene modified acrylic.
Use/Production. (S) Latex for anticorrosion. Prod. range: Confidential.

P 88–1322

Importer. Confidential.
Chemical. (S) 2-methoxy-5-acetamino-4-[(2-,4-dinitro-6-bromo) phenyl azo)-n-ethyl, n-cyano ethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1323

Importer. Confidential.
Chemical. (G) 1- ((2-nitro) phenylazo amino carbonyl methylene) benzimidazole.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1324

Importer. Confidential.
Chemical. (S) 4-(((4-nitro, 2,6-dichloro) phenyl) azo) n-2-cyano ethyl, ,-2-acetoxy ethyl) aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1325

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyurea.
Use/Production. (G) Automotive coating component. Prod. range: Confidential.

P 88–1326

Importer. Confidential.
Chemical. (S) 9-10-anthacene dione, 1-amino-4-hydroxy-2-phenoxy.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1327

Importer. Confidential.
Chemical. (S) 3-acetamino-4-((2-chloro-4-nitro) phenyl) azo) nn-diethyl aniline.
Use/Import. (S) Disperse dye for textile. Import range: Confidential.

P 88–1328

Manufacturer. Dilson Greatbatch Ltd.
Chemical. (S) Silver vanadium oxide.
Use/Production. (S) Cathode material for lithium batteries. Prod. range: 82.5–2,500 kg/yr.

P 88–1329

Manufacturer. Mapei Corp.
Chemical. (G) Vinyl acetate- acrylic copolymer.
Use/Production. (G) Adhesive. Prod. range: 150,000–250,000 kg/yr.

P 88–1330

Manufacturer. Mapei Corp.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (S) Adhesive. Prod. range: 250,000–600,000 kg/yr.

P 88–1331

Manufacturer. Mapei Corp.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (S) Adhesive. Prod. range: 60,000–120,000 kg/yr.

Dated: May 20, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–11841 Filed 5–25–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 88–244]

Applications for Consolidated Hearings; R. Tyler Bland, Jr. and West Point Radio Ltd. Partnership

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A.R. Tyler Bland, Jr.; West Point, VA.	BPH–870615MP	88–244
B. West Point Radio Limited Partnership; West Point, VA.	BPH–870615NB....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11885 Filed 5–25–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 88–229]

Applications for Consolidated Hearing; Dwight Broadcasting Co. and Imagery, Inc.

1. The Commission has before it the following mutually exclusive application for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Dwight Broadcasting Company; Dwight, IL.	BPH–870522MF	88–229
B. Imagery, Inc.; Dwight, IL.	BPH–870522MI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11886 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–243]

Applications for Consolidated Hearing; John Garber and Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. John Garber and Associates (A General Partnerhsip); Lancaster, OH.	BPH–870514MD	88–243
B. Trell Broadcasting Company; Lancaster, OH.	BPH–870514MG	
C. Alspach/Varga Communications, Inc.; Lancaster, OH.	BPH–870515MH	
D. Phillips Broadcasting, Inc.; Lancaster, OH.	BPH–870515MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Financial Qualifications, B
2. Air Hazard, A
3. Comparative, A–D
4. Ultimate, A–D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11887 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–241]

Applications for Consolidated Hearing; Livingston Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Livingston Communications, Inc., Brusly, LA.	BPH–870701MR	88–241
B. West Side Communications, Inc., Brusly, LA.	BPH–870701MX	
C. M. Kip Holden, d/b/a WKIP, Limited A Partnership in Commendam, Brusly, LA.	BPH–870701NB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A–C
2. Ultimate, A–C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11888 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–230]

Applications for Consolidated Hearing; MarKey Broadcasting Co., Inc. and Vermont Broadcast Associates, Inc.

1. The commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. MarKey Broadcasting Co., Inc, Lyndon, VT.	BPH–860113ME	88–230
B. Vermont Broadcasting Associates, Inc., Lyndon, VT.	BPH–860113MF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose hearings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the compete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11890 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-242]

Applications for Consolidated Hearing; Nanette Markunas et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicants, City, and State	File No.	MM Docket No.
1. Nanette Markunas, Montauk, NY.	BPH-870331MD	88-242
2. C&S Radio Corporation, Montauk, NY.	BPH-870331MO	
3. Jeffrey A. Salking, Montauk, NY.	BPH-870408KF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth below in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue in the proceeding, the full text of the issue and the applicant to which it applies are set forth below in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11891 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-239]

Applications for Consolidated Hearing; Milford, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Milford, Ltd., Milford, DE.	BPH-87051MR	88-239
B. JCH Broadcasters Corp., Milford, DE.	BPH-87051NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11892 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-226]

Applications for Consolidated Hearing; Worth M. Miller and Megan H. McWilliams

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Worth M. Miller, Narrows VA.	BPH-870514MK	88-226
B. Megan H. McWilliams, Narrows, VA.	BPH-870515NI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicant(s) to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-11893 Filed 5-25-88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88-225]

Applications for Consolidated Hearing; Spring Arbor College et al.

1. The Commission has before it the following mutually exclusive applications for modification of noncommercial FM facilities.

Applicant, City, and State	File No.	MM Docket No.
A. Spring Arbor College, WSAE(FM), Spring Arbor, MI.	BPED-790806AA	88-225
B. Board of Trustees/ Olivet College, WOCR(FM) Olivent, MI.	BPED-800303AD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issue whose headings are set forth below. The text of each of these issues has been

standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 19, 1986. The letters shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Environmental, A
2. 307(b)-Modification A, B
3. Contingent Comparative-Noncommercial Educational FM, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in the proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC., The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11894 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Jerry Swink and Huntington Broadcasting Corp.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Jerry Swink, Huntington, TX	BPH–870219MB	88–208
Huntington Broadcasting Corp., Huntington, TX	BPH–870224MD	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11895 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–227]

Applications for Consolidated Hearing; Telecommunications Network, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Telecommunications Network, Inc., Dallas, PA.	BPH–860523ME	88–227
B. Dennis A. Schacht and Ronald E. Schacht d/b/a Mountain Broadcasting, Dallas, PA.	BPH–860530MH	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, All
2. Ultimate, All

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11896 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–210]

Applications for Consolidated Proceeding; Topic-Air, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Tropic-Air, Ltd., Aiea, HI.	BPH–851028MA	88–210
B. Charles R. Crawford, Aiea, HI.	BPH–851028MB	.....
B. James Conrad Diaz, Sr., Aiea, HI.	BPH–851028MD	.....
D. Jess & Isabelle Drake, Joint Tenants, Aiea, HI.	BPH–851028MF, [Previously Dismissed].	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, All.
2. Comparative, All.
3. Ultimate, All.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may

also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11897 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–228]

Applications for Consolidated Hearing; Visalia Broadcast Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Visalia Broadcast Limited Partnership, Visalia, CA.	BPH–870331NJ	88–228
B. Sharryle G. Chung, Eurich and Robert, Eurich d/b/a Oak Tree Broadcasting, Visalia, CA.	BPH–870331PE	
C. Stillwell Broadcasting Limited, Visalia, CA.	BPH–870415KQ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Financial, C
2. Air Hazard, A
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicant(s) to which they apply are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11898 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 88–238]

Applications for Consolidated Hearing; White Eagle Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. White Eagle, Limited Partnership, Des Moines, IA	BPH–870429MR	88–238
B. Johnson Des Moines Broadcasting Limited, Des Moines, IA	BPH–870429ML	
C. Ronald Sorenson, Des Moines, IA	BPH–870430MM	
D. Clear Channel Commuications, Inc., Des Moines, IA	BPH–870430MO	
E. Midwest Radio, Inc., Des Moines, IA	BPH–870430MQ	
F. Des. Moines Broadcast Limited Partnership, Des Moines, IA	BPH–870430MS	
G. Santee Broadcasting, Inc., Des Moines, IA	BPH–870430MV	
H. Joshua One Eight, dba Heart of Iowa Broadcasting, Des Moines, IA	BPH–870430MW	
I. SpacCom, Inc., Des Moines, IA	BPH–870430MZ	
J. Chuckay Corp., Des Moines, IA	BPH–870430NA	
K. Asterisk Breadcasting, Inc., Des Moines, IA	BPH–870430NB	
L. Sinclair Telecable, Inc., Des Moines, IA	BPH–870430NC	
M. Beverly J. Hewitt, Ruth Sirko, et al. d/b/a High Tower Partnership, Des Moines, IA	BPH–870430ND	
N. Des Moines Skywave, Inc., Des Moines, IA	BPH–870430OJ	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Financial Qualifications, B
2. Alien Control, C
3. Air Hazard, C, F, G, J
4. Comparative, A–N
5. Ultimate, A–N

3. If there is any non-standardized issue in this proceeding, the full test of the issue and the applicant to which it applies are set forth in the Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–11899 Filed 5–25–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Anti-Arson Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Solicitation for Award of Cooperative Agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW–88–S–2877 on June 15, 1988, regarding the design and implementation of anti-arson strategy program for Community-Based Anti-

Arson Programs. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Applications for assistance must be requested in writing and addressed as follows:

Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street SW., Room 728, Washington, DC 20472, Attn: Cathy A. Green, Contract Specialist.

Request for Assistance No. EMW–88–S–2877

Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of thirty (30) assistance awards will be made. The anticipated funding levels of this program are between $5,000.00 to $15,000.00 based on the criteria shown in Attachment C of the solicitation package.

Kenneth J. Brzonkala,

Director, Office of Acquisition Management.

[FR Doc. 88–11829 Filed 5–25–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice, that on May 17, 1988, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was considered effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201–000086–003.

Title: Port of Greater New York and New Jersey Assessment Agreement.

Parties:

New York Shipping Association, Inc. (NYSA)

International Longshoreman's Association, AFL–CIO (ILA)

Synopsis: The amendment provides for the May 1, 1988 suspension of the NYSA–ILA Container Premium on northbound and southbound Puerto Rican cargoes.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 23, 1988.

[FR Doc. 88–11925 Filed 5–25–88; 8:45 am]

BILLING CODE 6730–01–M

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.: 224–002401–007.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach

Sea-Land Services, Inc. (Sea-Land)

Synopsis: The agreement restates and amends the basic agreement to provide Sea-Land with an additional berth and land area, and revises the compensation formula.

Agreement No.: 224–200119.

Title: Port of Seattle Lease Agreement.

Parties:

Port of Seattle

Trans Pacific Container Service Corporation

Synopsis: The proposed agreement establishes a five-year lease with renewal options for a 23.7 acre container terminal facility at terminal 30, Seattle, Washington.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 23, 1988.

[FR Doc. 88–11872 Filed 5–25–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bryn Mawr Bank 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 outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bryn Mawr Bank Corporation*, Bryn Mawr, Pennsylvania; to engage *de novo* through its subsidiary, Havens & Company, Inc., Radnor, Pennsylvania, in the performance of real estate appraisals pursuant to § 225.25(b)(13) of the Board's Regulation Y. Comments on this application must be received by June 10, 1988.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Montreal, Quebec, Canada, and Bankmont Financial Corporation, Wilmington, Delaware; to engage *de novo* through their subsidiary, Harris Government Securities, Inc., Chicago, Illinois, in underwriting, dealing in, brokering, purchasing and selling of such obligations of the U.S. Government and its various agencies pursuant to § 225.25(b)(16) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Meredosia Bancorporation, Inc.*, Springfield, Illinois; to engage *de novo* in the origination of conventional, F.H.A. and V.A. mortgage loans for immediate sale to third-party investors pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted within a 200 mile radius of Springfield, Illinois.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Capital Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Capital Services, Inc., Houston, Texas, in full pay-out personal property leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11780 Filed 5-25-88; 8:45 am]

BILLING CODE 6210-01-M

Pasco Financial 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 June 17, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Pasco Financial Corporation*, Dade City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Pasco, Dade City, Florida. Comments on this application must be received by June 16, 1988.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Britte Bancshares, Inc.*, Britt, Iowa; to become a bank holding company by acquiring 90 percent of the voting shares of First State Bank, Britt, Iowa.

2. *Tripoli Bancshares, Inc.*, Saint Paul, Minnesota; to acquire 10 percent of the voting shares of First State Bank, Britt, Iowa.

Board of Governors of the Federal Reserve System, May 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-11781 Filed 5-25-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Immunization Availability of Funds for Fiscal Year 1988 and Amendment to Program Guidelines

Introduction

The Centers for Disease Control announces the availability of funds for Fiscal Year 1988 for Project Grants for Preventive Health Services—Immunization. The "Amendments" Section of this notice amends the Program Guidelines published in the **Federal Register** May 5, 1987 (52 FR 16451) to comply with Pub. L. 100-177.

Authority

This grant program is authorized by the Public Health Service Act, Section 317 (42 U.S.C. 247b), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and B. The Catalog of Federal Domestic Assistance Number is 13.268.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Purpose

The purpose of this grant program is to prevent the occurrence and transmission of diseases preventable through immunizations.

Availability of Funds

Approximately $85,000,000 will be available in Fiscal Year 1988 to award approximately 63 grants with the average award expected to be $1,350,000, ranging from $25,000 to $4,200,000. Grants are usually funded for 12 months in a 3- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of

funds. No new grants are expected to be made in 1988 since current grantees are coordinating activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Amendments

Public Law 100–177 mandates the following changes in the previously published program announcement (Project Grants for Preventive Health Services-Immunization; Program Announcement; Program Guidelines, 52 FR 16451, May 5, 1987). On page 16455, column two, "Use of Grant Funds", letters B. and C. should be deleted and replaced with the following:

"B. No charge may be made to patients for the cost of vaccines provided through project grant funds, whether administered in public clinics or by private physicians. If an administration fee is charged, information must be prominently displayed which indicates that no one receiving an immunization in public clinics may be denied vaccine provided through project grant funds for failure to pay the administration fee or failure to make a donation to the provider."

C. Grant funds may be used for maintaining patient record systems, purchasing equipment (including data processing equipment), or providing vaccination facilities and services, only after complete justification has been included in the application and fund provided accordingly.

D. Grant funds may be used to supplement (not substitute for) existing immunization operations and services."

Information

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Application forms, information on review procedures, deadlines, the consequences of late submission, and copies of the program announcement and regulations may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: May 19, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

Department of Health and Human Services (HHS)—Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 331–2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353–1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Room 501, Kansas City, Missouri 64106, (816) 426–3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844–6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 88–11789 Filed 5–25–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88F–0167]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N'*-1,4-phenylenebis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, 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 8B4080) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of *N,N'*-1,4-phenylenebis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as colorant for food-contact polymers.

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

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–11791 Filed 5–25–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0118]

Diversey Wyandotte Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Diversey Wyandotte Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogen peroxide, peroxyacetic acid, acetic acid, sulfuric acid, and 2,6-pyridinedicarboxylic acid as components of a sanitizing solution for use on food-processing equipment and utensils.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, 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 8H4076) has been filed by Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of hydrogen peroxide, peroxyacetic acid, acetic acid, sulfuric acid, and 2,6-pyridinedicarboxylic acid as components of a sanitizing solution for use on food-processing equipment and utensils.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the

evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11792 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0151]

Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer Central Research, Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose in fruit spreads.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

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 Pfizer Central Research, Pfizer, Inc., 235 East 42d Street, New York, NY 10017, has filed a petition (FAP 8A4068), proposing that the food additive regulations be amended to provide for the safe use of polydextrose in fruit spreads.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11793 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0111]

Union Camp Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by the Union Camp Corp. proposing that the food additive regulations be amended to provide for the safe use of poly(oxypropylene)diamine as a component of adhesives in food-packaging applications.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, 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 8B4056) has been filed by the Union Camp Corp., P.O. Box 2668, Savannah, GA 31402, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of poly(oxypropylene)diamine as a component of adhesives in food-packaging applications.

The potential environmental impact of this section is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11794 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0113]

West Agro, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that West Agro, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium-*N*-cyclohexyl-*N*-palmitoyl taurate; acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; iodine/hydroiodic acid; and calcium chloride as components of a santizing solution to be used on food-contact surfaces.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, 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 7B4010) has been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153, proposing

that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of sodium-*N*-cyclohexyl-*N*-palmitoyl taurate; acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; iodine/hydroiodic acid; and calcium chloride as components of a sanitizing solution to be used on food-contact surfaces.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 18, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-11795 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0095]

Resonex, Inc.; Premarket Approval of Resonex Rx-4000™ Magnetic Resonance Imaging System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Resonex, Inc., Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Resonex Rx-4000™ Magnetic Resonance Imaging System. After reviewing the application and determining that the data in the application met the safety and effectiveness approval criteria for magnetic resonance imaging devices established by the Radiological Devices Panel (an FDA advisory committee), FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 27, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adrianne Galdi, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7514.

SUPPLEMENTARY INFORMATION: On August 26, 1987, Resonex, Inc., Sunnyvale, CA 94008-3626, submitted to CDRH an application for premarket approval (PMA) of the Resonex Rx-4000™ Magnetic Resonance Imaging System, a magnetic resonance imaging device with multislice operation and a resistive magnet operating at 0.38 tesla. Magnetic resonance imaging, as performed by the Resonex Rx-4000™ Magnetic Resonance Imaging System, is a diagnostic imaging procedure used to generate a picture of the internal structure of the body, including the head. Images reflecting the spatial distribution of protons (hydrogen nuclei) exhibiting magnetic resonance can be produced in four planes: transverse (axial), sagittal, coronal, and oblique. Image appearance is a function of proton density, spin-lattice relaxation time (T1), spin-spin relaxation time (T2), and fluid flow. Magnetic resonance imaging provides useful diagnostic information when interpreted by a properly trained physician. All other uses of the Resonex Rx-4000™ Magnetic Resonance Imaging System remain investigational.

The Radiological Device Panel is deemed to have recommended approval of the device. Panel guidelines for magnetic resonance imaging devices were established at the July 27, 1987, public meeting. The guidelines set forth approval criteria for safety and effectiveness, predicated on uniform device design and labeling (the transcript of the July 27, 1987, meeting is available at the Docket Management Branch). Since CDRH determined that the Panel guidelines were satisfied by the PMA, the Resonex Rx-4000™ Magnetic Resonance Imaging System was approved by a February 29, 1988, letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Adrianne Galdi (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 27, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 18, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-11800 Filed 5-25-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 15290, April 28, 1988) is amended to reflect the following changes in the Office of the Director, NIH: (1) Revise the functional statement of the Division of Disease Prevention (HNA22); and (2) establish the Division of Nutrition Research Coordination (HNA24) in the Office of Disease Prevention (HNA2). The establishment of this division will clarify the activities of the Office of Disease Prevention related to nutrition coordination and provide formal recognition of these responsibilities in the Office of the Director, NIH.

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *Division of Disease Prevention (HNA22),* delete the functional statement in its entirety and substitute the following:

Division of Disease Prevention. (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on research related to disease prevention; (2) coordinates and facilitates the systematic identification of research activities pertinent to all aspects of disease prevention, including: (a) identification of risk factors for disease; (b) risk assessment, identification, and development of biologic, environmental, and behavioral interventions to prevent disease occurrence or progression of pre-symptomatic disease; and (c) the conduct of field trials and demonstrations to assess interventions and encourage their adoption, if warranted; (3) identifies, coordinates, and encourages fundamental research aimed at elucidating the chain of causation of acute and chronic diseases; (4) coordinates and facilitates clinically-relevant NIH-sponsored research bearing on disease prevention, including interventions to prevent the progression of detectable but asymptomatic disease; (5) promotes the coordinating linkage for research institutes on biobehavioral modification toward prevention of disease; (6) coordinates with the Office of Medical Applications of Research to promote the effective transfer of identified safe and efficacious preventive interventions to the health care community and the public; (7) works with the research institutes to initiate and develop RFAs, PAs, and RFPs to enhance disease prevention program development; and sponsors, singly or in combination with other organizations, workshops and conferences on disease prevention; (8) provides a link between the disease prevention and health promotion activities of the research institutes of the NIH, the Office of the Assistant Secretary for Health, and the Secretary, DHHS; (9) monitors the effectiveness and progress of disease prevention and health promotion activities of the NIH; and (10) is responsible for reporting expenditures and personnel involved in prevention activity at NIH.

(2) After the statement for the *Office of Medical Applications of Research (HNA23),* insert the following:

Division of Nutrition Research Coordination (HNA24). (1) Serves as advisor to the Director, NIH, and the Associate Director for Disease Prevention on nutrition research issues; (2) coordinates the nutrition research and training activities of the research institutes; (3) works with NIH organizational components to develop RFAs, PAs, and RFPs to enhance the nutrition reserach activities of the NIH; (4) coordinates the Departmental Research Initiative in Nutrition that includes developing the 5-Year Plan on Nutrition and Training, and the NIH Program in Biomedical and Behavioral Nutrition Research and Training; (5) is responsible for the input and maintenance of all Federal (NIH, FDA, DOD, etc.) nutrition research into the Human Nutrition Research and Information Management System; (6) represents the NIH and provides liaison at the DHHS and interagency level on various committees on nutrition research and policy issues such as the Interagency Committee on Human Nutrition Research and the Nutrition Policy Board: (7) prepares the *Annual Report of the NIH Program in Biomedical and Behavioral Nutrition Research and Training;* (8) administers and coordinates the Fish Oils Test Materials Program; and (9) develops and maintains effective liaison with other departments and agencies that have nutrition mechanisms.

Date: May 18, 1988.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 88–11905 Filed 5–25–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–150–08–4830–11–ADVB–2410]

Grazing Advisory Boards

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal—grazing advisory boards.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's (BLM) 40 grazing advisory boards, listed below.

The 40 boards that have been renewed are as follows:

Arizona: Arizona Strip District Grazing Advisory Board, Kingman Resource Area Grazing Advisory Board, Phoenix-Lower Gila Resource Areas Grazing Advisory Board, Safford District Grazing Advisory Board

California: Bakersfield District Grazing Advisory Board, California Desert District Grazing Advisory Board, Susanville District Grazing Advisory Board

Colorado: Canon City District Grazing Advisory Board, Craig District Grazing Advisory Board, Grand Junction District Grazing Advisory Board, Montrose District Grazing Advisory Board

Idaho: Boise District Grazing Advisory Board, Burley District Grazing Advisory Board, Idaho Falls District Grazing Advisory Board, Salmon District Grazing Advisory Board, Shoshone District Grazing Advisory Board

Montana: Butte District Grazing Advisory Board, Lewistown District Grazing Advisory Board, Miles City District Grazing Advisory Board

Nevada: Battle Mountain District Grazing Advisory Board, Carson City District Grazing Advisory Board, Elko District Grazing Advisory Board, Ely District Grazing Advisory Board, Las Vegas District Grazing Advisory Board, Winnemucca District Grazing Advisory Board

New Mexico: Albuquerque District Grazing Advisory Board, Las Cruces District Grazing Advisory Board, Roswell District Grazing Advisory Board

Oregon: Lakeview District Grazing Advisory Board, Prineville District

Grazing Advisory Board, Vale District Grazing Advisory Board

Utah: Cedar City District Grazing Advisory Board, Moab District Grazing Advisory Board, Richfield District Grazing Advisory Board, Salt Lake District Grazing Advisory Board, Vernal District Grazing Advisory Board

Wyoming: Casper District Grazing Advisory Board, Rawlins District Grazing Advisory Board, Rock Springs District Grazing Advisory Board, Worland District Grazing Advisory Board.

FOR FURTHER INFORMATION CONTACT: The Director, Bureau of Land Management (150), U.S. Department of the Interior, Washington, DC 20240.

Roland Robison,

Acting Director.

Date: May 17, 1988.

[FR Doc. 88-11807 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-84-M

[WY-040-08-4300-90; W-101899]

Availability of Amendment to Big Sandy Management Framework Plan; Green River Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of amendment to the Big Sandy Management Framework Plan (MFP) for closure of 357.34 acres of public lands from mineral location and entry under the general public land laws. The area involved is located in the Bureau of Land Management (BLM) Rock Springs District, Green River Resource Area, Sweetwater County, Wyoming.

SUMMARY: The BLM has prepared an environmental assessment (EA) addressing a proposal to close 357.34 acres to mineral location and to amend the Big Sandy MFP accordingly. The proposed closure area is located within the designated Natural Corrals Area of Critical Environmental Concern (ACEC). The EA also addresses management of the ACEC. Adoption of the amended planning decision would initiate proceedings to withdraw the lands involved from settlement, sale, location, or entry under the general public laws, including the mining laws. The lands involved are described as:

Sixth Principal Meridian

T. 21 N., R. 101 W.,
Sec. 18 Lots 1-3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The proposed plan amendment may be protested, pursuant to 43 CFR 1610.5-2, by parties who participate in the planning process and who have an interest which is or may be adversely affected by adoption of the plan amendment. A protest may raise only those issues which are submitted for the record during the planning process.

At the end of the 30-day protest period, the Proposed Plan amendment, excluding any portion under protest, will become final. Approval will be withheld on any portion of the amendment under protest until final action on the protest has been completed. Any significant change made as a result of a protest will be made available for public review and comment before it is approved.

DATES: Any comments on the adequacy of the EA and protests on the proposed plan amendment must be postmarked by June 27, 1988.

ADDRESSES: Protests on the proposed plan amendment should be sent to Director (760), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Bill LeBarron Area Manager, Green River Resource Area, Bureau of Land Management, P.O. Box 1170, Rock Springs, Wyoming 82902-1170, (307) 362-6422.

SUPPLEMENTARY INFORMATION: The purpose of the closure and subsequent withdrawal of 357.34 acres is to provide protection for unique geological and cultural values as well as wildlife habitat and recreation values. The previously established Natural Corrals ACEC (1,276.56 acres) would remain a designated ACEC. The area was originally designated in 1982 to protect cultural, geological, wildlife, and recreation values. Limitations in this area include no surface occupancy for surface disturbing activities and an off-road closure.

In accordance with regulations contained in 43 CFR Part 8340, the following off-road vehicle designation is established. This is a modification to the current "Limited" designation. Approximately 12.5 acres in the Natural Corrals ACEC is designated as "closed" to off-road vehicles. The area contains a site listed on the National Register of Historic Places. To help protect the cultural and historical values, this area is closed to motorized travel.

Hillary A. Oden,

State Director.

May 18, 1988.

[FR Doc. 88-11810 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-22-M

[OR-010-08-4410-12:GP8-142]

Availability of Proposed Plan Amendment and Environmental Assessment; Lakeview District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and open house meetings.

SUMMARY: Bureau of Land Management (BLM) announces the availability of a proposed Plan amendment and environmental assessment for the Warner Lakes Management Framework Plan for public review and comment. This document addresses the impacts of six alternatives proposed for the management of 59,068 acres of BLM administered lands in the Warner Valley in the Lakeview District. The BLM also recommends designation of a new Area of Critical Environmental Concern (ACEC).

DATE: Written comments on the proposed Plan amendment must be submitted by July 25, 1988. All comments must be sent to: District Manager, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630. There will be two open house meetings to discuss provisions of the plan amendment, to answer questions and to accept comments at the following locations:

Lakeview, Oregon—July 19, 1988 at 1:00-5:00 p.m. and 7:00-9:00 p.m. Lakeview District Office

Portland, Oregon—July 21, 1988 at 2:00-5:00 p.m. and 7:00-9:00 p.m. Red Lion/Lloyd Center, 1000 N.E. Multnomah

A copy of the proposed plan amendment will be sent to all individuals, Government agencies, and groups who have expressed an interest in the Warner Lakes planning process. In addition, review copies may be examined at:

BLM State Office, Office of Planning and Environmental Coordination, 825 NE. Multnomah Street, Portland, Oregon 97208

BLM Lakeview District Office, District Planning Coordinator, 1000 South Ninth Street, Lakeview, Oregon 97630

Lake County Library, Courthouse, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Lakeview District Planning Coordinator, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, (503) 947-2177.

SUPPLEMENTARY INFORMATION: A draft of the planning criteria and possible alternatives were identified in a planning newsletter dated May 15, 1987. As a result of public response to the

planning newsletter six alternatives were developed. A brief description of each follows:

Alternative 1: The Present Management Alternative, discusses the existing management direction for livestock management, wildlife, and recreation along with other uses. This alternative corresponds to the No Action Alternative required by NEPA.

Alternative 2: Primary Emphasis on Wildlife Habitat with Provisions for Other Uses, places primary emphasis on wildlife habitat for protection or enhancement, while providing opportunities for other uses.

Alternative 3: Primary Emphasis on Range Condition for Livestock Grazing, provides for increased livestock forage production, while maintaining or improving the condition of the present vegetation communities.

Alternative 4: Maximize Wildlife Habitat; Exclude Conflicting Uses, improves wildlife resource values eliminating all conflicting uses, demands and allocations.

Alternative 5: ACEC Designation for the Warner Lakes Potholes Area. This alternative would emphasize the need for preservation and protection of unique wildlife, ecological, cultural, recreational, and geological values identified with the Potholes area. The Warner Potholes area is located in the north end of the Warner Basin in Lake County, Oregon. The Potholes area lies from the southwest shoreline of Flagstaff Lake and runs northeast to near Bluejoint Lake. It is bordered on the east by the Hart Mountain National Wildlife Refuge and on the west near the Bluejoint Road.

Alternative 6: The Preferred Alternative calls for an interdisciplinary management regimen utilizing a mixture of opportunities outlined in the previous five alternatives.

Judy Nelson,

District Manager.

[FR Doc. 88–11809 Filed 5–25–88; 8:45 am]

BILLING CODE 4310-33-M

[NV-060-4322-02]

Battle Mountain District Advisory Council Meeting; Eureka, NV

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday and Wednesday, June 21 and 22, 1988. The meeting will convene at 1:00 p.m. in the Judges Chambers at the Eureka County Courthouse in Eureka, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Review of rangeland monitoring information for the Tonopah Resource Area.

2. Cumulative impacts to the environment from mining and prospecting.

3. Review of Roberts Mountain Management Plan (riparian, wildlife habitat, livestock grazing, wild horses).

4. Field trip Wednesday, June 22, to Roberts Mountain Riparian Habitat Areas.

The meeting is open to the public. Interested persons may make oral statements between 4:00 and 4:30 p.m. on June 21, 1988. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635–5181.

Date: May 16, 1988.

Peter J. Keenan,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 88–11811 Filed 5–25–88; 8:45 am]

BILLING CODE 4310-HC-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Thursday, June 16, 1988, in the Studio B room of the Eugene Hilton, 66 E. 6th Ave., Eugene, Oregon.

The agenda will include: (1) A review and discussion of the State Director Guidance document; and, (2) a presentation concerning the injunction against timber harvesting of certain age classes imposed by the Ninth Circuit Court of Appeals.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make a statement must register with the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon 97401 by June 15, 1988. A per person time limit may be imposed, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be maintained in the District office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: May 19, 1988.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88–11812 Filed 5–25–88; 8:45 am]

BILLING CODE 4310-33-M

[AK-040-08-4213-21; AA-64705; 800163]

Realty Action; FLPMA Lease Proposal Near Old FAA Farewell Landing Field, AK

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: Notice is hereby given that pursuant to section 302 of The Federal Land Policy and Management Act of October 1, 1976, (43 U.S.C. 1732), Phillip G. Esai and John R. Runkle of Nikolai, Alaska, have submitted a lease proposal to resolve their occupancy trespass of public land located approximately 12 miles southwest of the old FAA Farewell Landing Field and approximately 60 miles southeast of McGrath, Alaska, at the base of the Trimokish Hills along Khuchaynik Creek within the following general legal description:

Seward Meridian, Alaska

T. 27 N., R. 27 W., (unsurveyed),
Sec. 26, SE¼SE¼ those portions with improvements;
Sec. 35, NE¼ those portions with improvements.
Containing approximately 80.00 acres.

The above lands would be offered noncompetitively to the prospective lessees under a 20-year renewable lease at no less than fair market rental. The proposed lease would authorize existing improvements used in conjunction with their commercial guided hunting operations and personal traditional and customary subsistence activities. Only applications by the above prospective lessees, who built the improvements, and who have the appropriate licenses from the State of Alaska, will be accepted. The lessees would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease in accordance with 43 CFR 2920.6. The general terms and conditions for leases are found in 43 CFR 2920.7.

DATE: For a period up to and including July 1, 1988, interested parties may submit comments.

ADDRESS: Comments must be submitted to the Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn (907) 267–1214.

John J. Rumps,

District Manager.

[FR Doc. 88–11788 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–JA–M

[AZ–040–08–4212–14]

A 23308

Receipt of Conveyance of Mineral Interest Application in Cochise County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application A 23308 in Cochise County, Arizona.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, J. A. Kartchner Partnership has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 19 E.,
Sec. 25, E½ (within).
T. 18 S., R. 20 E.,
Sec. 30, W½ (within).
Containing 548.92 acres, more or less.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, May 5, 1988, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the San Simon Resource Area Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Ray A. Brady,

District Manager.

Dated: May 18, 1988.

[FR Doc. 88–11813 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–08–4212–14; N–46540]

Amendment of Realty Action; Competitive Sale of Public Land In Washoe County, NV

The notice published in the **Federal Register** on Wednesday, September 2, 1987, Vol. 52, No. 170, Pages 33296 and 33297, identified a 20-acre parcel of land for modified-competitive sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976. The notice segregated the land from all forms of appropriation under the public land laws including the mining laws. The land did not sell at the original offering as a modified-competitive sale. The land will now be offered as a competitive sale in accordance with the September 2, 1987 notice. The segregative period is due to terminate on May 30, 1988. This notice extends the segregation until February 15, 1989.

Dated this 20th day of May, 1988.

Norman L. Murray,

Acting District Manager, Carson City District.

[FR Doc. 88–11790 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–920–08–4212–11; A–17979]

Arizona; Partial Termination of Classification

May 17, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; partial termination of classification.

SUMMARY: This notice partially terminates Recreation and Public Purposes Classification A–17979.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby partially terminates Recreation and Public Purposes Classification A–17979 where it involves the following described lands:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Sec. 27, NW¼NW¼NW¼, N½SW¼NW¼NW¼, SW¼SW¼NW¼NW¼, W½W½SW¼NW¼;
Sec. 34, NW¼NW¼NE¼NE¼NE¼, NE¼NE¼NW¼NE¼NE¼, SE¼NE¼SE¼NE¼SE¼, E½SE¼SE¼NE¼SE¼, E½NE¼NE¼SE¼SE¼.
Containing 31.875 acres in Maricopa County.

Of those lands, the following lands remain segregated from entry and appropriation under the public land laws, including the mineral leasing laws, by withdrawal application A–9682 filed by the Army Corps of Engineers on September 2, 1976:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Sec. 34, NW¼NW¼NE¼NE¼NE¼, NE¼NE¼NW¼NE¼NE¼.
Containing 1.25 acres in Maricopa County.

The remaining lands were found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

John T. Mezes,

Chief, Branch of Lands, Minerals Operations.

[FR Doc. 88–11808 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–32–M

[ID–060–08–4212–14]

Noncompetitive Sale of Public Lands; Coeur d'Alene District, ID

AGENCY: Idaho, Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Shoshone County, Idaho.

DATE AND ADDRESS: The sale offering for the parcels listed below will not be offered until at least on or before July 25, 1988, and will be held at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, ID 83814.

SUMMARY: The following public lands have been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) at not less than the appraised fair market value:

Parcel No.	Legal description	Acres	Proponent
	Boise Meridian, T. 58 N., R. 4 E., sec. 26.		
I–25844 B	Lot 18	0.90	George Banguard.
I–25498 B	Lot 19	0.71	Warren Van Zandt.
I–25502 B	Lot 20	0.39	Owen Bailey.
I–25499 B	Lot 21	0.99	Harriet Burgen.
I–25500 B	Lot 22	0.86	Agnes Johnson Estate.
I–25501 B	Lot 23	0.19	Del Enquist.
	T. 48 N., R. 5 E., sec. 9.		
I–25761 B	Portion of MS 655.	0.50	Jack Hayman.

Publication of this notice in the **Federal Register** segregates the above lands from the operation of the public land laws and the mining laws except

for a direct sale pursuant to section 203 of FLPMA. The segregative effect will end upon issuance of patents or 270 days from the date of publication, whichever occurs first.

Sale Procedures

The lands are proposed to be offered for sale to the parties listed above who have occupied the area inadvertently in trespass for several years and have been paying property taxes to Shoshone County (except Parcels I–25761 B and I–25844 B). Direct sale procedures are being used since competitive sales would not be appropriate and the public interest would best be served by direct sale to the parties involved. Benefits of direct sales will be to resolve potential claims to title and to give consideration to the parties involved who have significant interests in the subject properties.

The sale proposal is consistent with the Bureau of Land Management's planning system. The lands are not needed for any resource program and are difficult and uneconomical to manage and are not suitable for management by another Federal department or agency.

Conveyance of the available mineral interests under section 209 of FLPMA will occur simultaneously with the sale of each parcle. Acceptance of the direct sale offer and payment of a $50.00 filing fee will constitute an application for conveyance of those mineral interests.

The patents, when issued, will contain a reservation to the United States for ditches and canals and will be subject to any other existing rights of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sales can be obtained by contacting Eric Thomson, Realty Specialist, at (208) 765–1511. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objection will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: May 18, 1988.

Ted J. Graf,

Acting District Manager.

[FR Doc. 88–11819 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–940–08–4212–12; A–20349–A]

Realty Action; Exchange of Public and State Land in Arizona

May 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 2,767.31 acres in Mohave County and accepted title from the State of Arizona on 23,035.55 acres in La Paz, Mohave and Yuma Counties.

FOR FURTHER INFORMATION CONTACT: Marsha L. Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal and Land Policy and Management Act, the following described public land was transferred to the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 20½ W.,
Sec. 14, lots 1 to 4, incl., NE¼, E½NW¼, N½N½SW¼;
Sec. 15, lots 1, 2, 3, 5 and 8, E½NE¼, NE¼ SE¼.
T. 16 N., R. 21 W., Sec. 1, lots 1 to 4, incl., S½ N½, S½;
Sec. 3, lots 1 and 2, S½NE¼, SE¼;
Sec. 12, all;
Sec. 26, E½, E½NW¼, NW¼NW¼, E½ SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼.

Comprising 2,767.31 acres in Mohave County.

In exchange the United States accepted title to the following described land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 19 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all.
T. 5 N., R. 19 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, S½SW¼, SE¼;
Sec. 36, all.
T. 5 N., R. 20 W.,
Sec. 32, lots 5 to 8, incl., E½E½.
T. 8 N., R. 15 W.,
Sec. 32, SW¼SW¼.
T. 8 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, SW¼;
Sec. 32, SW¼SW¼.
T. 8 N., R. 17 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½, EXCEPTING a parcel of land in the NE¼ containing an area of 21.45 acres, more or less, and being more particularly described as follows: BEGINNING at the NE corner of said Section 2; thence along the east boundary of said Section 2 South 00°14' 46" West 1432.80 feet; thence leaving said east boundary North 42°06'56" West 1935.90 feet to a point in the north boundary of said Section 2; thence along said north boundary South 89°51'26" East 1304.43 feet to the point of beginning.
Sec. 16, all;
Sec. 36, all.
T. 8 N., R. 18 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 36, NE¼, N½SW¼, SW¼SW¼.
T. 9 N., R. 15 W.,
Sec. 16, all;
Sec. 32, all.
T. 9 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 9 N., R. 18 W.,
Sec. 16, NW¼.
T. 10 N., R. 16 W.,
Sec. 2, all.
T. 10 N., R. 18 W.,
Sec. 32, all.
T. 11 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, SE¼;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 8, all;
Sec. 10, all;
Sec. 14, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 22, all;
Sec. 26, N½, N½S½.
T. 11 N., R. 17 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 24, all;
Sec. 36, SW¼.
T. 11 N., R. 18 W.,
Sec. 2, SW¼NE¼, SE¼NW¼.
T. 12 N., R. 17 W.,
Sec. 2, NE¼SE¼.
T. 12 N., R. 18 W.,
Sec. 2, lots 1 and 2;
Sec. 36, E½, E½W½, W½NW¼, NW¼SW¼.
T. 13 N., R. 17 W.,
Sec. 16, all;
Sec. 32, all.
T. 13 N., R. 18 W.,
Sec. 32, all.
T. 15 N., R. 18 W.,
Sec. 32, SW¼.
T. 16 N., R. 18 W.,
Sec. 36, E½.
T. 2 S., R. 19 W.,
Sec. 16, SE¼SE¼.
T. 2S., R. 23 W.,
Sec. 32, all.
T. 3 S., R. 23 W.,
Sec. 32, SE¼SW¼.
T. 4 S., R. 23 W.,
Sec. 16, all.
T. 8 S., R. 17 W.,
Sec. 25-Two parcels of land in the NE¼ NE¼ containing a total of 8.80 acres, more or less, and being more particularly described as follows:

Parcel No. 1:

Beginning at the Northeast Corner of Section 25, T. 8 S., R. 17 W.; thence S. 89°52'26" W. along the north line of said Section 25, a distance of 163.37 feet to a point on a curve on the north right-of-way line of

the Mohawk Canal, said point also being the true point of beginning; thence along the arc of a simple curve to the left, said curve having a central angle of 18°31'22", a radius of 2,150.00 feet, the bearing to said radius S. 30°01'15" E., an arc distance of 695.06 feet to a point on said curve; thence N.0°07'34" W., a distance of 436.97 feet to a point on the north line of said Section 25; thence N. 89°52'26" E. along said north line, a distance of 536.62 feet to the true point of beginning. All in NE¼NE¼, Section 25, T. 8 S., R. 17 W., G&SRBM, Yuma County, Arizona, containing 2.4 acres, and,

Parcel No. 2:

Beginning at the Northeast Corner of Section 25, T. 8 S., R. 17 W.; thence S. 89°52'26" W. along the north line of said Section 25, a distance of 700.00 feet to the true point of beginning; thence S. 0°07'34" E., a distance of 436. 97 feet to a point on a curve on the north right-of-way line of the Mohawk Canal; thence along the arc of a simple curve to the left, said curve having a central angle of 5°03'09", a radius of 2,150.00 feet, the bearing to said radius S. 48°32'36" E., an arc distance of 189.59 feet to the P.T. of said curve; thence S. 36°24'16" W., along said north right-of-way line, a distance of 471.37 feet to a point; thence N. 0°07'34" W., a distance of 962.91 feet to a point on the north line of said Section 25; thence N. 89°52'26" E. along said north line, a distance of 400.00 feet to the true point of beginning. All in the NE¼NE¼, Section 25, T. 8. S., R. 17 W., Yuma County, Arizona, containing 6.4 acres.

Comprising 23,035.55 acres in La Paz, Mohave and Yuma Counties. The purpose of this notice is to inform the public and local governmental officials of the exchange of public and state land between the United States and the State of Arizona.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-11815 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-920-08-4212-12; A-20347(D)]

Realty Action; Reconveyed Land Opened to Entry; Cochise County, AZ,

May 18, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening of land.

SUMMARY: This action will open 1,870.73 acres of reconveyed land in Cochise County to the public land laws and the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241-5534.

SUPPLEMENTARY INFORMATION: Title to the following described lands was accepted August 28, 1987, from the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 20 E.,
- Sec. 25, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼;,
- Sec. 26, NE¼, N½NW¼;
- Sec. 27, N½NE¼, NW¼;
- Sec. 28, S½N½, N½S½;
- Sec. 29, S½N½;
- Sec. 30, lots 1 and 2, NE¼;
- Sec. 36, NE¼.

T. 12 S., 21 E.,
- Sec. 31, lots 2 and 3, NE¼SE¼;
- Sec. 32, W½SW¼, SE¼SW¼.

The areas described comprise 1,870.73 acres in Cochise County.

At 9:00 a.m. on June 27, 1988, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on June 27, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9:00 a.m. on June 27, 1988, the lands will be opened to applications and offers under the mineral leasing laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-11816 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-920-08-4212; A-22436]

Realty Action; Exchange of Public and State Land in Arizona

May 19, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 14,969.67 acres in Cochise, Graham and Greenlee Counties and accepted title from the State of Arizona on 23,154.26 acres in Cochise and Graham Counties.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, Post Office Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act, the following described public land was transferred to the State of Arizona under Patent No. 02-87-0049.

Gila and Salt River Meridian, Arizona

T. 4 S., R. 30 E.,
- Sec. 25, E½, SW¼.

T. 6 S., R. 24 E.,
- Sec. 25, SW¼SW¼;
- Sec. 35, E½NE¼,NE¼SE¼,W½SE¼SE¼, SW¼SE¼.

T. 7 S., R. 24 E.,
- Sec. 1, lots 3 and 4;
- Sec. 2, SE¼SE¼;
- Sec. 8, W½SW¼, S½SE¼;
- Sec. 9, S½NE¼, W½;
- Sec. 11, all;
- Sec. 12, W½SW¼;
- Sec. 13, NW¼NW¼, SE¼SE¼;
- Sec. 14, N½NE¼, SW¼NE¼, NW¼, W½SW¼, NE¼SW¼, NW¼SE¼;
- Sec. 15, N½, N½S½, S½SW¼, SW¼SE¼;
- Sec. 17, E½;
- Sec. 19, lots 2, 3, 4, W½NE¼, E½W½, SE¼;
- Sec. 20, NW¼SW¼;
- Sec. 22, all;
- Sec. 23, lots 1 and 2, W½NW¼;
- Sec. 24, lots 1, 2, 3, NE¼NE¼, S½NE¼, NE¼SW¼, N½SE¼.

T. 7 S., R. 25 E.,
- Sec. 5, lot 1, SE¼NE¼, E½SW¼, N½SE¼;
- Sec. 7, SW¼SE¼;
- Sec. 8, E½NE¼, E½NW¼, SW¼NW¼, SE¼SW¼, SE¼;
- Sec. 17, all;
- Sec. 18, SE¼NE¼;
- Sec. 19, lots 1 to 4, incl., E½W½, E½;
- Sec. 20, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
- Sec. 30, lots 1 to 4, incl., N½NE¼, E½W½.

T. 8 S., R. 16 E.,
- Sec. 23, S½.

T. 8 S., R. 30 E.,
- Sec. 19, lots 3 and 4, SE¼SW¼, S½SE¼;
- Sec. 30, NE¼.

T. 8 S., R. 31 E.
- Sec. 22, N½NE¼, NE¼NW¼, SE¼SW¼, S½SE¼.

T. 8 S., R. 32 E.,
- Sec. 3, lots 6 and 7, E½SW¼, W½SE¼;
- Sec. 9, NW¼SE¼;
- Sec. 10, lots 1-4, incl., W½E½, NW¼, E½SW¼;
- Sec. 15, lots 1-4, incl., W½E½, N½NW¼.

T. 15 S., R. 19 E.,
- Sec. 14, E½NE¼.

T. 15 S., R. 22 E.,
- Sec. 22, lot 1, N½NW¼, SW¼NW¼.

T. 16 S., R. 31 E.,
- Sec. 33, lots 3-6, incl.;
- Sec. 34, NW¼SE¼.

T. 17 S., R. 20 E.,
- Sec. 21, SE¼NW¼, SE¼SE¼;
- Sec. 22, NE¼NW¼, NW¼SW¼.

T. 17 S., R. 31 E.,
- Sec. 22, lots 4, 5, lots 8-14, incl.

T. 18 S., R. 20 E.,
- Sec. 13, lot 1, W½NE¼, S½NW¼, SW¼, NW¼SE¼;
- Sec. 23, NE¼, E½NW¼;
- Sec. 24, lots 1 and 2, W½NE¼, NW¼.

T. 18 S., R. 32 E.,
- Sec. 8, SW¼NW¼.

T. 19 S., R. 20 E.,
- Sec. 5, lots 1-4, incl., S½N½, N½S½, S½SW¼, SW¼SE¼.

T. 20 S., R. 19 E.,
- Sec. 29, lot 1.

T. 20 S., R. 20 E.,
Sec. 13, NE¼, NE¼SW¼, NW¼SE¼;
Sec. 23, NW¼NE¼;
Sec. 24, E½NE¼, SW¼NE¼, E½SW¼, SE¼;
Sec. 26, SE¼NW¼.
T. 20 S., R. 21 E.,
Sec. 18, NW¼NW¼, SE¼SE¼.
T. 21 S., R. 26 E.,
Sec. 31, lot 4, SE¼SW¼.
Comprising 13,467.80 acres.

The following described public land was transferred to the State of Arizona under Deed No. AZ–87–010.

Gila and Salt River Meridian, Arizona

T. 7 S., R. 24 E.,
Sec. 2, lots 1, 2, 3, S½N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 10, S½NE¼, NW¼, N½S½, SW¼SW¼.
T. 12 S., R. 28 E.,
Sec. 16, N½NE¼, NW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼.
T. 19 S., R. 26 E.,
Sec. 16, S½.
Comprising 1,501.87 acres.

In exchange the United States accepted title to the following land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 23 E.,
Sec. 32, lots 1 to 6 incl., N½, NE¼SW¼, N½SE¼, SE¼SE¼.
T. 4 S., R. 27 E.,
Sec. 26, lots 1 to 4 incl.;
Sec. 27, lots 1 and 3;
Sec. 35, all;
Sec. 36, all.
T. 5 S., R. 22 E.,
Sec. 2, lots 1 to 4 incl.;
Sec. 24, lot 4;
Sec. 25, lots 1, 2 and 3, W½NE¼,E½NW¼, SW¼NW¼,NW¼SE¼;
Sec. 26, lots 4, 5 and 8;
Sec. 35, lot 1;
Sec. 36, lots 1 to 4 incl., W½E½, W½.
T. 5 S., R. 23 E.,
Sec. 9, S½SW¼, SW¼SE¼;
Sec. 16, E½, N½NW¼, E½SE¼NW¼, E½E½SW¼;
Sec. 17, NE¼NE¼, SW¼SE¼;
Sec. 19, lot 4, SE¼SW¼, SE¼;
Sec. 20, E½E½, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 29, N½NW¼, SW¼NW¼;
Sec. 30, lots 1, 2 and 3, SE¼NE¼, NE¼SW¼;
Sec. 32, all;
Sec. 33, all;
Sec. 34, S½;
Sec. 35, E½, SW¼;
Sec. 36, all.
T. 5 S., R. 26 E.,
Sec. 10, lots 4 and 5, SE¼;
Sec. 15, E½E½;
Sec. 25, N½, N½SE¼, N½S½SE¼.
T. 5 S., R. 27 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 12, N½;
Sec. 16, all;
Sec. 35, all (U.S. Minerals);
Sec. 36, all.
T. 6 S., R. 22 E.,
Sec. 16, all, excluding San Carlos Indian Reservation;
Sec. 20, NE¼, E½SE¼;
Sec. 21, W½, W½SE¼;
Sec. 28, all;
Sec. 29, NE¼, NE¼SE¼.
T. 6 S., R. 23 E.,
Sec. 1, lots 1 and 2, S½NE¼, E½SW¼, W½SE¼;
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 3, lots 1 to 4 incl., S½N½;
Sec. 11, NE¼SE¼;
Sec. 12, NW¼, W½SW¼;
Sec. 29, S½NW¼, SW¼;
Sec. 31, lots 1 to 7 incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼ (U.S. Minerals);
Sec. 32, lots 1 to 4 incl., N½S½, N½;
Sec. 35, lot 1.
T. 6 S., R. 24 E.,
Sec. 16, E½;
Sec. 17, SW¼SW¼ (U.S. Minerals);
Sec. 19, E½W½, E½SE¼ (U.S. Minerals);
Sec. 20, W½W½ (U.S. Minerals);
Sec. 29, W½W½ (U.S. Minerals);
Sec. 30, lots 3 and 4, S½NE¼, E½SW¼, SE¼ (U.S. Minerals);
Sec. 31, lot 1, N½NE¼, NE¼NW¼ (U.S. Minerals);
Sec. 32, W½E½, E½SE¼.
T. 6 S., R. 27 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½;
Sec. 36, NE¼, N½NW¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1 to 4 incl., S½N½, S½ (U.S. Minerals E½SE¼);
Sec. 6, lots 1 to 6 incl., SW¼NE¼, SE¼NW¼.
T. 7 S., R. 24 E.,
Sec. 5, SE¼SW¼, SW¼SE¼ (U.S. Minerals).
T. 24 S., R. 32 E.,
Sec. 2, lots 1 to 4 incl., W½E½, W½;
Sec. 3, all;
Sec. 10, N½, SW¼, W½SE¼,SE¼SE¼;
Sec. 11, lots 1 to 4 incl., W½E½, NW¼NW¼ (U.S. Minerals);
Sec. 14, lots 1 to 4 incl., SW¼NE¼, S½NW¼, S½SW¼,W½SE¼;
Sec. 15, SE¼NE¼, SE¼SW¼, S½SE¼;
Sec. 16, all;
Sec. 22, lots 1 and 2;
Sec. 23, lots 1, 2, 3.
Comprising 23,154.26 acres.

The purpose of the notice is to inform the public and local governmental officials of the exchange of land between the United States and the State of Arizona.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–11817 Filed 5–25–88; 8:45 am]
BILLING CODE 4310–32–M

[AZ–920–08–4212–12; A–22699]

Realty Action; Exchange of Public and State Land in Arizona

May 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred title to 4,273.67 acres in Yavapai and Pinal Counties and accepted title from the State of Arizona on 12,382.94 acres in Yavapai County.

FOR FURTHER INFORMATION CONTACT: Marsha L. Luke, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal and Land Policy and Management Act, the following described public land was transferred to the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 1 E.,
Sec. 21, lots 1, 3, 4.
T. 13 N., R. 1 E.,
Sec. 24, E½E½, SW¼SW¼, E½SW¼, W½SE¼;
Sec. 25, lots 1–4, incl., N½, S½S½.
T. 13 N., R. 1½ E.,
Sec. 1, lot 4;
Sec. 11, lots 1–4, incl.;
Sec. 12, lots 1, 2, NW¼NW¼, SW¼SW¼;
Sec. 13, lots 1–11, incl., W½NW¼, SE¼SE¼;
Sec. 14, lots 1, 2, 4, 5;
Sec. 24, W½;
Sec. 25, NW¼, N½SW¼, SW¼SW¼.
T. 5 S., R. 10 E.,
Sec. 11, N½NW¼, SW¼SW¼, S½SE¼SW¼, S½SE¼;
Sec. 15, NW¼, S½;
Sec. 20, E½;
Sec. 21, E½, SW¼;
Sec. 22, SE¼.
Comprising 4,273.67 acres in Yavapai and Pinal Counties.

In exchange the United States accepted title to the following described land conveyed by the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 1 E.
Sec. 13, all. (surface only)
T. 9 N., R. 2 E.
Sec. 5, lots 1–4, incl., S½N½, S½; (surface only)
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼; (surface only)
Sec. 7, lots 1–4, incl., E½, E½W½; (surface only)
Sec. 8, all; (surface only)
Sec. 17, E½NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, NW¼, S½; (surface only)
Sec. 18, lots 1–4, incl., E½, E½W½; (surface only)
Sec. 19, lots 1–4, incl., E½, E½W½; (surface only)
Sec. 20, all; (surface only)
Sec. 30, lots 1–4, incl., NE¼, E½W½. (surface only)
T. 9½ N., R. 2 E.,

Sec. 19, lots 1–6, incl., E½SW¼, SE¼; (surface only)
Sec. 29, W½; (surface only)
Sec. 30, lots 1–4, incl., E½W½, E½; (surface only)
Sec. 31, lots 1–4, incl., E½W½, E½; (surface only)
Sec. 32, W½. (surface only)
T. 10 N., R. 2 E.,
Sec. 5, lots 1–4, incl., S½N½, S½; (surface only)
Sec. 6, lots 1–9, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼; (surface only)
Sec. 7, lots 1–8, incl., E½, E½W½; (surface only)
Sec. 8, E½; (surface only)
Sec. 18, lots 1–8, incl., E½W½; (surface only)
Sec. 19, lots 1–8, incl., E½W½; (surface only)
Sec. 30, lots 1–4, incl., lots 6–10, incl., E½NW¼; (surface only)
Sec. 31, lots 3–5, incl., lots 7–10, incl., E½SW¼; (surface only)

The areas described comprise 12,382.94 acres in Yavapai County.

The purpose of this notice is to inform the public and local governmental officials of the exchange of public and state land between the United States and the State of Arizona.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–11818 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–32–M

[CA 943–08–4220–10; CA 17849]

Proposed Withdrawal and Opportunity for Public Meeting; California

May 18, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,997.92 acres of public land in San Bernardino County, to protect the paleontological, geological, scenic, and recreational integrity of the Rainbow Basin-Mud Hills area. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by August 24, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978–4815.

SUPPLEMENTARY INFORMATION: On April 27, 1988, a petition was approved allowing Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 11 N., R. 1 W.,
Sec. 18, lots 1 and 2, and NE¼.
T. 11 N., R. 2 W.,
Sec. 10, W½SW¼, SE¼SW¼, and S½S½SE½.
Sec. 11, S½S½SW¼;
Sec. 14, W½ and SW¼SE¼;
Sec. 15,
Sec. 22, E½NE¼;
Sec. 23, NE¼NE¼, W½NE¼, NW¼, N½SW¼, and W½SE¼.

The areas described aggregate 1,997.92 acres in San Bernardino County.

The purpose of the proposed withdrawal is to protect and preserve the paleontological, geological, scenic and recreational values of the Rainbow Basin-Mud Hills area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregated period are licenses, permits, cooperative agreements, or discretionary land-use authorizations of a temporary nature.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–11820 Filed 5–25–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–056–08–4351–09]

Closure Order for Off-Road Vehicle Use; California

ACTION: Closure Order for Off-Road Vehicle Use.

SUMMARY: Notice is hereby given related to the closure of public land to off-road vehicle (ORV) use in accordance with regulations contained in 43 CFR 8341.2. Approximately thirty-seven (37) acres of rare plant habitat located in portions of Sections 26, 27, 34, 35, T. 6 N., R.1 W., H.M. and known as the foredunes of the Bureau's Manila Dunes tract, will be temporarily closed to ORV use. This closure order will remain in effect until a research project is completed or a formal activity plan is completed for the area.

DATE: This closure order is effective May 20, 1988.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1125 16th Street, Room 219, P.O. Box 1112, Arcata, California 95521 (Telephone: (707) 822–7648) or District Manager, Ukiah, District Office, 555 Leslie Street, Ukiah California 95482 (Telephone: (707) 462–3873).

SUPPLEMENTARY INFORMATION: The affected plant species is the Menzies' Wallflower (*Erysimum menziesii*), listed as endangered by the California Department of Fish and Game and identified as a candidate for Federal listing by the U.S. Fish and Wildlife Service. Its habitat has been reduced to dune systems along the California coast in three locations—Monterey, Fort Bragg and the Samoa Peninsula near Eureka.

Habitat restoration plans and research studies are currently being implemented on the thirty-seven (37) acres where ORV use will be prohibited by this closure order. The area has been fenced into four units in order to provide riding corridors from the inland dunes to the beach strand. Information and regulatory signs are posted and the fence wire is flagged and painted to increase its visibility to nearby ORV enthusiasts.

All restoration activities within this thirty-seven (37) acre area will be monitored for at least three years. During this period, the study area must be protected from impacts which could result in erroneous conclusions or recommendations. Upon completion of the habitat restoration and research projects, the authorized officer will determine whether or not to remove the fence and designate the area either open, limited, or closed to ORV's in

accordance with procedures established in 43 CFR 8342.

Edwin G. Katlas,

Acting District Manager.

May 18, 1988.

[FR Doc. 88-11814 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Mines

Sale of Helium Assets

AGENCY: Bureau of Mines, Interior.

ACTION: Solicitation of comments on the proposed sale of helium assets.

SUMMARY: The FY 1988 and 1989 Budgets for the Department of the Interior proposed the sale of Government helium assets as part of the President's initiative to privatize certain Federal operations. Under a contract with the Bureau of Mines, J.R. Campbell and Associates has prepared a report related to valuation of these assets and public comments are now being solicited on the issues described in that report in order to assist the Department in determining the options available for implementing the proposal.

DATES: Interested parties should provide their comments to the official listed below on or before June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Armond A. Sonnek, Assistant Director—Helium Operations, Bureau of Mines, Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20241; Telephone No. 202-634-4734.

SUMMARY INFORMATION: A Federal Helium Program was established by Federal law in 1925 to develop and produce helium for Government use. In 1937, the law was changed to allow the Government to sell helium for other than Government use. The law was again changed in 1960 to allow the Secretary of the Interior to purchase crude helium for storage to meet the current and future military and scientific needs of the helium-using Federal agencies. As a result of this legislation the Bureau of Mines has a crude helium reserve of 38 billion SCF (standard cubic feet) stored in its Cliffside Reservoir in Amarillo, Texas.

The 1960 Act also encouraged the development of a private helium industry. The resultant private helium industry now has a helium production capacity which supplies about 75 to 80 percent of the total helium market. Federal agencies, under the law, are still required to purchase needed helium from the Bureau of Mines. Under the President's FY 1989 initiative to privatize certain industrial-type operations, sale of the Exell helium plant, the Amarillo container-filling plant, and the helium (liquid and gaseous) transportation equipment has been proposed.

As a result of this proposal, a Helium Operations Report for the U.S. Bureau of Mines was prepared by J.R. Campbell and Associates, Inc., Lexington, Massachusetts. Consistent with the terms of a competitively awarded contract, Campbell and Associates conducted an analysis of the issues relating to the valuation and potential disposition of the Government's helium processing and distribution operations. Three value and disposition alternatives are covered in the contractor's report.

These are:

1. Retain all its interests and not sell any crude helium.

2. Sell its production and distribution facilities, and sell crude helium in portions over the next 50 years.

3. Retain all its production and distribution facilities, while also selling portions of the crude helium over the next 50 years.

(Copies of the report may be obtained by contacting Armond A. Sonnek, Assistant Director—Helium Operations, Bureau of Mines, Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20241, Telephone No. 202-634-5734.)

In addition, a number of questions has been identified as follows:

1. Interest in Operating Facilities

Is private industry interested in purchase or operation of the Exell facility on a contract basis? If so, how should such a sale or contract be structured?

2. Impact on the Market

What role should the Government play in the helium market? Is private industry able to absorb the Government requirements, as defined in the contractor's study, in terms of processing capacity, as well as peak demand (with or without access to Government crude)? What would be the consequences for supply and price?

3. Transition Period

If the Federal Government were to cease supplying helium, would a period of transaction be needed from Government processing capacity to private supply of helium? How long a transition would be necessary, if any? Would sale of Government-owned helium be necessary to meet demand during such a period?

4. Conservation

What role should the Government play in the conservation of helium subsequent to a sale of assets? Should the Government sell conserved helium into the market? If so, how should crude sales be structured to prevent any disruption of the private helium market?

Responses are also solicited as to whether there are other considerations that should be taken into account.

Dated: May 20, 1988.

T.S. Ary,

Director.

[FR Doc. 88-11778 Filed 5-25-88; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Transfer of Recreation Lands at Red Bluff Reservoir, Central Valley Project, California, to the Forest Service

AGENCY: Bureau of Reclamation; Department of the Interior.

ACTION: Notice of transfer of administrative jurisdiction over approximately 488 acres of land acquired by the Bureau of Reclamation, Department of the Interior, for the Red Bluff Reservoir, Central Valley Project, California, to the Forest Service, Department of Agriculture. The Forest Service will manage these lands for recreation and other National Forest System purposes, along with other lands on the Mendocino National Forest. The lands transferred are located in six tracts located in Tehama County, California, in Sections 20, 28, 29, and 33 of Township 27 North, Range 3 West, Mount Diablo Base and Meridian, and a portion of the Rio de Los Berrendos Rancho, a.k.a. Rancho El Primer Canon.

DATE: This action was effective on March 16, 1988.

ADDRESSES: Maps, a complete legal description of the lands over which the Bureau of Reclamation transferred administrative jurisdiction to the Forest Service, and a copy of the transfer agreement, can be seen and reviewed by contacting: Mr. Gary T. Sackett, Assistant Regional Supervisor of Water and Power Resources Management, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898. Telephone: (916) 978-4933.

SUPPLEMENTARY INFORMATION: The lands were transferred under the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965, Pub. L. 89-72 (79 Stat. 217), and his delegation to the Commissioner of

Reclamation dated February 25, 1966, published March 4, 1966 (31 FR 3462).

As prescribed by section 7(C) of Pub. L. 89–72, the lands, once transferred, will become National Forest Lands, provided that all lands and waters within the Red Bluff Reservoir needed or used for the operation of the Central Valley Project, or for any other Reclamation purpose(s) shall continue to be administered by the Commissioner of Reclamation to the extent he deems necessary.

Date: May 13, 1988.

C. Dale Duvall,

Commissioner.

[FR Doc. 88–11602 Filed 5–25–88; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; CSX Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that CSX Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5703, Block 161, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 17, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service make information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 18, 1988.

J. Roger Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–11821 Filed 5–25–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Eighth Meeting of the Board for International Food and Agricultural Development (BIFAD) on June 7, 1988.

The purpose of this meeting is to meet together with the Title XII Community and in an open forum discuss the following issues; additional inputs and suggestions with a focus on the 90's; future directions and trends for Title XII-sustainable agriculture, environmental sustainability and enhancement, developing policy analysis capability in host countries, expanding the research agenda, new modes for institutional development projects, developing collaborative linkages with ADC countries and institutions; internationalizing the university, etc.

The June 7, 1988 Meeting will be held in Fayetteville, Arkansas, the Center for Continuing Education, #2 University Center, Fayetteville Square. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, Washington, DC 20523, or telephone him on (707) 235–8929.

Date: May 20, 1988.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 88–11804 Filed 5–25–88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31247]

CSX Corp and American Commercial Lines, Inc.—Control—SCNO Acquisition Corp.[1]

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of determination that the proposal is a minor transaction and decision to waive and to clarify filing requirements.

SUMMARY: The Commission determines that the proposed acquisition of control of SCNO Barge Lines, Inc. by CSX Corporation and its wholly owned subsidiary, American Commercial Lines, Inc., is a minor transaction for purposes of handling of the application under the railroad consolidation regulations at 49 CFR Part 1180. Also, the Commission grants applicants' requests for waivers and clarifications of those regulations, including the environmental and energy regulations at 49 CFR 1180.6(a)(8) and 1180.6(a)(9).

[1] This proceeding was originally entitled Finance Docket No. 31247, *CSX Corporation and American Commercial Lines, Inc.—Control—SCNO Barge Lines, Inc.* The name of the proceeding has been revised in accordance with the request of counsel for CSX Corporation and American Commercial Lines, Inc., contained in a letter filed April 6, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: May 10, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Simmons, joined by Commissioner Lamboley, dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–11828 Filed 5–25–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-25X)]

Central of Georgia Railroad Co.; Exemption, Abandonment and Discontinuance of Service at Atlanta, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* (1) to abandon its 475-foot line of railroad between Valuation Station 15551+30, near Foundry Street, and Valuation Station 15546+55, at International Boulevard, in Atlanta GA, and (2) to discontinue service over a 1,575-foot segment of contiguous trackage between Valuation Station 15546+55, at International Boulevard, and the point of switch with its Circle Track in the vicinity of Valuation Station 15530+80, near Martin Luther King Drive, in Atlanta.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective June 25, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by June 5, 1988,
and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 15, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Angelica D. Lloyd, Norfolk Southern Corporation, 8 North Jefferson Sreet., Roanoke, VA 24042–0041.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 31, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7216).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 20, 1988.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub.-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[2] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–11827 Filed 5–25–88; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Ariel Rios Federal Building, located on 12th Street NW., between Constitution and Pennsylvania Avenues in Washington, DC on June 23 and 24, 1988. The meeting will be in Room 3001 beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 5 U.S. Code, section 1242(a)(1)(B) and to review the May 1988 Joint Board examinations in order to make recommendations relative thereto, including minimum acceptable pass scores. A determination as required by section (d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1988 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

In addition to the above, there will be discussion of the following: (1) Topics for inclusion on the examination program for the November 1988 pension law examination and May 1989 basic actuarial examination; (2) a memorandum regarding the new approach to life contingencies submitted by the Society of Actuaries for review by the Joint Board and the Advisory Committee; (3) the possibility of consolidation of the current two part structure of the basic actuarial examination; and (4) material (e.g., law, revenue rulings, and notices) which may be included as part of the pension law examination booklets. The portion of the meeting dealing with the discussion of these topics will be open to the public as space is available. Such discussion will commence at 1:30 p.m. on June 23 and

will continue until the discussion is finished but not beyond 3:30 p.m.

Time permitting, after discussion by Committee members, interested persons may take statements germane to these subjects. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements must be received no later than June 20, 1988 by Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

Date: May 20, 1988.

[FR Doc. 88-11865 Filed 5-25-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

United States v. State of Washington et al.; Lodging of Consent Decree Pursuant to Clear Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 2, 1988, a proposed partial Consent Decree in *United States* v. *State of Washington et al.*, Civil Action No. C88-552R, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Air Act against the defendants, the State of Washington, the University of Washington, W.G. Clark Construction Company, and G. Brett Bodily d/b/a Monarch Painting Company, for violations of numerous work practice standards under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations for asbestos, promulgated under the Clean Air Act, during renovation and asbestos removal operations at the Husky Stadium and the TV/Drama Building, both located on the University of Washington at Seattle campus.

The Consent Decree requires the three settling defendants, namely, the State and University of Washington, and Clark Construction, jointly to pay a civil penalty totaling $85,000. The Decree also enjoins the settling defendants from further violations of the asbestos NESHAP regulations for one year and subjects those defendants to contempt of court proceedings for violations within that year.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *State of Washington*, D.J. Ref. 90-5-2-1-1163.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Washington, 3600 Seafirst 5th Avenue Plaza, 800 Fifth Avenue, Seattle, Washington; (2) the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue NW., Washington, DC.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-11822 Filed 5-25-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-28]

Gordon M. Acker, D.M.D., Spring Lake Heights, NJ; Hearing

Notice is hereby given that on February 26, 1988, the Drug Enforcement Administration, Department of Justice, issued to Gordon M. Acker, D.M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

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 on Thursday, June 9, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: May 20, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-11826 Filed 5-25-88; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35, and NPF-52 issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would revise Technical Specification (TS) Tables 3.3-12, 3.3-13, 4.3-8, 4.3-9, 4.11-1 and 4.11-2 to add TS requirements to cover operation of systems and components associated with the Monitor Tank Building (MTB) which is being constructed at Catawba Nuclear Station. Also, TS Figure 5.1-4 "Unrestricted Area and Site Boundary for Radioactive Gaseous Effluent" will be revised to show the MTB as a potential release point.

The MTB and associated components, including additional tankage, will increase process rates and ensure segregation for the various liquid waste streams. By providing a piping arrangement and process area to accommodate portable temporary equipment, the facility will provide surge capacity and processing flexibility to incorporate such future problems as load cycling, ice condenser ice melt and potential volume reduction requirements.

The licensee's application for amendments was dated March 23, 1988.

The Need for the Proposed Action

At the present time, Catawba does not have the capability to process large volumes of liquid radwaste due to

restrictions on releases and release rates. This is particularly true for peak load conditions associated with routine plant operations such as during refueling outages. The MTB will provide a means to handle larger quantities of radioactive wastes and reduce occupational exposures.

The amendments to the Technical Specifications are necessary to ensure that appropriate controls for the radioactive liquid and gaseous effluent monitors and flow rate measuring devices are in place to cover the operation of the MTB.

Environmental Impacts of the Proposed Action

The proposed amendments to the Catawba Technical Specifications would adequately ensure the operability of the radioactive gaseous and liquid effluent monitoring instrumentation and would also ensure that proper sampling and analysis programs are in place for all radioactive gaseous and liquid effluent releases.

The MTB includes many ALARA design features that will reduce the occupational doses from maintenance and operations from those currently received. Its primary functions are to provide additional processing capacity for high radwaste inventories during normal operation, primary-to-secondary leaks, and contaminated powdex processing. The dose levels associated with the powdex processing in the MTB would be much lower than if processing occurred in the turbine building. Therefore, for the same operations, the individual and occupational cumulative dose levels should be lower than what is currently experienced.

Operation of the MTB will not increase the quantity of radioactive gaseous and liquid effluents produced by the Catawba Nuclear Station. The MTB will provide a means to handle larger quantities of radioactive wastes and reduce occupational exposures.

The MTB and associated trenches do not house any equipment which is important to safety and being a remote facility, cannot adversely affect any equipment which is important to safety. An accident or malfunction within the facility can, however, result in a radioactive release to the environment. The most severe consequences would be those following a tank failure.

The accident which is already analyzed in the FSAR is the failure of the refueling water storage tank (RWST) which results in the release of 395,000 gallons on contaminated water directly to Lake Wylie. Since the total volume of all MTB tankage is much less than that of the RWST and since the radionuclide concentrations of liquids within the MTB will be less than those assumed in the RWST analysis, the consequences of an MTB accident would be much less severe than an RWST accident. The releases resulting from a postulated RWST failure were determined to be within the limits of 10 CFR Part 20, Appendix B.

Accidents and malfunctions within the MTB will, therefore, not affect the safe operation or shutdown of the plant and will not adversely affect the health and safety of the public.

From the above evaluation of accidents, occupational radiation exposures and radiological effluents, the Commission concludes that there are no significant radiological environmental impacts associated with granting of the proposed amendments.

With regard to potential non-radiological impacts, the proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Because the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts associated with Catawba Nuclear Station operations, would result in reduced operational flexibility, and may add to the occupational radiation exposures.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of the Catawba Nuclear Station, Units 1 and 2" (NUREG–0921), dated January 1983.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 19th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11843 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

Availability of Final Technical Position on Items and Activities in the High-Level Waste Geologic Repository Program Subject to Quality Assurance Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1318 "Technical Position on Items and Activities in the High-Level Waste Geologic Repository Program Subject to Quality Assurance Requirements," and a document providing staff responses to public comments on the September 1987 draft of the technical position.

ADDRESSES: A copy of NUREG–1318 and staff response to public comments on the September 1987 draft of the technical position are available for inspection and/or copying for a free at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Copies of NUREG–1318 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Kennedy, Section Leader, Quality Assurance Section, Operations Branch, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–3402.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA), Pub. L. 97–425, and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to DOE's submittal of a license application for a geological repository. These interactions are to fully inform DOE about the types and amounts of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is the NRC staff's Site Characterization Analysis (SCA) of DOE's Site Characterization Plan (SCP). The SCA and SCP are required by the NWPA and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA. These include staff technical positions (TPs).

This TP provides guidance to DOE on what the staff considers as appropriate methods for identifying item and activities that are subject to the quality assurance requirements of 10 CFR Part 60.

On July 31, 1986 the NRC published the Notice of Availability for the draft TP and solicited public comments. As a results, ninety-six comments were received from eight different parties. Furthermore, a public meeting was held August 25, 1986 to discuss the draft TP and the NRC staff's responses to the public comments. Representatives for the States, affected Indian Tribes, industry, and the Department of Energy were in attendance and provided feedback to the NRC staff. In September 1987, a revised draft was issued for additional comment. As a result, ninety-three comments were received from six different parties. Changes and clarifications have been made in the final TP as a result of these interactions. The final position has also been reviewed by the Commission's Advisory Committee on Reactor Safeguards (ACRS) Waste Management Subcommittee.

Dated at Rockville, Maryland, this 20th day of May 1988.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Branch Chief, Operations Branch, Division of High-Level Waste Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 88–11844 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved LWRs; Meeting

The ACRS Subcommittee on Improved LWRs will hold a meeting on May 31, 1988, Room 167, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 31, 1988—1:00 p.m. until the conclusion of business.

The Subcommittee will review the proposed Commission rule on standardization.

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. Herman Alderman (telephone 202/634–1413) between 7:30 a.m. and 4:15 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: May 20, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–11901 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364; License Nos. NPF–2 and NPF–8; EA 87–142]

Alabama Power Co., Farley Nuclear Plant; Order Imposing Civil Penalty

I

Alabama Power Company (licensee) is the holder of Operating License Nos. NPF–2 and NPF–8 issued by the Nuclear Regulatory Commission (NRC/Commission) on June 25, 1977 and March 31, 1981, respectively. The licenses authorize the licensee to operate Joseph M. Farley Nuclear Plant Units 1 and 2 in accordance with the conditions specified therein.

II

Inspections of the licensee's activities were conducted on May 11–22, June 1–5, and June 11—July 10, 1987. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated November 3, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by two letters, both dated December 17, 1987.

III

After consideration of the licensee's responses and the statements of facts, explanation and arguments for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that three examples of violation I.A, one example of violation I.B.5, and one example of violation II.A should be withdrawn; that the remaining examples of violations I.A, I.B.5, and II.A and the remaining violations in their entirety occurred as stated; that the violations were properly categorized in the aggregate as two Severity Level III problems; and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector, Farley Nuclear Plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in section II and modified in section III above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland, this 18th day of May 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions of Response to Notice of Violation

On November 3, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during NRC inspections. This Notice contained two Severity Level III problems each assessed a Twenty-Five Thousand Dollar ($25,000) civil penalty. Alabama Power Company (APC) responded to the Notice by two letters, both dated December 17, 1987. In its first response, the licensee protested the issuance of Violation II.A.4, denied violations I.A., I.B.5 (in part), II.A.2, and II.A.5; admitted the remaining violations; and presented mitigating circumstances for violations I.B.1, II.A.1, II.A.3, and II.B. The licensee also requested recategorization of individual findings (as separate violations rather than aggregate violations), reduction of the severity level, and withdrawal of the proposed civil penalties. In its second response, the licensee presented arguments, regarding inaccuracies in Inspection Reports Nos. 50-348/87-11 and 50-364/87-11. The NRC's evaluations and conclusions regarding the licensee's initial response are as follows:

Restatement of Violation I.A

I. Inadequate Control and Installation of Purchased Equipment

A. 10 CFR Part 50, Appendix B, Criterion VII, Control of Purchased Material, Equipment, and Services, requires that measures be established to assure that purchased material, equipment, and services conform to the procurement documents. These measures shall include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source and examination of products upon delivery. Documentary evidence that material and equipment conform to the procurement requirements is required to be available at the nuclear power plant prior to installation or use of such material and equipment.

Contrary to the above, at the time of the inspections, the licensee had nine circuit breakers with unconfirmed seismic qualification and voltage ratings installed in safety-related motor control centers at Farley Nuclear Plant (FNP) Units 1 and 2. The circuit breakers were sold by Satin American Corporation as seismically qualified safety-related circuit breakers acceptable for installation into 600-V motor control centers. The vendor provided inadequate justification for seismic and 600-V qualification. No testing or analysis that would qualify the use of these breakers as installed had been done either by the licensee or the vendor. Moreover, although the vendor represented that the circuit breakers were fully qualified for 600-V applications, the licensee should have been alerted to a possible problem since the breakers were still affixed with an Underwriters Laboratories, Inc. rating of 480-V.

Summary of Licensee's Responses to Violation I.A

Prior to allowing Satin American to supply the needed breakers, APC reviewed the Satin American Quality Assurance Program and found it acceptable. APC efforts to upgrade the 480-V breakers to 600-V standards and to resolve potential seismic qualification problems involved Siemens-ITE, Ecotech, Telemecanique and Bechtel. The efforts by APC and the companies listed above included both testing and analysis. Therefore, APC concluded that the NRC's assertion that "No testing or analysis that would qualify the use of these breakers as installed had been done either by the licensee or vendor" is not correct.

APC additionally objected to the NRC's statement that "* * * the licensee should have been alerted to a possible problem since the breakers were still affixed with an Underwriters Laboratories, Inc. rating of 480-V." APC stated that it is not aware of any regulatory requirement to maintain a UL listing for these breakers. Finally, the licensee contended that the number of breakers that were installed in safety-related applications was six rather than the nine cited by the NRC in the Notice of Violation.

NRC Evaluation of Licensee Response to Violation I.A

At the exit meeting conducted at the end of the subject inspection, the NRC inspectors were told there were nine circuit breakers installed in safety-related motor control centers. If six is the correct number, the NRC staff agrees that reference to three of the nine original breakers should be withdrawn. However, the remaining six examples occurred as stated and the significance of the subject violation would not be changed.

The NRC staff was aware of and considered the circumstances surrounding the procurement of the subject breakers as described in paragraph A of the APC response to the subject violation. The staff has reviewed and considered the activities performed after the inspection as described in paragraph B of the subject response. The testing performed by Satin American and by APC was recognized and evluated by the NRC. It was determined that this testing did not serve as a basis for ensuring the breakers would meet the applicable design requirements for the installed applications. Specifically, Bechtel specification SS-1102-61 for 600 volt, 480 volt, and 208 volt Motor Control Centers, used in the procurement of the

original MCCs and breakers installed at the FNP, states in paragraph 6.1.3 that the 600–V circuit breakers should be capable of interrupting 18,000 amps rms symmetrical at 600 volts. The original supplied breakers were rated by UL as being capable of meeting this specification. To achieve this UL rating, a manufacturer is required to subject a production sample of breakers through vigorous testing performed on a quarterly basis. This testing includes subjecting the breakers to the rated interrupting current at the rated voltage (in this case 18,000 amps at 600 volts). This testing, performed on sample breakers, then serves as the basis for the UL rating associated with the other breakers manufactured during the same time period.

The circuit breakers received by FNP were UL rated for 480–V, not 600–V. Therefore, these were part of manufacturing lots subjected to testing at 480–V. No breakers manufactured during the same time period as those received by FNP were ever tested at 600–V, as would be necessary to establish an interrupting rating at 600 volts. Subsequent tests performed by Satin American and APC did not establish nor ensure that the subject breakers could interrupt 18,000 amps at 600 volts, as required by the Bechtel specification.

The staff agrees that the breakers installed at FNP are not rquired to have a UL rating, but in this case the UL rating served as the only assurance that the subject breakers could meet the design specifications. Additionally, information received from Seimens and from Telemecanique has reinforced the staff's position that the subject breakers are in fact not identical to the originally qualified 600 volt breakers. In the time period reviewed by the NRC inspectors (July 1984–June 1986) manufacturing and material changes were made to the type of breakers in question but, these changes were not evaluated for their possible effect on the 600 volt interrupting rating.

Appendix B to 10 CFR Part 50 provides the overall criteria for quality assurance programs for nuclear power plants in an effort to, among other things, provide a higher level of assurance that safety-related equipment and components are suitable for their application and will perform their intended safety function that is normally obtained with a typically commercially available off-the-shelf item. In this case, however, the 600 volt circuit breakers did not even benefit from the assurance of quality associated with a typical commercial grade quality assurance program (in this case UL) since they were not manufactured in a lot which was subject to "UL Proof Testing" at 600 volts. Consequently, APC started with a product that did not satisfy typical commercial grade testing requirements and then upgraded it to "nuclear grade" without performing equivalency tests or providing a technical basis for not doing them.

As detailed in the preceding paragraphs, based upon the information available at the time of the inspection, and with the additional knowledge obtained after completion of the inspection, the NRC staff has not seen nor does the staff know of existing documentation that would support qualification of the subject breakers for 600 volt applications. The NRC staff is concerned that APC, after thoroughly reviewing this issue and removing the subject breakers from safety-related applications, still has not addessed the technical adequacy of the available documentation as necessary to establish 600-V interrupting capabilities of the breakers. The staff considers Violation I.A valid as written for the six circuit breakers installed into the safety-related Motor Control Centers.

Restatement of Violation I.B.1

I. Inadequate Control and Installation of Purchased Equipment

B. 10 CFR Part 50, Appendix B. Criterion III, Design Control, requires that measures be established to assure that applicable regulatory requirements and the design basis for those structures, systems, and components to which this appendix applies are correctly translated into specifications, drawings, procedures, and instructions. It also requires that measures be established for the selection and review for suitability of materials, parts, equipment, and processes that are essential to the safety-related functions of structures, systems, and components.

Contrary to the above, the licensee installed a number of commercial grade parts at Farley Nuclear Plant Units 1 and 2 without adequately evaluating their suitability for use in safety-related applications. These parts were in use at the time of the inspections indicated above. Specifically:

1. Commercial grade circuit breakers were installed into safety-related motor control centers 1U and 2U.

Summary of Licensee's Response to Violation I.B.1

APC admitted that the decision to procure the items commercial grade did not include documented evaluation or dedication of parts procured as commercial grade for use in safety-related applications and that no documented evaluation/dedication was done prior to installation. However, the licensee asserted that pre-installation trip tests were performed at the time of installation.

The licensee's reason for the violation was that inadequate procedural guidance resulted in the failure to document fully evaluation of the suitability of commercial grade parts for installation in safety-related applications. The breakers were removed from service.

NRC Evaluation of Licensee's Response to Violation I.B.1

Although a pre-installation trip test may have been performed at the time of installation, no analysis or documentation existed that would show the similarity of the procured breakers to the original breakers installed in the motor control centers. Therefore, an adequate evaluation of suitability for use in safety-related applications was not performed.

Restatement of Violation I.B.5

I. Inadequate Control and Installation of Purchased Equipment

B. 10 CFR Part 50, Appendix B. Criterion III, Design Control, requires that measures be established to assure that applicable regulatory requirements and the design basis for those structures, systems, and components to which this appendix applies are correctly translated into specifications, drawings, procedures, and instructions. It also requires that measures be established for the selection and review for suitability of materials, parts, equipment, and processes that are essential to the safety-related functions of structures, systems, and components.

Contrary to the above, the licensee installed a number of commercial grade parts at FNP Units 1 and 2 without adequately evaluating their suitability for use in safety-related applications. These parts were in use at the time of the inspections indicated above. Specifically:

5. A commercial grade Agastat timing relay (ATR) was installed as a replacement in safety-related panel #Q2R16B007–B, 600-V load distribution panel. Additionally, commercial grade ATRs were found in other safety-related electrical enclosures including two ATRs in diesel generator load sequencer panel #O2R43E501B–B, and two ATRs in diesel generator relay terminal box #Q1R43G506–B.

Summary of Licensee's Response to Violation I.B.5

APC admitted that at the time of installation of the ATRs, it did not have documented evaluation or dedication of the ATR for safety-related use in the load distribution panel #Q2R16B007–B. However, the portion of the alleged violation associated with commercial grade ATRs in diesel generator load sequencer panel #Q2R43E501B–B and two ATRs in diesel generators relay terminal box #Q1R43G506–B was denied because the ATRs were part of the original equipment supplied with the panel and were therefore qualified by the vendor.

NRC Evaluation of Licensee's Response to Violation I.B.5

As originally stated, commercial grade ATRs were found in other safety-related electrical enclosures, including two relays in diesel generator load sequencer panel Q2R43G501–B and two relays in diesel generator relay terminal box Q1R43E506–B. While the NRC staff agrees with the licensee's conclusion that the relays found in relay terminal box Q1R43G506–B were part of the original equipment, the staff disagrees with the licensee's conclusion for load sequencer Q2R43E501B–B and APC's verification methodology, that appears to be based solely on a document review of maintenance work requests (MWR) and material issue forms (MIF). The NRC staff bases its disagreement on the following two points:

1. Deviations were noted in the APC document control, as discussed in Section 6.A, B, C, and D of the NRC inspection report. One example concerned a commercial grade circuit breaker that was withdrawn under a MIF but was installed in a safety-related system without a MWR (Reference 6.D.(2)).

2. A comparison of relay numbers revealed that two additional relays found in sequencer panel 02R43E501B–B were manufactured in the same week of 1979, which is after Unit 1 started operations.

Serial #79091355: 1,355th relay manufactured in the 9th week of 1979 (FNP device 2–2J)

Serial #79091379: 1,379th relay manufactured in the 9th week of 1979 (FNP device 2–1J)

Additionally, one of the relays in the Unit 2 sequencer panel was also manufactured in the same week as those above.

Serial #79091380: 1,380th relay manufacture in the 9th week of 1979

While the staff agrees that the relay terminal box Q1R43G506–B example of this violation should be withdrawn, it was concluded that your review of the remaining issues was inadequate. It would appear that relays 79091355 and 79091380 were replaced subsequent to plant startup, without using the MWR of MIF processes, since the licensee's review based on using these documents did not identify these relays as being replaced after start-up. Therefore, the remaining examples of this violation occurred as stated. NRC records will be adjusted accordingly.

Restatement of Violation II.A.1

II. Inadequate Corrective Actions and Inspections

A. 10 CFR Part 50, Appendix B, Criterion XVI, Corrective Action, requires that measures be established to assure that conditions adverse to quality, such as failures, defective material and equipment, and nonconformances are promptly identified and corrected. In the case of significant conditions adverse to quality, measures are required to assure that the cause of the condition is determined and corrective action is taken to preclude repetition. The identification of the significant conditions adverse to quality, the cause of the condition, and the corrective action taken are also required to be documented and reported to appropriate levels of management.

Contrary to the above, the inspector identified five instances where at the time of the inspections, the licensee had failed to take adequate corrective action:

1. A 10 CFR Part 21 notification by the Henry Pratt Company in May 1985 detailed problems with Pratt valves using Limitorque operators. This problem was not correctly or completely dispositioned in that seven valves were determined to be defective after the NRC inspection.

Summary of Licensee's Response to Violation II.A.1

APC admitted that the problem was not completely resolved but asserted that all seven affected valves were determined to be operable in the "as found" condition.

NRC Evaluation of Licensee Response to Violation II.A.1

Although all seven valves were determined to be operable, their condition was shown to be degrading as evidenced by slippage of ¾ of an inch of the spline adaptor of one of the valves. The degraded state of the valves, along with licensee's admission that the problem was not completely resolved, clearly indicated a lack of effective corrective action and therefore the violation is correct as written.

Restatement of Violation II.A.2

(See II.A.1 above for full restatement of violation)

II.A.2 A 10 CFR Part 21 notification by the Anchor/Darling Valve Company in June 1985 detailed failures with tilting disk check valve hinge pin bushings. This problem was not completely dispositioned in that only check valves in the Auxiliary Feedwater Systems were inspected. Other safety-related systems were not inspected.

Summary of Licensee's Response to Violation II.A.2

APC denied this violation and stated that the AFW valves were the only safety-related valves installed in Farley Nuclear Plant requiring inspection as a result of the 10 CFR Part 21 notification.

NRC Evaluation of Licensee Response to Violation II.A.2

The written and verbal information provided by the licensee at the time of the inspection [i.e., (1) Nuclear Generation Maintenance Memorandum dated May 13, 1987, from L.S. Ward to R.M. Coleman regarding Problem Report No. 7–122 Anchor Darling Tilting Disc Check Valves and (2) System Performance Group Problem Report No. 7–122 dated October 3, 1985, regarding Anchor Darling Tilting Disc Check Valves with Tack Welded Bushings] indicated that other valves in safety-related systems may have been affected and that the inspections/work was never performed. The NRC staff does not disagree that the subject valves were only in the auxiliary feedwater system but, the licensee did not know this at the time of the inspection. The evaluation/disposition of other systems was not completed until after the problem was identified by the inspectors (post inspection) nearly two years after receipt of the Part 21 notification and approximately four years after the event (hinge pin failure) occurred at Farley Nuclear Plant. Also, the information provided by System Performance Group Problem Report, dated October 3, 1985 states, in part that, "* * * additional Anchor Darling T.D.C.'s with tack welded bushings are installed in the plant." The valves potentially affected were prefixed with a Q, a designator used previously for safety-related equipment. These valves were in addition to the valves in the Auxiliary Feedwater System and partly formed the basis for the statement in the

inspection report. APC did not demonstrate at the time of the inspection that no other valves were located in safety-related systems. It was merely fortuitous that, in fact, the valves in the Auxiliary Feedwater System turned out to be the only valves of concern in safety-related systems. APC did not appropriately pursue this issue at the time of the event, or at the time of the Part 21 notification. Therefore, this violation occurred as stated.

Restatement of Violation II.A.3

(See II.A.1 above for full restatement of violation)

II.A.3. A Colt Industries Service Information Letter (SIL), A–2, dated February 1985, entitled "Blower Installation," was evaluated by the licensee, but not all the corrective actions determined to be appropriate by the APC engineering review were implemented in that SIL A–2, which gives service instructions, was never placed in the Colt Industries Emergency Diesel controlled vendor manual.

Summary of Licensee Response to Violation II.A.3

APC admitted that the instance occurred as described but considered that the actions taken in response to this SIL were adequate to assure operability. The licensee asserted that a Colt Service Information Letter, SIL A–2, was issued on February 18, 1985, concerning precautions regarding blower installation procedures for Model 38TD8–1/8 diesels. This SIL was received and evaluated in accordance with FNP procedures for evaluation of vendor technical information. A Problem Report was issued on March 29, 1985, recommending that the SIL be entered in the diesel generator instruction manual. Verification that the SIL had been entered in the manual was received on August 29, 1985; however, no update to the manual was actually made due to personnel error.

NRC Evaluation of Licensee Response to Violation II.A.3

The fact that the SIL was not entered into the manual is an example where vendor supplied information was evaluated; however, adequate and complete corrective action was not taken. In this case the action to be taken was to insert the SIL into the appropriate manual. The fact that this action was not performed was the basis of the violation. The NRC staff recognizes that corrective action was taken in that the diesel generators were appropriately inspected. However, without the inclusion of the SIL into the proper manual, there is no assurance that future inspections would have been properly conducted.

Restatement of Violation II.A.4

(See II.A.1 above for full restatement of violation)

II.A.4. Maintenance Work Request Nos. 44439 and 67875, which would have implemented corrective actions to the four control room fire damper electrical circuits to ensure that the circuits would function as desired, were not completed.

Summary of Licensee Response to Violation II.A.4

Although APC admitted that the above violation occurred as described, it protests the issuance of this violation. APC contends that this violation was identified previously as a Severity Level IV violation in the July 30, 1987, NRC inspection Reports Nos. 50–348/87–14 and 50–364/87–14. On August 25, 1987, APC, in a reply to a Notice of Violation, admitted to the violation, offered the reason for the violation, explained the corrective action taken and the results achieved, explained the corrective action taken to avoid a further violation, and reported the full compliance date. Therefore, it is inappropriate, and inconsistent with NRC Enforcement Policy, for the November 3, 1987, Notice of Violation to include this violation in a Severity Level III violation because the NRC already had cited it as a Severity Level IV violation in the July 30, 1987, Notice of Violation. The licensee contends that the imposition of two penalties on the basis of the same set of facts would result in an "undue overlapping of the penalties imposed." *In the matter of Atlantic Research Corporation*, 7 N.R.C. 701, 708 (1978) (footnote omitted), *rev'd on other grounds, 9 N.R.C. 611 (1979).*

NRC Evaluation of Licensee's Response to Violation II.A.4

The staff does not accept the proposition that the imposition of two penalties, where different regulatory requirements are based on the same facts, is prohibited. This need not be resolved here because different requirements and facts are at issue.

Violation II.A.4 is not the same as the violation issued on July 30, 1987. The July 30, 1987, violation cited the failure to inspect and/or test the four fire dampers following the completion of work authorized by CWR 1–32.86 and MWR 26982 in 1981. Had these tests been performed, it would have been discovered that wiring had not terminated on the Smoke Release Device (SRDs) for all four dampers.

Violation II.A.4 addresses the fact that in 1982 when APC discovered the failure to terminate the SRDs, two MWRs were written to correct the problem (44439 and 67875), but these work orders were not acted on until June 1987, after the issue was highlighted by the NRC.

The failure to take adequate corrective actions for an identified condition is the issue in violation II.A.4, while in the earlier violation the issue was the failure to perform an adequate test/inspection. Even though in this case the same plant hardware is involved, two regulatory requirements were not met and therefore two violations are appropriate.

Restatement of Violation II.A.5

(See II.A.1 above for full restatement of violation)

II.A.5 Contrary to the above, the inspectors identified cracks in a number of cells of the safety-related station batteries. Despite the fact that NRC Information Notice (IN) 84–83 identified that such conditions can be caused by the use of hydrocarbon-based solvents for cleaning purposes, the licensee had not updated one of three pertinent electrical maintenance procedures to address the problem.

Summary of Licensee's Response to Violation II.A.5

APC denied this violation and presented the following arguments:

NRC IN 84–83, "Various Battery Problems," which was issued by the NRC Staff on November 19, 1984, discussed overloading D.C. buses and solvent induced battery case cracking. The subject notice detailing three cases in which battery case cracking had occurred. The notice attributed the cracking in two cases to the use of a solvent, trichloroethylene, which was used to clean battery posts while the third case of cracking was attributed to the application of a hydrocarbon based grease to the vinyl straps on the battery racks to aid in installation of the cells. IN 84–83 states, "Licensees may wish to review their maintenance and surveillance procedures for station batteries to ensure that the use of solvents in the vicinity of batteries is carefully monitored and in accordance with procedures approved by the battery manufacturer's service department." The notice did not make any recommendation for cleaners to be used. The electrical maintenance procedures at Farley Nuclear Plant for battery cleaning have always required, in the material section, that bicarbonate soda be used. The use of bicarbonate soda for cleaning of batteries is also included in the training of maintenance personnel.

APC maintained that it did provide adequate procedural guidance for cleaning batteries since only bicarbonate soda was listed in the maintenance procedures. The response to IN 84–83 was adequate since procedures specified the proper cleaning material and only electrical maintenance personnel are authorized to clean batteries. A precautionary note instructing personnel not to use solvents was added to the Units 1 and 2 procedure for cleaning the auxiliary building batteries. Although a precautionary note was not included in the procedure for cleaning the service water batteries, there is no evidence that solvents have ever been used on them. Therefore, there was no inadequacy of corrective action in this case.

Procedural guidance is provided for the purpose of directing the activities to be performed. It is not the intent of procedural guidance to provide precautions against all possible inappropriate actions. The addition of a precaution against use of hydrocarbon based on solvents is a procedural enhancement which is not mandatory for adequate corrective action. Therefore, there is no basis for a violation of Appendix B, Criterion XVI.

NRC Evaluation of Licensee Response to Violation II.A.5

This issue was included as an example of violation II.A since it was another instance of a corrective action being initiated but not completed (only two of three procedures were changed). However, the staff agrees that in this instance the corrective action was an enhancement to the procedure rather than a correction and therefore the failure to change the procedure would be more appropriately categorized as an observation of a poor practice in the area of corrective actions rather than an example of a violation. Consequently, the staff agrees that example five of violation II.A should be withdrawn.

Restatement of Violation II.B

II. Inadequate Corrective Actions and Inspections

B. 10 CFR Part 50, Appendix B, Criterion X, Inspection, as implemented by Section 17 of the Final Safety Analysis, Report and Joseph M. Farley Operations Quality Assurance Policy Manual, requires that inspection of activities affecting quality be established and executed to verify conformance with documented instructions, procedures, and drawings for accomplishing the activity.

Contrary to the above, on June 2, 1987, both Train B, 125–V Service Water (SW) battery racks, were found to be improperly installed and mounted creating in an unanalyzed condition concerning seismic qualification. Specifically, the concrete anchor bolt nuts on all Train B battery rack anchors were backed off and used as leveling nuts for the rack, thus providing no preload on the concrete anchors. The battery racks were improperly installed in the SW Train B battery room approximately one year prior to this inspection and remained in this unanalyzed condition until it was identified by the NRC inspector on June 2, 1987.

Summary of Licensee's Response to Violation II.B

APC admitted that anchor bolt installation was not properly performed in accordance with procedures, but also asserted that subsequent testing demonstrated that the installed configuration resulted in no significant safety issues.

Subsequent to the NRC inspection APC selected four cells, including one of the worst cells, and contracted with the battery manufacturer to perform seismic testing using Farley specific response spectra curves. Wyle Report 48857–1 dated July 17, 1987 states that, based on the seismic test of the four cells, the specimens possessed sufficient integrity to withstand, without compromise of structure, the prescribed simulated seismic environment. The testing and inspections described herein demonstrate that no safety issues resulted.

NRC Evaluation of Licensee's Response to Violation II.B

The fact that the battery rack anchors were improperly installed and were in an unanalyzed condition was the basis of this violation. The fact that subsequent testing demonstrated that the installed configuration resulted in no significant safety issues does not change the basis for this violation.

Summary of Licensee's Objection to Aggregation of Violations I.A. and I.B

The licensee contended that violations I.A. and I.B are two separate and distinct findings and should not have been considered in the aggregate as a Severity Level III problem. The first finding concerned activities alleged to be in violation of 10 CFR Part 50, Appendix B, Criterion VII, "Control of all Purchased Material and Equipment." The second finding concerned activities alleged to be in violation of Criterion III of Appendix B, "Design Control." APC asserted that the above findings involve separate and distinct conditions not appropriate for aggregation under the applicable Commission enforcement guidance found in NRC Inspection and Enforcement Manual, Chapter 0400, Section 05.06 (4/24/85).

Additionally, with respect to the first finding, APC denied that a violation of Criterion VII occurred. With respect to the second, APC denied, in part, that a violation of Criterion III occurred.

In arguing that the violations should not have been aggregated, APC claims that the NRC recognized the underlying dissimilarity of these findings when it cited separate and distinct regulatory provisions as having been violated in each case. Thus, separate civil penalties may be appropriate if the severity of each violation so warrants [Enforcement Manual § 05.06 *supra*], but aggregation of violations I.A and I.B was not appropriate. Accordingly, APC submitted that these findings should be assessed independently if, in fact, the violations occurred.

NRC Evaluation of Licensee Objection to Aggregation of Violations I.A and I.B

APC has improperly applied NRC enforcement guidance in this case. The guidance provides for aggregation when several violations stem from the same cause *or* problem area.

Violations I.A and I.B were aggregated due to the fact that both were the result of deficiencies identified in the procurement program in place at the APC. Both violations concerned items originally manufactured as commercial products and either improperly or inadequately evaluated for use in safety-related applications. The staff does not view characterizing the licensee's procurement program as the problem area as being inconsistent with enforcement guidance even though such a characterization may be broader than the licensee thinks is appropriate. Therefore, the aggregation of violations I.A and I.B was appropriate and the Severity Level III violation remains as stated.

Summary of Licensee's Request for Reduction of Severity Level for Violations I.A and I.B

When properly viewed as separate and distinct matters, the licensee contended that violations I.A and I.B should be classified as no greater than Severity Level IV violations. In this regard, APC relies on the NRC Enforcement Policy which states that (1) Severity Level III violations are cause for a significant concern; (2) Severity Level IV violations are less serious but

are more than minor concern; i.e., if left uncorrected they could lead to a more serious concern; and (3) Severity Level V violations are of minor safety or environmental concern.

Based on the Enforcement Policy, APC asserted that the intent of the severity classification scheme is to premise enforcement action on the safety significance of the particular finding, even where a violation of a requirement may have occurred. The licensee concludes that evaluations of actions taken by APC, which are described in Attachment 1 of the licensee's response, demonstrate that no condition was identified with actual safety significance. Therefore, no adverse findings were made regarding the actual condition of the components involved and so the severity level of the violations should be reduced.

NRC Evaluation of Licensee Request for Reduction of Severity Level for Violations I.A and I.B

As described in the staff's evaluation of the licensee's response to Violation I.A, the staff still believes the subject circuit breakers were unqualified for use in 600 volt applications. This finding does involve safety significance due to the fact that the circuit breakers could actually be incapable of performing as intended during fault conditions.

Violation I.B is safety significant because the examples cited illustrated a programmatic breakdown in the APC procurement program. It is acknowledged that, for many of the examples of improperly procured parts cited in the violation, subsequent testing verified acceptability for safety-related applications. However, the very fact that further tests were necessary to verify acceptability is indicative of the programmatic shortcomings which were determined by the staff to be a significant concern. Therefore, the request for reduction of severity level for violations I.A and I.B is denied.

Summary of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations I.A and I.B

In the NRC's November 3, 1987, letter transmitting the Notice of Violation, the Staff states that the base civil penalty of $50,000 for this proposed Severity Level III violation was mitigated 50 percent because of "prior good performance." However, it was not fully mitigated "because of the extent of the weakness in management controls in the general area of procurement demonstrated by the number of examples cited." APC maintained that, based on its discussion above, the examples cited by the Staff in support of Violation I have been substantially reduced in both number and severity. Accordingly, APC maintains that the Staff's reason for not fully mitigating the civil penalty is no longer applicable and any remaining civil penalty should be fully mitigated. Additionally, to support further a full mitigation of the civil penalty, APC maintained that its prompt and extensive corrective action taken in response to the proposed violation warrants full and complete mitigation.

NRC Evaluation of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations I.A and I.B

The violations and corresponding examples cited by the staff have not been substantially reduced in number or severity by the discussion presented by APC. Furthermore, the corrective action taken as a result of the subject violations has not been judged to be unusually prompt or extensive in nature. Therefore, the request for full mitigation of violations I.A and I.B is denied.

Summary of Licensee's Objection to Aggregation of Violations II.A and II.B

The licensee contended that violations II.A and II.B are two separate and distinct findings and should not have been considered in the aggregate as a Severity Level III problem. The first finding concerned activities alleged to be in violation of 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Action." The second finding concerned activities alleged to be in violation of Criterion X of Appendix B, "Inspection." APC asserted that the above findings involve separate and distinct conditions not appropriate for aggregation under applicable Commission enforcement guidance. The licensee also referenced the NRC Inspection and Enforcement Manual, Chapter 0400, Section 05.06 (4/24/85). Additionally, with respect to the first finding, APC protested violation II.A.4 and denied violations II.A.2 and II.A.5. However, irrespective of the Staff's disposition of APC's denials of violations, APC claims that the findings of violation II.B should not have been aggregated as a single violation. APC's basis for this claim is that in their view the NRC recognized the underlying dissimilarity of these findings when it cited separate and distinct regulatory provisions as having been violated in each case. Thus, separate civil penalties may be appropriate if the Severity of each violation so warrants. (Enforcement Manual § 05.06 *supra*), but aggregation of violations II.A and II.B was not appropriate. Accordingly, APC submitted that these findings should be assessed independently if, in fact, the violations occurred.

NRC Evaluation of Licensee's Objection to Aggregation of Violations II.A and II.B

Violations II.A and II.B were agregated due to the fact that both violations involved instances where conditions adverse to quality were either not identified or were identified but never corrected. The staff views these violations as being indicative of a less than aggressive attitude toward problem identification and correction which is a significant concern. Therefore, the aggregation of violations II.A and II.B remains.

Summary of Licensee's Request for Reduction of Severity Level for Violations II.A and II.B

When properly viewed as separate and distinct matters, the licensee contended that violations II.A and II.B should be classified as no greater than Severity Level IV violations. In so claiming, the licensee referenced the NRC Enforcement Policy which states: (1) Severity Level III violations are cause for a significant concerns; (2) Severity Level IV violations are less serious but are more than minor concern; i.e., if left uncorrected they could lead to a more serious concern; and (3) Severity Level V violations are of minor safety or environmental concern.

The licensee further noted that the Enforcement Policy, (Supplement I), states that a Severity Level III violation can involve, for example "[a] system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions * * *" (Supplement 1, § C.2). The Enforcement Policy also provides as one example of a Severity IV violation, "[f]ailure to meet regulatory requirements [following plant procedures] that have more than minor safety * * * significance." [Supplement I, D.3]. Further, the Supplement I example of a Severity Level V violation states, "Violations that have minor safety or environmental significance."

As discussed earlier, the licensee contended that the NRC incorrectly aggregated the separate and distinct conditions addressed in violations II.A and II.B, contrary to the NRC Inspection and Enforcement Manual. Further, violations II.A.2, II.A.4, and II.A.5 were shown either not to constitute violations or otherwise to have been incorrectly included in the Notice. Thus, violations II.A.1 and II.A.3 should stand alone as distinct findings.

Standing alone, the licensee stated that those three violations (II.A.2, II.A.4,

and II.A.5) should only be categorized as a Severity Level V or a Severity Level IV violation because none of the three items involved a safety issue of the significance contemplated for Severity Level III violations, e.g., important safety systems "not being able to perform its intended function." As discussed in Attachment 1 of the licensee's response, additional evaluations or inspections performed with respect to violation II.A.1 demonstrated the findings involved had little safety significance. Regarding violation II.A.3, the underlying issue involved only the absence of a single item from a manual which was of no safety significance as measures were in place which would have prevented the condition from occurring in the first instance.

In reference to violation II.B, APC determined that as-found configurations of the battery racks did not involve a safety significant issue, notwithstanding the discovered position of the nuts. Thus, the observed condition had only minor, if any, safety or environmental significance. Therefore, in accordance with the Enforcement Policy, at most a Severity Level IV violation should apply to this condition.

NRC Evaluation of Licensee Request for Reduction of Severity Level for Violations II.A and II.B

Violations II.A.1, II.A.4, and II.B concerned actual hardware deficiencies that at a minimum degraded safety-related equipment. These examples, along with those of less individual significance, indicate a programmatic problem in the areas of identification and corrective action of conditions adverse to quality. The staff still considers them to be of significant concern; and therefore, the request for a reduction in severity level for Violations II.A and II.B is denied.

Summary of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations II.A. and II.B

In the NRC's November 3, 1987, letter transmitting the Notice of Violation, the Staff states that the base civil penalty of $50,000 for this proposed Severity Level III violation was mitigated 50 percent because of "prior good performance." However, it was not fully mitigated "because of the extent of the weakness in management controls in the general area of procurement demonstrated by the number of examples cited." APC maintained that based on its discussion above, the examples cited by the Staff in support of Violation II have been substantially reduced in both number and severity. Accordingly, APC maintains that the Staff's reason for not fully mitigating the civil penalty is no longer applicable and any remaining civil penalty should be fully mitigated. Additionally, to support further a full mitigation of the civil penalty, APC maintained that its prompt and extensive corrective action taken in response to the proposed violation warrants full and complete mitigation.

NRC Evaluation of Licensee's Request for Mitigation of the Civil Penalty Proposed for Violations II.A and II.B

As previously stated, the examples cited by the staff have not been substantially reduced in either size or number. Furthermore, the corrective action taken as a result of the subject violations has not been judged to be unusually prompt or extensive in nature. Therefore, the request for full mitigation of violations II.A and II.B is denied.

Conclusion

After careful consideration of APC's response to the Notice of Violation and Proposed Imposition of Civil Penalties, the NRC staff has concluded that three of nine examples of violation I.A, the relay terminal box Q1R43G506–B example of violation I.B.5, and example 5 of Violation II.A should be withdrawn; that the remaining examples of violations I.A, I.B.5, and II.A and the remaining violations in their entirety occurred as stated in the Notice; and that an adequate basis was not provided to warrant either recategorization of the violations, reduction of the severity level, or withdrawal of the proposed civil penalties. Although three of nine examples of violation I.A, one example of violation I.B.5, and one example of Violation II.A have been withdrawn, these examples were not considered to be major contributors to the enforcement action taken. Consequently, the proposed civil penalties in the total amount of $50,000 should be imposed.

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[Docket No. 50–440]

Cleveland Electric Illuminating Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Facility Operating License No. NPF–58, issued to Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1 (the facility) located in Lake County, Ohio.

The licensees' application for the amendment was dated February 9, 1988. Notice of consideration of issuance of the amendment was published in the **Federal Register** on April 6, 1988 (53 FR 11377).

The amendment, as proposed by the licensees, would consist of the following changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF–58):

1. The proposed amendment to the Perry Nuclear Power Plant Technical Specifications would modify the note to Technical Specification Table 4.8.1.1.2–1 to allow that appropriate overhauls to a like-new condition can be used to reduce the number of previous test failures, if the overhaul performed would correct deficiencies which were directly responsible for past diesel generator test failures. The requirement for having the overhaul, including appropriate post-maintenance operation and testing, approved by the manufacturer and the requirement for a demonstration of reliability by testing would remain intact.

2. The proposed amendment would also expand the applicability of a footnote on Table 4.8.1.1.2–1 to apply both to the case where more than 1 failure was experienced in the last 20 starts and the case where more than 4 failures were experienced in the last 100 starts. Presently the footnote applies only in the former case.

3. The proposed amendment would also change the reporting requirements to be on a per-diesel-generator basis rather than a per-nuclear-unit basis.

The portion of the application which would allow an appropriate overhaul to like-new condition as justification for reducing the number of previous test failures has been denied. Without adequate specificity or bounding criteria for the components affected by previous valid failures, or the acceptance criteria employed for determining when an "appropriate overhaul" has been completed, other than "as approved by the manufacturer," the staff has no basis for approval of the proposed TS or subsequent inspection for compliance were it to be approved. The staff instead evaluated the particular case presented by the licensees and granted a one-time waiver to the requirement for performing a complete overhaul to

rezero the failure count. The amendment would allow removal of four of the previous six test failures from consideration in the failure count.

The licensees were notified of the Commission's denial of this request by letter dated May 18, 1988. The third change requested by the licensees' application has been approved by Amendment No. 12. The second change requested is being held in abeyance. Notice of issuance of Amendment No. 12 will be published in the Commission's regular biweekly **Federal Register** notice.

By June 27, 1988, the licensees may demand a hearing with respect to the denial described above and any persons whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensees.

For further details with respect to this action, see: (1) The application for amendment dated February 9, 1988, and (2) the Commission's Safety Evaluation issued with Amendment No. 12 to NPF-58 dated May 18, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Division of Reactor Projects—III, IV, V & Special Projects.

Dated at Rockville, Maryland this 18th day of May 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

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[Docket No. 50-219]

GPU Nuclear Corp. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation, et al., (GPUN or the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The amendment would revise Technical Specifications 3.13.B.2 and 3.13.B.3 to add a note to permit a one time change which applies during Cycle 11 only. The note allows continued power operation if both of the primary and backup safety valve position indicators become inoperable on no more than two safety valves. In addition, the requirement to reduce the setpoint of the acoustic monitor on an adjacent safety valve would be changed so that it compensates for the inoperability of an acoustic monitor only. The note would also state that the 7 day action statement in Specification 3.13.B.2 would commence should both primary and backup devices on a third safety valve become inoperable.

In addition, an administrative change to Technical Specification Section 3.13.A, 3.13.B and 3.13.C would capitalize Technical Specification definitions where they appear in the specification in these sections.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92). Under the Commission's regulations this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following evaluation of the proposed change with regard to these three standards:

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated. Since no hardware modifications are associated with this change and since safety valve position indication is only a monitoring system, the operability of the monitoring system does not affect or prevent the function of the safety valves. Therefore, the probability of any accident is unaltered. As no automatic action is associated with safety valve position indication instrumentation and system and operator actions are not altered by knowledge of safety valve position, the consequences of any accident will not increase.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since the function of the safety valves is unchanged. The state of operability of safety valve position indication instrumentation does not affect any system and as such will not alter any safety system function used to mitigate any accident. Further, the operator is not dependent upon this indication for event mitigation actions.

3. Safety system and operator response to a stuck open safety valve is not affected or dependent on the operability of safety valve position indication. The Technical Specification basis for safety valve position indication instrumentation currently reflects that operator response does not rely upon safety valve position indication. In addition, safety valve actuation setpoints are not changed. Therefore, there is no reduction in margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

The staff also concludes that the licensee's no significant hazards determination given above would also apply to the administrative changes which were identified.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the requst and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbrige, 2000 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 29, 1988, as revised May 11, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, 101 Washington Street, Toms River New Jersey 08753.

Dated at Bethesda, Maryland, this 18th day of May 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11847 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

Applications; Notifications to Licensees; Minnesota Mining and Manufacturing Co.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notification to licensees generally licensed pursuant to 10 CFR 31.5 to use Po–210 static eliminators manufactured and distributed by Minnesota Mining and Manufacturing Company (3M).

On February 18, 1988, an Order was issued to general licensees who possessed 3M static eliminator devices based upon numerous failures of the devices in the course of ordinary use (53 FR 5661). The Order required general licensees in possession of such devices to immediately suspend use and return them to 3M by May 18, 1988. The Order further provided that the Director, Office of Nuclear Material Safety and Safeguards, may in writing relax or rescind the restrictions imposed by the Order for good cause shown.

Between February 18, 1988 and May 16, 1988, the majority of the 3M Po–210 devices used under general license have been returned to 3M for testing and evaluations. Detectable leakage has been found in about four percent of the returned devices with only half of the four percent being greater than the reportable limit of 0.005 microcuries.

Based on information obtained since the February 18, 1988 Order, I have determined that while the 3M devices do not meet the requirements of 10 CFR 32.51(a) for distribution to general licensees, the potential health and safety hazards for those uses of the device not involved with food, beverages, pharmaceuticals, or cosmetics are not as extensive as initially considered possible. The smaller than anticipated number of failed devices, the small leakage rate associated with those failures, and the nature and location of the contamination when found indicates less hazard than originally believed to be credible. Also, replacement devices are in short supply and, consequently, in many instances, 3M devices cannot be replaced immediately with alternative devices thus causing severe hardship to the users. The latter concern has been reflected in a number of requests to the NRC and the Agreement States for continued use of the 3M devices on a temporary basis.

Based on the reasons discussed, I have determined that good cause exists for relaxing of the Order. Accordingly, I conclude that relaxation of section III A and B of the February 18, 1988 Order to general licensees for those devices *not used* in the production of or packaging of food, beverages, pharmaceuticals, or cosmetics is appropriate as follows:

Section III A. of the Order is relaxed as follows: General licensees who currently possess Po–210 devices manufactured by 3M may continue to use these devices for 90 days from the date of this letter or the end of the licensee's lease date with 3M whichever is longer, provided the general licensee initially and every 30 days thereafter, has a survey performed of the area of use and a leak test of each device and the results do not indicate leakage of radioactive material in excess of 0.005 microcuries. Any devices failing the leak test shall be returned to 3M in accordance with instructions provided by 3M.

Section III B. of the Order is relaxed as follows: General licensses who currently possess Po–210 devices manufactured by 3M shall return the device within 90 days of date of this letter or the end of the licensee's lease date with 3M whichever is longer.

Nothing in this letter abrogates contractual arrangements between the general licensee and 3M concerning return dates under the lease. All other portions of the February 18, 1988 Order shall remain in effect.

Dated at Rockville, Maryland this 18th day of May, 1988.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88–11842 Filed 5–25–88; 8:45 a.m.]

BILLING CODE 7590-01-M

[Docket Nos. 50–445–OL2, 50–446–OL2; ASLBP No. 79–430–06–OL and Docket No. 50–445–CPA; ASLBP No. 86–528–02–CPA]

Texas Utilities Electric Co. et al.; Comanche Peak Steam Electric Station, Units 1 and 2; Prehearing Conference

May 20, 1988.

Before Administrative Judges: Peter B. Bloch, Chair; Dr. Walter H. Jordan; Dr. Kenneth A. McCollom

The public prehearing conference previously scheduled for May 11, 1988, has been rescheduled to June 1, 1988. We will conduct oral argument concerning consolidation of the two captioned cases and will clarify, to the extent that is currently feasible, the order in which specific issues may be litigated.

The conference is scheduled for 9 am to 1 pm in the Gallery Ballroom of the Sheraton Dallas Hotel and Towers, 400 North Olive Street, Dallas, TX 75201.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair, Administrative Judge.

[FR Doc. 88–11900 Filed 5–25–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–346]

Toledo Edison Co.; The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis–Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis–Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Refueling Operations Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR), the associated Refueling Operations Basis, and facility Design Features.

The proposed amendment, specifically, would add new LCO 3.9.13 and SR 4.9.13 relating to spent fuel pool fuel assembly storage, would revise TS Section 5.3.1 to reflect a change in the allowable fuel enrichment in reload cores to 3.8 weight percent, and would revise Section 5.6 to include additional design specification related to fuel storage rack neutron multiplication. In addition, Basis Section 3/4.9.13 relating to Spent Fuel Pool Fuel Assembly Storage would be added.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or

petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in MIssouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pitman, Potts and Trowibridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 11, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of May, 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-11848 Filed 5-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units No. 1 and 2 (NA-1&2) located in Louisa County, Virginia.

The proposed amendments, dated March 18, 1988, would modify the surveillance requirements of Technical Specification (TS) 3/4.7.13.1. "Groundwater Level-Service Water Reservoir." TS 3/4.7.13 currently requires the monitoring at 6-month intervals of nine pneumatic piezometers located around the Service Water Reservoir (SWR). Should the groundwater level measured at any piezometer exceed the allowable groundwater elevation given in the NA-1&2 TS Table 3.7.6, an engineering evaluation must be performed and a special report must be submitted to the Nuclear Regulatory Commission containing the results of the evaluation.

The proposed change to the NA-1&2 TS 4.7.13.1 would provide flexibility in the surveillance requirements. The NA-1&2 TS presently require that all of the existing piezometers at the service water reservoir be read every 6 months. However, the licensee states that it is not necessary to read all nine of the piezometers in order to detect a high rate of seepage from the reservoir. The licensee has proposed that three piezometer readings would provide the necessary data in order to detect a high rate of seepage.

An engineering evaluation has been performed by the licensee showing that reliable readings from at least one piezometer in each of the three areas of the dike (pump house, valve house and southeast side of the reservoir) is sufficient for detecting leakage from the reservoir. There are also other mechanisms available for identifying abnormally high groundwater levels that might signify increased seepage from the reservoir. These mechanisms are: (1) The horizontal drains which are monitored every 6 months in accordance with 4.7.13.1, (2) test wells located near the service water pump house, and (3) four weirs located at the toe of the reservoir dike. Items 2 and 3 are not currently being monitored, but the licensee states that they could be used

to provide additional information if abnormal piezometer data were to be obtained at some future time.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 27, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated March 18, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 12th day of May 1988.

For the Nuclear Regulatory Commission.

Bruce A. Wilson,

Acting Director, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–11849 Filed 5–25–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25717; File No. SR–AMEX–88–13]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Extension of the Near-Term Options Expiration Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1988 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to extend the stock options pilot program, which provides for four expiration months, including two near-term months, to December 31, 1988. The Exchange also requests permanent approval of the pilot program prior to its expiration in December.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to continue the stock options pilot program until December 31, 1988, and requests permanent approval of the program prior to that date.

In June 1985, in conjunction with the other options exchanges, the Amex implemented a stock option pilot program for certain January cycle stock options.[1] Under the terms of the pilot, the traditional January trading cycle was altered to ensure that: (i) One-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times. Since that time, the pilot program has been extended and expanded to all equity options on all three expiration cycles.[2]

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the program since its inception and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchange has found the pilot has improved investors' interest in trading such options.

The Exchange, therefore, proposes to continue the pilot program until December 31, 1988, and requests that the program be permanently approved prior to that date.

The Amex believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act, so that the pilot program can continue without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comment on this and other near-term expiration pilot programs submitted by other options exchanges and has not received any negative comments on the operation of these pilot programs. Moreover, the current pilot program, which has been in effect for a year, has operated effectively and generally has been well received. Finally, the Commission's approval is limited until December 31, 1988 or until the Commission acts on the Amex's request for approval of the pilot program.

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, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 16, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change is approved until December 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: May 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11853 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 22099, dated May 31, 1985, approving SR-Amex-85-16 to allow for implementation of the pilot program using monthly instead of quarterly expiration cycles.

[2] *See* Securities Exchange Act Release No. 23461, dated July 23, 1986, approving SR-Amex-86-21 to expand the pilot program to include all January cycle stock options and extend the program for six additional months; Securities Exchange Act Release No. 24193, dated March 9, 1987, approving SR-Amex-87-3 to extend the pilot program for four additional months; and Securities Exchange Act Release No. 24452, dated May 14, 1987, approving SR-Amex-87-7 to expand the pilot program to include February and March cycle stock options and extend the program for one additional year.

[3] 15 U.S.C. 78s(b) (1982).

[4] 17 C.F.R. 200.30-3(a)(12) (1986).

[1] 15 U.S.C. § 78s(b)(1).

[Release No. 34-25718; File Nos. SR-MCC-87-6 and SR-MSTC-87-7]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Midwest Clearing Corporation and the Midwest Securities Trust Co.

On December 28, 1987, the Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MSTC") (collectively "Midwest") filed proposed rule changes (File Nos. SR-MCC-87-6, SR-MSTC-87-7), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to provide a computer-to-computer interface for the transmission of data between Midwest and its participants. On March 1, 1988, the Commission published notice of the

proposed rule changes in the **Federal Register**.[2] No comments were received. This order approves the proposals for the reasons stated below.

I. Description

a. Purpose

Midwest proposes to develop and implement a new computer-to-computer communications link, termed the File Transmission Service ("FTS"), between Midwest's computer system and its participants' computer systems. Midwest developed this system in response to its participants' request for the capability to submit large batches of data to Midwest via a direct computer-to-computer link.[3] FTS is a new method of transmitting and receiving data, and generally will not change Midwest's operations or its participants' operations.

b. The FTS System's Components

Although Midwest believes FTS will become its primary method of data transmission, Midwest will continue to have several methods of data transmission.[4] Under this proposal, participants may gain access to FTS via a dedicated telephone line linking the two computers or via a dial-up connection. Participants will not need to procure new computers to use FTS; Midwest recognizes that its participants use several different types of computers and designed FTS to communicate with a variety of computers.[5] Participants, however, will need to obtain new data transmission telephone lines and modems to access FTS.[6]

To input data using FTS, participants will submit data to one of Midwest's two desination points, located in Chicago and New York. Data submitted to the Chicago destination point will be submitted directly to Midwest's computers, and data submitted to New York will be bundled and transmitted to Midwest's computers. (The New York destination point was established to allow participants in East Coast locations to transmit data more economically by transmitting their data to New York rather than by leasing telephone transmission lines from their locations to Chicago.) Participants also will receive reports from Midwest through FTS. Data submitted by participants and reports transmitted by Midwest to participants will retain the same format and contain the same data elements as current transmissions, with the exception of minor changes such as the addition of headers, trailers, and changes to data fields to adapt to software requirements.

Midwest will continue to process data via batch processing and use the same timeframes as it does now. Midwest stated that implementing FTS will result in automating processes that currently are performed manually.[7] Midwest has informed the Division's staff that FTS will not have any adverse effects on its computer system's capacity.[8] Indeed, Midwest believes it has significant excess capacity, because it doubled its system's capacity in February 1988.[9]

c. Security

Midwest stated in its filing that it has taken steps to ensure the FTS system's security. Midwest has established a password system and procedures to ensure that each participant can submit only instructions affecting its accounts and can not submit instructions to affect any other participant's accounts.[10] Midwest believes that FTS will improve the computer system's security because participants' data will be transmitted directly into the computer; today data is submitted on tapes that can be lost or damaged before they are inputted into Midwest's computer. Midwest has established standards for the transmission lines and the modems used by FTS to ensure control over the system's integrity.[11] Midwest also has developed procedures for providing service in the event of transmission difficulties with the dedicated transmission line. FTS will not change Midwest's existing computer back-up procedures and data storage methods. Midwest will continue to duplicate its computer programs and daily system data and store them at an off-site location.

Midwest has developed a security system to prevent unauthorized access. Midwest has leased a dedicated data grade telephone line and node on behalf of each participant. Those lines provide a separate physical location for the receipt of each participant's data; which prevents transmission through any other lines.[12] Midwest also has created programs that prevent participants from entering unauthorized portions of Midwest's computer system. The FTS program only allows data to be transmitted between the two computers. Midwest states in its filing that the system is designed to prevent, among other things, any attempt to manipulate data in any other Midwest computer system or to harm Midwest's computer or data.

Midwest's dail-up system features the same security system as the dedicated line system except that the computer determines that a request to transmit or receive data is preceded by the appropriate password.

II. Midwest's Rationale

Midwest states in its filing that the purpose of the FTS proposal is to provide Midwest and its participants with an imporved data transmission and communications network that will allow partcipants to submit and receive clearing and depository data in a more efficient and timely maner. Midwest believes the proposal fosters the Act's

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[1] *See* Securities Exchange Act Release Nos. 25390 (February 23, 1988), 52 FR 6213; 25389 (February 23, 1988), 52 FR 6214.

[3] Midwest's participants believed that developing a new computer-to-computer interface would allow data to be transmitted more efficiently and would reduce the potential for data loss. Telephone conversation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[4] The four data transmission systems are as follows: FTS, tape transmission via Midwest's Mohawk tape transmission device (the Mohawk receives small quantities of information via telephone transmission and prepares a tape which is then mounted on Midwest's computer to input the data), key entry into a Midwest terminal, and submission of paper trade information which Midwest keys into its computers.

[5] As discussed in the proposed rule change, participants can communicate with FTS via either of two types of software: IBM's File Transfer Product (FTP) or IBM's Remote Job Entry (RJE). Some users will need to purchase new software to communicate with FTS, but others already own the appropriate software for use in other applications. Telephone conversation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[6] Under the proposal, participants may chose to procure telephone lines and modems themselves or request Midwest to procure them. Midwest informed the Division's staff that it prefers to procure these materials to allow it to have control over the integrity of the network. Telephone conversation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[7] Telephone conversation beteen John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[8] Telephone converstation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[9] Telephone converstaion between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[10] Midwest stated in its filing that new passwords must be obtained when a praticipant's employee with access to the password leaves the participant's employment.

[11] To ensure that these standards are met, Midwest has informed participants that it wishes to procure the transmission lines and the modems for the participants. Participants who elect to obtain the equipment themselves must obtain equipment that meets Midwest's standards. Telephone converstation between John Rockrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988.

[12] Service bureaus have a special arrangement to permit the submission of data for a number of broker-dealers.

goal of promoting the prompt and accurate clearance and settlement of securities transactions by impoving the communications link used to transmit trade information and clearance and settlement instructions beween Midwest and its participants.

Specifically, Midwest believes that FTS provides improvements not offered by its Mohawk tape transmission device. FTS reduces the steps required for participants to transmit data to Midwest and allows larger data transmissions to be submitted. Participants currently using the Mohawk must split submissions into several parts, which poses the risk that Midwest will not receive one (or more) of the transmissions.

Because FTS provides for the transmission of data directly to Midwest's computer, Midwest believes that FTS will eliminate the need to prepare tapes on the Mohawk for transporting and loading on the mainframe and thus eliminate loss or damage the tapes and related data. In addition, FTS will provide Midwest with the ability to identify lost data earlier than is possible under the current system. FTS provides a coding technique to identify missing transmissions immediately upon receipt by the mainframe. With this enhanced ability, Midwest believes that it will be able to replace missing data earlier and decrease the possibility of processing incomplete trade data.

Midwest has informed Division staff that FTS will enhance Midwest's ability to reconstruct instructions submitted by participants. With FTS, Midwest will maintain segregated copies of all instructions submitted by participants via computer. Midwest believes that these records will provide an audit trail that is easier to follow than the current method of post-execution instruction identification, which requires an examination of the current system's tapes.[13]

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act because it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions. Midwest's proposal is designed to improve the method of transmission of trade data and clearance and settlement information between Midwest and its participants. Because FTS is a computer-to-computer communications system, participants will transmit information directly to Midwest's computer and no longer will need to use tape transmissions which pose risks of incomplete transmissions and data loss. Moreover, participants that use FTS will be able to cease creating tapes for the sole purpose of communicating with Midwest.

The Commission believes the security features built into the proposed system appear to be designed to assure the safeguarding of funds and securities within Midwest's control. While the Commission recognizes that no system can eliminate the risk of unauthorized system access, the Commission believes that clearing agencies' automated processing systems should contain prudent safeguarding mechanisms adequately designed to reduce the risk of unauthorized system access.[14] The Commission is satisfied that Midwest's system safeguards, *e.g.*, use of dedicated lines or dial-up terminal access controlled by password identification and function restriction to the transmission and receipt of authorized data, are appropriately designed to ensure system integrity by maintaining a sufficient level of protection against the risk of unauthorized system access.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule changes are consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MCC–87–6 and SR–MSTC–87–7) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11854 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

[13] Telephone conversation between John Ruckrich, Senior Vice President, Midwest and Cynthia Psoras, Staff Attorney, Commission, March 24, 1988

[Release No. 34–25719; File No. SR–NASD–87–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 2, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to establish a new registration category for individuals that transact business in corporate and certain other securities and to require those individuals to pass a Series 62 qualification exam.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25377, February 22, 1988) and by publication in the **Federal Register** (53 FR 5846, February 26, 1988). The Commission did not receive any written comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11855 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

[14] The Commission previously has addressed and approved similar systems. *See* Securities Exchange Act Release Nos. 34–23793 (November 12, 1986), 51 FR 41882; 23589 (September 3, 1986), 51 FR 32712.

[Release No. 34–25727; File No. SR–NASD–88–9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Amendment to the NASD "Free-Riding and Withholding" Interpretation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and an amendment thereto on May 5, 1988, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the NASD "Free-Riding and Withholding" Interpretation by providing members with an alternative means to comply in making sales of "hot issue" securities [1] to the accounts of investment partnerships and corporations, including hedge funds, investment clubs and other similar accounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The present section being amended, titled "Investment Partnerships and Corporations," was adopted in 1973 to impose a specific duty of inquiry upon members in making sales of "hot issues" securities to investment partnership and investment corporation accounts. The section was created in an effort to prevent these accounts from being used as vehicles by which restricted persons could indirectly obtain the benefits of "hot issues" ownership under circumstances inconsistent with the above basic prohibitions and restrictions of the Interpretation. The section currently prohibits members and their associated persons from selling "hot issue" securities to any investment partnership, corporation, or similar account unless the member receives from such account, prior to the execution of the transaction, the names and business connections of all persons having any beneficial interest in the account. If the information thus required to be obtained discloses that a restricted person has a beneficial interest in the account, the sale can be made only in compliance with the basic restrictions of the Interpretation. Under the existing provision, it is a violation for a member to fail to obtain the identities and business connections of all the beneficial owners regardless of whether any of the beneficial owners are restricted persons.

Description of the "Opinion of Counsel" Proposal

The proposed rule change is intended to provide an alternative means for members to comply with the Free-Riding Interpretation when selling "hot issue" securities to investment partnerships and similar accounts. The proposal would provide a member or associated person a "safe harbor" presumption of compliance with the requirements of the Free-Riding Interpretation if, prior to executing a transaction with an investment partnership, the member has obtained a copy of a current opinion from counsel stating that counsel reasonably believes that no person with a beneficial interest in the account is a restricted person under the Free-Riding Interpretation and stating that, in providing such opinion, counsel:

1. Has reviewed and is familiar with the Interpretation;
2. Has reviewed a current list of all persons with a beneficial interest in the account supplied by the account manager;
3. Has reviewed information supplied by the account manager with respect to each person with a beneficial interest in the account, including identity, employment, and any other business connections of such persons; and
4. Has requested and reviewed other documents and other pertinent information and made inquiries of the account manager and received responses thereto, if counsel determines that such further review and inquiry are necessary and relevant to determine the correct status of such persons under the Interpretation.

Under the proposed amendments, members are allowed an option and may continue to comply with the current requirements of the Interpretation's section on investment partnerships by obtaining a list of the names and business connections of all persons having a beneficial interest in the account from the account manager.

The Board of Governors' has adopted the proposed rule change filed herein because of concern that members often experience difficulty in complying with the existing requirement because, among other reasons, the general partners or other persons responsible for the management of the investment partnership or corporation or similiar investment accounts are often hesitant to release the names of all persons holding a beneficial interest in such accounts. The failure by a member to obtain a list of the names and business connections of all the beneficial owners before selling a "hot issue" security to the account under the existing exclusive requirement is nevertheless a violation of the Interpretation even though none of the beneficial owners may be restricted persons under the Interpretation.

Other Changes Under the Proposal

The proposed rule change would make certain other changes in the present section of the Interpretation in addition to incorporation of the alternative procedure for compliance described above. Under the proposal, the opinion of counsel or list of names and business connections, depending upon which procedure a member elects, would be deemed current if based upon the status of the account as of a date not more than eighteen (18) months prior to the transaction. The proposal also would require a member to maintain in its files a copy of the opinion of counsel or list of names for at least three (3) years following the member's last sale of a new issue to the account.

Finally, the proposal eliminates, as no longer necessary, the exemption under the existing requirement for sales to accounts of foreign investment partnerships and similar foreign accounts where disclosure of the names of the beneficial owners is prohibited by law. The present provision requires that members become knowledgeable about the laws of foreign countries, and exempts member sales to a foreign investment partnership only if the law of the particular country does in fact prohibit disclosure of the names of the beneficial owners and a written representation is obtained from the account manager that none of the beneficial owners are restricted persons. The proposal merely substitutes as a condition for exemption a requirement to obtain an opinion of counsel for the existing written representation from the account manager, and eliminates any need of the member to make a determination with respect to the application of foreign secrecy laws to the account.

Statutory Basis

The NASD believes the proposed rule change is consistent with Sections 15A(b) (2) and (6) of the Act, which require that NASD rules be designed to enforce compliance by its members with

[1] "Hot issue" securities are securities sold pursuant to a public offering that trade at a premium in the secondary market.

its rules and to protect investors and the public interest, by providing an alternative method to ensure that the member is in compliance with the Interpretation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

In Notice to Members 86–40 (May 23, 1986), the NASD solicited comments on an earlier version of the proposed rule change. The comments were reviewed and in Notice to Members 87–73 (November 4, 1987), the NASD solicited comments on the present proposed rule change. The NASD received a total of (7) comment letters on the proposal filed herewith. There were two (2) comments which opposed adoption of the proposal, including one (1) which favored the earlier proposal rejected by the Board in favor of the present proposal.

There were two (2) comments which objected primarily to the opinion of counsel portion of the proposal stating that it appears to require lawyers to conduct a factual "audit" before rendering an opinion. It was argued that such an inquiry by lawyers goes beyond the standards established by the Code of Professional Responsibility of the American Bar Association ("ABA"). The Board of Governors and National Business Conduct Committee ("Committee") disagreed. The Board and Committee concluded that the degree of factual inquiry contemplated by the proposal is consistent with the applicable provisions of the Code of Professional Responsibility which does require reasonable inquiry into the facts upon which legal opinions on securities law matters are based.

There were three (3) comments which favored the proposal or favored it with some modification. These commentators uniformly favored an 18 month standard of "currency" as proposed. Although one (1) suggested the language be expanded to state that a member may not rely upon an opinion of counsel if the member knows that a restricted person has a beneficial interest in the account, it was felt that this was already implicit in the proposal. A second commentator questioned whether the proposal should not limit the opinion of counsel to outside counsel, but this suggestion was rejected as it was believed that inside counsel subject to professional standards of responsibility could be expected to give a proper opinion. The same commentator questioned whether the proposal should not also allow opinions to be given by independent accountants, but this was rejected on the basis that opinions of accountants have traditionally been reserved for accounting matters only.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and agruments 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–9 and should be submitted by June 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11856 Filed 5–25–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25716; File No. SR Phlx–87–30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 10, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change to establish professional execution standards for certain limit orders [1] delivered to Phlx specialists over the PACE system.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act release No. 25450, March 11, 1988) and by publication in the **Federal Register** (53 FR 9163, March 21, 1988). No comments were received in connection with the proposal.

The Exchange indicates in its filing that Phlx equity specialists currently are expected to provide a professional execution for limit orders of 600 shares or greater routed to them over PACE. The Exchange notes, however, that it has not, to date, established guidelines governing such trades.[2] Accordingly, in proposing the new rule, the Exchange indicates that it seeks to provide guidance to Phlx specialists by identifying the types of trades that constitute a professional execution of this class of limit orders. As described more fully below, the proposed standards impose a number of trading obligations upon Phlx specialists when executing PACE limit orders of 600 shares or more.

The first standard involves a limit order whose price is between the PACE Quote [3] when received by the

[1] The rule would apply to limit orders above 599 shares that are eligible for delivery over the PACE system. This includes round-lot limit orders of 600 shares to 1,000 shares, combined round-lot and odd-lot limit orders (PRL's) of 601 shares to 1,099 shares, and limit orders exceeding 1,099 shares that the specialist has agreed to accept. All limit orders routed to Phlx specialists over the PACE system are executed on a manual basis.

[2] By contrast, the Exchange has adopted standards governing the execution of PACE limit orders of up to 599 shares. Phlx Rule 229, Supplementary Material, .10(a) provides that limit orders of 599 shares or less entered into PACE for delivery to the specialist are guaranteed execution at the limit price up to a miximum of 500 shares for each 1,000 share trade of the security on the American, Boston, Cincinnati, Midwest, New York, or Pacific Stock Exchange.

[3] The PACE Quote consists of the best bid/ask quote among the American, Boston, Cincinnati,

Continued

specialist.[4] Under the proposal, each time the New York Stock Exchange ("NYSE") prints a trade at the limit order price, the specialist would be required to execute a portion of the limit order equal to the size of the NYSE print. The limit order would not, however, be entitled to an execution until the NYSE prints a trade at the limit order price. The standard further provides that marketable limit orders are to receive an immediate execution against contra side Phlx orders, regardless of whether the NYSE has printed a trade at the limit price.

A limit order whose price is on the PACE Quote when received by the specialist falls under the second standard. Under the standard, the specialist would initially be required to ascertain the quotation size of the Reference Quote.[5] After determining the quotation size, the specialist would be obligated to execute the limit order when the NYSE market prints a trade(s) that is equivalent to the limit price and aggregates to the size of the Reference Quote. Thereafter, a portion of the limit order equal to the NYSE market print would be entitled to an execution each time a trade at the limit order price is printed on the NYSE market.[6]

The third standard provides for the execution of a limit order whose price is away from the PACE Quote when delivered to the specialist. In this instance, the specialist's initial obligation would be to determine the size of the PACE bid or offer when it reaches the limit price. This occurrence triggers two pre-conditions, one of which must occur before the specialist is allowed to execute the limit order.

First, for limit orders on the specialist's book for one day or more, the specialist would be required to execute the limit order when the NYSE prints a trade at the limit price equal to one-half of the Reference Quote size. Limit orders placed on the book for less than one day, on the other hand, would be entitled to an execution only when the NYSE market prints a trade(s) at the limit price which equals the Reference Quote size. In either instance, after the NYSE prints a trade at the limit price, the specialist would be required to execute that portion of the limit order equal to the size of the primary market print.[7] In addition, as noted above, if a contra side order in the security is received by the specialist prior to the occurrence of either condition, the specialist would be required to execute immediately the limit order of any portion thereof.

The final standard governs those circumstances in which the limit order price is traded through by a transaction reported on a market composing the PACE Quote.[8] The proposal provides that the specialist must execute the entire limit order, regardless of the size of the trade that caused the trade-through.

In its filing, the Exchange indicates that it believes the proposal will lead to increased consistency in the execution of limit orders on its trading floor.[9] The Exchange further indicates that the new standards are designed to notify PACE users as well as specialists of the kinds of execution they can anticipate for larger limit orders delivered to Phlx specialists over the PACE system. Finally, the Exchange maintains that the proposal is consistent with section 6(b) of the Act in that it will promote just and equitable principles of trade, facilitate transactions in securities and protect investors and the public interest.

After careful consideration, the Commission believes that the proposal to establish professional execution standards for PACE limit orders of 600 shares or more is appropriate. In particular, the Commission believes, that the proposal will lead to increased consistency in the overall execution of limit orders on the Exchange because all limit orders delivered to Phlx specialists over PACE will be subject to professional execution standards. Further, the Commission believes that the proposal will facilitate Exchange oversight of specialist performance in this area as specialists will not be held accountable to specific, codified execution standards for these larger PACE limit orders. The proposal also will facilitate transactions in securities in that it will provide guidance to specialists on what constitutes a professional execution of limit orders in addition to providing investors with information on how their limit orders will be executed. Finally, in addition to the general benefits, the proposed standards themselves will ensure that investors receive a fair execution for limit orders routed through PACE. Based upon the above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities Exchange, and, in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to regulated authority.

Dated: May 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11857 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

Midwest, New York, Pacific or Philadelphia Stock Exchange or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote. *See* Phlx Rule 229.

[4] Since the limit order in this instance betters the market for the particular security, the specialist is required to display the limit order price in accordance with the Firm Quote Rule prior to executing the limit order. *See* Securities Exchange Act Rule 11Ac1-1.

[5] Reference Quote, as used herein, is the PACE Quote. *See*, fn. 3.

[6] In this regard, we note that the limit order in this instance would be entitled to an immediate execution, if a contra side Phlx order were received by the specialist for the security regardless of whether the NYSE has printed a trade at the limit price.

[7] The Phlx has indicated in discussions with the Division of Market Regulation staff that its determination to distinguish orders based on how long they have been left on the specialists book is related to concerns that the execution of limit orders on the specialist's book for one day or more may be unduly delayed if conditioned upon the occurrence of a trade(s) in the primary market that matches the full Reference Quote size.

[8] *See* fn. 3, *supra.*

[9] We note, in this regard, that Phlx rules currently do not provide execution standards for limit orders manually delivered to equity specialists by floor brokers. Phlx officials have indicated, however, that specialists, in executing such orders, are nevertheless bound by general agency principles as well as other Phlx rules governing price, parity and precedence. In any event, the Phlx indicated that it will examine the issue to determine what action, if any, is necessary to address this issue. The Commission expects that any changes in Phlx rules proposed as a consequence of this examination will be submitted to the Commission for review under section 19(b) of the Act.

Issuer Delisting; Application To Withdraw From Listing and Registration; (American Realty Trust, Shares of Beneficial Interest, Par Value $1.00) File No. 1-5954

May 20, 1988.

American Realty Trust ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex"). The Company's shares of beneficial interest were recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw its shares of beneficial interest from listing

on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its shares of beneficial interest on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its shares and believes that dual listing would fragment the market for its shares of beneficial interest.

Any interested person may, on or before June 13, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11858 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting Application To Withdraw From Listing and Registration; (Great Lakes Chemical Corp., Common Stock, $1.00 Par Value) File No. 1-6450

May 20, 1988.

Great Lakes Chemical Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex"). The Company's common stock was recently listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before June 13, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11859 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16408; 812-6956]

Qualified Housing Partners Limited Partnership et al.; Application

May 20, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Qualified Housing Partners Limited Partnership ("Partnership") and Frederick Investment Corporation ("Managing General Partner").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the Act.

Summary of Application: Applicants seek an order exempting the Partnership from all of the provisions of the 1940 Act, and the rules thereunder, to permit the Partnership to invest in other limited partnerships that in turn will engage in the development, rehabilitation, ownership and operation of low-income housing projects. Such investment is expected to generate certain credits allowable under the Internal Revenue Code of 1986 ("Code") for investments in low-income housing projects.

Filing Date: The application was filed on January 7, 1988, and amended on May 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. any requests must be received by the SEC by 5:30 p.m., on June 13, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC, 20549; Applicant, c/o Frederick Investment Corporation, 3900 Barrett Drive, Suite 301, Raleigh, North Carolina 27609.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was formed under the North Carolina Revised Uniform Limited Partnership Act on December 22, 1987, as a vehicle for equity investment in apartment complexes, the ownership of which is expected to generate certain credits allowable under the Code for investments in low-income housing projects. The Partnership will operate as a "two-tier" entity; *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships (the "Operating Partnerships"), that in turn, will engage in the development, rehabilitation, ownership and operation of apartment complexes for low and moderate income persons. The Partnership will normally acquire between a 94% and a 99% interest in the profits, losses and tax credits of each Operating Partnership, with the balance remaining with the local general partners of the Operating Partnership. The Partnership's investment objectives are (i) To preserve and protect the Limited Partners' capital; (ii) to generate tax benefits, primarily consisting of tax credits that investors in the Partnership (the "Limited Partners") may use to offset their tax liabilities on income from other sources; and (iii) to recognize appreciation in the value of the Partnership's investments through cash distributions from sales or refinancings of the Partnership's properties.

2. On January 4, 1988, the Partnership filed a registration statement (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), and amended the Registration Statement on April 4, 1988 and May 4, 1988. The Registration Statement as amended was declared effective on May 20, 1988. The Partnership intends to initially offer 15,000 units of limited partnership interest (the "Units") to the public at $1,000 per Unit, with a minimum investment of $5,000 per investor. Offers to sell and sales to the public of the Units will be effected through Wheat, First Securities, Inc. ("Wheat"), and through other members of the National Association of Securities Dealers, Inc. ("NASD") selected by Wheat, on a "best efforts" basis. Purchasers of Units will become Limited Partners pursuant to the Partnership's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"). In the event that subscriptions for more than 15,000 Units are received, the Partnership has registered a total of 25,000 Units and has granted to Wheat the right, exercisable in its sole discretion, to sell up to 10,000 additional Units (on the same terms and conditions as the other Units).

3. Subscriptions for Units must be approved by the Partnership's Managing General Partner, a North Carolina corporation, and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership. Those standards are, in the case of an individual investor, that such investor reasonably expects to have substantial unsheltered passive income or reasonably expects to have adjusted gross income of less than $200,000 in the next twelve years and reasonably expects to have income tax liability during those years in respect of which the tax credits can be utilized and either: (1) He has a net worth (exclusive of home, furnishings and automobiles) of at least $30,000 in the current year and an annual gross income of not less than $30,000 in the current year and estimates that he will maintain these levels for each of the twelve succeeding years and that (without regard to investment in the Partnership) a portion of his income for the current year and the twelve succeeding years will be subject to federal income tax at the rate of 28% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (3) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2). An investor that is a corporation, other than a corporation subject to Subchapter S of the Code, must have a net worth of not less than $75,000. Units will be sold in certain states only to persons who meet additional or alternative standards which are set forth in the Prospectus, any supplement to the Prospectus, or the subscription agreement; provided, however, that in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth above. The Partnership Agreement also imposes certain restrictions on the transfer of the Units. Further, with regard to subsequent transfers of Units, it is required that, prior to admission to the Partnership as a Limited Partner, each proposed assignee must deliver to the Managing General Partner evidence of his suitability. Applicants believe that the suitability standards set forth above are consistent with the requirements in Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release 8456"), and are consistent with the guidelines of those states which prescribe suitability standards. Also consistent with Release 8456 are the further protections for the interests of Limited Partners provided by the numerous provisions of the Partnership Agreement and Registration Statement designed to prevent overreaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis Limited Partners.

4. All proceeds of the public offering of Units will initially be placed in an escrow account with Crestar Bank of Richmond, Virginia (the "Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the bank accounts referred to below, United States Government or governmental agency securities, securities issued by states or political subdivisions thereof, obligations (including certificates of deposit or time and bankers' acceptances) of banks located in the United States having a net worth of at least $50,000,000, prime commercial paper and other short-term corporate obligations of comparable investment quality, repurchase agreements covering any of the foregoing securities and in public investment companies registered with the Commission, the assets of which exceed $50,000,000 and are invested in the foregoing types of investments; provided that, until subscriptions for at least 5,000 Units are received and accepted, such funds shall be invested only in bank accounts, including savings and bank money market accounts (which may include such accounts of the Escrow Agent), or short-term securities issued or guaranteed by the United States Government (or pooled funds which invest exclusively in such securities). The offering will terminate in one year unless extended by the Partnership for up to an additional one year thereafter. If subscriptions for at least 5,000 Units have not been received by the termination date, no Units will be sold, and funds will be returned promptly with a pro rata share of any interest earned thereon. Upon receipt of the minimum number of subscriptions ($5,000,000), funds in escrow will be released to the Partnership and held in trust pending investment in Operating Partnerships. Any net proceeds not immediately utilized to acquire Operating Partnership interests, or for other Partnership purposes (such as the establishment of a reserve equal to 4.25% of the gross proceeds of the offering), will be invested in highly liquid, non-speculative securities which provide adequately for the preservation of capital. After an initial capital contribution to an Operating Partnership, other funds allocated for subsequent investment therein will also be temporarily invested in such securities, and interest earned thereon employed in a manner determined by the Managing General Partner.

5. The Partnership will be controlled by the Managing General Partner and George F. Marshall (the "Class A General Partner") (collectively the "General Partners"), while the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. Limited Partners owning a majority of the Units, however, will have the right to amend the Partnership Agreement (subject to certain limitations), remove any General Partner and elect a replacement therefore, and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

6. Wheat will receive commission of up to 7% of the gross proceeds of the sale of Units, together with an expense allowance (not to exceed 0.25% of the gross proceeds) to defray documented due diligence activities. Such selling

commissions are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD. Wheat will also receive a sales incentive fee in an amount equal to 0.25% of the purchase price of Units placed by it. The fee will be paid by the Managing General Partner and not the Partnership.

7. the General Partners and their affiliates will receive substantial fees and compensation from the Partnership. Furthermore, the local general partners of the Operating Partnership (the "Local General Partners") will receive substantial fees and compensation from each Operating Partnership. In addition to fees and interests in the Partnership, the General Partners and their affiliates will be allocated generally 1% of profits, losses and tax credits of the Partnership.

8. All compensation to be paid to the General Partners and their affiliates is specified in the Partnership Agreement and Prospectus, and no compensation will be payable to the General Partners, or any of their affiliates, that is not so specified. The substantial fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been arrived at through arm's length negotiations. All such compensation, however, is believed to be fair and on terms no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines, including without limitation the statement of policy adopted by the North America Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

9. The Partnership will not accept any subscriptions for Units until the exemptive order applied for herein is granted, or the Partnership receives an opinion of counsel that is not required to register as an investment company under the 1940 Act.

Applicants' Legal Conclusions

1. Without conceding that Partnership is an investment company as defined in the 1940 Act, Applicants assert that the exemption of the Partnership from all provisions of the 1940 Act pursuant to section 6(c) of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure provides the only means of bringing private equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investment generally; (c) the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (e) real estate limited partnerships such as the Partnership generally cannot comply with the asset coverage limitations imposed by Section 18 of the 1940 Act. Thus, an exemption from these basic provisions is necessary and appropriate so as not to discourage use of the two-tier limited partnership entity, and thus frustrate the public policy established by the housing laws.

2. The Partnership does not intend to trade in temporary investments, or investments of reserves or committed funds, and there will be no investment speculation by the Partnership; the partnership will own and hold these short-term securities on a temporary basis pending their investment in Operating Partnerships in accordance with the stated purposes of the Partnership. Further, it is the Partnership's intention to apply capital raised in its public offering to the acquisition of Operating Partnership interests as soon as possible.

3. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort that the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Operating Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to, and in some respects greater than, that provided by the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-11860 Filed 5-25-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16407; 812-7999]

Vestar, Inc.; Application

May 19, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Vestar, Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption is requested pursuant to section 3(b)(2) or, alternatively, pursuant to section 6(c) of the 1940 Act as set forth below.

Summary of Application: Applicant seeks an order pursuant to section 3(b)(2) of the 1940 Act declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities or, in the alternative, for an order pursuant to section 6(c) of the 1940 Act exempting Applicant from all provisions of the 1940 Act during the period from November 12, 1987, to the earlier to occur of November 12, 1988, or the next public offering of any class of Applicant's securities. Applicant further requests a temporary order, if necessary, pursuant to section 3(b)(2) of the 1940 Act extending the 60-day automatic exemption period contained in section 3(b)(2) or, in the alternative, pursuant to secton 6(c) of the 1940 Act, in each case until the SEC shall make a final determination upon the exemption sought.

Filing Date: The application was filed on November 12, 1987, and amended on May 10, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 10, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for

lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Vestar, Inc. 939 East Walnut Street, Pasadena, California 91106, Attention: Randall M. Gates, with a copy to Gerald A. Eppner, Esq., Reavis & McGrath, 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney at (202) 272–3024 or Karen L. Skidmore, Branch Chief at (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a biopharmaceutical company engaged in the development of liposomes as drug delivery systems for the treatment and diagnosis of malignant tumors and other disease conditions. Applicant's technical and commercial strategy is to build a product line in cancer diagnostics and therapeutics, both on its own and in collaboration with corporate sponsors and partners, and to use its technology to solve drug delivery problems for other companies.

2. Applicant's initial public offering of 1,437,500 shares of Common Stock in November 1986 resulted in net proceeds of $10,787,572. Applicant's second public offering of 1,000,000 shares of its Common Stock in June 1987 resulted in net proceeds of $9,785,000. The use of proceeds as set forth in the respective prospectuses included product development and commercialization efforts, clinical development, basic research and working capital. The Applicant does not anticipate publicly offering any class of its securities during the term of the requested exemption.

3. In order to preserve the value of the proceeds of the respective equity offerings, Applicant has purchased investment grade, short-term bank certificates of deposit issued by United States and Japanese banks, each with assets of at least $1 billion. Immediately upon the receipt of the proceeds of the respective equity offerings, more than 40 percent of the value of Applicant's total assets (on an unconsolidated basis and exclusive of government securities and case items) were represented by short-term bank certificates of deposit, which may be "investment securities" as defined in the 1940 Act. At September 30, 1987, Applicant's position in cash and cash equivalents, including short-term bank certificates of deposit, approximated 90 percent of the value of its total assets. Also for capital preservation purposes, Applicant may in the future use a portion of its assets to acquire high quality commerical paper, but will not increase the amount of its assets represented by short-term debt instruments relative to the levels reflected in the application.

4. The maintenance of large reserves of case or instruments readily convertible into cash is of critical importance to the Applicant. The Applicant currently has no product sales and the product development cycle is a very slow and expensive process. As the amount and timing of ultimate product revenues is dependent upon numerous variables, the Applicant is forced to raise capital in excess of its apparent short-term needs, which it has done on a recent occasion. Accordingly, cash items represent a significant portion of the Applicant's assets. The Applicant expects that as it moves from product development into manufacturing and marketing its products, the proportion of its assets in cash and cash equivalents will decline and a greater proportion of its assets will be comprised of inventory, accounts receivable and capital equipment.

5. At all times since Applicant's inception in 1981, its operating expenses have substantially exceeded its revenues. As Applicant's technology and potential products are in an early state of development, Applicant expects that its operating losses will increase and continue through the early 1990's.

Applicants Legal Analysis

1. Applicant submits that its historical development, the nature of its assets, the source of its income, its public representations of policy, and the activities of its officers and directors demonstrate that Applicant is primarily engaged in the biopharmaceutical business and is not primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities within the meaning of section 3(b)(2) of the 1940 Act and, therefore, is entitled to an order of the SEC under that provision.

2. Since its inception in 1981, the Applicant has historically engaged in the development of liposomes as drug delivery systems for the treatment and diagnosis of malignant tumors and other disease conditions. The Applicant's technology and potential products, however, are in the early stage of development. The Applicant has made substantial progress toward its goal of commercially producing liposome-based drug delivery systems.

3. Applicant is a biopharmaceutical company in the early stages of product development and as of September 30, 1987, had investable cash of $18,423,356, representing approximately 90 percent of total assets. The need for large cash reserves is due to the significant cost and time requirements necessary for successful product development.

4. The Applicant currently has no product sales. Since inception, the Applicant has generated revenues from research projects funded by the federal government and collaborative agreements with other companies. The Applicant has also obtained a substantial portion of its revenues from interest income. These revenues have offset in part the cost of projects under development but have not been sufficient to support fully the Applicant's operations. Applicant expects to commence limited product sales in 1988 and generated 56% of its revenue in 1987 from activities unrelated to its holdings of short-term bank certificates of deposit.

5. Applicant has consistently represented, in its prospectuses, public disclosure documents filed under the Securities and Exchange Act of 1934 ("Exchange Act"), annual and quarterly reports to stockholders and in press releases that it is engaged in the biopharmaceutical business. While the periodic reports disclose interest income, Applicant has never held itself out as being engaged or proposed to engage in, the business of investing, reinvesting, owning, holding or trading in securities. Press releases and written communications issued by the Applicant have related primarily to recent events regarding the Applicant's operations and product development. No press release or written communication to stockholders or the investment community mention the Applicant's holdings of short-term bank certificates of deposit other than to disclose them on the balance sheet and to note briefly the receipt of interest derived therefrom in the statement of operations. Accordingly, a shareholder's return on an investment in Applicant will be expected from its growth as a biopharmaceutical company and not from its holdings of short-term debt instruments.

6. Each of Applicant's five directors and three elected officers dedicate substantially all their working time for Applicant in operational and administrative activities. The Board of

Directors' involvement in capital preservation efforts has been limited to establishing the policy of preserving capital and obtaining a reasonable return while avoiding unreasonable risk to capital. The officers of the Applicant have extensive experience in operating companies and clinical development of pharmaceutical products. Applicant's directors and officers as a Group spend and are expected to continue to spend for the term of the requested exemption less than 1% of their time on activities related to Applicant's holdings of short-term debt instruments. Applicant's Board of Directors adopted a resolution declaring Applicant's continuing intention to be engaged primarily in a non-investment company business and to seek to decrease the value of its total assets comprised of short-term debt instruments so as not to be an investment company within the meaning of the 1940 Act and the rules and regulations thereunder as soon as reasonably possible and in any event within the period during which the requested order is in effect. Moreover, the Applicant does not employ the services of an external investment manager experienced in the management of a short-term debt portfolio in connection with its capital preservation effort.

7. In the alternative to an order under Section 3(b)(2) of the Act, Applicant submits that the SEC should issue the requested order of exemption pursuant to Section 6(c) of the 1940 Act as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicant maintains that its contemplated operations are not susceptible to abuses of the sort that the 1940 Act was designed to remedy.

8. The requested order is necessary or appropriate in the public interest because the change necessitated by registration under the 1940 Act would involve necessary burden and expense for the Applicant and its stockholders where not likelihood of abuse exists.

9. The requested order is consistent with the protection of investors since, as a reporting company under the Exchange Act, Applicant is already subject to extensive reporting and other requirements for the protection of its stockholders. Applicant's stockholders could possibly be harmed in Applicant were required to reallocate its existing short-term bank certificates of deposit to lower yielding U.S. Government securities or not permitted to acquire high quality commercial paper, in that Applicant's cash reserves may be affected, thereby impairing the successful development of a commercial product.

10. The requested order is consistent with the purposes fairly intended by the policies and provisions of the 1940 Act, as no regulatory purposes of the 1940 Act would be served by requiring Applicant to register under that Act.

11. Since November 12, 1986, Applicant could be deemed to have relied on the one year safe harbor exemption provided by Rule 3a-2 under the 1940 Act. Reliance on Rule 3a–2 does not preclude Applicant from applying to the SEC for exemptive order under the 1940 Act.

12. Applicant further submits that a temporary order exempting Applicant from all provisions of the 1940 Act pursuant to section 6(c) until a final determination is made on the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will limit its cash investments to investment grade, short-term certificates of deposit issued by banks with assets of at least $1 billion and high quality commercial paper, and hold those instruments to maturity.

2. Applicant will continue to be engaged primarily in a non-investment company business and to seek to decrease the value of its total assets comprised of short-term debt instruments so as not to be an investment company within the meaning of the 1940 Act and the rules and regulations thereunder as soon as reasonably possible and in any event within the period during which the requested order is in effect.

3. Applicant will not engage in trading in securities for short-term speculative purposes.

Temporary Order

The request for temporary exemptive relief pending a final determination on the application by the SEC has been considered, and it is found that, in view of the circumstances set forth above and in the application, that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to grant an immediate temporary order as requested by Applicant. Accordingly,

It is ordered, pursuant to section 6(c) of the 1940 Act, that the application for a temporary order exempting Applicant from all provisions of the 1940 Act, be and hereby is, granted, during the period from November 12, 1987 until the SEC shall make a final determination upon the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the SEC by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–11861 Filed 5–25–88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region VII Advisory Council; Public Meeting in Omaha, NE

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting, from 9:00 a.m. to 12:00 p.m., on Monday, June 27, 1988, at the SBA Office, 11145 Mill Valley Road, Omaha, Nebraska, 11154, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 11154—(402) 221–3620.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 19, 1988.

[FR Doc. 88–11784 Filed 5–25–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1062]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: This form (DSP–94) is used by the Department of State to administer the U.S. Government program regulating commercial exports of defense articles, data, and services under the Foreign

Military Sales Program. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Politico-Military Affairs.

Title of information collection—Authority to Export Defense Articles and Defense Services Sold Under the Foreign Military Sales Program.

Form number—DSP–94.

Frequency—On occasion.

Respondents—U.S. exporters and foreign diplomatic missions.

Estimated number of responses—5,000.

Estimated burden hours—3,750.

Section 3504(h) of Pub. L. 96–511 was addressed in Departmental Regulation 108.840 (49 FR 47682).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7340.

Date: May 9, 1988

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88–11824 Filed 5–25–88; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 20, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0042.

Form Number: CF 4457.

Type of Review: Extension.

Title: Certificate of Registration for Personal Effects Taken Abroad.

Description: This document is used to provide travelers with a means of showing proof of prior possession of a foreign-made personal item.

Respondents: Individuals or households.

Estimated Burden: 10,556 hours.

Clearance Officer: Dennis Dore (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–11904 Filed 5–25–88; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The U.S. and Spain: An Educational Dialogue

The Office of Private Sector Programs will assist in supporting a 14-day study tour for 10 Spanish higher and post-secondary education officials. The program will focus on the dynamics of higher education policy-making in the U.S. and the operation of our university system. It will take place in September of 1988 and include travel to Washington, DC, and two other locations. The delegation will include representatives of policy-making institutions, the Spanish government ad the autonomous regions.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have a lasting impact on their participants.

Interested organizations should submit a request for complete application materials marked "Spanish Education Project"—postmarked no later than fifteeen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street SW., Washington, DC 20547

Dated: May 16, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88–11825 Filed 5–25–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amended System of Records

Notice is hereby given that the Veterans Administration (VA) is amending a system of records entitled "Employee Health Unit and Dispensary Records—VA" (08VA05) which is set forth on page 760 of the **Federal Register** publication, "Privacy Act Issuances," 1986 Compilation, Volume V. The system name is being retitled to read "Employee Medical File system Records (Title 38)—VA." The system is being amended by revising the paragraphs for System Name; System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System; System Manager(s) and Address; Notificaiton Procedure; Record Access Procedures; Contesting Record Procedures; and Record Source Categories.

The purpose of this amendment is to more efficiently administer VA Title 38 employee medical records and to reflect

changes in "Employee Health Unit and Dispensary Records—VA" resulting from the establishment by the Office of Personnel Management (OPM) of a System of Records entitled "Employee Medical File System Records" (OPM/GOVT–10) to manage Federal civilian employee medical records. The system of records OPM developed covers employee medical records that are in the possession of Federal agencies and/or stored in Federal records centers. The OPM Government-wide system, however, does not cover VA Title 38 employees. We are, therefore, altering by amendment VA's "Employee Health Unit and Dispensary Records—VA" system (08VA05) by revising "Categories of Employees Covered by the System" to include only Title 38 employees. The system also is being amended to include record information that is stored in the Decentralized Hospital Computer Program (DHCP) system. The DHCP is an automated integrated information system that has been installed at each VA medical center which provides comprehensive support for medical center specific clinical and administrative needs, as well as the VA-wide management information. Employee health unit records are maintained in the DHCP system and include information on scheduling, laboratory, and radiology.

The amended system will provide effective safeguards to protect these highly sensitive records. Access to DHCP file information is controlled by a series of individually unique passwords/codes which are issued to authorized employees that are entered as a part of each data message. Employees who are authorized access to the system are limited to only that information in the file which is needed in the performance of their official duties.

Records in this system of records are maintained for a variety of reasons i.e., to meet the mandates of law, Executive Order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and Office of Workers' Compensation Programs (OWCP) regulations); to provide data necessary for proper medical evaluations and diagnoses; to ensure that proper treatment is administered and to maintain continuity of medical care; to provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual; to provide a legal document describing the health care administered and any exposure incident; to provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment work, workplace monitoring, and medical exam monitoring required by OSHA or by good practice; to ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with medical evaluations and disability retirement decisions); to document claims filed with and the decisions reached by OWCP and the individual's possible reemployment rights under statutes governing that program; to document an employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to OSHA and actions taken by that agency or by the VA; and to ensure proper and accurate operation of the VA's employee drug testing program under Executive Order 12564.

In addition, the paragraph entitled "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses" is being changed. Routine use number two has been deleted since there is no longer a reporting requirement. Routine uses numbered three, four, and five have been renumbered as two, three, and four. This paragraph is also being expanded to include additional routine uses numbered five through twenty-four, reflecting those uses identified in OPM/GOVT–10.

A "Report of Altered System" and an advance copy of the revised system have been sent to the Speaker of the House, the President of the Senate, and the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by the Office of Management and Budget (50 FR 52730), December 24, 1985.

Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received before June 28, 1988, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 11, 1988.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the routine uses in this system are effective June 28, 1988.

Approved: May 18, 1988.

Thomas K. Turnage,

Administrator.

Notice of Amendment to System of Records

The system identified as 08VA05, "Employee Health Unit and Dispensary Records—VA," appearing on page 760 of the **Federal Register** publication, "Privacy Act Issuances," 1986 Compilation, Volume V, is revised as follows:

08VA05

SYSTEM NAME:

Employee Medical File System Records (Title 38)—VA.

SYSTEM LOCATION:

For current employees, records are located in VA medical, personnel, dispensary, health, safety or other designated offices at Central Office and field facilities (see Appendix 1); with another agency providing such services for the VA; or with private sector contractors. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal records centers operated by the National Archives and Records Administration (NARA). Paper record abstract information is stored in automated storage media records that are maintained at the health care facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: current or former VA employees appointed under 38 U.S.C. Chapter 73 to the occupations identified in 38 U.S.C. 4103, 4104(1), and 4104(3); individuals in those occupations who are appointed under 38 U.S.C. 4114; and residents appointed under 38 U.S.C. 4114(b). This includes employees such as non-physician facility Directors, physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses. Current and former employees appointed under 38 U.S.C. Chapter 75 in the Veterans Canteen Service are also covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include: (1) Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed; (2) Medical records, forms, and reports completed during employment as a condition of employment, either by the VA or by another agency, State or local government entity, or a private sector entity under contract to the VA; (3) Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the VA (e.g., by the VA Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and lists of who has been tested, who failed to report for testing, and related documents. Records maintained by a VA dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence. (4) Files containing reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file, maintained by the Department of Labor's Office of Workers' Compensation Program (OWCP) is part of that agency's system of records and not covered by this notice.) (5) All other medical records, forms, and reports created on an employee during his or her period of employment, including records retained on a short term/temporary basis (i.e., those designated to be retained only while the employee is with the VA) and records designated for long-term retention (i.e., those retained for the employee's duration of Federal service and for some period of time thereafter).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564; Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Pub. L. No. 100–71, Section 503, 101 Stat. 468 (1987); and Title 38, United States Code, Chapter 3, Section 210(c)(1,); Chapter 73, Section 4108 and Chapter 75, Section 4202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Except for Routine Use 7, no other Routine Use for this system of records applies to records included in Item (3) in the Categories of Records in the System section of this notice. Drug test results may not be released under any other routine use.

* * * * *

5. To disclose information to the Department of Labor, Social Security Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

7. To disclose the results of a drug test of a Title 38 employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

8. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the VA is authorized to appear, when: (a) The VA, or any component thereof; or (b) any VA employee in his or her official capacity; or (c) any VA employee in his or her individual capacity where the Department of Justice or the VA has agreed to represent the employee; or (d) the United States, where the VA determines that litigation is likely to affect the VA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the VA is deemed by the VA to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

9. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

10. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

11. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordintion and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

12. To disclose information to officials of the Merit Systems Protection Board including the Office of Special Counsel, the Federal Labor Relations Authority and its general counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

13. To disclose information to survey team members from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet JCAHO standards.

14. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employee Health Benefits Program, information necessary to verify eligibility for payment of a claim for health benefits or to carry out the coordination of audit of benefit provisions of such contracts.

15. To locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

16. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

17. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

18. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under: (a) Medical evaluation (formerly Fitness for Duty) examinations procedures, or (b) agency-filed disability retirement procedures.

19. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

20. To disclose information to a Federal agency, in response to its request or at the initiation of the VA, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the other agency, or the lawful statutory, administrative or investigative purpose of the agency to the extent that the information is relevant and necessary to the other agency's decision on the matter.

21. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the VA, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose as it relates to the conduct of job related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

22. To disclose to officials of labor organizations recognized under 5 U.S.C. Chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the record access rules of the OSHA, Department of Labor, and subject to the limitations of 29 CFR 1910.20(e)(2)(iii)(B).

23. Records from this sytem of records may be disclosed to a Federal Agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

24. Information in this system of records may be disclosed to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders, microfiche, magnetic discs, magnetic tape, and on file cards, X-rays, or other medical reports and forms. These records are stored in VA medical, personnel, dispensary, health, safety or other designated offices at Central Office and field facilities. Information in the Decentralized Hospital Computer Program (DHCP) system is stored at health care facilities.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours. Automated records are protected by restricted access procedures and audit trails. Access to Employee Medical File System records is strictly lilmited to VA or contractor officials with a bona fide need for access to the records. Strict control measures are enforced to ensure that access to and disclosure from these records are limited to a "need-to-know basis." In VA Central Office these records are maintained in staffed rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel. Access to the DHCP computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the DHCP system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Drug testing records will be maintained in accordance with the Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Pub. L. No. 100–71, Section 503, 101 Stat. 468 (1987). Contractor laboratories are subject to the same restrictions as VA employees.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention standards approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules. Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 2 years. Records are destroyed by shredding, burning, or by erasing the magnetic media. Automated storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel and Labor Relations (05), VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this sytem of records contains records on them should follow the appropriate procedure listed below.

a. Current employees. Current employees should contact the local facility at which they are employed. Individuals must furnish such identifying information as required by VA for their records to be located and identified.

b. Former employees. Former employees should contact the local facility at which they were employed. Individuals submitting requests must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) social security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

RECORD ACCESS PROCEDURES:

Individuals requesting access to and contesting the contents of records must submit the following information for their records to be located and identified: (1) Full name, (2) date of birth, (3) social security number, (4) name and location of VA facility where last employed and dates of employment, and (5) signature.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above).

RECORD SOURCE CATEGORIES:

Records in this system are obtained from: The individual to whom the records pertain, VA employee health unit staff, Federal and private sector medical practitioners and treatment facilities, supervisors/managers and other VA officials, testimony of witness, and other VA records.

[FR Doc. 88-11770 Filed 5-25-88; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register
Vol. 53, No. 102
Thursday, May 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3372-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

Correction

In proposed rule document 88-9523 beginning on page 15422 in the issue of Friday, April 29, 1988, make the following corrections:

1. On page 15424, in the second column, in the third complete paragraph, in the 15th line, "FAF" should read "EAF".

2. On page 15425, in table 3, in entry "Selenium", in column 9, remove "0"; in entry "Silver", column 9 should read "<0.01"; and the last entry, first column should read "Cyanide".

3. On page 15426, in the first column, in the third complete paragraph, in the eighth line, "or" should read "of".

4. On page 15427, in the first column, after the fifth complete paragraph, the "Date" line should appear immediately below "(Title of Certifying Person)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 62

[CGD 81-030]

Vital System Automation

Correction

In rule document 88-10622 beginning on page 17820 in the issue of Wednesday, May 18, 1988, make the following corrections:

§ 62.25-25 [Corrected]

1. On page 17841, in the second column, in § 62.25-25, in paragraph (a), in the first line, "programable" should be capitalized, and in paragraph (d), in the fifth line, "aboard" was misspelled.

§ 62.35-5 [Corrected]

2. On page 17842, in the second column, in § 62.35-5, in paragraph (b)(5), in the second line, "(e)" should read "(d)".

§ 62.35-50 [Corrected]

3. On page 17844, in § 62.35-50, in paragraph (a), in the table, at the end of the overall heading, the parenthetical reference should read "(Note 1)".

4. On the same page, in the table, in the third column, under "Instrumentation", the 23rd line, now reading "Temperature, forced lubrication" should read "Temperature", and the 24th line, now reading "Pressure" should read "Forced lubrication pressure".

5. On the same page, in the table, in the fifth column, under "Safety control", "do" should read "ditto" wherever it appears.

6. On the same page, in the table, in the sixth column, under "Notes" the 10th and 12th entries should be removed and the remaining entries should be non-superior arabic numerals without parentheses.

7. On the same page, following the table, in footnote two, "Roller" should read "Rollover".

§ 62.50-20 [Corrected]

8. On page 17845, in the third column, in § 62.50-20(c), in the note, in the second line, "machinery" was misspelled.

9. On page 17846, in the first column, in § 62.50-20, the second paragraph (g) should be paragraph (h).

§ 62.50-30 [Corrected]

10. On the same page, in the second column, in § 62.50-30, in paragraph (a), in the second line, "these" should read "those".

BILLING CODE 1505-01-D

federal register

Thursday
May 26, 1988

Part II

Environmental Protection Agency

40 CFR Parts 152 and 172
Pesticide Registration; Fees for Processing Activities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 172

[OPP-36101B; FRL 3320-4]

Pesticide Registration; Fees for Processing Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing amendments to 40 CFR Parts 152 and 172 which establish fees to be collected by EPA from applicants when they request EPA to conduct certain registration activities under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., as amended. The amendments authorize EPA to collect the fees in advance of conducting requested registration activities and will allow EPA to recoup the cost to the Agency of providing registration activities. The authority for this rulemaking is 31 U.S.C. 9701 and Public Law 100–202.

DATE: These regulations are effective on June 27, 1988. Actual compliance with this rule will be required in association with applications received or postmarked after June 27, 1988. Applicants who submit applications prior to the effective date of the rule, which are determined by EPA to be complete, will not be required to pay fees. Incomplete applications submitted to EPA prior to the effective date of the rule, and resubmitted after the effective date, will be subject to the registration fee schedule contained in the rule. EPA may waive the fee if, in its judgment, the first submission was nearly complete.

FOR FURTHER INFORMATION CONTACT:

By Mail: Ken Wetzel, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 1002, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1128).

SUPPLEMENTARY INFORMATION: This rule establishes fees for certain registration activities that are required to be completed under FIFRA when applicants request a registration, a modification to an existing registration, or an experimental use permit. Each applicant must make payment of the fee prior to, or at the time the application is submitted. Food additive petition review fees were included in the proposed rule, but have not been included in this final rule. The Agency intends to establish these fees in a subsequent rule.

I. Background

A. Statutory Authority

EPA issued a proposed rule in the **Federal Register** of November 26, 1986 (51 FR 42974), proposing to collect fees for certain registration activities EPA conducts under FIFRA and section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Subsequently, EPA issued a document extending the time for comment on the proposed rule, published in the **Federal Register** of January 22, 1987 (52 FR 2433). As stated in the preamble of the proposed rule, the Independent Offices Appropriation Act of 1952 (IOAA) contained a provision authorizing recoupment by Federal agencies of certain costs incurred by them. This statute, codified as 31 U.S.C. 9701 and commonly referred to as the "User Charge Statute", authorizes and encourages Federal regulatory agencies to recover, to the fullest extent possible, costs attributable to services provided to identifiable recipients. Public Law 100–202, which appropriated funds for EPA for FY 1988, contained a provision authorizing EPA, in 1988, to assess and collect fees and to deposit an amount not to exceed $25 million into a special fund which shall be available for appropriation, and remain available until expended, to carry out the Agency's activities in the programs for which the fees or charges are made. Pesticide registration fees were specifically cited by the Conference Report as an example of the type of fees authorized by that Act. Although Public Law 100–202 was passed subsequent to publication of the Agency's proposed rule, this final rule is being issued under the authority of 31 U.S.C. 9701 and Public Law 100–202 in view of the clear applicability of the Appropriations Act to the rule.

FIFRA authorizes EPA to regulate pesticide products. The regulation of pesticides includes registering products prior to distribution and sale within the United States, continued regulation of these products and their uses after registration, and identification and elimination of unreasonable adverse effects. A registration is a license that allows the registrant to market a pesticide product.

In recognition of the fact that pesticide applicants and registrants receive certain benefits from EPA's registration activities, the Agency has examined the feasibility and desirability of making the pesticide registration program as self-supporting as possible by having the applicant bear some of the costs of pesticide registration through the registration fee system authorized by 31 U.S.C. 9701 and Pub. L. 100–202. Through the annual appropriation of funds by the Congress, the public provided approximately $69 million to support the pesticide program in FY 1987.

It should be noted, that for many years, EPA has been collecting fees for processing related tolerance petitions, as authorized by FFDCA section 408(o). These fees are placed in a revolving fund and are directly available to the program. Fees collected under 31 U.S.C. 9701 are to be deposited to the U.S. Treasury, rather than being directly available to the program. Fees collected under Pub. L. 100–202 are to be deposited in a special fund in the U.S. Treasury which is to be available for appropriation, to remain available until expended, to carry out the Agency's activities in the program for which the fees or charges are made. Accordingly, fees assessed and collected in FY 1988 pursuant to this rule will be deemed to be assessed and collected under the authority of Pub. L. 100–202 in order to insure the availability of such funds to the Agency in accordance with Congressional intent. Assignment of fees in 1988, is, however, subject to the overall limit of $25 million on EPA fee collections pursuant to Pub. L. 100–202.

B. Activities for Which Fees Will be Charged

In this rule, EPA includes in its user charge system the costs of the following regulatory activities:

1. New chemical registration reviews.
2. New biochemical and microbial registration reviews.
3. New use pattern registration reviews.
4. Old chemical registration reviews.
5. Amendment reviews.
6. Experimental use permit reviews.

C. Activities for Which Fees Will Not Be Charged

The Agency will not collect fees under this rule for the following activities:

1. FFDCA section 408 tolerance petition reviews (currently charged for under 40 CFR Part 180).
2. Certification and training.
3. Reviews of currently registered uses of pesticides (including reregistration activities).
4. State registration reviews that meet special local needs.
5. Reviews of emergency exemption requests.
6. EPA's research and development activities.
7. Pesticide enforcement activities.

8. The integrated pest management program.
9. The farm safety program.
10. Food additive petition reviews.

D. Fee Schedule

The Agency published in the Notice of Proposed Rulemaking a proposed fee schedule which used FY 1983 data in the calculation of those fees. At that time, the Agency proposed increasing fees by Federal pay scale increases up to the date of publication of the final rule. The Federal pay scale increases were 4 percent in 1984, 3.5 percent in 1985, 0 percent in 1986, 3 percent in 1987, and 2 percent in 1988. Each fee on the schedule was, thereby, increased by 13.09 percent for FY 1984–1988 and rounded to the nearest $100. The fee schedule for 1988 is as follows:

TYPE OF REGISTRATION

Transaction	Amount of fee
New Chemical Registration Review	$184,500
New Biochemical and Microbial Registration Review	64,000
New Use Pattern Registration Review	33,800
Experimental Use Permit Review	4,500
Old Chemical Registration Review	4,000
Amendment Review	700

These fees reflect the Agency's costs of conducting the above types of reviews. To the best of EPA's knowledge, they represent only a small fraction of most applicants' product development costs for these activities. Based on data from the National Agricultural Chemicals Association, which stated that its members spent $527 million on research and development for pesticides in 1982, the additional $14 million projected to be paid in fees would add about 2.7 percent to the expected industry research and development costs. The fee of $184,500 for a new chemical application represents about 0.7 percent of the $25 million a company would spend, on the average, in developing a product. It is the intent of the Agency to charge fees which continue to reasonably reflect the current costs of operating the registration program. The Agency shall, therefore, periodically review costs and fees to make certain that they are in balance. Should the methodology or procedure for calculating the user fees warrant change, EPA will prepare such changes and invite public comment prior to revision of the fee schedule. However, in order to keep the fees reasonably consistent with general costs, the fee schedule shall be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. New fees will be printed in the **Federal Register** as a final rule, to become effective 30 days or more after promulgation, as specified in the rule.

E. Fee Waivers

The rule contains provisions for five types of waivers: minor use, IR–4, severe economic impact, public interest, and EPA-initiated amendments. Issues concerning these waivers are addressed in Unit II. of this document.

II. Response to Comments

A. Lack of Statutory Authority

There were 28 comments stating that EPA lacks statutory authority to charge fees to applicants for services provided during the registration of the applicants' pesticide products. The Agency disagrees with the premise of these comments and promulgates these fees for FIFRA-related activities under the authority of 31 U.S.C. 9701 and, for FY 1988, Pub. L. 100–202.

Eleven commenters stated that the public in general derives a greater benefit from the registration of pesticides than does the industry and therefore, the industry should not be charged fees. Three comments suggested that the Agency's proposed rule represents a tax and not a fee. Two commenters cited *National Cable Television Assn.* v. *U.S.*, 415 U.S. 336 (1978) and *FPC* v. *New England Power Company*, 415 U.S. 345 (1974) as cases establishing the accepted understanding of the IOAA (31 U.S.C. 9701). In developing the registration fee structure, EPA reviewed the case law and kept in mind *National Cable Television Assn.* v. *U.S.*, in which the Supreme Court distinguished "taxes," which the Court stated could be levied only by the Congress, from "fees," which may properly be charged by Federal agencies pursuant to 31 U.S.C. 9701. The distinction drawn by the Court was that, unlike a tax, a fee, "is incident to a voluntary act, e.g., a request that a public agency permit an applicant" to engage in a regulated activity and is therefore charged for an agency action which, "bestows a benefit on the applicant, not shared by other members of society." The user fee established in this rule is a "fee" under that definition. Companies choose to produce a pesticide and request EPA to grant initial and continuing registrations for their products. The Agency, by granting such registrations, is bestowing a benefit on the applicant that is not shared by other members of society. This contention is supported by *Mississippi Power & Light Co.* v. *NRC*, 601 F. 2d 223, 229 (5th Cir. 1979), and *Phillips Petroleum Co.* v. *FERC*, 786 F. 2d 370, 376–377 (10th Cir. 1986).

In 1972, an amendment to FIFRA authorizing fees for registration was proposed, but was deleted in conference, and the conference report included language indicating that no fees should be charged (S. Rep. No. 92–1540, 92nd Cong., 2nd Sess. (1972)). Two commenters stated that this 1972 conference report demonstrated Congressional intent not to impose registration fees. The Agency views 31 U.S.C. 9701 as adequate justification for charging registration fees despite the 1972 legislative action on FIFRA. While Pub. L. 100–202 clearly authorizes collection of pesticide registration fees, EPA does not consider this to be an indication on the part of the Congress that the Agency otherwise lacked this authority. In addition, the Federal Pesticide Act of 1978 (Pub. L. 95–396, September 30, 1978), also required EPA to study the feasibility of establishing fees payable by applicants requesting registrations. The required study was completed and a report delivered to Congress.[1] In the report, EPA concluded that there were no major technical or administrative constraints on assessing and collecting fees.

B. Activity Costs

Several comments were related to the timely review of registration applications. The commenters argued that prompt EPA review of applications should be required if fees are to be levied. The Agency intends to provide as rapid a review of registration applications as is possible. EPA attempts to complete review of new chemicals and first food use registration applications in the time frames cited in OPP PR Notice 86–4, *Submission of Incomplete Applications for Registration of Pesticides Under Section 3 of FIFRA*. Other review time targets have been set administratively based on the nature of the work to be done. It is difficult to set absolute limits on the time required to review a registration application due to occasionally incomplete data bases, varying complexity of cases, and the occasional need for additional data or fluctuations in the number of incoming applications when OPP review resources are fixed. The Agency believes that fees will encourage applicants to submit necessary data and will also discourage

[1] "Technical and Economic Feasibility of Charging Fees to Cover Costs of Pesticide Registration Programs and FIFRA," Office of Pesticide Programs, February 1980.

the submission of inadequate applications.

Several commenters argued that the proposed new chemical fee would represent a substantial portion of their research and development budget, as opposed to the 2.9 percent share cited in the Notification of Proposed Rulemaking for the industry at large. The 2.9 percent figure (present estimate is 2.7 percent) was used to show the impact of fees on the industry in relation to overall research and development costs. In considering this average, it is critical to note that any one company may have fees that exceed this percentage of its research and development costs for any 1 year, but that same company may not have any registration activities in other years. Therefore, although fees will not impact heavily on the industry at large, it is acknowledged that some companies will periodically have fees that appear large when measured against their annual research and development costs. Such companies may be qualified to seek relief through the severe economic impact waiver provision of this rule.

Several commenters argued that it is unfair to charge a basic manufacturer the new chemical fee, when a follow-on registrant pays only the old chemical fee. No change has been made. The fees for new chemical reviews and old chemical reviews are based on the actual costs to the Agency. Three commenters advocated charging fees only to the manufacturer of an active ingredient, arguing that these costs would be passed on more equitably to formulators by the market than through separate fee categories. No change has been made. The primary objective in charging fees is to recover, as much as possible, EPA's cost of registration activities. Amendment and old chemical fees are charged for activities that create a cost to the Agency. The Agency notes that firms that formulate products from registered products purchased from others will pay registration fees that reflect only the cost of processing their end-use registrations. The much higher cost of review of the data on the safety of the active ingredient in the purchased product will be paid by the registrant of that product and, presumably, passed on in the manner these commenters support.

One commenter questioned the definitions of biochemical, biotechnical, and microbial registrations. Definitions for biochemical and microbial pesticides are contained in 40 CFR 158.65 (a) and (b). The Agency believes that these definitions adequately define these terms for purposes of the biochemical/microbial fee category. Although the NPRM contained the term "biotechnical" and the final rule omits that term, this should not be construed to mean that the rule's requirements do not apply to the process of biotechnology. The Agency's original concept of biotechnical pesticides is embodied in the cited definition for biochemicals and microbials. The change merely means that there may be new chemical registration applications for which the Agency will need to make a case-by-case assessment to determine which fee category is appropriate.

C. Method of Calculating User Fees

A few commenters indicated that the fee schedules were higher than the fees that would be justified by the services OPP provides. The Agency has established fees based on an in-depth analysis of the resources expended by the Agency on registration and supporting activities. The preamble to the proposed rule contained a full discussion of the methods used to develop the fee schedule.

The data used to develop this fee system were derived from the OPP Time Accounting Information System (TAIS), the OPP On-Line Action Tracking System (OLTS), the EPA Financial Management System (FMS), the OPP Extramural Resource Management System (ERMS), and other internal records. Interviews were also conducted with responsible program personnel to verify the information contained in the data bases and the technical steps involved in registering a pesticide. EPA will periodically monitor and review these systems to assure that the fees represent the true cost to the government for the appropriate registration activities. If a review of the data indicates that a new fee schedule is necessary, then the Agency will submit rulemaking to change the fees accordingly.

Four commenters indicated that state fees are a burden to the industry and need to be considered in setting the Federal fees. No change has been made. The Agency examined the fees charged by 48 states and the District of Columbia. These state fees are usually based on product registrations and range from $10 to $60 per product, averaging about $25. Some states also charge other types of fees, such as license fees, but these fees do not seem prohibitive either. EPA has concluded that the economic impact of state fees is not large enough to alter the fee structure. In any case, state fees have no effect on the cost to EPA of processing registration actions.

Several commenters indicated that a distinction should be made between food-use and non-food-use chemicals in levying fees. One argued that registration applications for non-food-use pesticides do not require as extensive a data base of residue and toxicology information as do food-use pesticides and that the fees should reflect this lower cost.

No change has been made. While this argument may have been true in the past, the Agency is now requesting much more information of non-food-use registrants and there is little difference in review time between most food-use and non-food-use applications. There may be additional review time incurred for the review of a tolerance submitted by a food-use applicant. The petitioner will be charged the appropriate tolerance fee, in addition to the registration fee. Therefore, a food-use applicant may incur more fee costs for associated registration activities than a non-food-use applicant.

Several commenters indicated that new chemical and new biochemical registrants should be charged the same fee if the system is to be fair and based on benefit to the recipient. Another commenter indicated that the cost of reviewing a new biochemical is approximately 20 times less than for reviewing a new non-biochemical insecticide. No change has been made. The fees being charged are based on review costs experienced by the Agency. EPA will periodically review its cost accounting data and adjust fees if warranted.

D. When the User Fees May be Waived or Adjusted

Several commenters requested a better definition of waiver criteria so that waivers will be granted in a consistent and equitable fashion. EPA has attempted to improve the entire waiver section of the rule so that criteria for each category can be better understood and the documentation required presents minimal burden to the waiver applicant. These improvements are described in this unit.

1. *Refunds.* One commenter stated that, if fees are truly based on benefits to the registrant, EPA should refund any fees when a registration application is denied or a registration is cancelled. Regardless of whether an application is denied, the cost of review is still incurred by the Agency, at the applicant's request. However, if an application is submitted to the Agency and is not processed because it is incomplete, then the Agency shall refund the fee, less $1,200 for handling and initial review. Additionally, if an application is withdrawn by the

applicant prior to significant Agency scientific review, the Agency will refund the fee, less $1,200. Incomplete or withdrawn applications for amendments will not result in refunds of the fee because the fee for amendments ($700) is less than the charge ($1,200) for handling and initial review of applications. If an unacceptable or withdrawn application is resubmitted, the applicant must submit the full fee that would be required if it were being submitted for the first time.

2. *Waiver request fees.* One commenter argued that fees for waiver requests are inappropriate. No change has been made. The Agency will have to expend resources in order to evaluate waiver requests. The waiver request fee will be refunded and that cost will be absorbed by the U.S. Government when the waiver is granted. However, the Federal Government cannot absorb the cost of this review when the request is not warranted. Waiver request fees will discourage spurious waiver applications and ensure that the waiver review process does not place unreasonable administrative burdens on the Agency. Waiver request fees are not meant, however, to discourage legitimate requests. The waiver process in the rule is designed to provide minimal burden to an applicant in applying for a waiver.

3. *Integrated Pest Management (IPM).* The NPRM discussed a waiver of fees for registration of some products judged to be useful in IPM programs. One commenter indicated that any disincentive to the registration of pesticides caused by prohibitive fees would be a limitation on IPM practices. Although no specific waiver provision is established for IPM, the public interest waiver provision will permit consideration of a product's extraordinary utility for IPM as a factor in determining the extent of public interest demonstrated by the applicant in the waiver request. For example, the Agency will consider a waiver for a new pesticide which may be expected to become an essential part of an integrated pest management program or is a biologically integrated alternative for pest control which would result in a net reduction of the amount of risk and pesticide chemical applied over that used in conventional application methods.

4. *EPA-initiated amendments.* Four commenters suggested that the registration fee for an amendment action should be automatically waived when the need for the amendment arises solely due to an Agency initiative. An example of such an action would be an EPA-mandated label change. The Agency agrees. When EPA determines that an Agency-initiated amendment provides negligible benefit to the registrant, the amendment fee prescribed by this regulation will be waived. The Agency intends to announce such fee waivers through the EPA request for an amendment. The Agency will not approve any individual requests for such fee waivers.

5. *Minor use.* Several commenters supported waivers for minor use. One indicated that there should be automatic minor use waivers for pesticides used on fruits and vegetables. Another argued that there are specific small volume markets that would not be served unless the associated new use fees were waived. A third commenter indicated that the Agency needs to more clearly define "minor use" to head off a flood of waiver requests. The Agency has determined that it is in the public interest to waive pesticide registration fees for minor use registrations that lack commercial feasibility for the pesticide applicant. Applications may cover multiple uses, some of which are for minor uses. There is only one fee charged for review of an application, whether it addresses one or multiple uses and whether it contains only major uses or a combination of major and minor uses. Therefore, requests for a minor use waiver should address applications that are limited to minor uses. Waiver requests will be evaluated on a case-by-case basis. (See 51 FR 11341, Apr. 2, 1986 for a full discussion of EPA's minor use pesticide policy.)

6. *IR–4 program.* Many commenters supported waivers for Inter-Regional Research Project Number 4 (IR–4) related activities. The Agency will waive fees for registration actions that are determined to be specifically associated with tolerances established through IR–4 petitions when the Agency determines that a waiver would serve the public interest.

7. *Public interest.* Several commenters argued that the new chemical fee will inhibit the development of safer pesticides. One commenter stated that many biochemicals would have limited use and would not be cost effective to register. Another commenter indicated that fee waivers should be granted to those making a convincing argument that the public interest will be served by waiving the fee.

The public interest waiver has been retained. In the public interest, waivers may be granted in full or in part on a case-by-case basis, such as when a pest control agent is judged by EPA to significantly reduce a current environmental or health risk, provides an important improvement in public health control, or is based on a product's extraordinary utility for use in integrated pest management (IPM). Petitioners for such waivers must provide supporting information which fully substantiates the public interest nature of the individual request.

8. *Severe economic impact.* In the proposed rule, the Agency requested and encouraged public comment on the issue of small business waivers. No specific criteria or eligibility requirements were proposed by the Agency but suggestions by the Small Business Administration (SBA) on defining a small business and establishing criteria, were presented in the proposed rule. The SBA suggested that a small business be defined as one with up to $40 million in annual gross revenue, from all sales including pesticides, and one with no more than 150 employees. For businesses meeting this definition, SBA suggested that the fee should be no more than 1 percent of the annual gross revenue for the pesticide for which the registration action was requested. (In its comments on the proposed rule, the SBA expanded on this suggestion by proposing a sliding fee scale based on approximately 1 percent of projected first year sales.)

Many commenters supported small business waivers and stated that specific criteria should be established in the final rule. Without waivers, commenters claimed that smaller businesses would experience severe economic hardship, and in some cases, would be drive out of business. A few commenters claimed that the proposed fee would represent significant portions of the cost borne by a small company in developing a pesticide, placing the company at a competitive disadvantage. One commenter took the position that EPA should only consider gross revenue from pesticide sales in determining eligibility for any small business waiver.

In response to those concerns the Agency has taken a number of actions, such as the elimination of fees for Agency-initiated amendments as discussed earlier. The Agency has also developed specific waiver criteria for those small businesses severely impacted by fees and is establishing a partial waiver for them. The severe economic impact (SEI) waiver criteria in this rule are based on meeting two threshold requirements but are different from the criteria suggested by SBA.

The Agency has accepted the SBA position that $40 million or less in total gross annual revenues, including both pesticide and non-pesticide sales, is an appropriate threshold to determine what

constitutes a small business. It was decided to include both pesticide and non-pesticide sales because the $40 million threshold relates to the economic viability of the entire business. However, to set the fee at 1 percent of gross annual revenue on pesticide products is thought to be inappropriate. Aside from the serious possibility that a fee based on gross annual revenue would be considered a "tax" that could only be levied by Congress, the SBA suggestion would decrease dramatically the amount of fees that could be collected without regard to the potential profitability of the product in question in future years. A company applying for a new chemical registration, for instance, would have to project more than $18 million in sales for the first year in order to be required to pay the full fee.

In developing the second threshold for the SEI waiver, current Agency policy and procedures in the areas of minor use and data waivers were used to provide a benchmark for identifying a meaningful level of impact on industry profits. The minor use policy and data waiver producers are based on assumptions about industry-wide company profits after taxes on pesticides. In general, EPA employs an industry-wide estimate of profitability of about 10 percent of pesticide sales, after taxes. The Agency believes, however, that small businesses may tend to have lower than average profit margins. As a result, the Agency has adopted 3 percent of annual pesticide sales as a threshold for fees paid during a year's time, after which a severe economic impact is likely to exist and a partial waiver would be appropriate.

Therefore, the Agency has determined that to qualify for this waiver a company must first establish that its total gross annual revenue from both pesticide and non-pesticide sales for the preceding fiscal year was less than $40 million, i.e., it is a small business. Second, a company must show that its cumulative cost for registration fees for the 12-month period following its most recently completed fiscal year is greater than 3 percent of the company's gross annual revenue for pesticide sales in its preceding fiscal year. If a company is able to demonstrate that it meets both criteria, then two-thirds of all Agency registration fees in excess of 3 percent of the applicant's pesticide sales in the most recently concluded fiscal year will be waived.

The Agency does not wish to place an unreasonable burden on the applicant applying for an SEI waiver.

Existing information, such as an annual report or income tax form filed with the Internal Revenue Service should provide information on total annual revenues. A notarized statement signed by a corporate officer would be sufficient to document annual pesticide sales.

The Agency concluded that it would be inappropriate to waive the fee entirely, since the applicant must expect to gain some economic benefit from the license sought and thus should be able to pay some amount toward the fee. The Agency finds that it is reasonable to expect a business to pay at least a share of the cost for review of registration applications. For the waiver to be meaningful to an eligible company, the Agency believes a fee of less than 50 percent of full value is necessary. Examination of other Federal user fee waivers for analogous types of fees, reveals that most partial fees are less than one-half of the full fee for those eligible. After considering these factors, the Agency concludes that a charge of one-third of the fee is appropriate after the 3 percent cumulative threshold has been reached.

The Agency concludes that the SEI waiver provision in this rule, along with elimination of fees for Agency-initiated amendments, such as label changes, and the already established formulator's exemption in FIFRA, provide a reasonable response to the concerns presented by small business. In addition, all of the above discussion concerning the impact of fees assumes that none of these fees will be recovered or passed through the economic chain. In reality, it is reasonable to believe that some of the additional cost due to fees will be recovered by the registrant.

In summary, the Agency's intent in establishing severe economic impact waivers is to provide relief to companies with gross annual revenues too small to pay the full fee. It would be inappropriate to grant large companies these waivers simply because their pesticide related sales are small. For this reason, the Agency is using a company's gross annual revenue for determining the first threshold of $40 million for SEI waivers, regardless of whether the revenues are pesticide related. The second threshold for determining company eligibility is based only on pesticide sales.

The Agency is concerned that this waiver may be requested by applicants that would not normally be eligible. The Agency will not grant such a waiver if it finds the entity submitting the application has been formed or manipulated to qualify for such a waiver. The submission of false or misleading information is a violation of 18 U.S.C. 1001, and may result in the imposition of a fine up to $10,000 or imprisonment up to 5 years, or both.

E. Post-Registration Fees

The Notice of Proposed Rulemaking solicited comments on possible future elaborations of a registration fee system to recover post-registration Agency costs. One approach, an annual fee for all science reviews, would combine all science review costs for an active ingredient and split them among all basic producers of that active ingredient. The second approach, differential fees based on Agency review costs associated with evaluation of risks/benefits or incomplete data, would vary fees based on EPA costs related to reviewing riskier chemicals or those chemicals with data gaps, rather than establishing uniform fees within activity categories.

Comments on these approaches were mixed. Several commenters questioned EPA's legislative authority to collect post-registration fees under 31 U.S.C. 9701 and voiced concern about their potential adverse economic impacts. Two commenters supported the idea of annual post-registration fees to achieve cost recovery and to eliminate "inactive" registered uses that are not being marketed. Two commenters supported the concept of differential fees if these were based on per pound charges, while two others emphasized that any such fees should take into account ability to pay. One commenter suggested that differential fees based on risk might be disproportionate to benefit received.

The Agency is not proposing to levy any fees associated with post-registration activities in this rule. Such fees, however, are being considered by Congress in connection with reauthorization of FIFRA. Consistent with EPA's position that registration to market a product represents a special benefit, the Agency supports implementation of appropriate fees that require private beneficiaries, rather than the tax-paying public at large, to bear some of the costs of protecting public health and the environment through the FIFRA post-registration process as a whole. EPA also recognizes that implementing a system comprised solely of registration fees may tend to discourage innovation by placing prospective registrants requesting Agency action on new chemicals and new use applications at a greater economic disadvantage relative to registrants of existing chemicals, and that a consistent approach to cost recovery across both registration and post-registration actions may represent

desirable policy in the long run. However, the Agency has no basis for concluding that today's fee schedule is likely to produce any undesirable results in the short term. For these reasons, EPA is continuing to explore alternatives concerning post-registration cost recovery and plans to propose such a fee in the near future under existing authority, unless a FIFRA reauthorization bill containing such a provision is enacted.

III. Other Changes

Unit II. of this document describes changes to the NPRM recommended by commenters and actions taken by the Agency in response to these comments. For purposes of clarification and completeness, additional changes have been made to the NPRM.

Section 152.403, Definitions of fee categories, was added to assist applicants in determining the appropriate fee categories for payment. This section also clarifies the effect that pending applications (those submitted to EPA, but not yet approved or denied) may have on the fees for other applications.

The Agency may, at any time, have several applications pending from different applicants for registration of products containing the same active ingredient leading to possible confusion concerning the proper fee for some of the applications. The new provisions are intended to eliminate that confusion. For example, if the Agency has before it a pending new chemical application and a new use pattern application is received for a product containing the same active ingredient, the revised provisions make it clear that only the new use pattern fee, not the new chemical fee, should be submitted for the new use pattern application.

Section 152.406 was added to clarify that submission of supplementary data for applications that are pending will not require payment of additional fees. The cost data used in calculating the fees include the cost of handling supplementary data for the associated applications. Language was added to clarify how fees would be charged for multiple new active ingredients in a single product. EPA has decided that the full fee for a new chemical registration review should be charged for the review of each active ingredient, since science and administrative reviews must be conducted by the Agency for each of them. EPA also has decided that if two or more applicants had applications pending for products containing the same new active ingredient and each applicant had developed and submitted separate data sets to support the registrations, then each applicant would be charged the full new chemical registration review fee. This is appropriate since the Agency may be expected to incur the costs of administrative and scientific reviews for each data set. If two or more applicants develop and submit a common data set for registering their products which have a common new active ingredient, the applicants would pay equal shares of the total fee. The total fee would include the fee for one new chemical registration review and a fee for an old chemical registration review for each of the additional products. This charge is consistent with the cost to be incurred by the Agency in reviewing a single generic data set and the specific data on each of the additional products.

The Agency identified an issue concerning experimental use permits (EUPs) that needed clarification. Generally, pesticides are exempted from the requirement for obtaining an EUP for small-scale field testing (40 CFR 172.3). However, due to the risk concerns about the capacity of microorganisms to reproduce and multiply in the environment, this exemption has been modified with respect to certain genetically-altered and non-indigenous microbial pest control agents so that the Agency may elect to require an EUP for small-scale field testing. The imposition of fees at this early stage of research and development, however, is considered to be inequitable with respect to traditional operating procedures within the pesticide program, and could discourage development of individual microbial pest control agents which prove safer alternatives both for human health and the environment. The Agency, therefore, has determined that EUPs required for small-scale field testing of microbial pest control agents should be excluded from fee charges.

The Agency proposed charging fees for FFDCA section 409 food additive petition reviews in the Notice of Proposed Rulemaking. The Agency has identified two issues concerning this fee:

1. The food additive fee published for comment was inaccurate due to a mathematical error in the computation. The correct fee would be approximately twice as large.

2. Various activities associated with reviewing food additive petitions differ substantially. For example, the level of effort needed to review a request for a new food additive tolerance that has a raw agricultural commodity tolerance associated with it may be considerably less than one for which no raw agricultural tolerance is required. Also, amendments to food additive tolerances would require lower levels of effort than the establishment of new tolerances. It appeared inequitable to charge the same fee for all food additive petition review activities.

Therefore, the Agency has decided to perform a more comprehensive analysis to correct these deficiencies and may publish food additive petition fees in a future rule.

IV. Administrative Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a rule is "major" and therefore, subject to the requirement for a Regulatory Impact Analysis. The Agency has determined that this rule is not major because it does not meet any of the criteria set forth and defined in section 1(b) of the Order.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165 (5 U.S.C. 60 et. seq.)) and it has been determined that it will not have significant economic impact on a substantial number of small businesses, small governments, or small organizations. In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency developed a document entitled "Regulatory Impact Analysis of User Charges for Registering Pesticides Under the Federal Insecticide, Fungicide, and Rodenticide Act." The document was available for inspection during the comment period on the Notice of Proposed Rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* and have been assigned OMB control numbers 2070–0040 and 2070–0060.

List of Subjects in 40 CFR Parts 152 and 172

Administrative practice and procedure, Fees, Intergovernmental relations, Labeling, Pesticides and pests, Reporting and recordkeeping requirements, Research.

Dated: May 18, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 152—[AMENDED]

1. In Part 152:

a. The authority citation for Part 152 is revised to read as follows:

Authority: 7 U.S.C. 136–136y. Subpart U is also issued under 31 U.S.C. 9701 and Pub. L. 100–202.

Subparts M—T [Reserved]

b. By adding and reserving Subparts M through T.

c. By adding Subpart U to read as follows:

Subpart U—Registration Fees

Sec.

152.400 Purpose.
152.403 Definitions of fee categories.
152.404 Fee amounts.
152.406 Submission of supplementary data.
152.408 Special considerations.
152.410 Adjustment of fees.
152.412 Waivers and refunds.
152.414 Procedures.

Subpart U—Registration Fees

§ 152.400 Purpose.

Subpart U prescribes fees to be charged for the pesticide regulatory activities set forth in § 152.403 as performed by the Environmental Protection Agency (as authorized by 31 U.S.C. 9701 and Pub. L. 100–202) and provisions regarding their payment.

§ 152.403 Definitions of fee categories.

(a) "New chemical registration review" means review of an application for registration of a pesticide product containing a chemical active ingredient which is not contained as an active ingredient in any other pesticide product that is registered under FIFRA at the time the application is made.

(b) "New biochemical and microbial registration review" means review of an application for registration of a biochemical or microbial pesticide product containing a biochemical or microbial active ingredient not contained in any other pesticide product that is registered under FIFRA at the time the application is made. For purposes of this Subpart, the definitions of biochemical and microbial pesticides contained in § 158.65 (a) and (b) of this chapter shall apply.

(c) "New use pattern registration review" means review of an application for registration, or for amendment of a registration entailing a major change to the use pattern of an active ingredient contained in a product registered under FIFRA or pending Agency decision on a prior application at the time of application. For purposes of this paragraph, examples of major changes include but are not limited to, changes from non-food to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and non-residential to residential use.

(d) "Old chemical registration review" means review of an application for registration of a new product containing active ingredients and uses which are substantially similar or identical to those currently registered or for which an application is pending Agency decision.

(e) "Amendment review" means review of any application requiring Agency approval to amend the registration of a currently registered product, or for which an application is pending Agency decision, not entailing a major change to the use pattern of an active ingredient.

(f) "Experimental use permit review" means review of an application for a permit pursuant to section 5 of FIFRA to apply a limited quantity of a pesticide in order to accumulate information necessary to register the pesticide. The application may be for a new chemical or for a new use of an old chemical. The fee applies to such experimental uses of a single unregistered active ingredient (no limit on the number of other active ingredients, in a tank mix, already registered for the crops involved) and no more than three crops. This fee does not apply to experimental use permits required for small-scale field testing of microbial pest control agents (40 CFR 172.3).

§ 152.404 Fee amounts.

The fee prescribed by the following table must be submitted with each application for registration, amended registration or experimental use permit. Fees will be adjusted annually in accordance with § 152.410. The Agency may waive or refund fees in accordance with § 152.412.

TABLE.—REGISTRATION FEES

Type of review	Fee
New chemical	$184,500
New biochemical or microbial	64,000
New use pattern	33,800
Experimental use permit	4,500
Old chemical	4,000
Amendment	700

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

§ 152.406 Submission of supplementary data.

Applicants may submit data to supplement pending applications without incurring additional charges if the proper fee was paid with submission of the original application and subsequent submissions of supplementary data do not constitute a change in the type of registration action requested.

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

§ 152.408 Special considerations.

(a) If two or more applicants apply for a new chemical registration for products having the same active ingredient and each applicant provides a set of data in support of the registration developed independently of the other applicants' data, then each applicant submitting an independent set of data shall be charged the full new chemical registration review fee.

(b) If two or more applicants apply for a new chemical registration for products having the same active ingredient and the applicants have jointly developed or paid for the joint development of a common set of data to support their applications for registration, then each applicant shall be charged an equal share of the total fee for review of the applications for all of the subject products. The total fee will include the sum of the new chemical registration review fee for one product and one old chemical registration review fee for each additional product.

(c) If an application is received for registration of a product that contains two or more new chemical active ingredients and a different set of generic data is required by the Agency for each new chemical for the purpose of registration, the applicant will be required to pay the full new chemical registration review fee for each active ingredient.

§ 152.410 Adjustment of fees.

(a) The fee schedule will be adjusted annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. Such adjustments will be published in the **Federal Register** as a final rule and will be effective 30 days or more after promulgation.

(b) Processing costs and fees will be reviewed periodically and changes will be made to the schedule as necessary. Such adjustments will be published for notice and comment in the **Federal Register.**

§ 152.412 Waivers and refunds.

(a) *Refunds.* If an application is not accepted for processing because it is incomplete, the fee, less $1,200 for handling and initial review (or the

amount of the fee, whichever is less), shall be returned. If an application is withdrawn by the applicant before significant Agency scientific review has begun, the fee, less $1,200, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were submitted for the first time.

(b) *Waiver of fees for activities initiated by the Agency.* The Agency may waive fees for amended registrations where the amendment has been initiated solely by the Agency. The Agency retains sole discretion in determining when this fee will be waived. The announcement of the fee waiver will accompany the EPA request for an amendment. The Agency will not approve any individual requests for waivers of EPA-initiated activity fees.

(c) *Waiver of fees for activities initiated by applicants.* Upon request by an applicant, together with the supporting documentation or justification described in this paragraph, the Agency may waive or refund fees in whole or in part. A request for waiver must be submitted in accordance with § 152.414(a). An application for which a waiver of fees has been requested will not be accepted for review until the waiver has been granted, or until the waiver has been denied and thereafter the proper fee has been submitted.

(1) *Minor use.* Fees may be waived for applications limited to minor uses that lack commercial feasibility for the pesticide applicant. An applicant requesting a waiver on this basis must provide supporting information that demonstrates that anticipated revenues from the uses that are the subject of the application would be insufficient to pay back the cost of the fee. The burden of proof of the reasonableness of this estimate rests with the applicant.

(2) *IR–4.* Fees will be waived for registration actions that are determined to be specifically associated with tolerance petitions submitted by the Inter-Regional Research Project Number 4 (IR–4 program) when such waiver is deemed by the Agency to be in the public interest.

(3) *Severe economic impact.* The Agency may waive two-thirds of any cumulative registration fee payment in a 12-month period following completion of the applicant's most recent fiscal year that exceeds 3 percent of the applicant's pesticide sales in its most recently completed fiscal year. An applicant requesting a waiver on this basis must provide documentation (e.g. copy of an annual report, or income tax forms filed with the Internal Revenue Service, or if needed, a notarized statement signed by a corporate officer regarding annual pesticide sales) demonstrating that:

(i) The company applying had less than $40 million in gross revenue (including all revenue sources) in the most recently concluded fiscal year of operation, and a single fee would constitute more than 3 percent of the applicant's gross revenue from pesticide sales in the most recently completed fiscal year of operation, or

(ii) The company applying had less than $40 million in gross revenue (including all revenue sources) in the most recently concluded fiscal year of operation, and the cumulative registration fees paid during the 12 months following the applicant's most recently completed fiscal year, including any registration fees paid for the applicant for which a waiver is requested, constitute more than 3 percent of the applicant's gross revenue from pesticide sales in the most recently concluded fiscal year of operation.

(iii) The Agency will not grant such a waiver if it determines that the entity submitting the application has been formed or manipulated to qualify for such a waiver.

(4) *Public interest.* The Agency, in its discretion, may waive in whole or in part any of the fees established herein in the public interest. Examples include, but are not limited to, pesticides offering unique advantages for reducing public health risks, those that significantly reduce a current environmental risk, or a product with extraordinary utility for use in Integrated Pest Management (IPM).

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

§ 152.414 Procedures

(a) *Procedures for requesting a waiver.* (1) A request for a waiver must be submitted in writing at the time the application is submitted to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS–767C), 401 M. Street SW., Washington, DC 20460.

(2) A payment of $1,200 for processing the waiver or the amount of the actual fee, whichever is less, must be submitted simultaneously to the address set forth in paragraph (b) of this section. This fee will be refunded (or applied to any resulting partial fee) if the waiver is granted. Payment of fees for the registration activities, in contrast to the waiver fee, shall not be required until the Agency makes a determination on the waiver request. Since the actual fee is submitted to an address different than the one to which the waiver request is submitted, a copy of the payment document must be submitted with the waiver request that is submitted to the Washington, DC address set forth in paragraph (a)(1) of this section. No fee is required from a person who has no financial interest in the application.

(b) *Procedures for payment of fees.* All fees required by this section must be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All payment of fees must be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Registration Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Registration Fees" and should be accompanied only by a copy of the registration application form or the experimental use permit application form, as appropriate. An application will not be accepted for processing until the required fees have been submitted.

(c) *Procedures for submitting application and supporting data.* The application, along with supporting data, shall be forwarded within 30 days of payment to the Washington DC address set forth in paragraph (a)(1) of this section.

(Approved by the Office of Management and Budget under control numbers 2070–0040 and 2070–0060)

PART 172—[AMENDED]

2. In Part 172:

a. The authority citation for Part 172 is revised to read as follows:

Authority: 7 U.S.C. 136c, 136v, and 136w. Section 172.4 is also issued under 31 U.S.C. 9701 and Pub. L. 100–202.

b. In § 172.4, by adding paragraph (c) to read as follows:

§ 172.4 Applications.

* * * * *

(c) *Fees.* The payment of fees for experimental use permits shall apply as specified in Subpart U of Part 152 of the chapter.

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federal register

Thursday
May 26, 1988

Part III

Department of Education

34 CFR Part 75

48 CFR Ch. 34

Acquisition Regulation; Establishment of Chapter; Final Regulations With Invitation to Comment

DEPARTMENT OF EDUCATION

34 CFR Part 75

48 CFR Ch. 34

Acquisition Regulation; Establishment of Chapter

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary establishes the Department of Education Acquisition Regulation (EDAR) as Chapter 34 of Title 48 of the Code of Federal Regulations. The EDAR is being issued to implement and supplement the Federal Acquisition Regulation (FAR) within the Department of Education. The EDAR incorporates, together with the FAR, the policies, procedures, contract clauses, solicitation provisions and forms that govern the contracting process or otherwise control the relationship between the Department and contractors or prospective contractors.

DATES: These regulations are effective May 26, 1988. Comments must be received on or before July 25, 1988.

ADDRESSES: All comments concerning these regulations should be addressed to Richard Galloway, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3519, ROB–3, mail stop 3341), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Richard Galloway, telephone (202) 732–2525.

SUPPLEMENTARY INFORMATION: Federal acquisition is subject to two related means of regulation: (1) Governmentwide provisions under the FAR; and (2) agencywide provisions under individual agency regulations. The FAR was codified as Chapter 1 of Title 48 of the Code of Federal Regulations on April 1, 1984. The FAR, in turn, authorizes each agency to issue agency acquisition regulations to implement FAR policies and procedures and provide supplementary rules for special agency needs. FAR 1.301(b) requires publication of agency acquisition policy issuances that have a significant effect beyond internal agency operations or a significant cost or administrative impact on contractors or offerors.

The EDAR replaces the Education Department Procurement Regulation (EDPR) (41 CFR Chapter 34). The EDPR remains in effect only for contracts based upon solicitations issued prior to April 1, 1984. The EDPR became inapplicable to new contract actions when the FAR superseded the Federal Procurement Regulation under which the EDPR had been codified.

The EDAR does not establish new external policy or significantly change existing practice. Rather, the EDAR is the result of (a) conversion of policies established under the EDPR to conform with the FAR, (b) incorporation of standard agency solicitation provisions and contract clauses, and (c) designation of agency discretionary acquisition authorities. Accordingly, the EDAR does not represent new independent policy directions, but rather, reflects policies established by the present governmentwide regulation, the FAR. Further, although the old regulations, *i.e.*, the EDPR, did not incorporate standard agency provisions and clauses, the provisions and clauses in the EDAR do not differ substantially from the provisions and clauses that had been in use under EDPR. Designations of agency acquisition authorities, although required by the FAR, are primarily of internal rather than external significance.

A conforming amendment to the Education Department General Administrative Regulations (EDGAR) was needed to clarify the Department's copyright practice. Section 75.621 of EDGAR is amended in this document by revising the heading to read: Copyright Policy for Grantees; and deleting paragraph (b) from § 75.621. The Department follows the copyright provisions of the FAR, which were established by Federal Acquisition Circular 84–27.

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.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not significantly change the Department's existing practice.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these regulations.

All comments submitted in response to these regulations will be available for public inspection, during and after the comment period, in Room 3519, ROB3, 7th and D Streets SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of 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 75

Accounting, grant programs—education, Reporting and recordkeeping requirements.

48 CFR Ch. 34

Government procurement.

Dated: July 23, 1987.

Editorial Note.—This was received at the office of the **Federal Register** May 20, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

TITLE 34—[AMENDED]

PART 75—[AMENDED]

1. The Secretary amends Title 34, Part 75, of the Code of Federal Regulations by revising the heading of § 75.621, as set forth below, by removing paragraph (b) and removing the paragraph designation "(a)".

§ 75.621 Copyright policy for grantees.

* * * * *

TITLE 48—[AMENDED]

2. The Secretary amends Title 48 of the Code of Federal Regulations by establishing a new Chapter 34 to read as follows:

CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part 3401 ED Acquisition Regulation System
Part 3402 Definitions of Words and Terms

Part 3403 Improper Business Practices and Personal Conflicts of Interest
Part 3404 Administrative Matters
Part 3405 Publicizing Contract Actions

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

Part 3408 Required Sources of Supplies and Services
Part 3409 Contractor Qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 3413 Small Purchase and Other Simplified Purchase Procedures
Part 3414 Sealed Bidding
Part 3415 Contracting by Negotiation
Part 3416 Types of Contracts
Part 3417 Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 3419 Small Business and Small Disadvantaged Business Concerns
Part 3424 Protection of Privacy and Freedom of Information
Part 3425 Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 3427 Patents, Data, and Copyrights
Part 3428 Bonds and Insurance
Part 3432 Contract Financing
Part 3433 Protests, Disputes, and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 3437 Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 3442 Contract Administration
Part 3443 Contract Modifications
Part 3445 Government Property
Part 3447 Transportation

SUBCHAPTER H—CLAUSES AND FORMS

Part 3452 Solicitation Provisions and Contract Clauses.

SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

Sec.
3401.000 Scope of part.

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.
3401.104 Issuance.
3401.104–2 Arrangement of regulations.
3401.104–3 Copies

Subpart 3401.3—Agency Acquisition Regulations.

3401.304 Agency control and compliance procedures.

Subpart 3401.4—Deviations

3401.401 Definition.
3401.403 Individual deviations.
3401.404 Class deviations.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.
3401.501–2 Opportunity for public comments.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in Title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Department of Education (ED) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of ED which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.

The FAR and the EDAR apply to all acquisitions as defined in FAR Part 2 except where expressly excluded.

3401.104 Issuance.

3401.104–2 Arrangement of regulations.

The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR (See FAR 1.104–2(c)).

3401.104–3 Copies.

Copies of the EDAR in the Federal Register and Code of Federal Regulations (CFR) form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

Subpart 3401.3—Agency Acquisition Regulations

3401.304 Agency control and compliance procedures.

The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

Subpart 3401.4—Deviations

3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Head of the Contracting Activity (HCA).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Procurement Executive.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501–2 Opportunity for public comments.

Unless the Secretary of Education (Secretary) approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

Contracting authority vests with the Secretary. The Secretary has delegated this authority to the Deputy Under Secretary for Management who has delegated this authority, with the right to redelegate, to the Procurement Executive and the HCA.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.
3402.101 Definitions.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3402.1—Definitions

3402.101 Definitions

As used in this chapter—

"Head of the Contracting Activity" or "HCA" means the Director, Grants and Contracts Service (GCS), Office of Management of the Department of Education.

"Procurement Executive" means the Comptroller, Office of Management of the Department of Education.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The contracting officer shall insert the clause in 3452.202–1, Definitions, in all solicitations and contracts in lieu of the clause in FAR 52.202–1, except—

(a) A fixed-price research and development contract that is expected to be $2,500 or less; or

(b) A purchase order.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3403.1—Safeguards

Sec.
3403.101 Standards of conduct.
3403.101–3 Agency regulations.

Subpart 3403.2—Contractor Gratuities To Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

Sbupart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c)

Subpart 3403.1—Safeguards

3403.101 Standards of conduct.

3403.101–3 Agency regulations.

ED regulations on standards of conduct are in 34 CFR Part 73.

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the Procurement Executive for disposition.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

(a) [Reserved]

(b) Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition shall—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the Procurement Executive.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, shall report the matter promptly in accordance with the procedures in 3403.203.

Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Exceptions under FAR 3.602 must be approved by the Deputy Under Secretary for Management.

PART 3404—ADMINISTRATIVE MATTERS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3404.1—Contract Execution

3404.170 Ratification of unauthorized contract awards.

The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers acting in excess of the limits of their delegated authority, may be later ratified by the Department. To be effective, a ratification must be—

(a) A written document clearly stating that ratification of a previously unauthorized act is intended; and

(b) Signed by the HCA, or higher level official of the Department, who could have granted authority to enter into the commitment at the time it was made and still has the power to do so.

PART 3405—PUBLICIZING CONTRACT ACTIONS

Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.
3405.270 Notices to perform market surveys.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3405.2—Synopses of Proposed Contracts Actions

3405.270 Notices to perform market surveys.

(a) If a sole-source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the Government, constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factors relevant to those requirements; and

(3) The criteria, including relative weights, to be used in the evaluation of responses.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 3408.8—Acquisition of Printing and Related Supplies

3408.870 Printing clause.

The contracting officer shall insert the clause in 3452.208–70, Printing, in all solicitations and contracts other than purchase orders.

PART 3409—CONTRACTOR QUALIFICATIONS

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 Definitions.
3409.406 Debarment.
3409.406–3 Procedures.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.
3409.503 Waiver.
3409.507 Procedures.
3409.570 Offeror certification provision.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 Definitions.

The Procurement Executive is designated as the "debarring official" and the "suspension official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405–1, 9.405–2, 9.406–1(c), and 9.407–1(d).

3409.406 Debarment.

3409.406–3 Procedures.

The debarring official may enter into a settlement with a contractor under which the contractor voluntarily excludes itself from, or restricts its participation in, Government contracting and subcontracting for a specified period.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR Subpart 9.5 or of this subpart.

3409.507 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED terminates the contract.

(b) The Procurement Executive is designated as the official to conduct reviews and make final decisions under FAR 9.507(c)(4).

3409.570 Offeror certification provision.

The contracting officer shall insert the provision in 3452.209–70, Organizational Conflict of Interest, in all solicitations.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3413.1—General

3413.107 Solicitation and evaluation of quotations.

(a)–(c) [Reserved]

(d) *Information provided by ED.* If ED provides information to a potential quoter concerning a request for quotations, that information must also be provided to all other potential quoters, by amending the request, if—

(1) The information is necessary to quoters in submitting quotations; or

(2) The lack of the information would be otherwise prejudicial to other potential quoters.

(e) *Late quotations.* The procedures in FAR 15.412 must be used for quotations received after the time specified for receipt at the contracting activity, except that late quotations may be accepted if the contracting officer determines in writing prior to the award that it is in the best interest of the Government to do so.

PART 3414—SEALED BIDDING

Subpart 3414.4—Opening of Bids and Award of Contract

Sec.

3414.406 Mistakes in bids.

3414.406–3 Other mistakes disclosed before award.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3414.4—Opening of Bids and Award of Contract

3414.406 Mistakes in bids.

3414.406–3 Other mistakes disclosed before award.

(a)–(d) [Reserved]

(e) Authority is delegated to the HCA to make determinations under FAR 14.406–3(a)–(d).

PART 3415—CONTRACTING BY NEGOTIATION

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

Sec.

3415.406–3 Part II—Contract clauses.

3415.407 Solicitation provisions.

3415.413–2 Alternate II.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.

3415.506 Agency procedures.

Subpart 3415.9—Profit

3415.902 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

3415.406–3 Part II—Contract clauses.

The contracting officer shall insert the clause in 3452.215–33, Order of Precedence, in all contracts other than purchase orders. The contracting officer shall use this clause in lieu of the clause in FAR 52.215–33.

3415.407 Solicitation provisions.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–12. The solicitation provision in 3452.215–70, Release of Restricted Data, informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer shall insert the provision in 3452.215–70, in all solicitations that include a reference to FAR 52.215–12, Restriction on Disclosure and Use of Data.

3415.413–2 Alternate II.

The Department uses the Alternate II procedures in FAR 15.413–2.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.

(a)–(c) [Reserved]

(d) Each unsolicited proposal must contain the following certification:

Unsolicited Proposal Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization)

3415.506 Agency procedures.

(a) [Reserved]

(b)(1) The HCA is the contact point to coordinate the receipt and handling of unsolicited proposals.

(2) Offerors shall direct unsolicited proposals to the HCA.

Subpart 3415.9—Profit

3415.902 Policy.

(a) [Reserved]

(b) The contracting officer shall establish the profit or fee portion of the Government prenegotiation objective in accordance with 48 CFR Chapter 3, Part 315, Subpart 315.9 (Department of Health and Human Services Acquisition Regulation).

PART 3416—TYPES OF CONTRACTS

Subpart 3416.3—Cost-Reimbursement Contracts

Sec.

3416.303 Cost-sharing contracts.

3416.307 Contract clauses.

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.

3416.603–3 Limitations.

Subpart 3416.7—Agreements

3416.701 Contract clause.

3416.702 Basic agreements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(a) [Reserved]

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause in FAR 52.216–7, Allowable cost and Payment, is used in a contract with a hospital, the contracting officer shall modify the clause by deleting the words "Subpart 31.2 of the Federal Acquisition Regulation (FAR)" from paragraph (a) and substituting "34 CFR Part 74, Appendix E."

(b) The contracting officer shall insert the clause in 3452.216–70, Additional Cost Principles, in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutional, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A–122.

Subpart 3416.6—Time-and Materials, Labor-Hour and Letter Contracts

3416.603 Letter contracts.

3416.603-3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the Procurement Executive executes the written determination under FAR 16.603–3.

Subpart 3416.7—Agreements

3416.701 Contract clause.

The contracting officer shall insert the clause in 3452.216–71, Negotiated Overhead Rates—Fixed, in contracts with organizations that have fixed indirect cost rates with carryforward adjustments approved by the Government agency responsible for negotiating the organization's indirect cost rates.

3416.702 Basic agreements.

(a)–(d) [Reserved]

(e) *Negotiated overhead rates.* Basic agreements may include negotiated overhead rates for cost-reimbursement contracts. If a negotiated overhead rate is included, the bases to which the rate applies and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs must also be included.

PART 3417—SPECIAL CONTRACTING METHODS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3417.2—Options

3417.207 Exercise of options.

If any provision in a contract requires that an option may only be exercised within a specified time after funds become available, the same provision must specify that the date on which funds are available means the date funds become available to the contracting officer for obligation.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3419.705–2 Determining the need for a subcontracting plan.
3419.708 Solicitation provisions and contract clauses.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.
3419.870 Acquisition of technical requirements.

Authority: 5 U.S.C.; 40 U.S.C. 486(c).

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3419.705–2 Determining the need for a subcontracting plan.

Incremental funding actions must be included in determining whether an acquisition meets the dollar threshold requiring a subcontracting plan.

3419.708 Solicitation provisions and contract clauses.

(a) [Reserved]

(b) If the clause "Small Business and Small Disadvantaged Business Subcontracting Plan" (see FAR 52.219–9) must be used in a solicitation, a notification must be included in the solicitation that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.

The signing of a contract document by the Small Business Administration (SBA) may be accepted by the contracting officer as the certification under FAR 19.801(b)(1).

3419.870 Acquisition of technical requirements.

(a) *Source selection.* (1) Except where SBA selects a concern for an award under section 8(a) or under the circumstances in paragraph (a)(5) of this section, ED selects a nominee for an 8(a) award by SBA through a limited technical competition if technical aspects, methodology, or approach are of primary importance rather than price.

(2) If limited technical competition is used, the concerns to be included are decided by the contracting officer in consultation with OSDBU and the Contracting Officer's Technical Representative (COTR).

(3) (i) ED may require the concerns participating in the limited technical competition to submit written technical proposals. Otherwise, ED holds oral discussions with the participating concerns.

(ii) In a limited technical competition, cost factors may not be included in the technical proposals nor considered during technical discussions of the proposals.

(4) ED evaluates the concerns participating in a limited technical competition based on the written technical proposals or oral discussions. ED nominates, to SBA for subcontract award, the concern that the contracting officer determines to have the best technical capability to perform the contract requirements.

(5) Instead of selecting a nominee through limited technical competition, ED may nominate one 8(a) concern to SBA if that concern has exclusive or predominant capability among 8(a) concerns by reason of experience, specialized facilities, or technical competence to perform the work within the time required.

(6) Each concern nominated for a specific 8(a) requirement must be approved by OSDBU or SBA for that particular requirement before the contracting officer initiates negotiation of 8(a) award terms with the concern.

(b) *Negotiation of 8(a) award.* The contracting officer shall give all possible

assistance required by SBA with respect to SBA's negotiation of an 8(a) award.

(c) *Delegated 8(a) award administration.* If SBA delegates responsibility to ED for administration of the 8(a) award, ED informs SBA of all 8(a) award modifications, progress payments, problems experienced by the subcontractor, and other pertinent matters requested by SBA.

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3424.1—Protection of Individual Privacy

Sec.
3424.103 Procedures.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3424.1—Protection of Individual Privacy

3424.103 Procedures.

(a) If the Privacy Act of 1974 applies to a contract, the contracting officer shall specify in the contract the disposition to be made of the system or systems of records upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(b) If a notice of the system of records has not been published in the **Federal Register**, the contracting officer may proceed with the acquisition but shall not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

The Department's regulations implementing the Freedom of Informaiton Act, 5 U.S.C. 552, are in 34 CFR Part 5.

PART 3425—FOREIGN ACQUISITION

Subpart 3425.1—Buy American Act—Supplies

Sec.
3425.102 Policy.

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3425.1—Buy American Act—Supplies

3425.102 Policy.

(a) [Reserved]

(b) The HCA approves determinations under FAR 25.120(a)(4).

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

The HCA is designated to make all determinations under FAR 25.302. This authority may not be redelegated.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3427—PATENTS, DATA, AND COPYRIGHTS

Subpart 3427.4—Rights in Data and Copyrights

Sec.
3427.470 Publication and publicity clause.
3427.471 Paperwork Reduction Act clause.
3427.472 Advertising of awards clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3427.4—Rights in Data and Copyrights

3427.470 Publication and publicity clause.

The contracting officer shall insert the clause in 3452.227–70, Publication and Publicity, in all solicitations and contracts other than purchase orders.

3424.471 Paperwork Reduction Act clause.

The contracting officer shall insert the clause in 3452.227–71, Paperwork Reduction Act, in all solicitations and contracts.

3427.472 Advertising of awards clause.

The contracting officer shall insert the clause in 3452.227–72, Advertising of Awards, in all solicitations and contracts other than purchase orders.

PART 3428—BONDS AND INSURANCE

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3428.3—Insurance

3428.370 Contract clause.

The contracting officer shall insert the clause in 3452.228–70, Required Insurance, in all solicitations and resultant cost-reimbursement contracts.

PART 3432—CONTRACT FINANCING

Subpart 3432.1—General

Sec.
3432.170 Method of payment.

Subpart 3432.4—Advance Payments

3432.402 General.
3432.407 Interest.

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.
3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.
3432.771 Provision for incremental funding.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(C).

Subpart 3432.1—General

3432.170 Method of payment.

The contracting officer shall insert the clause in 3452.232–72, Method of Payment, in all solicitations and contracts.

Subpart 3432.4—Advance Payments

3432.402 General.

(a)–(d) [Reserved]

(e) The HCA is designated to make determinations under FAR 32.402(c)(1)(iii)(A). This authority may not be redelegated.

3432.407 Interest.

The HCA is designated to authorize advance payments without interest under FAR 32.407(d).

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following format:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase, such as error in estimate or changed conditions.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.

The contracting officer shall insert the clause at 3452.232–70, Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations, in contracts with educational institutions, hospitals, and State and local governments. Contracts with commercial and nonprofit organizations shall be subject to the legislative lobbying prohibitions contained in FAR 31.205–22 and Office of Management and Budget Circular A–122, respectively.

3432.771 Provision for incremental funding.

The contracting officer shall insert the provision in 3452.232–71, Incremental Funding, in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

Subpart 3433.1—Protests

Sec.
3433.101 Definitions.
3433.103 Protests to the agency.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.
3433.212 Contracting officer's duties upon appeal.
3433.214 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3433.1—Protests

3433.101 Definitions.

"Filed," as used in this subpart, means that a document has been received by the contracting officer, the General Accounting Office (GAO), or the General Services Administration Board of Contract Appeals (GSBCA).

3433.103 Protests to the agency.

(a)(1) Protests to ED based on alleged improprieties in any type of solicitation that are apparent before bid opening or the closing date for receipt of proposals, must be filed before bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, protests based on alleged improprieties that do not exist in the initial solicitation, but that are added later, must be filed not later than the next closing date for receipt of proposals following the addition. In other cases, protests to ED must be filed not later than ten (10) Federal Government working days after a basis for protest is known or should have been known, whichever is earlier.

(b) With the concurrence of the HCA, the contracting officer is authorized to make a determination, using the criteria in FAR 33.103(a), to award a contract before resolution of a protest.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.

The General Services Administration Board of Contract Appeals (GSBCA) is designated to hear any appeal from a final decision of a contracting officer issued pursuant to the "Disputes" clause in a contract. The rules and regulations of the GSBCA are in 48 CFR Chapter 5, Appendix B, and govern the processing of these appeals.

3433.212 Contracting officer's duties upon appeal.

The Office of the General Counsel is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the GSBCA.

3433.214 Contract clause.

The contracting officer shall use the clause in FAR 52.233–1, Disputes, with its Alternate I.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3437—SERVICE CONTRACTING

Subpart 3437.1—Service Contracts—General

Sec.
3437.102 Policy.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clauses.
3437.271 Services of consultants clauses.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3437.1—Service Contracts—General

3437.102 Policy.

If a service contract requires one or more end items of supply, FAR Subpart 37.1 and this subpart apply only to the required services.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clause.

The contracting officer shall include the clause in 3452.237–70, Identification of Reports Under Consulting Services Contracts, in all solicitations and contracts for consulting services.

3437.271 Services of consultants clause.

The contracting officer shall insert the clause in 3452.237–71, Services of Consultants, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3442—CONTRACT ADMINISTRATION

Subpart 3442.7—Indirect Cost Rates

Sec.
3442.705 Final indirect cost rates.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.
3442.7002 Litigation and claims clause.
3442.7003 Delays clause.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3442.7—Indirect Cost Rates

3442.705 Final indirect cost rates.

The Chief, Cost Determination Branch, Grants and Contracts Service, is delegated the authority to establish final indirect cost rates under FAR 42.705–1 and 42.705–2.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.

(a) The contracting officer shall insert the clause in 3452.242–72, Withholding of Contract Payments, in all solicitations and contracts other than purchase orders.

(b) ED may withhold contract payments if any report required to be submitted by the contractor is overdue, or if the contractor fails to perform or deliver work or services as required by the contract.

(c) The contracting officer shall notify the contractor in writing that payments are being withheld in accordance with the clause.

3442.7002 Litigation and claims clause.

The contracting officer shall insert the clause in 3452.242–70, Litigation and Claims, in all solicitations and resultant cost-reimbursement contracts.

3442.7003 Delays clause.

The contracting officer shall insert the clause in 3452.242–71, Notice to the Government of Delays, in all

solicitations and contracts other than purchase orders.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer shall insert the clause in 3452.242–73, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 3443—CONTRACT MODIFICATIONS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

3443.106 Contract clause.

The contracting officer shall insert the clause in 3452.243–70, Key Personnel, in all solicitations and resultant cost-reimbursement contracts.

PART 3445—GOVERNMENT PROPERTY

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3445.4—Contractor Use and Rental of Government Property

3445.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA shall determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

PART 3447—TRANSPORTATION

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3447.70—Foreign Travel

3447.7000 Foreign travel clause.

The contracting officer shall insert the clause in 3452.247–70, Foreign Travel, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3452.2—Texts of Provisions and Clauses

Sec.

3452.202–1 Definitions.
3452.208–70 Printing.
3452.209–70 Organization Conflict of Interest.
3452.215–33 Order of Precedence.
3452.215–70 Release of Restricted Data.
3452.216–70 Additional Cost Principles.
3452.216–71 Negotiated Overhead Rates—Fixed.
3452.227–70 Publication and Publicity.
3452.227–71 Paperwork Reduction Act.
3452.227–72 Advertising of Awards.
3452.228–70 Required Insurance.
3452.232–70 Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations.
3452.232–71 Incremental Funding.
3452.232–72 Method of Payment.
3452.237–70 Identification of Reports Under Consulting Services Contracts.
3452.237–71 Services of Consultants.
3452.242–70 Litigation and Claims.
3452.242–71 Notice to the Government of Delays.
3452.242–72 Withholding of Contract Payments.
3452.242–73 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.
3452.243–70 Key Personnel.
3452.247–70 Foreign Travel.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

3452.202–1 Definitions.

As prescribed in 3402.201, insert the following clause in solicitations and contracts:

Definitions (Aug 1987)

(a) The term "Secretary" or "Head of the Agency" (also called "Agency Head") means the Secretary or Under Secretary of the Department of Education; and the term "his/her duly authorized representative" means any person, persons, or board authorized to act for these officials.

(b) The term "contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(c) The term "Contracting Officer's Technical Representative" means the person representing the Government for the purpose of technical monitoring of contract performance. The Contracting Officer's Technical Representative (COTR) is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost or price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term "Department" or "ED" means the Department of Education.

(e) Except as otherwise provided in this contract, the term "subcontract" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

3452.208–70. Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

Printing (Aug 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches, and one side and color only.

(End of clause)

3452.209–70 Organizational Conflict of Interest.

As prescribed in 3409.570, insert the following provision in all certifications:

Organizational Conflict of Interest (Oct 1987)

The offeror certifies that it (__) is (__) is not aware of any potential organization conflict of interest that it may have under this procurement. If the offeror is aware of any potential conflict of interest, the offeror shall submit a disclosure statement fully describing the situation. An organizational conflict of interest is as defined and illustrated in FAR 9.5.

(End of provision)

3452.215–33 Order of Precedence.

As prescribed in 3415.406–3, insert the following clause in contracts:

Order of Precedence (Aug 1987)

Any inconsistency in this contract shall be resolved by giving precednece in the following order:

(a) The Schedule (exclusing the work statement or specification).

(b) The contract clauses (Section I).

(c) Any incorporated documents, exhibits, or attachment, excluding the work statement or specifications and the contractor's proposal, representations, and certifications,

(d) The work statement or specifications, and

(e) The contractor's proposal, as amended, including representations and certifications.

(End of clause)

3452.215–70 Release of Restricted Data.

As prescribed in 3415.407, insert the following provision in solicitations:

Release of Restricted Data (Aug 1987)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215–12, Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the

data under the Freedom of Information Act. the Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under the Freedom of Information Act. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to the Act and that the Government's FOI officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to the Act; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any propose, including the release of the information pursuant to requests under the Act.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with (1) a restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.515–12, *Restriction on Disclosure and Use of Data*, or (2) a statement taking exceptions to the terms of (a) or (b) of this provision.

(End of provision)

3452.216–70 Additional Cost Principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

Additional Cost Principles (Aug 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basic as the allocation of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

3452.216–71 Negotiated Overhead Rates—Fixed.

Insert the following clause in cost-reimbursement contracts as prescribed in 3416.701:

Negotiated Overhead Rates—Fixed (Aug 1987)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. If the applciation of the negotiated fixed rates(s) against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for that period, the greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the contracting officer or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carry-forward adjustments, if any, by the contractor and the contracting officer, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for the fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed rate or rates or to the amount of any carry-forward adjustment under this clause shall not be considered a dispute for decision by the contracting officer within the meaning of the Disputes clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates, in accordance with the terms of the Allowable Cost and Payment clause, in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the contracting officer or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the contractor and the contracting officer or the duly authorized representative, as evidenced by negotiated overhead rate agreements signed by both parties, shall satisfy the requirements of paragraphs (b), (c), (d), and (e) of this clause.

(End of clause)

3452.227–70 Publication and Publicity.

As prescribed in 3427.470, insert the following clause in all solicitations and contracts other than purchase orders:

Publication and Publicity (Aug 1987)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the Contracting Officer's Technical Representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgment shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number _____. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

(End of clause)

3452.227–71 Paperwork Reduction Act.

As prescribed in 3427.471, insert the following clause in all solicitations and contracts:

Paperwork Reduction Act (Aug 1987)

(a) The Paperwork Reduction Act of 1980 (Pub. L. 96–511) applies to contractors that collect information for use or disclosure by the Federal Government.

If the contractor will collect information requiring answers to identical questions from 10 or more people then no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Deputy Under Secretary for Management (DUSM) or his/her delegate within the Department of Education (ED) and the Office of Management and Budget (OMB).

Contractors and Contracting Officers' Technical Representatives shall be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring DUSM and OMB clearance.

(b) The contractor shall obtain the required DUSM and OMB clearance through the Contracting Officer's Technical Representative before expending any funds or making public contacts for the collection of information described in (a) above. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for DUSM and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

3452.227-72 Advertising of Awards.

As prescribed in 3427.472, insert the following clause in all solicitations and contracts other than purchase orders:

Advertising of Awards (Aug 1987)

The contractor agrees not to refer to awards issued by the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal Government or is necessarily considered by the Government to be superior to other products or services.

(End of clause)

3452.228-70 Required Insurance.

As prescribed in 3428.370, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Required Insurance (Aug 1987)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR Subpart 28.3 or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

3452.232-70 Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations.

The following clause is to be used in accordance with 3432.770:

Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations (Apr 1987)

No part of any funds under this contract shall be used to pay the salary and expenses of any contractor, or agency acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

(End of clause)

3452.232-71 Incremental Funding.

As prescribed in 3452.771, insert the following provision in solicitations:

Incremental Funding (Aug 1987)

(a) Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in FAR 52.232-22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for cost incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Cost clause in FAR 52.232-20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded.

(End of provision)

3452.232-72 Method of Payment.

As prescribed in 3432.170, insert the following clause in all solicitations and contracts:

Method of Payment (Aug 1987)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The contractor shall forward the following information in writing to (designated payment party) not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution:

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of that institution and its nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to (designated payment office) in writing at least 30 days before the effective date of the change. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the contractor's official authorized to provide it, as well as the contractor's name and contract number.

(End of clause)

3452.237-70 Identification of Reports Under Consulting Services Contracts.

As prescribed in 3437.270, insert the following clause in all solicitations and contracts for consulting services:

Identification of Reports Under Consulting Service Contracts (Aug 1987)

The contractor shall set forth on the cover of every report submitted pursuant to this contract the following information:

(a) Name and business address of the contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Contracting Officer's Technical Representative and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

3452.237-71 Services of Consultants.

As prescribed in 3437.271, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Services of Consultants (Aug 1987)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts," the prior written approval of the contracting officer shall be required:

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the

daily rate set forth elsewhere in this contract or, if no amount is set forth, $150, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by consultant to others for performing consultant services of a similar nature.

(End of clause)

3452.242-70 Litigation and Claims.

As prescribed in 3442.7002, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Litigation and Claims (Aug 1987)

(a) The contractor shall give the contracting officer immediate notice in writing of:

(1) Any action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for a cost which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall:

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claim (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but which the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

3452.242-71 Notice of the Government of Delays.

As prescribed in 3442.7003, insert the following clause in all solicitations and contracts other than purchase orders:

Notice to the Government of Delays (Aug 1987)

Whenever the contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the contracting officer.

(End of clause)

§ 3452.242-72 Withholding of Contract Payments.

As prescribed in 3442.7001, insert the following clause in all solicitations and contacts other than purchase orders:

Withholding of Contract Payments (Aug 1987)

Notwithstanding any other payment provisions of this contract, failure of the contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, or failure to meet any of the requirements of the contract, will result in the withholding of payments under this contract in such amounts as the contracting officer deems appropriate, unless the failure arises out of causes beyond the control, and without the fault of negligence, of the contractor, as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted. Payment will be withheld until the failure is cured, a new delivery schedule is agreed upon, or payment is made as part of a termination settlement.

(End of clause)

3452.242-73 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (Aug 1987)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

3452.243-70 Key Personnel.

As prescribed in 3443.106(b), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Key Personnel (Aug 1987)

The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without the written consent of the contracting officer; *provided*, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect that addition or deletion personnel.

(End of clause)

§ 3452.247-70 Foreign Travel.

As prescribed in 3447.7000, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Foreign Travel (Aug 1987)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, "foreign travel" means travel outside the fifty States comprising the United States, the District of Columbia, and Canada.

(End of clause)

[FR Doc. 88-11719 Filed 5-25-88; 8:45 am]

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federal register

Thursday
May 26, 1988

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3372-9]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final Rule

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule revising the regulation codified in Subpart L of 40 CFR Part 86, that makes nonconformance penalties (NCPs) available for specific Federal emission standards, to include a provision which will waive payment of penalties to EPA for those heavy-duty vehicles and engines (collectively referred to as HDVs) which are certified under the Federal NCP process and are titled, registered or principally used in the State of California under a California NCP program. EPA will waive collection of the amount due under 40 CFR section 86.1113(g) provided the identical nonconformance penalty is paid to the State of California. However, EPA reserves the right to collect any penalties which have been waived if a manufacturer fails to pay the quarterly penalty to the State of California when due, or if the amount of the penalty paid to the State of California is less than that which would have been due to EPA under the regulations.

EFFECTIVE DATE: June 27, 1988.

ADDRESSES: Public Docket: Copies of material relevant to this rulemaking are contained in Public Docket Number A-87-14, Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-132), Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 am and 3:00 pm on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Tesoriero or Mr. Anthony Erb, Manufacturers Operations Division (EN-340F), Office of Mobile Sources, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-2487 or (202) 382-2536, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Section 206(g) of the Clean Air Act (Act) requires EPA to issue a certificate of conformity for HDVs which exceed a section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by EPA by regulation. Congress intended NCPs as temporary relief for manufacturers which have difficulty complying with technology—forcing heavy-duty emission standards which otherwise might force some manufacturers out of the market place.

On August 30, 1985 (50 FR 35374) EPA published a final rule promulgating the administrative aspects of the NCP program. On December 31, 1985 (50 FR 53454), EPA promulgated a final rule making NCPs available for specific emission standards taking effect in model years 1987 and 1988. The regulations are codified in Subpart L of 40 CFR Part 86. These regulations did not specifically prohibit or allow NCPs for HDVs destined for the California market. However, California regulations, at that time, did not allow for NCPs and, thus, did not allow a manufacturer to obtain a California certificate of conformity for a nonconforming vehicle or engine based on payment of an NCP to EPA.

On December 8, 1986, the Executive Director of the State of California Air Resources Board (CARB) sent to EPA a letter describing a proposed California NCP program. A copy of this letter is available in the Public Docket Number A-87-14. It pointed out that the availability of NCPs for Federal HDVs had created a disparity between California and Federal HDV requirements. Thus, unless a California NCP program were implemented, beginning with the 1988 model year,[1] fewer HDV models would be available for sale in California than in neighboring states and California consumers might be encouraged to purchase and register higher emitting HDVs in other states. Assuming this occurred, these HDVs, along with other Federally certified vehicles engaging in interstate commerce, would travel a substantial number of miles on California highways each year and contribute to emissions within the State.

The December 8, 1986 letter also stated that to address this situation, the California Legislature had enacted Assembly Bill 3683 (AB 3683). This new law authorized CARB to implement an NCP program applicable to sales of HDVs in California which do not meet CARB emission standards, but which have already been certified under the Federal NCP program, contingent upon the following factors:

(1) That Federal emission standards and test procedures applicable to the specified HDVs are identical to the emission standards and test procedures adopted by the CARB; and

(2) That it is established that payment of nonconformance penalties to the State of California may substitute for payment of nonconformance penalties to the Federal Government.

The law (AB 3683) specified that the NCPs to be established are to be identical to those established by EPA for the same HDVs. All fees collected pursuant to AB 3683 are to be deposited in the State of California Air Pollution Control Fund and will provide a mechanism for funding measures to mitigate emission increases within the State from HDVs certified under the NCP process, thereby ensuring protection of California's ambient air quality.

In the December 8, 1986 letter, the CARB requested that EPA provide assistance in establishing a California NCP program. The CARB NCP program is very similar to the Federal NCP program. For pollutants where CARB and EPA have the same standards and procedures, noncomplying HDVs could be sold for titling, registration or principal use in the State of California if the manufacturer agrees to pay an NCP and the HDV emissions do not exceed an upper limit. The penalty rates and upper limit used for the California NCP program in such cases are identical to the Federal penalty rates and upper limits. However, California will not offer NCPs for pollutants which have standards or procedures that are not identical to Federal standards and procedures.[2] Moreover, under the CARB program, NCP payment to the State of California will substitute for payment to the Federal Government for HDVs sold for titling, registration or principal use in the State of California. The NCP payments made to the State of California would be used to mitigate any

[1] There was no need for a California NCP program for the 1987 model year since Title 13 of the California Administrative Code, Section 1956.7 allowed manufacturers that had certified for California in 1986, to carry forward that certification to the 1987 model year.

[2] For the 1988 and 1989 model years, the only difference between the Federal and California standards for Heavy-Duty Engines is for oxides of nitrogen (NOx). The Federal NOx standard is 10.7 grams per brake horsepower hour (g/BHP-hr) and the California NOx standard is 6.0 g/BHP-hr for these years. Beginning in 1990 and for later model years, the Federal and California NOx standard will be the same.

resultant emission increases that would occur within California.

On January 21, 1988, EPA proposed that the regulation governing payment of Federal NCPs be amended to include a provision which would waive payment of penalties to EPA for those HDVs which are certified under the Federal NCP process and registered, titled or principally used in the State of California under a California NCP program (53 FR 1716). EPA offered to hold a public hearing on the proposal but none was requested.

II. Statutory Authority

Section 206(g) of the Act, 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays a nonconformance penalty (NCP), that would escalate with time, established by rulemaking.[3] The purposes of section 206(g), in general, are to encourage EPA to promulgate stringent HDV standards by giving those manufacturers unable to meet certain standards a temporary means of continuing to market nonconforming HDVs, while creating incentives for such manufacturers eventually to bring the HDVs into conformance or, ultimately, to discontinue their manufacture. Since under California's program the California NCPs and HDV standards would have to be identical to the Federal NCPs and standards for the pollutants for which NCPs are currently available, waiving payment of NCPs to EPA based on payment of identical NCPs to California would continue to carry out the purposes and intent of section 206(g). Moreover, EPA would retain authority to collect NCPs in any case in which the California NCP program did not result in the manufacturer actually paying adequate penalties to California. Thus, the amendment is within the scope of the authority granted by section 206(g).

In its comments on the proposed rule Cummins Engine Company (Cummins) expressed some concern that allowing the waiver of the Federal NCP payment when all California HDV emission standards and procedures are not yet identical to Federal emission standards and procedures would not serve the purposes of section 206(g). EPA does not agree with Cummins' comment and has addressed Cummins' concerns in the "Discussion of Final Rule and Comments" section of this regulation.

[3] Section 206(g) of the Act does not expressly require that NCPs be paid to EPA.

III. Discussion of Final Rule and Comments

This final rule adopts most of the provisions proposed in the NPRM for the reasons stated in that NPRM. Thus, EPA will not discuss all of the provisions of the final rule in this notice. Instead, EPA will discuss only the most significant provisions, or those that have been revised or that were addressed in the comments.

EPA is revising 40 CFR Part 86, Subpart L to waive payment of NCPs to EPA, under certain conditions, for those nonconforming HDVs which are certified under the Federal NCP process and which are titled, registered or principally used in California, and for which the manufacturers have paid NCPs to California in the same amount that EPA would have been paid. EPA reserves the right to collect a waived amount (in full or in part, as appropriate) if the manufacturer has not demonstrated either that it has paid California an amount equal to the penalty which has been assessed under the Federal NCP rule, or that the HDVs claimed to have been titled, registered or principally used in California were, in fact, titled, registered or principally used in California. Moreover, if in a later model year a manufacturer brings a previously nonconforming HDV configuration into compliance with the standards and certifies that HDV configuration, EPA will be responsible only for a portion of the refund (if any) to the manufacturer of the engineering and development component of the penalty. EPA's portion of the refund will be proportional to the amount of the NCP payment for HDVs of that configuration paid to EPA.

During the time that was available for public comment on the NPRM, only three organizations provided written comments. All three are vehicle or engine manufacturers.

The Chrysler Corporation supported the revisions as proposed and recommended a speedy publication of the final rule so that the California NCP program could be implemented without delay.

General Motors Corporation (GM) supported the revision and stated it is extremely interested in the implementation of the California NCP program as quickly as possible so that existing market demand can be satisfied. However, GM also stated its concern that proposed language requirements for a specific emissions label statement on California nonconformance engines and vehicles would be unnecessarily restrictive. GM believes that its current product ordering and production system efficiently differentiates between any engines or vehicles that are built to be introduced in commerce in California and those built to be introduced only in the other 49 states. GM requested that the proposed labeling requirement be modified to allow approval of alternative processes to demonstrate separation of California and 49-state NCP engines and vehicles. In the Proposed Action section of the NPRM, EPA stated that other forms of demonstration of the HDV destination could be acceptable. However, in the proposed regulatory language EPA failed to include a provision permitting alternative demonstrations. Thus, in response to GM's comment a provision has been made in the final rule to allow for manufacturers to make such a demonstration in lieu of using the suggested label language.

An example for an alternative system that could be approved would be one in which the manufacturer clearly informs its distributors and dealers in writing of the guidelines used to determine whether it is appropriate to sell a HDV to a customer for titling, registration or principal use in California or in the other 49-states and the manufacturer has an established communication link with the distributor or dealers through which it can receive feedback to determine that appropriate decisions are being made as to the sale of California or 49-state HDVs.

Moreover, upon consideration of GM's comments, EPA also has determined that the proposed labeling requirement could have unnecessarily restricted the waiver of NCP payment to only those HDVs delivered to dealers in California. In the NPRM, EPA proposed that it would waive payment of NCPs to EPA for those HDVs which were certified under the Federal NCP process and which "entered into commerce in the State of California" under a California NCP program. After further review, EPA has determined that the phrase, "entered into commerce in the State of California" could have been construed in an overly restrictive way to preclude waivers of NCP payments where prospective purchasers have a legitimate need to take delivery of a California HDV outside of California. Such a case could exist where a business established in a state other than California desires to purchase an HDV which will be titled, registered or principally used in California. Under such circumstances, it may be appropriate to deliver a California-designated HDV outside of California. Thus, to avoid any potential confusion,

the phrase, "* * * entered into commerce in the State of California * * *" in the NPRM has been revised and clarified in the appropriate sections of the Final Rule to read, "* * * which are titled, registered or principally used in the State of California."

The Cummins Engine Company (Cummins) made several comments concerning this rulemaking. Cummins questions the authority of the CARB to adopt an NCP program unless CARB, "has adopted emission standards and test procedures which are identical to the corresponding Federal emission standards and test procedures." Cummins also stated its belief that the granting of a waiver of Federal preemption by EPA to CARB for collection of NCPs would be inappropriate unless CARB agrees to adopt a program which is totally consistent with EPA's. Further, Cummins stated that the changes proposed in section 86.1113–87(h)(iii) would require that EPA make an independent decision as to whether CARB has the statutory authority to adopt NCPs as proposed. The specific language in the NPRM stated, "Such a waiver of preemption would be applicable only if the Administrator finds that: (A) California has adopted emission standards and test procedures for heavy-duty vehicles or engines which are identical to the corresponding Federal emission standards and test procedures for which NCPs are available, (B) California has adopted nonconformance penalty fees, requirements and other procedures identical to corresponding Federal nonconformance penalty fees, requirements and other procedures, and (C) all criteria for a waiver under section 209(b) have been met."

Cummins also expressed concern regarding whether the proposed rule was consistent with the intent of section 206(g).

As explained below, Cummins' concerns regarding the authority of CARB to adopt an NCP program are beyond the scope of this rulemaking. Cummins' claim that EPA should not grant a waiver of Federal preemption under section 209(b) of the Clean Air Act for CARB's NCP program, unless EPA independently determines that California's HDV emission standards and NCP program are identical in every respect to the Federal HDV emission standards and NCP program, is not appropriate in the context of this section 206(g) rulemaking. However, Cummins' argument would be appropriate, and will be considered, in the context of EPA's separate proceeding under section 209(b) to determine whether CARB's NCP program is entitled to a waiver of preemption or is within the scope of a previous preemption waiver.[4]

Upon review of Cummins' comment and the proposed revisions to section 86.1113–87(g)(1)(iii), EPA believes that the proposal itself may have caused some confusion by suggesting that EPA would determine whether CARB's NCP program is subject to a waiver from preemption based, in part, on whether California's standards and NCP procedures are identical to Federal standards and NCP procedures. Such a consideration would be appropriate, if at all, in the context of a separate section 209(b) proceeding. This rulemaking, by contrast, should be and is limited to establishing whether and how to waive payment of NCPs under section 206(g). Thus, this final rule clarifies the scope and purpose of this rulemaking by deleting any reference to the criteria for granting a preemption waiver from revised section 86.1113–87(g)(1)(iii). Of course, the existence of an applicable 209(b) preemption waiver (if not the grounds for granting one) is a legitimate criterion for determining whether to waive NCP payments, as stated in the NPRM and adopted in this Final Rule.

Regarding Cummins' concerns about whether this rule is consistent with the intent of section 206(g), the proposed rule stated "waiving payment of NCPs to EPA based on payment of identical NCPs to California will continue to carry out the purpose and intent of section 206(g)." Cummins commented that it believes, "California use of Federal NCPs without [complete] alignment between California and Federal standards and on a pollutant-by-pollutant basis would be inconsistent with the intent of the NCP program." Cummins bases this comment on its belief that "the Federal NCP program and schedule reflects . . . a balancing of costs and technology trade-offs designed to encourage conformance with all standards while not creating competitive disadvantages for those manufacturers that conform to all of the standards."

EPA disagrees with Cummins' conclusions. Under the present circumstances, for the 1988 and 1989 model years, EPA does not believe that manufacturers of complying vehicles will be at a competitive disadvantage or that there will be a disincentive to conformance with emission standards if California does not align all of its HDV standards with Federal standards and limits its NCP program to only those pollutants for which California and Federal standards are identical.

NCPs were developed to cope with the situation where manufacturers faced different costs to comply with technology-forcing standards. Section 206(g) contemplated that it would be initially less costly for some technological laggard manufacturers to pay NCPs than to comply with standards. Thus, the NCP penalty rates are devised so that it could be cost effective, on a temporary basis, for a technological laggard to pay an NCP, whereas it would not be cost effective for such a manufacturer to build a complying engine. Other manufacturers who are capable of developing technology, however, may find it more cost effective to build complying engines.

In its comments Cummins seems to assume that for all manufacturers it would be less expensive to pay an NCP rather than develop the technology to comply with emission standards. For the reasons stated above, EPA does not believe this is a valid assumption.

Even if EPA accepted Cummins' argument, currently all CARB and Federal heavy-duty engine emission standards, except for 1988–1989 model year oxides of nitrogen (NO_x) standards, are identical. Therefore, the only pollutants which could cause Cummins concern are NO_x and particulates (in that there is a possibility of trading off particulate emissions to achieve additional NO_x control.)

The Federal and California NCP programs will not permit NCPs for NO_x in the 1988 and 1989 model years. Thus, the NO_x NCP penalty rate is not an issue in the decision of whether or not to waive Federal collection of the NCP payment if an NCP payment has been made to California because manufacturers will not have the option of paying an NCP for HDVs which exceed the NO_x standard.

The Federal program will permit payment of an NCP for HDVs that exceed the particulate standard. However, California has decided not to permit payment of an NCP for HDVs that exceed the particulate standard. Even if California did permit the payment of NCPs for HDVs that exceeded the particulate standard, the Federal NCP penalty rate for particulates was developed assuming a 0.6 gram per brake horsepower hour (g/BHP-hr) particulate standard (the current Federal and California

[4] This is not to say that EPA agrees with Cummins' comment that CARB's proposed NCP program would exceed CARB's statutory authority or that EPA should not defer to CARB's assessment of its own authority.

particulate standard) and a 6.0 g/BHP-hr NO_x standard (the applicable Federal NO_x standard at the time the particulate penalty rate was developed [5] and the current California NO_x standard). Thus, Cummins' suggestion that the temporary discrepancy between the California and Federal NO_x standards somehow changes the technological and economic factors underlying the Federal NCP rate for particulates is factually incorrect. Therefore, it would not be inappropriate to apply the Federal particulate NCP penalty rate to California vehicles which exceed the particulate standard. However, at this time, this is essentially an academic issue since California does not now intend to allow NCPs for, and thus they will not certify for sale in California, any HDVs that exceed the particulate standard.

Based on the reasoning described above, EPA believes that waiving payment of pollutant-specific NCPs to EPA based on payment of identical NCPs to California carries out the purpose and intent of section 206(g).

IV. Impacts of the Final Rule

A. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility to choose whether or not to use NCPs for California HDVs based on their ability to comply with emission standards. If manufacturers elected not to use NCPs to introduce HDVs into California, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The use of NCPs may provide some direct cost savings to HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer that desires to market in California and has difficulty certifying HDVs in conformance with emission standards, or fails an emissions audit, has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost; or refrain from selling such engines or vehicles for titling, registration or principal use in the State of California. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and market HDVs in California upon payment of a penalty for each HDV that exceeds the standard until emissions conformance is achieved.

[5] When the Federal NCP rules were finalized, EPA had promulgated a 6.0 g/BHP-hr NO_x standard to take effect in May 1988. Subsequently, pursuant to a court order the 6.0 NO_x standard was deferred until May 1990.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to sell HDVs for titling, registration or principal use in California. Hence, this rule may be considered to have a favorable economic impact on some manufacturers.

The CARB has pointed out that many of the HDVs marketed in California are incomplete vehicles and are completed by secondary manufacturers based on specific customer needs. Without California NCPs, these secondary manufacturers and their customers within the State of California will likely suffer adverse economic impacts due to the inability of the primary manufacturer to deliver the required HDVs and the resulting inability of the secondary manufacturers within the State of California to produce the product the consumers require.

B. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used for HDVs marketed in California.

If manufacturers are able to market all their engines in California without using NCPs, all HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the Federal rulemakings that established the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDVs will be marketed in California that will be emitting pollutants above applicable standards. However, Congress contemplated such a possibility when it mandated that EPA provide Federal NCPs. The magnitude of this reduced environmental benefit is proportional to the number of HDVs subject to NCPs and their degree of nonconformance; the upper limits on the availability of NCPs exclude gross emitters from being introduced into commerce. In previous rulemakings concerning NCPs, EPA estimated that an NCP would not be used for more than 10 percent of the HDVs for which NCPs are available in the first year that they were available and that they would be used for less than one percent in the third year. These percentages are not expected to be different for the State of California. The long-term environmental impact from NCP usage is expected to be very small, if any, due to the high penalty rates and the annual adjustment factor that rapidly increases penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit generally refers not to an increase in emissions from previous levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Further, the NCP payment to the State of California will be used to mitigate any emission increases that occur as a result of NCPs. This may lead to some improvement over the potential situation wherein consumers, in order to meet their specific vehicle needs, may purchase nonconforming vehicles certified under the existing Federal NCP process in bordering states for primary use on California roadways.

Because the emission impacts of the NCPs in the State of California are anticipated to be very small, compared to the total emissions of California HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis has been made regarding this rule.

V. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Administrator is required to prepare a regulatory flexibility analysis or to certify that this regulation would not have a significant economic impact on a substantial number of small business entities. None of the affected HDV primary manufacturing entities meet the requirements for classification as a small business. Moreover, as already discussed, the NCP waiver program can be expected to have salutary effects on manufacturers, both primary and secondary. Thus, I certify that this rule would not have a significant adverse impact on a substantial number of small entities.

VI. Administrative Designation

Under Executive Order 12291, the Administrator has determined that this regulation is not "major" and therefore not subject to the requirement of a draft Regulatory Impact Analysis.

(A) The NCP waiver program for the California HDVs would not result in an annual adverse effect on the economy of $100 million or more. NCPs, in general, merely provide a temporary, economically viable, alternative to other possible actions at least as costly as NCPs that may be utilized when a manufacturer is unable to comply with a

standard. This concept was discussed in the Economic Impact section.

(B) This waiver program will not result in adverse cost or price impacts above those that would otherwise occur from compliance with the emission standards themselves.

(C) This waiver program will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Final Rulemaking has been submitted to the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and any EPA written response to those comments are available for inspection in the public docket for this rulemaking.

VII. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2060–0132.

VIII. Judicial Review

This rulemaking is a final Agency action within the meaning of section 307(b) of the Clean Air Act. Under section 307(b), judicial review of this action is available only in the appropriate federal court of appeals upon filing of a petition for review within 60 days of the date of publication of this Federal Register notice. Review may not be obtained in any subsequent proceeding to enforce these regulations.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Section 202, 203, 206, 207, 208, 215 and 301(a) of Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

Dated: May 20, 1988.

Lee M. Thomas,

Administrator.

TABLE OF CHANGES

Section	Change	Reason
1. Part 86, Authority	Add cities	Clarification.
2. Section 86.1113–87:		
(a)(4)	Amend paragraph to redefine terms to include California-designated engines and vehicles	Do.
(g)(1)	Amend paragraph to provide for the waiver of a portion of the NCP payment due to EPA each quarter equal to the amount a manufacturer pays to California. Formula to calculate waived amount is presented. Addition of requirement that "California only" designation be added to emission label or that manufacturers develop an alternative method which will be approved by EPA demonstrating that engines or vehicles will be registered, titled or principally used in California.	Do.
(g)(3)(i)	Amend paragraph to provide for manufacturer's submittal of information documenting introduction into commerce for the State of California and payment of NCPs to California.	Do.
(h)	Amend paragraph to provide for refund of a portion of the engineering and development component of the penalty when such is applicable to reflect that EPA responsibility will be limited only to that portion of vehicles or engines for which NCPs were paid to EPA.	Do.

PART 86—[AMENDED]

For the reasons set forth in the preamble, Part 86, Subpart L, Chapter 1 of the Title 40, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 86 is revised to read as follows:

Authority: Sections 202, 203, 206, 207, 208, 215, 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

2. In § 86.1113–87 of Subpart L, paragraphs (a)(4), (g)(1), (g)(3) (i), and (h) are revised to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

(a) * * *

(4) The terms in the above formulas have the following meanings and values, which may be determined separately for each subclass and pollutant for which an NCP is offered. The production of Federal and California designated engines or vehicles shall be combined for the purpose of this section in calculating the NCP for each engine or vehicle.

NCP_n = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by section 86.1104–87, except that, if the upper limit is determined by section 86.1104–87(c), the value of UL in paragraph (a)(2) of this section shall be the prior emission standard for that pollutant.

UL' = Upper limit as determined by section 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which NCP_i equals COC_{50}

$$X = \frac{COC_{50}}{(F)(MC_{50})} + S$$

PR_1 = Penalty rate when CL<X

PR_2 = Penalty rate when X<CL<applicable upper limit

$\prod_{i=1}^{n} AAF_i$ = Running product, i.e., $(AAF_1)X(AAF_2)X \ldots X (AAF_n)$

i = An index representing a year. It represents the same year for both Federal and California designated engines or vehicles of the same production model year.

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n=1 for the first year that the NCP is available, and so on until n=n for the nth year that the NCP is available). The factor "n" is based on the model year the NCP is first available, as specified in section 86.1105–87 for the engine or vehicle subclass and pollutant for both Federal and California designated engines and vehicles.

COC_{50} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit.

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit.

MC_{50} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard.

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3).

AAF_i=Annual adjustment factor for year i, $frac_{i-1}$=Fraction of engines or vehicles of a subclass using NCPs in previous year (year i-1).

A_i=Usage adjustment factor in year i: A_i=0.10 for i=2; A_i=0.08 for i>2.

I_i=Percentage increase in overall consumer price index in year i.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid as follows:

(i) By the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter.

(ii) The penalty shall be payable to U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251, except as provided in paragraph (iii).

(iii) Payment of a portion of the amount due each quarter under this section for any vehicle(s) or engine(s) is waived equal to the amount which the manufacturer has paid the State of California as a nonconformance penalty for nonconforming vehicle(s) or engine(s) titled, registered or principally used in the State of California, provided a waiver of Federal preemption under section 209(b) of the Clean Air Act permitting the State of California to collect NCPs for those vehicle(s) or engine(s) is approved by the Administrator. The nonconformance penalty for which payment is waived by EPA and due to the State of California shall be payable in accordance with California regulations and is calculated for each engine or vehicle subclass as follows:

$W_{q,n}=(Cal_{q,n})(NCP_n)$

where:

n=Index representing the number of model years for which the NCP has been available (same as "n" in paragraph (a)(4).

q=calendar quarter for which an NCP payment is due.

$W_{q,n}$=waivered portion of the NCP payment for calender quarter q of year n.

$Cal_{q,n}$=number of engines or vehicles of the subclass titled, registered or principally used in the State of California during calendar quarter q of year n.

NCP_n=the NCP for year n for the subclass (same as "NCP_n" in paragraph (a) (4)).

(iv) EPA reserves the right to collect any nonconformance penalties previously waived under paragraph (g)(1)(iii) if:

(A) The manufacturer has not adequately demonstrated that it has paid the amount due to California for any quarter; or

(B) The payment by the manufacturer to California is less than that which would be due to EPA for the number of HDVs titled, registered or principally used in California in that quarter; or

(C) The manufacturer has not adequately demonstrated that all vehicles claimed to have been titled, registered or principally used in the State of California were in fact titled, registered or principally used in the State of California.

(v)(A) In the situation described in paragraph (g)(1)(iv)(A), EPA reserves the right to collect the entire NCP amount assessed under this Subpart.

(B) In the situations described in paragraphs (g)(1)(iv)(B) and (C), EPA reserves the right to collect the difference between the amount that is due to EPA for the vehicles in question and the lesser amount (if any) paid to the State of California.

(C) A statement on the emissions label required under Subpart A of 40 CFR Part 86 that the engine or vehicle is designated for title, registration or principal use only for the State of California will constitute adequate demonstration that the engine or vehicle was titled, registered or principally used in the State of California, for the purpose of this section. Other forms of demonstration that a vehicle was titled, registered or principally used in the State of California would be acceptable if the manufacturer submits a request for approval of an alternative demonstration plan to the Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN-340F, Washington, DC 20460, and if that request is approved prior to the production of such vehicles.

* * * * *

(g)(3)(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, identification and quantity and proof of title, registration or principal use in the State of California for any engines or vehicles subject to California NCPs and documentation of the NCP paid to the State of California under paragraph (g)(1)(iii) of this section, certificate identification (number and date), and NCP payment calculations, if applicable.

* * * * *

(h) A manufacturer that certifies as a replacement for the nonconforming configuration, a configuration that is in conformance with applicable standards, and that performs a production compliance audit (PCA) in accordance with § 86.1112-87(a) that results in a compliance level below the applicable standard, will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development component will be determined by multiplying the base penalty amount by the engineering and development factor for the appropriate subclass and pollutant in § 86.1105-87. The amount refunded will depend on the model year in which the certification and PCA take place. In cases where payment of penalties have been waived by EPA in accordance with paragraph (g)(1)(iii) of this section, EPA will refund a portion of the engineering and development component. The proportionate refund to be paid by EPA will be based on the proportion of vehicles or engines of the nonconforming configuration for which NCPs were paid to EPA. The refund is calculated as follows:

$R_{tot}=D_n\times F_{E\&D}\times NCP_1\times Prod_{tot}$

$R_{Cal}=(Prod_{Cal}/Prod_{tot})\times(R_{tot})$

$R_{EPA}=R_{tot}-R_{Cal}$

Where:

n=index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n=1 for the first year that NCPs are available, . . . , n=n for the n^{th} year the NCPs are available; same as "n" in paragraph (a)(4)).

D_n=discount factor depending on the number of model years (n) for which NCPs were available at the time of certification and PCA of the replacement configuration, and its value is as follows:

D_1=0.90
D_2=0.79
D_3=0.67
D_4=0.54
D_5=0.39
D_6=0.23
D_7=0.05
D_n=0.00 for n = 8 or larger

$F_{E\&D}$=the engineering and development factor specified in section 86.1105-87 for the appropriate subclass and pollutant

NCP_i = the penalty for each engine or vehicle during the first (base) year the NCP is available as calculated in paragraph (a)

$Prod_{tot}$ = total number of engines or vehicles produced in the subclass for which NCPs were paid to EPA or to the State of California

$Prod_{Cal}$ = number of engines or vehicles in the subclass demonstrated to have been titled, registered or principally used in the State of California and for which NCPs were paid to the State of California under paragraph (g)(1)

R_{tot} = Total refund due to the manufacturer for the engineering and development component of the NCP

R_{Cal} = Refund due to the manufacturer from the State of California for the engineering and development component of the NCP

R_{EPA} = Refund due to the manufacturer from EPA for the engineering and development component of the NCP.

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federal register

Thursday
May 26, 1988

Part V

Department of Education

34 CFR Part 776

Library Career Training Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary is issuing final regulations for the Library Career Training Program. These final regulations will give the Secretary the flexibility to select priorities for the program from among those cited in the regulations. This flexibility will allow the program to be more responsive to the changing needs for library training. Additionally, the amount of allowable costs for the participants in training projects is increased, and the existing regulations are revised to conform with the Department's current requirements regarding the style and format of regulatory documents.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of the regulations, write or call the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Educational Research and Improvement, Library Programs, 555 New Jersey Avenue NW., Washington, DC 20208–1430. Telephone: (202) 357–6315.

SUPPLEMENTARY INFORMATION: Under the Library Career Training Program funds are awarded to institutions of higher education and to library organizations or agencies for the purpose of training persons in librarianship. The training is carried out through full-time, year-long fellowships at institutions of higher education or through short or long-term institutes or traineeships conducted by institutions of higher education or other library organizations or agencies. A fellowship is awarded to a person who is or will be enrolled in a graduate or undergraduate program in librarianship. An institute provides persons with skills needed to enter the library and information science field or provides library and information science personnel with an opportunity to strengthen their competencies. A traineeship provides individualized instruction designed to meet the particular needs of mid-level professionals, usually through an internship. In all cases, the award is made to the institution, organization, or agency; it, in turn, selects the individual participants.

On December 14, 1987, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (52 FR 47538). The regulation changes were designed to allow the Secretary to establish priorities for the program that would accurately reflect the training needs of the library community and prepare librarians for service where qualified professional shortages are critical. In addition to this change, the Secretary has increased the amount of allowable costs for participants and added a definition of "disadvantaged" as it applies to this program. Finally, the regulations are revised to conform with the Department's current requirements regarding the style and format of regulatory documents.

Analysis of Comments and Changes

In responses to the Secretary's invitation in the NPRM, 23 parties submitted comments on the proposed regulations. An analysis of the comments on the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

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 on the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 776

Fellowships, scholarships, traineeships, Higher Education Act–library training, Library training, Libraries, Library and information science education, Library training, fellowships, Library training, scholarships, Reporting and recordkeeping requirements.

Dated: May 10, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.036, Library Career Training)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Responses

The following is an analysis of comments concerning the NPRM. Substantive issues are discussed under the section headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

Priorities the Secretary May Establish

Comment: The Secretary received 22 comments on the proposed deletion of the language that cited the training and professional advancement of traditionally underrepresented groups as an objective of the program. The commenters opposed the change and suggested that the language be reinstated. Two commenters indicated concern about the decline in the number of minorities graduating from American Library Association (ALA) accredited library education programs, which they believe would be aggravated by the proposed deletion. Two others cited reduced funding for training for minorities from other sources as a reason that continued support from Title II–B is needed. Five commenters stated that the recruitment of minority students for master's degrees in Library Science is essential in order to provide leadership throughout the library profession and suitable outreach services to the varied local communities.

One commenter wholeheartedly supported the establishment of the priorities in order to allow the Secretary and the program to be more responsive to increasing and ever-changing areas of need.

Two commenters, one of them speaking for the membership of the American Library Association, noted

that there is nothing in the statute, either previously or in the Higher Education Amendments of 1986, which allows for the establishment of priorities by the Secretary as proposed in § 776.5(a). They suggested that the introductory clause in § 776.5(a) be restated to encourage applicants to "design projects that will address one or more of the following priorities" and to include the training of underrepresented groups as one of these priorities.

Discussion: The enabling legislation provides sufficient flexibility to permit the Secretary to establish a list of activities and annual priorities. Establishing program priorities is consistent with the Education Department General Administrative Regulations (EDGAR), which became effective on January 14, 1981. Section 75.105 of Part 74, Code of Federal Regulations, EDGAR, authorizes the Secretary to establish priorities for any discretionary program. For this program, the Secretary has defined six broad categories as priorities. These priorities will provide a strong base for the continued development of library science training and better preparation of participants for professional careers as leaders in their particular areas of study.

With respect to the expressed concern about the decline in the number of minorities graduating from ALA-accredited library schools, the Secretary will endeavor to select for funding those applications whose proposed projects are most responsive to the critical training needs of the library community. The Secretary believes that an award under this program provides an incentive to the grantee to recruit the best possible participants. The Secretary presumes that the recommended slate will include a number of ALA-accredited schools and that the participants selected will include minority persons.

Change: None.

Comment: The commenters favored the attention to areas of specialization and target groups in § 776.5(a)(1) and (a)(6). They agreed that reduced funds mandate the concentration of attention on the areas of critical need. One commenter however, suggested that a clarification of "disadvantaged" in § 776.5(a)(6) is needed, as this term does not adequately cover the needs of ethnic and racial minority populations which are newer to the United States and are increasing in size.

Discussion: The Secretary concurs with the commenters and, for this program, is attempting to provide maximum flexibility in meeting critical library and information needs. The areas which have been identified by the Secretary are lacking in the numbers of the qualified personnel needed to meet the information service requirements of the varied society in which we live.

For purposes of this program and to maintain consistency with other library programs, the term "disadvantaged" refers to persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefitting from library services to the same extent as the general community benefits from these services. The Secretary feels this adequately covers the varied minority and other special groups for which library service has become critical.

Change: The term "disadvantaged" and its definition have been added to § 776.7.

Allowable Costs for Participants

Comments: All of the commenters had positive responses to the increase in the amounts of stipends noted in § 776.30 which they felt would make their fellowship programs more attractive to talented applicants. However, several commenters suggested that part-time students be included in this program, with appropriate stipends. This would allow greater opportunity and flexibility for promising students whose circumstances would not allow full-time study, even with fellowship assistance.

Discussion: The Secretary makes no special provision for part-time students in the program. The Department's policy is to adhere to the accepted common practice of the applicant institutions that requires a fellowship recipient to complete a course of study in one academic year plus one summer.

Change: None.

Restrictions on stipend levels

Comment: A commenter, speaking on behalf of the American Library Association, sought clarification of the wording in § 776.32 which states that Pell Grant funds will be deducted from a Library Career Training award and questioned whether the Pell Grant amount is to be subtracted in all cases or only if the student actually receives the Pell Grant.

Discussion: Pell Grants are awards to undergraduates to assist in paying for their postsecondary education. The Pell Grant deduction, therefore, would only apply to the fellowship recipient in the undergraduate category, and only if the student actually receives a Pell Grant. There was no intention to imply that a standard amount would be deducted from every II–B recipient.

Change: None.

Funds available

Comment: Several comments were made concerning the lack of sufficient funds for the program overall. The commenters felt that an appropriation of less than one million dollars is severely inadequate to cover the increasing demand for fellowships, traineeships and institutes.

Discussion: The Title II–B program is designed to assist in providing fellowship and training funds for talented students who require financial aid. The dollar amount of the appropriation is outside the scope of these regulations.

Change: None.

The Secretary revises Part 776 of Title 34 of the Code of Federal Regulations to read as follows:

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Sec.

776.1 What is the Library Career Training Program?
776.2 Who is eligible for an award?
776.3 Who is eligible to participate in a project?
776.4 What activities may the Secretary fund?
776.5 What priorities may the Secretary establish?
776.6 What regulations apply?
776.7 What definitions apply?
776.8 What is the duration of a project?

Subpart B—How Does One Apply for an Award?

776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

Subpart C—How Does the Secretary Make an Award?

776.20 How does the Secretary evaluate an application?
776.21 What selection criteria does the Secretary use to evaluate an application for a fellowship?
776.22 What selection criteria does the Secretary use to evaluate an application for an institute?
776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship?

Subpart D—What Conditions Must Be Met After an Award?

776.30 What are the allowable costs for participants?
776.31 What are the restrictions on costs for participants?
776.32 What are the allowances for assistance under other Federal programs?
776.33 What requirements govern the removal, withdrawal, and substitution of participants?
776.34 What agencies must be informed of activities funded by this program?

Authority: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

Subpart A—General

§ 776.1 What is the Library Career Training Program?

The Secretary awards grants under the Library Career Training Program to—

(a) Train or retrain persons in librarianship through fellowships, institutes, or traineeships; and

(b) Establish, develop, and expand programs of library and information science, including new techniques of information transfer and communication technology.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.2 Who is eligible for an award?

Eligible applicants are—

(a) Institutions of higher education; and

(b) Library organizations and agencies.

(Authority: 20 U.S.C. 1032)

§ 776.3 Who is eligible to participate in a project?

In order to be selected by a grantee as a participant in a project, an individual must—

(a)(1) Be a United States citizen or national;

(2) Provide evidence from the United States Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b) Be engaged in or preparing to engage in a profession or other occupation involving library or information science; and

(c) Meet the selection criteria of the grantee.

(Authority: 20 U.S.C. 1032)

§ 776.4 What activities may the Secretary fund?

A grantee may conduct one or more fellowship projects, institute projects, and traineeship projects with funds under this program.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.5 What priorities may the Secretary establish?

(a) The Secretary may give priority to applications that propose one or more of the following:

(1) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

(2) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

(3) To increase excellence in library leadership through advanced training in library management.

(4) To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

(5) To provide advanced training in the development, structure, and management of new library organizational formats, such as networks, consortia, and information utilities.

(6) To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

(b) The Secretary established priorities by publishing a notice in the **Federal Register**, in accordance with 34 CFR 75.105.

(Authority: 20 U.S.C. 1032)

§ 776.6 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant 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).

(b) The regulations in this Part 776.

(Authority: 20 U.S.C. 1021)

§ 776.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract (includes definition of Subcontract)
Department
EDGAR
Grant
Grantee
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Dependent" means a spouse or other person who receives more than half of his or her support from a participant during the course of a project conducted under this program, or any person identified as a personal exemption on a participant's income tax return for the calendar year preceding the year in which the participant is enrolled in the project.

"Disadvantaged" refers to those persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from library services to the same extent as the general community benefits from these services.

"Fellowship" means an award of financial assistance to an individual who has been accepted for admission to an institution of higher education and who is or will be enrolled full-time in a graduate or undergraduate program of library and information science, working toward or completing the requirements for a specific degree in some aspect of librarianship.

"Institute" means a specialized long-term or short-term group training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Has an innovative curriculum; and

(3) Either provides persons with the skills needed to enter the library and information science field or provides library and information science personnel—including library educators—an opportunity to strengthen or increase their knowledge and skills.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Act.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or private organization or agency that provides library services or programs.

"Participant" means a person who is enrolled in a training project funded under this part.

"State agency" means the State agency designated under section 1203 of the Act.

"Traineeship" means a training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Is designed to meet the individual needs of mid-level library and information science professionals; and

(3) Provides individualized instruction, usually through an internship.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.8 What is the duration of a project?

(a) A fellowship or long-term institute project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide at least one week but no more than six weeks of training.

(c) A traineeship project may not exceed 12 months.

(Authority: 20 U.S.C. 1021, 1032)

Subpart B—How Does One Apply for an Award?

§ 776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

(a) An applicant shall submit separate applications for fellowship, institute, and traineeship projects.

(b) An applicant shall submit separate applications for fellowships at the bachelor's, master's, post-master's, and doctoral levels.

(c) An applicant may request any number of fellowships.

(d) An applicant shall specify the amount to be paid to participants as stipends.

(Authority: 20 U.S.C. 1021, 1032)

Subpart C—How Does the Secretary Make an Award?

§ 776.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.21 and awards up to 100 possible points for these criteria.

(b) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.22 and awards up to 100 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.23 and awards up to 100 possible points for these criteria.

(d) The maximum score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1032)

§ 776.21 What selection criteria does the Secretary use to evaluate an application for a fellowship?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The project objectives are clearly stated, realistic, and satisfy a current training need;

(3) The required courses meet standards that are recognized by the library and information science profession; and

(4) The student field experience component (if included) is well designed.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(2) The quality of the design of the project;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) How well the objectives of the project relate to the purpose of the program; and

(5) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of selecting participants, including—

(1) Conformance with program priorities; and

(2) Evidence that admissions standards for participants are comparable to those for other students admitted to the library education program.

(e) *Applicant characteristics.* (20 points) The Secretary reviews each application to determine the applicant's commitment to library and information science education, including—

(1) The adequacy of the description in the applicant's catalog of the specific library education program in which participants will be enrolled;

(2) The extent to which the amount the applicant spends per student for education in librarianship is comparable to that of other education programs;

(3) The extent to which the ratio of degrees awarded to total enrollment in the applicant's library education program is comparable to that of other library education programs;

(4) The extent to which the ratio of requested fellowships to other fellowships and scholarships in librarianship supported by the applicant is comparable to that of other library education programs; and

(5) The extent to which the academic level of the project is appropriate to the applicant's capabilities or experience.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(h) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.22 What selection criteria does the Secretary use to evaluate an application for an institute?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The subject matter of the project is significant, timely, well described, appropriate for an institute, and is not duplicated in the applicant's regular curriculum;

(3) The project duration is appropriate for presenting the subject matter;

(4) The project content satisfies rigorous educational standards;

(5) The blend of theoretical and practical training is suitable to the subject matter and the needs of the participants; and

(6) The training methods are innovative and imaginative.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the method of participant selection, including the extent to which—

(1) Participants will be selected according to their ability, experience, current responsibilities, and training needs; and

(2) The number of participants is appropriate to the training methods and project resources.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Project effectiveness.* (10 points) The Secretary reviews each application to determine the effectiveness of the project, including the extent to which—

(1) The project will increase the number of librarians with specialized skills;

(2) The project includes plans for disseminating promising results and high quality materials to other institutions or agencies.

(**Authority:** 20 U.S.C. 1032)

§ 776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship?

(a) *Project description.* (15 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The training needs to be met by the project are significant, of current interest to the library and information science community, and well described;

(3) Project activities are designed to meet the individual needs of each participant; and

(4) Other library agencies or institutions will cooperate with the applicant in providing appropriate and high quality internship opportunities.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel plan to commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of participant selection, including the extent to which participants will be selected on the basis of their stated career goals and on their potential for high level advancement and continued professional growth within the field of library and information science.

(e) *Budget and cost effectiveness.* (10 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate for the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

Cross Reference: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (15 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(**Authority:** 20 U.S.C. 1021, 1032)

Subpart D—What Conditions Must Be Met after an Award?

§ 776.30 What are the allowable costs for participants?

(a)(1) A grantee may use grant funds in the following amounts to cover the cost of providing fellowship training:

(i) For each fellowship awarded at the undergraduate level—$2000 for an

academic year plus $500 for a summer session.

(ii) For each fellowship awarded at the master's level—$4600 for an academic year plus $800 for a summer session.

(iii) For each fellowship awarded at post-master's and doctoral levels—$6400 for an academic year plus $1000 for a summer session.

(2) A grantee shall use grant funds to pay stipends to fellowship participants in the following amounts:

(i) Undergraduate level—$2000 for an academic year plus $500 for a summer session.

(ii) Master's level—$4600 for an academic year plus $800 for a summer session.

(iii) Post-master's and doctoral level—$6400 for an academic year plus $1000 for a summer session.

(b) A grantee may use grant funds to pay stipends to institute participants in the following amounts:

(1) Long-term, full-time post-baccalaureate level—$4600 for an academic year plus $800 for a summer session.

(2) Long-term, full-time pre-baccalaureate level—$2000 for an academic year plus $500 for a summer session.

(3) Short-term, full-time—up to $375 per week.

(4) Part-time—up to $75 per day.

(c)(1) The grantee shall use grant funds to provide traineeship training in accordance with the allowable costs of providing training for either fellowships or institutes, whichever is applicable.

(2) The grantee may use grant funds to pay stipends to traineeship participants in accordance with the allowable costs of fellowships or institutes, whichever is applicable.

(d)(1) The Secretary may authorize travel allowances for participants—

(i) In cases of extreme hardship; and

(ii) If travel is necessary for successful participation in the project.

(2) The mileage rate must be consistent with rates applicable to Federal Government employees.

(3) The Secretary may defer authorization of travel allowances until the grantee establishes the need by appropriate documentation.

(e)(1) In cases of extreme hardship, the Secretary may authorize allowances for dependents of participants. The maximum amount that may be provided per dependent is $800 for an academic year, $200 for a summer session, and $50 per week for short-term projects.

(2) The Secretary may defer authorization of allowances for dependents until the grantee has documented need.

(f)(1) The grant award specifies the amount for stipends and dependency and travel allowances.

(2) The grantee shall disburse the stipends and the dependency and travel allowances to the appropriate project participants.

(Authority: 20 U.S.C. 1032)

§ 776.31 What are the restrictions on costs for participants?

A grantee may not charge tuition or fees to a participant in a training project funded under this program.

(Authority: 20 U.S.C. 1032)

§ 776.32 What are the allowances for assistance under other Federal programs?

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except veterans', war orphans', and widows' educational assistance under Title 38, United States Code) must be deducted from the amount that participant would receive under this part.

(b) If a participant receives a federally assisted educational loan, the amount of the loan and any interest paid may not be deducted from the amount received by the participant under this part.

(Authority: 20 U.S.C. 1021, 1032 and 38 U.S.C. 1700)

§ 776.33 What requirements govern the removal, withdrawal, and substitution of participants?

(a) A grantee shall remove a participant from a training project if the grantee determines that the participant has ceased to maintain academic proficiency.

(b) If a grantee removes the participant or if a participant withdraws, the grantee—

(1) May replace the participant if the new participant can successfully complete the training at no additional cost to the Department; and

(2)(i) Shall notify the Secretary in writing—

(A) Within 30 days of the removal or withdrawal; or

(B) Within 30 days of a substitution if the grantee substitutes another participant.

(ii) The date of removal or withdrawal is—

(A) The date the grantee determined that the participant had ceased to maintain academic proficiency; or

(B) The last date the participant attended class.

(c)(1) If a grantee removes the participant or if the participant withdraws, the grantee shall prorate the participant's stipend and any allowances, according to the number of the weeks the participant has completed in the project.

(2) For purposes of paragraph (c)(1) of this section, the grantee shall count attendance in any part of a week as a full week.

(d) If a grantee does not substitute a participant for the participant who has been removed or who has withdrawn, the grantee shall return to the Federal Government the unused portion of the stipend and any allowances.

(Authority: 20 U.S.C. 1032)

§ 776.34 What agencies must be informed of activities funded by this program?

Each institution of higher education that receives a grant under this part shall annually inform the agency designated under section 1203 of the Act of its project activities.

(Authority: 20 U.S.C. 1022)

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Federal Register

Thursday
May 26, 1988

Part VI

Office of Personnel Management

5 CFR Part 950

1988 Combined Federal Campaign; Final Rule and Notice

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rules.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12785 (March 23, 1982), and Executive Order 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983). These regulations are intended to be consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988. These regulations provide a system for administering the annual charitable solicitation campaign conducted by Federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from Federal personnel through the Combined Federal Campaign.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, CFC Coordinator, (202) 632–5564.

SUPPLEMENTARY INFORMATION: On Wednesday, February 17, 1988, OPM published a Notice of Proposed Rulemaking in the **Federal Register**, 53 FR 4631, to revise regulations codified at 5 CFR Part 950, governing the conduct of the Combined Federal Campaign (CFC). The regulations were proposed to implement Executive Orders 12353 and 12404. These regulations were also intended to be consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988.

Analysis of Comments

OPM received over 300 comments on the proposed regulations that were published on February 17, 1988. Many of the commentators complemented OPM on its efforts to publish clearer and more logical rules. Comments were received from a variety of persons including local Federal officials, representatives of voluntary agencies and federations, members of Congress, and the Federal donor.

OPM considered these comments and made various revisions to improve the final regulations which OPM believes will insure a well-run and well-organized CFC.

The receipt of over 300 sets of comments has necessarily delayed promulgation of these final rules. The comments were on the whole extraordinarily helpful in refining the proposed rules, and in pointing out minor inconsistencies between the statute and the proposed rules. On the whole, the comments conveyed a sincere appreciation not only of the complexity of the campaign operations but also an appreciation of the campaign's legal status as a non-public forum, the need for OPM oversight, and a recognition of the inability of any workplace campaign to meet all the demands of the not-for-profit world.

Perhaps the greatest change reflected in these rules is the clear recognition that OPM must maintain vigilance of campaign operations and must act to penalize attempts to interfere with employee designations or to gain entry to the campaign under false certifications of eligibility. OPM will aggressively enforce the standards set forth in these rules confident of the clear expectation of Congress, the employees, and the general not-for-profit world that it do so.

It is a certainty that not all observers or would-be participants in the CFC will be satisfied with these rules. As the rules balance numerous demands, those organizations that discover their ineligibility to participate in future campaigns or which find themselves penalized for practices inconsistent with the rules will not doubt demand access to campaign listings on nothing more than a claim to tax-exempt status. It is OPM's earnest hope that courts confronting such challenges will recognize from the outset of litigation that this set of rules was developed in close cooperation with the Congress, and that it is anticipated that the rules will operate to provide fair but not universal access to the campaign.

In the near decade of controversy that has beset the CFC there have remained principled voices of reason that have repeatedly pointed out that the controversies, however satisfying, were achieved at a real cost to those least able to bear it: the poor and the sick. With the promulgation of these rules, it is OPM's hope that an era of cooperative endeavor will begin that allows the full beneficent force of the Federal workforce to address itself to the alleviation of their needs.

E.O. 12291, Federal Regulations

After a careful review of the proposed rulemaking, including the analysis set forth below, for purposes of the Regulatory Flexibility Act, OPM has determined that this is not a major rule for purposes of Executive Order No. 12291, Federal Regulations, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in the costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

(1) Reasons Why Action by Agency is Being Considered

OPM issues these rules because President Reagan's Executive Order No. 12404 and Pub. L. 100–202 require OPM to promulgate rules for charitable solicitation in the Federal workplace.

(2) Objectives and Legal Basis for Rule

These regulations are issued under Executive Orders No. 12353 and 12404, and Pub. L. 100–202. The objective of these regulations is to provide a system for administering the annual charitable solicitation drive among Federal civilian and military employees in the CFC, and to set forth ground rules under which charitable organizations receive Federal employee donations through the CFC.

(3) Number of Small Entities Covered Under the Rule

The rule would apply to all human health and welfare agencies that apply to participate in the CFC.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The new rules continue, for the most part, the reporting, recordkeeping, and other requirements that have been a part of the campaign operations since the 1984 CFC. The paperwork burden is kept to the minimum necessary to be consistent with the governing Executive orders and the statute.

The rules assure the free choice of the employee to contribute or not to contribute to those agencies found eligible to participate in the CFC. The Government has no obligation to

subsidize these voluntary agencies or those found ineligible to participate in the CFC. So every effort must be made by the responsible Federal officials to reduce the cost to the Government of the operation of the CFC and to shift the cost of CFC operations to the beneficiaries of the Federal donors.

These regulations in no way inhibit solicitation by any organization that may wish to conduct a fund-raising drive other than in the Federal workplace. Thus, there is no regulatory burden placed upon ineligible agencies. The regulatory burden imposed on participating agencies is minimal.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There are no duplicating, overlapping or conflicting Federal rules that apply to the CFC.

(6) Differing Compliance or Reporting Requirements

The campaign arrangements used from 1984 through 1987 were fundamentally unsound and raised administrative costs excessively. They proved to be controversial and disruptive of the Federal workplace. OPM has taken as much advantage as it can within the limitations imposed on it by the statute, to improve the operation of the CFC. There have been no substantial changes in compliance or reporting requirements.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As was noted above there are no substantial changes to compliance and reporting requirements.

(8) Use of Other Standards

Appropriate alternative standards are not available that would impose less burdensome regulations, unless the CFC was abolished.

(9) Exemption of Small Entities From Coverage

Exemptions from coverage for small entities is not practical because many of the eligible voluntary agencies are small entities, and exceptions for those groups would frustrate the major purposes of Executive Order No. 12404 and Pub. L. 100–202: To limit participation to voluntary agencies delivering service and benefits to human beings and to require that eligible organizations meet reasonable standards of financial integrity and public accountability. As a result of the above Regulatory Flexibility Analysis, I have determined that the rule will not have any significant detrimental economic impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 950

Charitable contributions, Government employees, Nonprofit organizations.

Office of Personnel Management

Constance Horner,

Director.

Accordingly, OPM is issuing final rules to amend 5 CFR Chapter I, Subchapter B as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

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

Authority: 5 U.S.C. 1103; Section 110.201 is also issued under 5 U.S.C. 1104, 5 CFR Part 5.2(c) and (d); 44 U.S.C. 3507(f); 5 CFR Part 1320.

2. The table in paragraph (b) of § 110.201 is amended by removing the reference to Part 950 and adding the citations set out below.

§ 110.201 OMB control numbers.

* * * * *

(b) * * *

5 CFR citation	OMB Control No.
* * * * *	*
950.105	3206–0131
950.202	3206–0131
950.203	3206–0131
950.204	3206–0131
950.205	3206–0131
950.302	3206–0131
950.303	3206–0131
950.601	3206–0131
950.901	3206–0131

3. Part 950 is revised to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—General Provisions

Sec.

950.101 Definitions.
950.102 Scope of the Combined Federal Campaign.
950.103 Structure of the Combined Federal Campaign.
950.104 Local Federal Coordinating Committee.
950.105 Principal Combined Fund Organization.
950.106 PCFO expenses.
950.107 Lack of a qualified PCFO.
950.108 Preventing coercive activity.
950.109 Avoidance of conflict of interest.
950.110 Prohibited discrimination.

Subpart B—Eligibility Provisions and Public Accountability Standards

950.201 National eligibility.
950.202 National eligibility requirements.
950.203 Public accountability standards.
950.204 Local eligibility.
950.205 Appeals.

Subpart C—Federations

950.301 National Federations.
950.302 Responsibilities of National Federations.
950.303 Local Federations.

Subpart D—Campaign Materials

950.401 Campaign and publicity materials.
950.402 Miscellaneous.
950.403 Pledge cards.
950.404 Penalties.

Subpart E—Distribution of Undesignated Funds

950.501 Applicability.
950.502 Fall 1988 and 1989.
950.503 Fall 1990 and thereafter.
950.504 Review by the Director.

Subpart F—Miscellaneous Provisions

950.601 Release of contributor names.
950.602 Solicitation methods.

Subpart G—DoD Overseas Campaign

950.701 DoD Overseas campaign.

Subpart H—CFC Timetable

950.801 Campaign schedule.

Subpart I—Payroll Withholding

950.901 Payroll allotment.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR 1982 Comp., p. 139, E.O. 12404 (February 10, 1982), 48 FR 6685 (February 15, 1983), and Pub. L. 100–202 (5 U.S.C. 1101 Note).

Subpart A—General Provisions

§ 950.101 Definitions.

"Agency" or "Voluntary Agency" means a private, non-profit, philanthropic, human health and welfare organization.

"Business Days" means calendar days exclusive of Saturdays, Sundays, and Federal holidays.

"Combined Federal Campaign" or "Campaign" or "CFC" means the charitable fund-raising program established and administered by the Director of the Office of Personnel Management (OPM) pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and all subsidiary units of such program.

"Designated Funds" means those contributions which the contributor has designated to specific voluntary agencies or federation.

"Director" means the Director of the Office of Personnel Management.

"Domestic Area" means the several United States, the District of Columbia,

the Commonwealth of Puerto Rico, and the United States Virgin Islands.

"Employee" means any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service, uniformed service, foreign service, and the postal service.

"Federation" or "Federated Group" means a group of voluntary charitable human health and welfare agencies organized for purposes of supplying common fund-raising, administrative, and management services to its constituent members.

"International Agency" means a voluntary agency that provides services either exclusively or in a substantial preponderance in the overseas area or primarily on behalf of non-U.S. citizens in the overseas area.

"Local Federal Coordinating Committee" or "LFCC" means the group of Federal officials designated by the Director to conduct the CFC in a particular community.

"Overseas Area" means the Department of Defense (DoD) Overseas Campaign which includes all areas other than those included in the domestic area.

"Principal Combined Fund Organization" or "PCFO" means the federated group or combination of groups, or a voluntary agency selected by the LFCC to administer the local campaign under the direction and control of the LFCC and the Director.

"Undesignated Funds" means those contributions which the contributor has not designated to a specific voluntary agency or federated group.

§ 950.102 Scope of the Combined Federal Campaign.

(a) The CFC is the only authorized charitable fund-raising drive in the Federal workplace. A campaign may be conducted in every Federal agency in the campaign community in accordance with these regulations. No other fund-raising drive may be conducted in the Federal workplace without the express written permission of the Director, and no departure from any provisions of these rules is permitted without the express written permission of the Director.

(b) The Director establishes and maintains the official list of local CFCs and each CFC's geographic coverage. CFCs are normally conducted only in those locations which include a Federal employee population of at least 300 employees.

(c) Realignment of the geographical boundaries of local campaigns may be done only upon the express written permission of the Director.

(d) Payroll allotments to voluntary agencies are only authorized at those locations that are included in an established CFC as defined by the Director.

(e) The solicitation of employes will occur for no more than a six-week period between September 1 and November 15, as established by the LFCC. The six-week period may be extended by the LFCC as local conditions require but, in no event may it be extended beyond November 15, except in those instances where the campaign includes deployed military units and then not beyond December 15th.

§ 950.103 Structure of the Combined Federal Campaign.

(a) The Director exercises general supervision over all operations of the CFC, and takes all steps that may be necessary and proper to ensure the achievement of the campaign objectives. Any disputes relating to the interpretation or implementation of this part may be submitted to the Director for resolution. The decisions and rulings of the Director are final for administrative purposes.

(b) The Director establishes a LFCC to govern the conduct of the local CFC. The LFCC will, whenever possible, be comprised of members of local Federal inter-agency organizations, such as Federal Executive Boards, Federal Executive Associations, Federal Business Associations or, in the absence of such organizations, self-organized associations of local Federal officials. These groups will include all the local Federal agency heads or their representatives. It will also include, wherever possible, representatives of employee unions and other employee groups.

(c) The head of the local Federal installation having the largest number of employees is responsible for organizing the LFCC and assuring that it carries out its responsibilities in accordance with these regulations. The LFCC Chairmanship will normally, but not necessarily, rotate among its members.

§ 950.104 Local Federal Coordinating Committee.

(a) The LFCC is responsible for organizing the local CFC, deciding on the eligibility of local voluntary organizations, surpervising the activities of the PCFO, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the CFC.

(b) The LFCC shall, by majority vote, select a PCFO to administer the campaign and to serve as fiscal agent. A federated group(s) or voluntary agency found by the Director, by a written decision issued after notice and opportunity to submit written comments, to have violated these regulations may be barred from serving as a PCFO for one year. Such decision shall be communicated in writing to the LFCC, and the LFCC shall not consider an application from such group(s) or agency to serve as the PCFO during terms of debarment.

(c) The responsibilities of the LFCC include, but are not limited, to the following:

(1) Selecting the PCFO on the basis of presentations made to the local committee by applicant organizations. The LFCC shall consider the efficiency and effectiveness of the campaign as the primary factors in selecting a PCFO.

(2) Ensuring that the PCFO selected or retained does not use the services of consulting firms, advertising firms or similar business organizations to perform the policy-making or decision-making functions in the CFC. A PCFO may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(3) Ensuring that, within the limits of the policies and procedures established by the Director nationally, local campaign arrangements are facilitated.

(4) Naming a campaign chairman.

(5) Ensuring that no employee is coerced in any way to participate in the campaign.

(6) Bringing allegations of coercion to the attention of the Director and the employee's agency and providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper channels for pursuing such complaints.

(7) Monitoring the work of the PCFO, and inspecting closely the annual audit required of the PCFO.

(8) Encouraging local Federal agencies to detail, on administrative leave, loaned executives to assist in the campaign; encouraging the establishment of a thorough network of employee keyworkers and volunteers; and cooperating on interagency briefing sessions and kick-off meetings.

(9) Ensuring that every employee is given the opportunity to participate in

the CFC, and that employee designations are honored.

(10) Encouraging designations to voluntary agencies or federations and ensuring that the PCFOs include in their keyworker training specific information on how undesignated monies are distributed and instructing them to encourage employees to specify the voluntary agencies of federations to receive their donations.

(11) Insuring that undesignated contributions are divided in accordance with the formula established by law and repeated in these regulations.

(12) Calling to the attention of the Director any significant questions concerning the campaign, and abiding by the Director's decisions on these questions.

(13) Determining the eligibility of local organizations that apply to participate in the local campaign.

(14) Ensuring that the list of charities found by the Director to be nationally eligible to participate in all local campaigns is reproduced in the local brochure in accordance with these regulations.

(15) Ensuring that the local brochure and pledge card are produced in accordance with these regulations.

(16) Developing understanding of campaign policies, procedures and voluntary agency programs among Federal employees by serving as the central point of information.

(17) Responding promptly to any request for information from the Director.

§ 950.105 Principal Combined Fund Organization.

(a) Only federations, combinations of federations, or a voluntary agency may serve as the PCFO.

(b) Any organization or combination of organizations that wishes to apply to be the PCFO must submit to the LFCC on or before March 1 of each year:

(1) A written campaign plan which shall be in sufficient detail to allow the LFCC to determine if the applicant could administer an efficient and effective CFC, and shall include a CFC budget that details all costs estimated to be required to operate the CFC. The costs in the budget shall be based on estimated actual expenses, not on the percentage of the funds raised in the local campaign, and

(2) A written application to the LFCC which will include a pledge signed by the applicant's local director or equivalent pledging to administer the CFC fairly and equitably, to conduct the applicant's non-CFC operations separately from the campaign operations, and to be subject to the decisions and supervision of the LFCC and a signed acknowledgment that it is subject to the provisions of § 950.404(a) of these regulations.

(c) The specific responsibilities of the PCFO include but are not limited to:

(1) Helping to ensure that no employee is in any way coerced with regard to participation in the campaign and that allegations of coercion are brought to the attention of the appropriate Federal officials.

(2) Training employee keyworkers and volunteers in the methods of non-coercive solicitation.

(3) Honoring employee designations.

(4) Ensuring that no employee is in any way questioned as to his or her designation or its amount, other than for arithmetical inconsistencies.

(5) Preparing pledge cards and brochures that comply with these regulations.

(6) Honoring the request of employees who indicate in the box on the pledge card that their names not be released to the agency(ies) that they designate. PCFOs will include specific guidance to keyworkers during their training to inform employees that failure to check this box may result in the employee's name and home address being forwarded to the voluntary agency(ies).

(7) Submitting an extensive and thorough audit of its operations, conducted by an independent certified public accountant in accordance with generally accepted auditing standards, to the LFCC within four months of the end of their business year during which contributions pledged are collected.

(8) Absorbing the cost of any reprinting, embezzlement, loss of funds, or cost overrun connected with the campaign as a result of its action or inaction.

(9) Designing and implementing CFC awards programs which are accessible to all employees and which reflect the Government's commitment to non-coercion in that the awards are not ostentatious or of more than nominal value. Awards to Federal employees or Federal agencies by individual voluntary agencies or federations for CFC accomplishments are prohibited.

(10) Communicating to all applicants by U.S.P.S. registered or certified mail the eligibility decisions of the LFCC.

(11) Responding in a timely and appropriate manner to all inquiries from participating organizations.

(12) Producing any documents or information requested by the LFCC and/or the Director within 10 business days of the receipt of that request.

(13) Consulting, as appropriate, with federated groups on the operation of the local campaign and any printed materials, giving an adequate opportunity for them to participate in local campaign events, and providing them timely access to all reports, budgets, audits, and other records.

(d) The failure of the PCFO to perform any of these responsibilities listed in paragraph (c) of this section may be grounds for removal and disqualification by the Director to serve as PCFO for one year. Before deciding on removing or disqualifying a PCFO the Director shall give the PCFO an opportunity to respond to any allegations of failure to perform its responsibilities. The PCFO must submit its response to the Director within 10 business days. The Director will issue a written determination based on a review of all of the information submitted.

§ 950.106 PCFO expenses.

(a) The PCFO shall recover from the gross receipts of the campaign its expenses, approved by the LFCC, reflecting the actual costs of administering the local campaign. In no event shall the amount recovered for expenses exceed by more than 10 percent the estimated budget submitted pursuant to § 950.105(b) of this part.

(b) The campaign expenses will be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts.

§ 950.107 Lack of a qualified PCFO.

In the absence of a qualified PCFO, there is no authority in statute or regulation for an LFCC or any Federal official or employee to assume the duties and responsibilities of the PCFO. In the event that there is no qualified PCFO, the LFCC Chairman will promptly inform the Director in writing. The Director will make reasonable efforts to identify an eligible organization to function as the PCFO in the specific campaign, but failure to find a qualified PCFO will result in the local CFC being cancelled. No workplace solicitation of any Federal employee in the campaign area is authorized and payroll allotments cannot be accepted and honored during the duration of the cancellation.

§ 950.108 Preventing coercive activity.

True voluntary giving is fundamental to Federal fund-raising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. Certain activities are contrary to the

intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in the campaigns, they include but are not limited to:

(a) Solicitation of employees by their supervisor or by any individual in their supervisory chain of command. This does not prohibit the head of an agency to perform the usual activities associated with the campaign kick-off and to demonstrate his or her support of the CFC in employee newsletters or other routine communications with the Federal employees.

(b) Supervisory inquiries about whether an employee chose to participate or not to participate or the amount of an employee's donation. Supervisors may be given nothing more than summary information about the major units that they supervise.

(c) Setting of 100 percent participation goals.

(d) Establishing personal dollar goals and quotas.

(e) Developing and using lists of non-contributors.

(f) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments, and as allowed under § 950.601 of this part.

(g) Using as a factor in a supervisor's performance appraisal the results of the solicitation in the supervisor's unit or organization.

§ 950.109 Avoidance of conflict of interest.

Any Federal employee who serves on the LFCC, on the eligibility committee, or as a Federal agency fund-raising program coordinator, must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest under any criminal statutes, Executive Order 11222, or applicable agency standards of conduct.

§ 950.110 Prohibited discrimination.

Discrimination for or against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation is prohibited in all aspects of the management and the execution of the CFC. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this part to participate in the CFC, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

Subpart B—Eligibility Provisions and Public Accountability Standards

§ 950.201 National eligibility.

(a) In accordance with the timetable issued by the Director and pursuant to procedures established by the Director, the Director shall annually determine which national organizations qualify to be listed for inclusion in all local CFCs.

(b) The Director shall provide to all local campaigns the list of agencies that have been judged to have met all the standards and may participate on a national basis. The list will be provided no later than April 30 of each year. The list shall be reproduced in all local brochures in accordance with these regulations. The list will be accompanied by eligibility numbers which shall be an organization's national number code. These number codes must be faithfully reproduced in the local brochures.

(c) When a voluntary agency is found to be a national organization it may elect to have its local affiliate listed in its stead. For the local affiliate or subunit to be listed in lieu of the national organization the following procedures must be followed:

(1) The national organization must send a letter to the local affiliate or subunit in that particular CFC authorizing the local group to be listed in the local campaign brochure.

(2) The local affiliate or subunit will present to the LFCC a copy of the letter authorizing its inclusion in the brochure and all the required materials for completing a local agency application.

(3) Upon presentation of this letter, the national listing of the agency shall be deleted in the local campaign list. Under no circumstances may an agency appear in both the national and local sections of the list of voluntary organizations.

§ 950.202 National eligibility requirements.

All organizations seeking national eligibility:

(a) Must demonstrate that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states over the three year period immediately preceding the start of the year involved; or several foreign countries or several parts of a foreign country.

(b) Must certify that it is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170.

(c) Must provide a separate certification that the organization's expenses connected with lobbying and all attempts to influence voting or legislation at the local, State, or Federal level would classify it as a tax-exempt agency under 26 U.S.C. 501(h).

§ 950.203 Public accountability standards.

(a) To insure that the organizations that wish to solicit donations from Federal employees in the workplace are portraying accurately their programs and benefits, the following public accountability standards must be met by all organizations applying to participate in the CFC.

(b) To qualify for inclusion on the list of organizations judged eligible to participate on a national basis, an organization must submit annually to the Director:

(1) Documentary evidence that it accounts for its funds in accordance with generally accepted accounting principles and was audited in accordance with generally accepted auditing principles by an independent certified public accountant in the year immediately preceding any year in which it applies for admission to, or its federation certifies its eligibility to receive donations from the CFC. This documentary evidence must include a copy of the organization's audit, prepared in accordance with the above-mentioned principles. Agencies with affiliates must provide combined or acceptably compiled financial statements prepared in accordance with generally accepted accounting principles.

(2) A statement that it is directed by an active and responsible governing body whose members have no material conflict of interest and, a majority of which serve without compensation. This statement will be accompanied by a list that shall include the names and locations of the directors, and a statement of the directors' participation in the conduct of the organization's affairs.

(3) A statement demonstrating that, if its fund-raising and administrative expenses are in excess of 25 percent of total support and revenue, its actual expense for those purposes are reasonable under all the circumstances in its case. For those agencies whose expenses are not in excess of the 25 percent limit, a statement so affirming shall be supplied which also sets forth the actual percentage of their funds that are used for administrative and fund-raising. The Director may reject any application from an agency with fund-raising and administrative expenses in excess of 25 percent of total support and revenue, unless the agency demonstrates to the satisfaction of the Director that its actual expenses for

those purposes are reasonable under all the circumstances in its case.

(4) A statement affirming that the organization's fund-raising practices protect against unauthorized use of its CFC contributor lists, permit no general telephone solicitations of the public, permit no payment of commissions, finders fees, percentages, bonuses, or similar practices in connection with fund-raising.

(5) A statement affirming that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, include all material facts, and make no exaggerated or misleading claims.

(6) A statement affirming that the organization is a human health and welfare organization which providing services, benefits, or assistance to, or conducts activities affecting human health and welfare. The statement shall enumerate those benefits.

(7) A statement affirming that the funds contributed by Federal personnel are effectively used for the announced purposes of the voluntary agency.

(8) A statement specifying under which governmental entity the voluntary agency is organized.

(9) A statement affirming that, with the exception of a voluntary agency whose revenues are affected by unusual or emergency situation, as determined by the Director, it has received at least 50 percent of its total support and revenues from sources other than the Federal government or at least 20 percent of its total support and revenue from voluntary contributions from the general public.

(10) A statement affirming that it prepares and makes available to the public an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. A copy of the annual report shall accompany its application.

(11) A statement in 25 words or less describing the program of the voluntary organization and the percentage of its total support and revenue that goes to administration and fund-raising. In addition, organizations will provide a telephone number through which the donors may receive further information about the organization. This information will be used in the campaign brochure listing of agencies.

(12) A copy of the organization's IRS 990 form.

(c) The Director shall review these applications for accuracy, completeness, and compliance with these regulations. Failure to supply any of this information may be judged a failure to comply with the requirements of public accountability, and the voluntary organization may be ruled ineligible for inclusion on the national list.

(d) The Director may request such additional information as the Director deems necessary to complete these reviews. An organization that fails to comply with such requests within 10 business days may be judged ineligible.

(e) The Director may waive any of these public accountability standards upon a showing of extenuating circumstances.

§ 950.204 Local eligibility.

(a) The LFCC shall establish an annual application process for organizations that wish to be listed in the local brochure and which have not been listed on the national list.

(b) The requirements established by the LFCC shall include all substantive requirements of the national eligibility and public accountability process in §§ 950.202 and 950.203 of this part, with the following exceptions:

(1) Voluntary agencies have delivered benefits in 15 states over the prior three years,

(2) Organizations whose annual budget is less than $50,000 may submit IRS Form 990 in lieu of an audit report,

(3) The applicant voluntary agency must have a substantial presence in the geographical area covered by the local campaign or a substantial presence in the geographical area covered by a contiguous local campaign. "Substantial presence" is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to its clientele or members of the public seeking the voluntary agency's services or benefits that it provides, and which is open at least 15 hours a week. The facility, office or portion of a residence dedicated exclusively to that organization, may be staffed by volunteers. An LFCC may also make an exception to this requirement to include organziations in their campaign that provide services on a statewide or region-wide basis. This exception shall not be granted on the basis of a showing of services provided through an "800" telephone number or the U.S. Mails or a combination thereof.

(4) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

(c) The LFCC shall announce its decisions on the local applications at an open public meeting and will communicate all eligibility decisions by USPS registered or certified mail to the applicant agencies within 10 business days of the decision. Applicants denied eligibility may appeal in accordance with § 950.204 of this part.

(d) No LFCC may print the local eligibility list while there are appeals from their campaign pending with the Director. LFCCs are under an obligation to check with OPM 21 calendar days after the mailing of the last decision as to whether the Director is on notice of a pending timely appeal.

(e) No LFCC shall grant eligibility to an organization the name of which is substantially similar to the name of an organization which has been granted national eligibility, unless the similarly named organizations demonstrate that they provide their services or benefits in different geographic areas within the campaign community.

§ 950.205 Appeals.

(a) *National Eligibility.* Applicants denied national listing will be notified of the Director's decision. They may petition the Director in writing to reconsider the denial within 15 business days of the decision. Such a petition for reconsideration may be dismissed as untimely unless it is received by the Director by the close of business 15 business days from the date of receipt of the Director's decision. This petition shall be limited to those facts justifying reversal of the original decision.

(b) *Local Eligibility.* (1) Because local applicants will have the opportunity to attend the local meeting as required by § 950.203(c), the date and location of which will be publicly announced in the campaign area, at which time all eligibility decisions and the reasons for any adverse decisions will be announced, the schedule for appealing adverse decisions is shortened. This shortened schedule does not excuse the LFCC from informing both successful and unsuccessful applicants by certified or registered mail of the result of the LFCC's deliberations.

(2) Applicants denied listing in the local brochure must first appeal in writing to the LFCC to reconsider its denial. Such an appeal must be received by the LFCC within the seven calendar days immediately following the receipt of the letter. This appeal shall be limited to those facts justifying reversal of the original decision. The LFCC must consider all timely appeals within the next seven calendar days after the receipt of a timely appeal.

(3) An applicant which is unsuccessful in its appeal to the LFCC may appeal to the Director. All appeals must be in writing. The appeal to the Director must be received by the Director within 14 calendar days of the date of the letter of

the LFCC's denial of the appeal. The Director's decision is final for administrative purposes.

Subpart C—Federations

§ 950.301 National federations.

(a) Organizations presently with national federation status for purposes of participation in the Combined Federal Campaign are:

(1) The United Way of America (UWA),

(2) The International Service Agencies (ISA),

(3) The International Service Agencies-Overseas (ISAO) (Overseas Campaign Only),

(4) The National Voluntary Health Agencies (NVHA),

(5) The National Service Agencies (NSA), and

(6) The American Red Cross (ARC).

(b) The Director may establish additional national federations that conform to statutory requirements. The Director may decertify a federation for up to one year if it is determined on the record after opportunity for a hearing that the federated group has not complied with the requirements set forth in this part. This determination shall be the final administrative review.

(c) By applying for inclusion in the CFC, federations consent to allow the Director complete access to it and its members' CFC books and records and to respond to requests for information by the Director or the Director's designee.

§ 950.302 Responsibilities of national federations.

(a) National federations must ensure that their member organizations comply with all eligibility requirements included in these regulations, and must identify to OPM which of their member agencies fail to meet such requirements.

(b) National federations may elect to certify the eligibility of their member agencies at the national and local levels in accordance with Subpart B.

(1) LFCCs must accept the certifications of national federations, but may ask the Director to review any such certification.

(2) The Director may elect to review, accept or reject the certifications of the eligibility of the members of the national federations. If the Director requests information supporting a certification of national eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 calendar days of the receipt of the request constitutes grounds for the denial of national eligibility.

(c) The Director may elect to decertify a federation which makes a false certification for up to one campaign year, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the hearing.

(d) The failure of a national federation to respond in a timely fashion to a request for required information or cooperation in an investigation by the Director may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) National federations shall file with the Director by December 1 of each year an audit of the federation's operations completed by an independent certified public accountant. Failure to comply with this provision may be grounds for decertification, provided that decertification is preceded by a hearing on the record and is communicated in writing.

§ 950.303 Local federations.

(a) LFCCs may grant in accordance with these regulations, in the fall 1990 CFC and thereafter, local federation status to groups of 15 or more voluntary agencies. In the fall 1988 campaign they may grant local federation status to a group of five or more and, in the fall 1989 campaign to a group of 10 or more agencies. This recognition will be in writing from the Chairman of the LFCC. Local federations must re-establish eligibility each year, and in 1989 and 1990, must deomonstrate that their membership includes 10 and 15 groups respectively. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(b) An applicant for local federation status must certify and demonstrate:

(1) That all member organizations are qualified for inclusion on the local eligibility list.

(2) That it possesses the necessary financial responsibility to operate as a federation, and that its financial practices conform to generally accepted accounting procedures.

(3) That its fund-raising and administrative expenses meet the requirements for national federations, as set forth in this part.

(4) That it does not employ the services in its CFC operations of private consultants, consulting firms, advertising agencies or similar business organizations to perform the policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(c) The Director may decertify after an opportunity for a hearing on the record any local federation at any time when such local federation falsely certifies its eligibility of any of its member agencies.

(d) Local federations, having been properly established, may certify their member voluntary agencies as eligible to be included on a local list, and they may be listed on the local list and be eligible to receive funds. The LFCC may require any member agency of a local federation to supply independent evidence of its eligibility.

Subpart D—Campaign Materials

§ 950.401 Campaign and Publicity materials.

(a) The specific campaign and publicity materials, i.e., the contributor information leaflet and list of organizations, will be developed locally, except as specified in these regulations, under the direction of the LFCC and will be printed and supplied by the PCFO. Any disputes over local materials will be resolved by the LFCC. All publicity materials must have the approval of the LFCC before being used. All publicity materials must be developed in consultation with other federations which are able to respond in a timely fashion to the opportunity to consult.

(b) Distribution of any bona fide educational materials of the voluntary agencies or federations or the provision of other services to employees at Federal establishments must be handled through personnel offices, occupational health units, or other appropriate agency components, and not the CFC coordinators, keyworkers, or members of the LFCC.

(c) Voluntary agencies and federations are encouraged to publicize their activities outside Federal facilities, to broadcast messages aimed at Federal employees in an attempt to solicit their contributions, through the media and other outlets. They may also communicate with Federal employees in writing through USPS Mail addressed to them at their Federal workplaces, as long as these mailings do not interfere with Federal government activities. The head of the Federal agency must make a single determination as to what will be

the agency's policy on such mail solicitations.

(d) LFCCs are further authorized to permit the distribution by voluntary agencies of brochures to Federal personnel in public areas at or near Federal workplaces in connection with the CFC, provided that the manner of distribution accords equal treatment to all voluntary agencies furnishing such brochures for local use, and further provided that no such distribution shall utilize Federal personnel or interfere with Federal government activities. LFCC members and other campaign personnel are to be particularly aware of the prohibition to not assist any voluntary agency or federated group to distribute any type of literature, especially during the campaign period. Nothing in this section shall be construed to require an LFCC to distribute or arrange for the distribution of any material other than the contributor's information leaflet, the list of voluntary agencies, and the pledge card.

(e) The Campaign Brochure shall consist of a Contributor's Information Leaflet, a List of Eligible Voluntary Organizations (divided into national and local sections), and a joint Pledge Card, Payroll Authorization, and Name Release form. The brochure shall be distributed by each keyworker as the official CFC information package to each potential contributor. All CFC literature must inform employees of their right to make a choice to contribute or not to contribute; to designate or not to designate; and to give a confidential gift in a sealed envelope.

(f) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. The package should focus on the CFC without undue use of voluntary agency symbols or other distractions that compete for the donor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors' receipts, and similar reports, which are primarily for keyworkers must be avoided.

(g) The following applies specifically to the campaign materials:

(1) Contributor's Information Leaflet

(i) This will be the primary informational material distributed to the individual contributors. It will describe the CFC arrangement; explain the payroll deduction privilege; and explain the formula for the distribution of undesignated monies. It will clearly state and urge the Federal donor to direct his or her gift to specific voluntary agencies or group of his or her choice by designating in the boxes provided, up to five organizations. It will further explain that failure to designate a specific agency or federation to receive the employee's gift will result in the donation being distributed in accordance with the formula established by law for allotting undesignated funds. It will also include an explanation as to exactly how this formula will operate.

(ii) The leaflet will include a statement that the donor may only designate the voluntary agencies and groups that are listed in the brochure and that write-ins are prohibited.

(iii) The leaflet will provide instructions about how an employee may obtain more specific information about the programs and the finances of the organizations participating in the campaign.

(iv) It will also inform employees of their rights to pursue complaints of undue pressure or coercion in Federal fund-raising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agencies.

(2) Agency Listing

(i) The listing of agencies shall be in two major divisions. The first shall be labelled "National Voluntary Agencies" and will consist of a faithful reproduction of the list provided by OPM, except as described in § 950.201(c). The second division will consist of "Local Voluntary Federated Agencies" and a list of "Local Unaffiliated Voluntary Agencies." The order of the listing of the federated and unaffiliated organizations will be determined by a random drawing. The order of agencies within a federation subgroup will be determined by the federation. The order of agencies within the unaffiliated list will be determined by random drawing. Each participating agency and federated group may include a description, not to exceed 25-words, of their services and programs, plus a telephone number for the Federal donor to request further information about the groups services, benefits and administrative expenses. The description will include a statement of the percent of the organization's total receipts and revenues that are used for administration and fund-raising.

(ii) Each national federation and voluntary agency will be assigned a code number by OPM. Local federations and local voluntary agencies will be assigned code numbers by the LFCC. At the beginning of each federated group's listing will be listed the federation including its 25-word statement. The federation will only be listed once in the campaign materials.

(iii) All other requirements of § 950.401 will be followed.

(3) Pledge Card—The pledge card as described in § 950.403 of these regulations will be distributed with the campaign materials described above.

§ 950.402 Miscellaneous.

(a) *Omission of an eligible voluntary agency requires that all brochures be reprinted and redistributed.* The LFCC may direct that the cost of such reprinting and redistribution shall be borne by the PCFO or charged to administrative expenses.

(b) *Dual listing is prohibited.* No voluntary agency or federation may be listed in both the national and local lists. The listing of both a national voluntary agency and its local affiliate or other subunit is prohibited even if the local affiliate or other subunit is prohibited even if the local affiliate or other subunit applies separately for admission to the local campaign. The national parent agency shall determine whether it or its local affiliate or other subunit will be listed. If the national parent agency applies for the national list then it will be presumed, unless it authorizes in writing that its local affiliate be listed instead of the national parent agency, that the national parent agency has determined that its local affiliates and subunits will not be included in local CFCs. Similarly-named local agencies may be listed provided that the LFCC determines that each delivers services to distinct geographical areas.

(c) *An employee may not make a designation to an organization not listed in the brochure.* Any attempt to do so voids the employee's contribution. The PCFO will return to the employee any money received and/or ask the employee to cancel his or her allotment. An employee whose designation is voided may not be resolicited.

§ 950.403 Pledge card.

(a) The Director will make available a model pledge card which must be faithfully reproduced at the local level. This will be the only authorized pledge card for use in the CFC.

(b) Upon written request the Director may authorize the use of different pledge cards.

(c) The use of a pledge card other than one that faithfully reproduces the Director's design or which has been authorized by the Director is prohibited.

§ 950.404 Penalties.

(a) A PCFO's failure to comply with Subpart D of these regulations may result in either disqualification from future service as PCFO, disqualification as a participating federation, forfeiture of all undesignated money otherwise directed to the PCFO, or all three penalties. Any or all of these penalties may only be imposed after a hearing on the record and communication of the Director's decision in writing.

(b) These penalties may be imposed in the sole discretion of the Director after an opportunity for a hearing on the record.

Subpart E—Distribution of Undesignated Funds

§ 950.501 Applicability.

(a) This Subpart applies to all domestic area campaigns. It does not apply to the DoD Overseas Campaign.

(b) The amount of undesignated funds to which the distribution formulas described in §§ 950.502 and 950.503 of this part apply shall be the amount remaining after the PCFO's approved budget is deducted from the total campaign receipts.

§ 950.502 Fall 1988 and 1989.

(a) For the fall 1988 and 1989 campaigns, the local United Way, ISA, NVHA, the American Red Cross, and those federations and voluntary agencies described in § 950.503(a)(4) of this part shall be allocated the same average dollar amount from undesignated funds as each received in the fall 1985 and 1986 local campaigns, except that:

(1) If there are not enough undesignated funds for the local UW, ISA, NVHA, the American Red Cross, and those federations and voluntary agencies described in § 950.503(a)(4) of this part to receive the same average dollar amount each received in the fall 1985 and 1986 local campaigns, then the shortfall shall be shared proportionally by them, so that each receives the average percentage of the pool of undesignated funds as it received in the 1985–86 campaigns; or

(2) If undesignated funds exceed the total of the average dollar amounts, then the excess shall be allocated in the following manner:

(i) The excess shall be added proportionally to the average dollar amounts of ISA, NVHA, and those federations and voluntary agencies described in § 950.503(a)(4) of this part, so that:

(A) 78 percent of the excess is divided evenly for ISA and NVHA each to receive an amount of up to 7 percent of the average of all undesignated funds for the fall 1985 and 1986 local campaigns; and

(B) Those federations and voluntary agencies described in § 950.503(a)(4) of this part receive 22 percent of the excess to be allocated by the LFCC among them so that they receive up to 4 percent of the average of all undesignated funds for the fall 1985 and 1986 local campaigns.

(ii) Any undesignated funds remaining after the distribution described in paragraph (a)(2)(A) of this section shall be distributed in accordance with the formula described in § 950.503 of this part.

(b) Each LFCC shall determine the average dollar amount of undesignated funds received in its fall 1985 and 1986 local campaigns by the local United Way, ISA, NVHA, the American Red Cross, and those federations and voluntary agencies described in § 950.503(a)(4) of this part, by adding the dollar amounts of the undesignated funds each received in those campaigns and dividing each recipient's total by two.

§ 950.503 Fall 1990 and thereafter.

(a) For the fall 1990 campaign, all undesignated funds received in a local campaign shall be allocated as follows:

(1) 82 percent shall be allocated to the local United Way;

(2) 7 percent shall be allocated to ISA;

(3) 7 percent shall be allocated to NVHA; and

(4) 4 percent shall, after fair and careful consideration of all eligible federated groups and agencies, be allocated by the LFCC among any or all of the following:

(i) National federated groups, other than the local UW, ISA, NVHA, except that a national federated group shall not be eligible unless:

(A) There are at least 15 member agencies of such group participating in the local campaign,

(B) The members of such group collectively receive at least 4 percent of the designated contributions in the local CFC, and

(C) Such group was granted national eligibility status for the fall 1988, 1989, or 1990 CFC;

(ii) Local federated groups;

(iii) Any local non-affiliated voluntary agency that receives at least 4 percent of the designated contributions.

(b) In those campaigns that have no local United Way or in which no organization is eligible to receive the 4 percent share, the LFCC will distribute what would have been the local UW or the 4 percent share of the undesignated funds in a fair and equitable manner that is reflective of the needs of the community. NVHA and ISA shall not receive more than 7 percent each of these funds.

(c) In those campaigns that have two or more United Ways, the United Way organization which is to receive the share of undesignated funds allocated shall agree with the other United Ways in the campaign area how their share of the undesignated monies will be distributed.

(d) The Director shall adjust the formula described in paragraph (a) of this section to reflect the experiences gained in the fall 1988, 1989, and 1990 CFCs. In so doing, the Director shall consult and give appropriate weight to the preferences of the Federal donors and other interested parties.

(e) The formula for distributing undesignated funds after the 1990 compaign shall be the one described in paragraphs 950.503(a) and (b), unless the formula is adjusted by the Director.

§950.504 Review by the Director.

The Director may alter an LFCC's distribution of undesignated funds:

(a) To reverse any allocation to ineligible organizations; or

(b) To enforce the distribution formulas described in §§950.502 and 950.503 of this part.

Subpart F—Miscellaneous Provisions

§950.601 Release of contributor names.

(a) The pledge card will contain a box for an employee to check if the employee does not wish his or her name and home address forwarded to the charitable agency or agencies designated. Failure to honor this decision may be grounds for decertifying the PCFO.

(b) An employee who elects to have his or her name forwarded to the organization(s) that the employee designates will complete a form, attached to the pledge card, a copy of which is to be forwarded to the organization(s). The original may be kept by the PCFO for one year from the end of the campaign, after which it will then be destroyed.

(c) It is the responsibility of the PCFO to forward the names and addresses of these employees to the recipient organization. The PCFO may not make any other use of this information provided by the employees.

(d) Recipient organizations that receive the names and addresses of employees must segregate this information from all other lists of contributors. This segregated list may not be sold or in any way released to

anyone outside of the recipient organization. Failure to protect the integrity of this information may result in penalties up to permanent expulsion from the CFC.

(e) Organizations must cooperate fully with OPM investigations into the care and appropriate use of these lists. Should an organization ignore or fail to respond to OPM's requests for cooperation or hamper an investigation, the Director may propose that the organization be suspended or expelled from the CFC. After considering any response, the Director will issue a decision.

§950.602 Solicitation methods.

Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and shall reserve to the individual the option of disclosing any gift or keeping it confidential. Raffles, lotteries, bake sales, carnivals, athletic events, or other fund-raising activities not specifically provided for in these regulations are strictly prohibited. This does not bar kick-offs, victory events, awards, and other non-fund-raising events to build support for the CFC.

Subpart G—DoD Overseas Campaign

§950.701 DoD Overseas Campaign.

(a) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Organizations that may participate in the Overseas Campaign will consist of:

(1) All agencies and federations found nationally eligible by OPM which meet the statutory eligibility requirements and the regulatory requirements of this part.

(2) The American Red Cross.

(3) The United Service Organizations.

(b) The DoD may select any organization or combination of organizations to serve as PCFO as it deems in the best interests of the overseas campaign.

(c) Federal civilian agencies with overseas personnel may elect to have these employees participate in the DoD campaign or in the National Capital Area campaign.

(d) On-base morale, welfare, and youth recreational activities may be supported from CFC funds.

(e) The distribution of undesignated funds shall be controlled by the determination of the organization or organizations serving as PCFO.

Subpart H—CFC Timetable

§ 950.801 Campaign schedule.

(a) The Combined Federal Campaign after 1988 will be conducted according to this timetable.

(1) During one 30-day period between January and March, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the national list.

(2) Within 30 days of the closing of the receipt of applications, the Director will issue notices and the reasons to organizations that failed to qualify for inclusion on the national list by U.S.P.S. first class mail.

(3) Organizations appealing the Director's adverse decision may petition for reconsideration within 15 business days of receipt of the initial decision. The deadline for this appeal will be determined by the date of the letter in paragraph (a)(2) of this section for receipt of this appeal.

(4) Local Federal Coordinating Committees must select a PCFO not later than March 15.

(5) The Director will issue a national eligibility list to all local campaigns 30 days after the deadline for the receipt of reconsideration petitions.

(6) Local Federal Coordinating Committees must accept applications from organizations seeking local eligibility for 30 days, and must render eligibility decisions at a public meeting advertised in the local media not later than two weeks after the deadline for receipt of applications.

(7) The appeals process described in section 950.204 of this part will be followed.

(b) The Director will annually issue a timetable for conducting eligibility hearings and processing appeals.

Subpart I—Payroll Withholding

§ 950.901 Payroll allotment.

The policies and procedures in this section are authorized for payroll withholding operations in accordance with the Office of Personnel Management Pay Administration regulations in Part 550 of this chapter.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local CFC organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to one year or less may make an allotment to a CFC when an appropriate official of the employing Federal agency determines that the employee will continue employment for a period to justify an allotment. This includes part-time and intermittent employees who are regularly employed.

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than three months).

(c) *Authorization.* (1) Allotments will be totally voluntary and will be based upon contributor's individual authorizations.

(2) Authorization forms in conformance with the model provided by the Director may be printed or purchased from a central source by each PCFO. These forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed payroll withholding authorization forms should be transmitted to the contributor's servicing payroll office as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by the payroll office.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24, or 12 pay periods depending on the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. Three months of employment is considered the minimum amount of time that is reasonable for establishing an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount of the allotment will be determined by the LFCC but will not be less than $1 per payday, with no restriction on the size of the increment above that minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) No deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the CFC allotment. No adjustment will be made in subsequent periods to make up for the missed deductions.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point (CRP) at each location for which the payroll office has

received allotment authorizations. The Director will provide a list of the authorized CRPs to Federal payroll offices.

(2) The check will be accompained by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the one year withholding period; or

(ii) On the death, retirement, or separation of the allotter from the federal service, whichever is earlier.

(2) The allotter may revoke the authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different Department or agency, his or her allotment authorization will be transfered to the new payroll office.

(2) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated.

(i) *Accounting.* (1) Federal payroll offices will oversee the establishment of individual allotment accounts, the deductions each pay period, and the reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit at least monthly for campaigns of $500,000 of more or quarterly if less than that amount, minus only the approved proportionate share for administrative cost reimbursement. It shall remit the contributions to each agency or to the federated group, if any, of which the agency is a member. The PCFO shall notify the federated groups, national agencies, and local agencies as soon as practicable after the completion of the campaign, but in no case not later than 60 days thereafter, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution amount the voluntary agencies of remittances from the PCFO; and

(ii) Arrangements for an independent audit conducted by a certified public accountant agreed upon by the participating voluntary agencies.

[FR Doc. 88–11914 Filed 5–25–88; 8:45 am]
BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

1988 Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Timetable for the 1988 Combined Federal Campaign.

SUMMARY: OPM has published final regulations on the CFC. This announcement governs the schedule for the 1988 campaign. The schedule provided in the regulations will govern subsequent campaigns.

May 27–June 17 Voluntary organizations applying for the national list submit their applications to OPM. To be considered timely applications must be received at the address below by 4:00 p.m. EDT June 17.

Office of Personnel Management
Office of the General Counsel
Room 7354, 1900 E Street, NW.,
Washington, DC 20415

May 27–July 15—Local voluntary organizations submit applications to Local Federal Coordinating Committees, to be considered timely they must be received by the LFCC by the close of business 4:00 p.m. local time on July 15.

July 1—Director issues letters to agencies found ineligible for the national list. Agencies found ineligible would be well-advised, pending appeal to the Director requesting reconsideration from the Director, to submit applications to those local campaings for which they are eligible to participate as a local organization.

Appeals of the Director's adverse decision must be received at OPM by the close of business (4:00 p.m. EDT), 15 business days after receipt of the above-mentioned letter.

July 25—Director issues the list of voluntary organizations for the 1988 CFC.

July 22—All LFCCs will have completed the notification, as required in regulations, to all applicants for the local CFC list.

August 5—The last date for an appeal to be received by the LFCC of an original adverse decision, to be considered timely it must be received by COB 4:00 p.m. local time.

August 12—Last date for LFCCs to reconsider timely appeals.

August 26—By close of business (4 p.m. EDT) all appeals of LFCCs denials of reconsideration must be received by the Director.

September 2—Last date for LFCCs to check with OPM on any timely appeals.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, Special Assistant to the General Counsel for the Combined Federal Campaign, 1900 E Street, NW., Room 7354, Washington, DC 20415 (202) 632–5564

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–11915 Filed 5–25–88; 8:45 am]

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Federal Register

Thursday
May 26, 1988

Part VII

Nonprocurement Debarment and Suspension; Notice and Final Rule and Interim Final Rule

Office of Management and Budget
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Department of State
International Development Cooperation Agency
Agency for International Development
United States Information Agency
Department of Housing and Urban Development
Department of the Treasury
Internal Revenue Service
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum Services
ACTION
Department of Transportation

OFFICE OF MANAGEMENT AND BUDGET

Memorandum to the Heads of Executive Departments and Agencies; Governmentwide Nonprocurement Suspension and Debarment

May 26, 1988.

In February 1986, the President signed an executive order directing that persons suspended or barred from doing nonprocurement business with ONE agency of the Executive Branch should be suspended or barred from ALL agencies. For example, if you debar an organization from fraudulent or criminal conduct in its dealings with you, that organization will not be able to shop for work from other Federal agencies. This is one more step in our war against fraud, waste, and abuse.

Twenty-eight agencies are today publishing a final common rule on "governmentwide nonprocurement suspension and debarment," and OMB is amending its guidelines to conform to the common rule.

Further information regarding the OMB guidelines may be obtained from Barbara Kahlow in the Financial Management Division on 395–3053.

Joseph J. Wright, Jr.,

Deputy Director.

[FR Doc. 88–11560 Filed 5–25–88; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF ENERGY

10 CFR PART 1036

SMALL BUSINESS ADMINISTRATION

13 CFR PART 145

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1265

DEPARTMENT OF COMMERCE

15 CFR PART 26

DEPARTMENT OF STATE

22 CFR PART 137

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR PART 208

UNITED STATES INFORMATION AGENCY

22 CFR PART 513

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 24

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR PART 601

DEPARTMENT OF JUSTICE

28 CFR PART 67

DEPARTMENT OF LABOR

29 CFR PART 98

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR PART 1471

DEPARTMENT OF DEFENSE

32 CFR PART 280

DEPARTMENT OF EDUCATION

34 CFR PARTS 85 AND 668

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR PART 1209

VETERANS ADMINISTRATION

38 CFR PART 44

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 32

GENERAL SERVICES ADMINISTRATION

41 CFR PART 101–50

DEPARTMENT OF THE INTERIOR

43 CFR PART 12

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 17

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 76

NATIONAL SCIENCE FOUNDATION

45 CFR PART 620

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR PART 1154

National Endowment for the Humanities

45 CFR PART 1169

Institute of Museum Services

45 CFR PART 1185

ACTION

45 CFR PART 1229

DEPARTMENT OF TRANSPORTATION

49 CFR PART 29

Nonprocurement Debarment and Suspension

AGENCIES: Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, Agency for International Development, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Final rule and interim final rule.

SUMMARY: This final common rule and this interim final rule establish among the Federal agencies shown above a uniform system of nonprocurement debarment and suspension. The rules are required under Executive Order 12549 of February 18, 1986. The rules are intended to prevent waste, fraud, and abuse in Federal nonprocurement transactions.

DATES: The effective date for both the final common rule and the interim final common rule is October 1, 1988. However, the Department of Housing and Urban Development is required to submit the interim final common rule provisions to Congress for review. See HUD's agency specific preamble below. Comments on the interim final common rule must be submitted by July 25, 1988. Sections ____.105(n) (phrase beginning at "except:" through the end of the definition), ____.110(a) (deletion of the word "domestic" from the first introductory sentence only), ____.110(a)(2)(ii), and ____.200(c)(2) comprise the interim final portion of the common rule. Public comment is invited solely on those provisions. The Department of Education is requesting comments on additional items within its agency-specific preamble. See the agency-specific preamble for the Department of Education below.

ADDRESSES: Persons wishing to submit comments on §§ ____.105(n), ____.110(a), ____.110(a)(2)(ii), and ____.200(c)(2), as specified above, should send them to Karin L. Genis, U.S. Small Business Administration, 1441 L Street, NW., Room 722, Washington, DC 20416. For all other purposes, see individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council for Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its 1982 report, that such a system was both desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on

Nonprocurement Suspension and Debarment. This Task Force recommended, in its 1984 report, that a governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step toward a comprehensive system, including both procurement and nonprocurement.

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed governmentwide nonprocurement debarment and suspension system. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of the nonprocurement programs. As a result, the proposed system essentially used the due process procedural structure of the FAR. Also, the proposed causes for debarment and suspension were substantially similar to those in the FAR. The proposal combined the causes common to existing agency nonprocurement regulations with the causes in the FAR.

In furtherance of the Task Force's recommendation, President Reagan signed Executive Order 12549, "Debarment and Suspension," on February 18, 1986. It was published on February 21, 1986 (51 FR 6370–71). The Executive Order established governmentwide effect for an agency's nonprocurement debarment or suspension action.

Section 6 of the Executive Order directed OMB to issue guidelines governing implementation of the Order, and Section 3 of the Executive Order directed the departments and agencies to promulgate final rules, consistent with these guidelines, within one year of the date of OMB's issuance of the guidelines.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in section 6 of E.O. 12549, including: coverage, governmentwide criteria, and minimum due process procedures (51 FR 6372–79). After consideration of public comment on the proposed guidelines, OMB issued final guidelines on May 26, 1987, published on May 29, 1987 (52 FR 20360–69).

On October 20, 1987, 25 of the 28 affected departments and agencies (all but the Departments of Education, Energy, and Housing and Urban Development) published proposed or interim final rules consistent with the final OMB guidelines (52 FR 39015–62, 39198–204). Subsequently, the Departments of Housing and Urban Development and Energy published proposed rules on November 2, 1987 (52 FR 42004–16) and December 24, 1987 (52 FR 48693–702), respectively. The Department of Education publishes herein a final rule with a request for comments on several sections, as indicated in the Department of Education's agency-specific preamble.

The common rule is being published here in part as a final rule and in part as an interim final rule. Because the common rule deletes the limitation contained in § _____.110(a) to *domestic* Federal nonprocurement programs, as proposed in the common rule by the Agency for International Development, and instead follows more closely the exemption set forth in the Executive Order for foreign governments and public international organizations, those sections affected by this change are being published as on an interim final basis. Those sections are:
§ _____.105(n) (phrase beginning at "except:" through the end of the definition), § _____.110(a) (deletion of the word "domestic" from the first introductory sentence only),
§ _____.110(a)(2)(ii), and
§ _____.200(c)(2). Public comment is invited solely on these provisions.

Comments on Proposed and Interim Rules

All 28 departments and agencies have shared a common docket for purposes of this rulemaking. 75 comments were received from the public: seven from executive branch agencies, 11 from Members of Congress, two from State and local governments, 36 from universities and academic associations, 11 from nonprofit organizations, four from hospitals, one from a business, and three from individuals.

Of the 25 agencies issuing proposed or interim final rules on October 20, 1987, 20 voluntarily joined a common proposed rule. The five other agencies and the two agencies which published in November and December 1987 proposed consistent rules with some variations. The public comments urged a final common rule, governmentwide uniformity and various substantive changes. The final common rule reflects substantive changes that respond to various public comments. As a consequence, OMB is amending its final guidelines to conform to the final common rule herein promulgated by all 27 participating Federal departments and agencies. The Department of Agriculture was unable to complete its clearance process on this document. A memorandum to the heads of executive departments and agencies appears elsewhere in today's Federal Register.

The preamble to the October 20, 1987 proposed common rule specifically invited public comment on two areas of the proposed regulation: "Coverage" (§ _____.110(a)(1)) and "Responsibilities of Federal agencies" (§ _____.505(e)). With respect to the first, the common preamble discussed the agency choice offered in the OMB guidelines to cover direct *or* direct and indirect costs. Under the guidelines, agencies were given the discretion to extend coverage of the regulations to lower tier transactions charged as indirect costs.

The February 1986 proposed OMB guidelines requested public comment on the scope of the governmentwide system, including: types of programs; lower tier transactions; dollar thresholds; which, if any, employees should be covered; and types of costs. The final OMB guidelines attempted to be responsive to the public comments received up to that point. The common rule limited coverage to lower tier transactions charged as direct costs, and thereby proposed to exempt indirect cost transactions.

The second section on which the common preamble specifically invited public comment, § _____.505(e), set out minimum agency responsibilities for implementing and enforcing the regulation. The proposed common rule required agencies to establish procedures for dissemination and use of the List of debarred and suspended persons and to obtain certifications from participants, in transactions at or below the Federal procurement small purchase threshold, that they are not debarred or suspended. Several of the agencies in the common rulemaking proposed variations on this theme in their individual preambles. These variations ranged from requiring certifications below $25,000 and checking the List over $25,000 to exempting all transactions under $25,000 and requiring only certifications for transactions over $25,000.

Substantial public comment was received on both sections. The proposed rule was amended in several respects, as set forth below, in response to these and other public comments.

General Comments

The public comments generally supported the Executive Order's establishment of governmentwide effect for an agency's nonprocurement debarment or suspension action, but expressed concerns about the fairness and workability of certain provisions of

the proposed rule and the potential impact on programs, and consistency with the procurement rules for debarments and suspensions. The final rule has been reviewed and amended to better balance the Federal Government and private interests at stake in Federal nonprocurement programs.

Several commenters stated that they considered the rule too vague and, therefore, subject to misuse. In response to these concerns, the final rule has been amended to emphasize more clearly that debarment and suspension actions are serious actions which should be undertaken only where the conduct upon which such an action is based seriously and directly affects the responsibility of the participant.

Additionally, several sections were amended with a view toward reducing potential ambiguities regarding the responsibilities of participants.

A number of commenters urged that the compliance provisions of the regulation be reconsidered in light of the paperwork and administrative burdens they appeared to impose on participants. The final rule establishes a uniform compliance system for all agencies and participants, which is less burdensome. These amendments are discussed in detail below.

The next step towards a comprehensive debarment and suspension system covering both procurement and nonprocurement activities will require technical revisions to be made to both this final common rule and to 48 CFR Subpart 9.4, which governs procurement debarment and suspension actions. The public will have a further opportunity to comment at that time. In addition, before the October 1, 1988 effective date of this final common rule, the public has the opportunity to address general questions and concerns to OMB or specific program questions to the affected agency.

Section-by-Section Analysis

The numbering system of the final rule varies somewhat from that of the proposed rule. Some sections were added and others reordered. For purposes of this discussion, the numbering of the final rule will be used, except where otherwise indicated.

Section ____.100 Purpose.

No public comment was received on this section. Paragraph (a) and the introductory sentence in paragraph (b) are amended for clarity. The order of reference to "debarred," "suspended," "ineligible," and "voluntarily excluded" persons is amended here and is made consistent throughout the regulation. Paragraph (d) of the proposed rule has been deleted since it was OMB guidance to the agencies.

Section ____.105 of the proposed rule, "Authority," is deleted as unnecessary. Reference to authority is included after the table of contents in each agency's individual preamble.

Section ____.105 Definitions.

This section (§ ____.120 of the proposed rule) was moved forward in the regulation for greater clarity in view of the fact that several of the defined terms are used in sections which formerly preceded the definitions section. For purposes of clarity of reference and to permit easier amendment by agencies which desire agency-specific language in their individual agency regulations, each definition has been given an alphabetical designation. Additionally, certain of the individual definitions were changed to respond to public comments and to conform them to changes made elsewhere in response to public comments.

The definition of "affiliate" is amended to conform to the definition in the July 31, 1987 proposed revision to the FAR (52 FR 28643). As a result, the separate definition of "control" that was included in the proposed rule is deleted as unnecessary.

A new definition of "civil judgment" is added to the regulation at § ____.105(d). The Department of Transportation (DOT) proposed this definition in its interim rule. DOT noted that the OMB guidelines authorized debarment and suspension based on civil judgments, but the guidelines contained no definition of "civil judgment." Further, DOT noted that the same rationale would justify debarment or suspension based on agency proceedings under the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99–509, 31 U.S.C. 3801–12). The Small Business Administration (SBA) also proposed inclusion of this ground for debarment or suspension, although in a different section. No public comment was received on either proposal. The final rule adopts the DOT definition, except that the word "wrongful" is omitted as misleading in that it is generally associated with tortious acts.

The definition of "debarring official" at § ____.105(g) was reformatted without substantive change to facilitate agency designations within their individual agency regulations of officials designated by the agency heat to impose debarments. A corresponding change was also made to the format of the definition of "suspending official" at § ____.105(t).

The final rule at § ____.105(i) retains the definition of "ineligible" in the proposed common rule with two amendments. These amendments make clear that persons will be considered "ineligible" under this definition only where there has been a determination of ineligibility which results in that person's exclusion from more than one covered transaction. The revised language is intended to make clear that the definition is not intended to include persons denied assistance with respect to a single covered transaction for failure to satisfy statutory or regulatory eligibility criteria.

The term "Nonprocurement List" at § ____.105(k) has been subsituted in the final rule for the term "Consolidated List" in the proposed rule to conform to decisions made by the General Services Administration (GSA) regarding the title and captions of the *List of Persons Excluded from Federal Procurement or Nonprocurement Programs.* Additionally, the word "participants" has been changed to "persons" to conform the text to the new treatment of participants and principals elsewhere in the regulation. See discussion of "participant" and "principal" below.

The definition of "participant" at § ____.105(m) is substantially revised from the proposed rule. The definition of "participant" formerly included any person who might "perform services in connection with" a covered transaction and any person who "conducts business * * * as an agent or representative" of a participant. Public comment opposed this broad concept of "participant" which would encompass any employee of the participant, however indirectly involved in a covered transaction. Based on a proposal made by the Department of Defense (DOD), which was strongly supported by the public comments, the final rule deletes the "performs services in connection with" language from the definition of "participant," and revises the last sentence of the definition. Both changes are to conform the definition of "participant" to the new definition of "principal" at § ____.105(p).

This change significantly narrows the breadth of the rule. By introducing the concept of "principals," the rule now covers only those persons who participate in a covered transaction and who are working for a participant in a capacity of primary management, or who have a critical influence on or substantive control over a covered transaction (e.g., not support staff).

The definition of "participant" was also amended by replacing the phrase "receives an award or subaward" with "enter into a covered transaction" to

conform the definition to the definition of "covered transaction" in § _____.110. The concept of "award" is related to grants and cooperative agreements, which are only a part of the range of transactions which constitute "covered transactions."

The final common rule adopts SBA's proposals to delete the phrase "including any subsidiary of any of the foregoing" from the definition of "person" at § _____.105(n) and to delete the definition of "subsidiary." These changes conform the definition section to the treatment of subsidiaries under § _____.325. See discussion of this significant change under that section.

The definition of "person" has also been amended to exclude certain international participants in covered transactions. The Executive Order specifically excluded direct awards to foreign governments and public international organizations. Other related entities have been added to these two Executive Order designated entities to recognize that the sort of transaction to which the Executive Order referred sometimes is accomplished through combinations of foreign governments and other nongovernmental entities. The consequence of this exclusion, taken together with the deletion of "domestic" from § _____.110(a), is to include international nonprocurement activities of the Federal Government involving entities not specifically excluded from the definition of "person." The discussion of § _____.110(a) below provides the rationale for this extension of the coverage of this rule. This new language is being published on an interim final basis and public comment is specifically invited.

The definition of "principal" at § _____.105(p) is added to the final rule based on a proposal made by DOD in its proposed rule. The change was intended to conform the nonprocurement rule to the July 31, 1987 proposed amendment to the FAR provisions governing procurement debarment and suspension (52 FR 28642–46). The definition of "principal" in the final rule is different from that under the proposed FAR to reflect differences in the procurement and nonprocurement programs. The definition reaches all persons critical to the covered transaction, whether or not employed by the participant. This change includes within the concept of "principal"persons that would fall outside of the definition in the FAR amendment, but who have primary management of, a critical influence on or substantive control over a nonprocurement covered transaction (e.g., principal investigators).

The concept of "principal" is used in the rule in connection with the description of the effect of a debarment or suspension, and who is subject to the enforcement procedures outlined in Subpart E of the rule. The adoption of this concept limits the effect of the rule by excluding persons who would otherwise have been covered under the proposed rule.

The final rule is formatted to permit agencies to add to the examples of "persons who have a critical influence on or substantive control over a covered transaction," for purposes of their individual agency programs. This approach is intended to permit agencies to reach persons within a participant who are key to a covered transaction but who might not otherwise be considered "principals" of the transaction under the basic definition in the common rule. See agency specific amendments.

The definition of "proposal," at § _____.105(q), is amended to conform more closely with the coverage of the rule, i.e., all Federal nonprocurement programs.

A definition of "State" at § _____.105(s) has been added. The proposed rule, while using the concept "State," did not define the term. The definition included here reflects this Administration's Federalism policy.

The definition of "suspension" at § _____.105(u) has been amended by adding "Program Fraud Civil Remedies Act" to the first sentence. This change is made to conform the definition to changes made to the procedural provisions governing suspension actions. See discussion of §§ _____.411 and _____.415.

Section _____.110 Coverage.

The final rule contains fully revised language describing the coverage of these regulations. The public comments highlighted a significant weakness of the proposed rule's treatment of the distinction between coverage, effect of debarment, scope of debarment, and certification. The proposed rule combined elements of all these provisions in former § _____.110(a), which led to substantial confusion and charges that the regulations were overboard.

The public expressed substantial concern about the treatment of indirect cost transactions. Most commenters on this section objected to the inclusion of such transactions, or questioned the feasibility of such inclusion.

The final rule deletes any reference to direct or indirect costs as a basis for inclusion or exclusion of a transaction from the coverage of the regulation. The final rule omits this distinction based on the view that it is an inappropriate vehicle for limiting the scope of the rule. As the public comment made clear, use of a direct/indirect cost distinction creates difficulties in identifying which transactions are covered by the rule at the time into which they are entered. Further, exclusion of indirect cost transactions may result in a shifting of cost by participants from direct to indirect cost categories in order to evade the rule. Finally, indirect cost transactions may represent a significant portion of the cost of covered transactions, and the Federal Government's interest in these transactions cannot be legitimately distinguished from its interest in direct cost transactions.

The final common rule adopts a new approach intended to avoid the limitations of the direct/indirect cost approach. Also, it more clearly identifies the transactions affected by the rule so that participants may better avoid inadvertent violations of the rule. In response to the general concern that the rule reaches too far, the final rule contains several changes which have the effect of significantly limiting and clarifying its scope. Section _____.110(a) is revised to distinguish between primary covered transactions and lower tier covered transactions. Primary covered transactions are described at § _____.110(a)(1)(i) using substantially the same language as appeared in the proposed common rule § _____.110(a)(1). Primary covered transactions are defined to include the transactions formerly identified as "specially covered transactions" in § _____.110(a)(2) of the proposal. These transactions include essentially all Federal activities other than Federal procurement activities in which the Federal Government deals directly with a person.

Lower tier covered transactions, defined at § _____.110(a)(1)(ii), are those transactions between a participant in a covered transaction and another person growing out of a primary covered transaction. The definition of lower tier covered transaction distinguishes between three types of transactions. The first involves transactions other than procurement contracts for goods or services growing out of a covered transaction. These include, for example, subgrants under grants. All such transactions are included because they generally involve the submission of applications or other documentation before the transaction is

entered into. Because of this, the enforcement procedures contained in the final rule may be applied without creating onerous paperwork or administrative burdens. See discussion of § ____.510.

The second category of lower tier covered transactions is certain procurement contracts for goods or services growing out of covered transactions. The final rule limits coverage of these transactions to contracts expected to equal or exceed the Federal procurement small purchase threshold, currently set at $25,000. This exception is made because procurement transactions under the Federal procurement small purchase threshold frequently do not involve the submission of written offers or proposals under participant's procurement procedures. Consequently, coverage of these transactions would require participants to establish additional recordkeeping and administrative procedures to comply with the rule.

The third category of lower tier covered transactions is procurement contracts for goods or services between participants and a person under which such person will have a critical influence on or substantive control over a covered transaction. This category is established to accommodate the need to reach certain procurement contracts under $25,000 for goods or services of persons having a critical influence on or substantive control over a covered transaction, e.g., bid and proposal estimators and preparers. The final common rule is formatted to permit agencies to add to the example of such persons for purposes of their individual agency programs. See agency specific amendments. Only contracts with those persons listed, either in the common rule or as a result of agency specific additions, will be considered lower tier covered transactions under paragraph (a)(1)(ii)(C).

One commenter urged that estimators be included within the scope of lower tier covered transactions. We have concluded that it is unnecessary to include such a provision in the list in paragraph (a)(1)(ii)(C) of the common rule because such persons do not participate in agency programs throughout the Federal Government. Those agencies whose programs involve estimators may designate such persons as having a critical influence on or substantive control over a covered transaction in their individual agency amendments.

Other changes in the rule also serve to narrow its scope. The inclusion of the concept of principals limits the effect of the rule to participants and their principals, and thereby excludes all other individuals employed by participants or principals. The elimination of § ____.325(a) of the automatic application of debarments and suspensions to subsidiaries also limits the effect of debarment and suspension actions. Further, the rule generally excludes procurement contract transactions which do not equal or exceed the Federal procurement small purchase threshold, currently set at $25,000. These changes are believed to be more appropriate methods of narrowing the focus of the rule to transactions and persons about which and whom the Federal Government should be most concerned.

Some commenters questioned the meaning of the term "intermediary." The term is unnecessary in view of the changes made to this provision, and is omitted from the final regulation.

One congressional commenter urged that the rule cover export licensing. The final common rule does not cover these licensing actions in part because export licenses issued under the Export Administration Act of 1979, as amended, and licenses under the Arms Export Control Act, as amended may be denied only for certain reasons specified by statute. These reasons are not currently compatible with the causes for debarment under this rule. Moreover, the Department of Commerce and State, which administer these licensing programs, currently have procedures for excluding persons from those programs. Persons so excluded would be considered "ineligible" under this rule, and would be so listed on the *List of Persons Excluded from Federal Procurement or Nonprocurement Programs.*

Section ____.110(a)(2) of the rule contains the language formerly contained in § ____.110(a)(3), with an amendment. This paragraph is reorganized for clarity and to conform to the order of reference to transactions excluded by the Executive Order.

The list in § ____.110(a)(2) is duplicated in § ____.200(c) to clarify that a person who has been debarred or suspended nevertheless retains eligibility for the listed transactions. For example, if a person receiving disability benefits is debarred for any of the causes under § ____.305 in connection with performance of a grant, such person is not prohibited from continuing to receive the disability benefits.

Persons engaged in the transactions on this exclusion list are not required to comply with the certification requirements in § ____.510 in connection with such transactions. For instance, an individual does not need to certify that he or she is not debarred or suspended in order to receive food stamps.

A particular transaction's exclusion from the definition of covered transaction, however, does not affect the Federal Government's authority to debar a person from any of the causes under § ____.305 in connection with that transaction. For instance, a person may be debarred for fraud in connection with acceptance of food stamps.

Three new categories of transactions are also excluded pursuant to this paragraph. The final common rule now includes reference to two categories identified in the Executive Order but omitted from the proposed common rule: direct awards to foreign governments and public international organizations and federal employment. The exclusion for foreign governments and public international organizations has been expanded to include related entities involved in such transactions. This change is made as a consequence of the deletion of "domestic" in the introductory sentence of § ____.110(a). See the discussion of that change above. This addition is published as an interim final rule, and public comment is expressly invited. A new exclusion has been added for transactions growing out of emergencies or disasters recognized by Federal agencies. This change is made to recognize the need for expedient action which could be encumbered unnecessarily by application of this rule.

Section ____.110(b) is amended by deleting the word "additional" before "affiliates" in the last sentence. This change is made to conform the provision to the changes made in §____.325 relating to subsidiaries and affiliates.

Section ____.110(c) is amended by deleting the first sentence. The phrase "under Federal procurement contracts" is added to modify "subcontractors" in the second sentence to make clear that the exception does not include contracts or subcontracts under covered transactions. The last sentence of this provision, as contained in the proposed rule, is omitted as unnecessary. That sentence contained instructions from OMB to the agencies.

Section ____.115 Policy.

A new paragraph (c) is added to this section. The new paragraph provides that where more than one agency has an interest in proposing a debarment or suspension, a lead agency may be designated for purposes of taking the debarment or suspension action. This change is made for three reasons. First, it will facilitate coordination of Federal agencies having shared interests in the

debarment or suspension of a person. Second, it will enhance efficiency, by avoiding duplication of effort by several agencies. Third, it will protect persons from being subject to multiple debarment or suspension proceedings by different agencies. Public comment urged that the agencies act as "one government." This provision will help respond to these comments, and will conform the rule to the proposed changes to the FAR published on July 31, 1987 (52 FR 28642–46).

Section _____.200 Debarment or suspension.

The language of § _____.200 has been substantially revised to state more clearly the effect of a debarment or suspension. In the proposed rule, § _____.200(a) described the effect of a debarment or suspension on the eligibility of persons to be participants in covered transactions; § _____.200(b) described the effect on such persons to serve in certain key capacities within participants (see discussion of § _____.510). The final rule is organized to describe with greater clarity the effect of debarment and suspension in relation to the different categories of covered transactions.

Section _____.200(a) now specifically provides that debarred or suspended persons are excluded as either participants or principals in primary covered transactions. Section _____.200(b) now provides that debarred or suspended persons are excluded from participating in lower tier covered transactions.

A number of commenters expressed concerns about the effect of debarment or suspension. One commenter asked what would happen if a debarment or suspension terminated between the date of bid opening and the date of award. Although these regulations do not specifically address this question, the practice under the FAR is that if the debarment terminated prior to the date of award, the award may be made to the formerly debarred person.

Some commenters expressed concern that the proposed rule implied that a person who was debarred or suspended might be excluded from all Federal Government benefits. In response to these comments, a new § _____.200(c) has been added. This paragraph contains language formerly found in § _____.110(a)(3). The order of the items excluded has been amended to conform to the order of reference in the Executive Order. The list has also been expanded consistent with the amendment at § _____.110(a)(2) to include direct awards to foreign governments and public international organizations (and related transactions), Federal employment, and transactions growing out of national or agency-recognized emergencies and disasters. The reference to direct awards to foreign governments and public international organizations is published as an interim final rule, and public comment on that item is specifically invited.

The addition of this list of exclusions to § _____.200 makes clear that persons who are debarred or suspended are not rendered ineligible for participation in the nonprocurement transactions listed in this paragraph. For example, debarred and suspended persons continue to be eligible for protection of their deposits in federally-insured financial institutions as such protection is a statutory entitlement. Incidental benefits include use of the U.S. Postal Service, National Parks and recreation areas, and certain Federal licenses and permits.

Commenters also questioned whether debarment of a person would preclude that person from having any form of connection with a participant. Under the rule, a person who is debarred or suspended is only excluded from either a participant or a principal of either a primary or lower tier covered transaction. Such person is not precluded from serving in another capacity with respect to a participant, such as a non-principal employee.

Several commenters raised concerns about the motives behind and severity of a debarment or suspension action and/or its governmentwide effect. Some feared overzealous use of the procedures to harass, punish, or defund certain groups. In fact, however, the causes and due process procedures for nonprocurement debarment and suspension are not essentially different from those for nonprocurement debarment and suspension before Executive Order 12549. The principal difference is that a governmentwide system will save the Federal Government the cost and effort of taking repetitive actions to exclude participation of the same entity. Other less severe remedies, such as suspension or termination of a particular grant or disallowance of costs, will remain available, and may be more appropriate in many circumstances. Overall, the process should be viewed as beneficial to the vast majority of participants because it will ensure that assistance and benefits go only to qualified, responsible participants.

A related concern was whether a debarred or suspended person could serve on the board of directors or as an officer of a nonprofit organization receiving Federal funds. A board member or officer is included within the definition of "principal" at § _____.105(p). Therefore, an organization would be ineligible to participate in covered transactions if a debarred or suspended individual was either an officer or director.

Section _____.210 Voluntary exclusion.

This section was designated as § _____.205 in the proposed common rule. It is redesignated as § _____.210 to conform to the order of reference throughout the rule to "debarred," "suspended," "ineligible," and "voluntarily excluded" persons. Section _____.210 of the proposed common rule, "Ineligible Persons," has been redesignated as § _____.205 for the same reason. Further, text of this section is amended by replacing the term "participants" with "persons" to make it clear that voluntary exclusions may affect both participants and principals. The second sentence is deleted from the final common rule because it is misleading. The requirement to contact the original action agency is eliminated for participants and is limited to Federal agencies. Participants are not precluded from doing so, however, if they so choose. This is to conform the section to § _____.510(b)(2), which allows participants to rely on certifications received from lower tier participants, and to recognize the fact that participants are not expected to be in possession of the List. This change further reduces the compliance burden imposed on participants.

Section _____.215 Exception provision.

The term "voluntarily" is inserted before "excluded" in the first sentence of this provision. This change is made to recognize that no exception may be granted to a person who is ineligible for a program, as defined in § _____.105(i); whereas, an exception may be granted to a voluntarily excluded person.

Section _____.220 Continuation of Covered transactions.

The caption of this section has been amended to conform to the use of "covered transaction" in place of "award" throughout the rule. Two commenters asked for clarification that no-cost time extensions or change orders were not affected by § _____.220(b). Language is added to indicate that no-cost time extensions of existing awards are not affected by subsequent debarments or suspensions. A similar provision is not included for change orders because of the varied nature of change orders. If change

orders are necessary to protect the integrity of the covered transaction, the exception provisions of § ____.215 may be utilized.

Section ____.225 Failure to adhere to restrictions.

The phrase "ineligible or voluntarily excluded" is substituted for "otherwise excluded" each time it appears in this provision and throughout the regulation. This change limits the reference to actions covered by this regulation.

The first sentence of this section is amended to more clearly state the types of transactions which would constitute a violation of the rule. The proposed common rule language could have been read as precluding any transaction with any person who was debarred, suspended, ineligible, or voluntarily excluded, regardless of whether the transaction was in connection with a covered transaction, or whether the person was ineligible or voluntarily excluded from the individual transaction involved.

The final common rule also substitutes "knowingly" for "known or reasonably should have been known" to conform this provision to the comparable proposed FAR provision. The comparable FAR provision appears in the certification in the July 31, 1987 proposed amendments to the FAR (52 FR 28642–46). Knowingly doing business with a debarred or suspended person could result in a cost disallowance or other action.

Six commenters expressed concerns that the sanctions for failing to adhere to restrictions would place an undue burden on participants. In response to these concerns, a provision is added stating that a participant pursuant to § ____.510(b), unless the participant knows that the certification is erroneous. The burden of proof is on the Federal Government to prove that the participant knowingly did business with a debarred or suspended person.

Section ____.305 Causes for debarment.

Several commenters expressed concern that the proposed common rule vested too much administrative discretion in agencies, that the causes for debarment under § ____.305 were too broad and/or vague, and that some of the grounds for debarments were inconsistent with those in the FAR. The principal concern raised was that agencies might use the debarment process to exclude persons for inadvertent or insignificant actions or as punishment. These concerns focused on the grounds in three paragraphs.

Concern was expressed that paragraph (b)(1) and (b)(3), which permitted debarment based on willful *or* material failures to perform or violations of applicable requirements, could be used to exclude persons for insignificant cause. Other commenters objected to paragraph (c)(2), which permits debarment based on a participant's doing business with a person the participant knew or should have known was debarred, suspended, ineligible, or voluntarily excluded from a covered transaction. The concern was that persons could be debarred for unintentional and inadvertent violations of these provisions.

The final rule retains most of the grounds for debarment of the proposed rule with amendments. Most of the amendments are to conform the grounds for debarment under this rule with those contained in the FAR causes for debarment at 48 CFR 9.406–2 (a)–(c). Paragraph (a) is amended to delete the phase beginning with "any offense indicating" through the colon, in conformity with the comparable FAR provision. Paragraphs (a)(1) through (a)(4) restate the causes for debarment contained in paragraphs (a)(1) through (a)(3) and (c)(3) of the proposed rule in language that more closely parallels the comparable FAR provisions. They have also been reordered to conform to the order of the FAR provisions.

One commenter suggested that the grounds for debarment under § ____.305(a) be restricted to the offenses related to the assistance program or benefit in question. In order for the Federal Government to adequately protect its various interests, it is necessary to take cognizance of a person's propensity to commit fraud or other wrongs in other similar relationships, whether the original offense was against another Federal agency, a State, or a private person. It is the act of wrongdoing, and not the program or victim, that is relevant to the protection of the Federal interest.

The phrase "public or private agreement or transaction" in paragraph (a)(1) is intended to paralled "public contract or subcontract" in 48 CFR 9.406–2(a)(1). Private agreements and transactions need to be covered because certain lower tier covered transactions will be between two private parties.

Other changes are made to narrow the grounds for debarment in response to the public comments. Paragraph (b) is amended by substituting the phrase "integrity of an agency program" for "present responsibility of a participant." This change is made to better describe the Federal interest intended to be protected by the grounds for debarment outlined in paragraph (b).

Several commenters objected to the "or material" language in paragraphs (b)(1) and (b)(3). In response to these comments, and to conform with the FAR causes for debarment at 48 CFR 9.406–2(b), that language has been deleted from the final rule.

Paragraph (c)(1) has been amended to restrict this cause to debarments by Federal departments or agencies under the FAR procurement debarment and suspension regulations, 48 CFR Subpart 9.4. Paragraph (c)(1) in the proposed rule provided that a person may be debarred for debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § ____.305. This cause was narrowed to include only debarments by Federal agencies under the FAR and nonprocurement debarments by Federal agencies taken prior to the effective date of these regulations. This change was made in response to the concern that State debarment proceedings may not provide the same due process rights as Federal proceedings and, therefore, such proceedings by themselves should not constitute sufficient cause for a Federal debarment.

Paragraph (c)(2) has been amended by substituting "knowingly" for "known or reasonably should have been known" to conform to the comparable proposed FAR provision. The comparable FAR provision appears in the certification in the July 31, 1987 proposed amendment to the debarment provision (52 FR 28642–46).

Paragraph (c)(3) in the proposed common rule has been moved in substance to paragraph (a)(4) to conform to the FAR.

Paragraph (c)(3) was designated as paragraph (c)(5) of the proposed common rule. Commenters expressed concern that the effect of this provision would be to convert this regulation into another tool used by agencies to collect debts, and that this provision could be used to exclude persons with a single or nominal debt. These concerns are unwarranted. This cause is intended to ensure that the Federal Government does not enter into covered transactions with persons who have either defaulted on a single, substantial obligation to a Federal agency (e.g, an agri-business loan, but not a single student loan), or defaulted on a number of obligations to one of more Federal agencies. It is also not intended to reach debts once in default that have since been repaid or otherwise forgiven.

In light of the public comment and the underlying purpose of the provision, the final rule is amended to provide that

debarment may be based on a failure to satisfy a single, substantial outstanding debt or a number of outstanding debts owed to any Federal agency or instrumentality, provided that such debt is uncontested or that all administrative remedies have been exhausted by the debtor. Additionally, because concern was raised that this cause might be used as a method for compelling payment of tax deficiencies and related assessments, the cause has been amended in the final rule to exclude debts due under the Internal Revenue Code.

Paragraph (c)(4) of the proposed common rule is deleted from the final common rule. This cause for debarment is not in the FAR, and raises possible due process concerns.

Paragraph (c)(6) in the proposed rule is redesignated as paragraph (c)(4) in the final rule.

As revised, the causes for debarment are now better tailored to focus on the appropriate range of events and behavior that potentially threaten the integrity of federally-administered nonprocurement programs and more closely parallel the FAR causes for debarment. Additionally, the rule provides adequate protection to the public and business community against frivolous agency debarment actions or actions based on insignificant events. Section _____.300 clearly states that the mere technical existence of a cause for debarment does not require an agency to debar. Under that section, the debarring official must consider the seriousness of the person's acts and any mitigating factors, before rendering a decision. Moreover, the procedures in §§ _____.310–_____.314 guarantee substantial due process rights to a person proposed for debarment, and any final determination by an agency is subject to judicial review.

Section _____.310 Procedures.

The provisions contained in § _____.310 of the proposed rule are restructured and simplified to improve their readability. The language is now divided into separate sections, §§ _____.310–_____.314. The substance of the common rule, as revised, is essentially unchanged from that of the proposed common rule.

The language from the first part of proposed rule § _____.310(b), is now contained in substance in § _____.310.
§ _____.310(a) is now contained in substance in § _____.311.
§ _____.310(b)(1) is now in § _____.312.
§ _____.310(b)(2) is now in § _____.313(a). § _____.310(b)(3) is now in § _____.313(b).
§ _____.310(b)(4) is now in § _____.314 (a) and (b). § _____.310(b)(5) is now § _____.314(c). § _____.310(b)(6) is now § _____.314(d).

Further, the provisions have been structured to permit individual Federal agencies to insert additional provisions necessary to conform the regulation to their internal operating procedures. Additionally, non-substantive language changes have been made in various sections to improve clarity.

The Department of Housing and Urban Development (HUD) has organized its procedural sections differently to accommodate actions for both procurement and nonprocurement debarment and suspension. See its agency specific preamble.

Public comments focused on several aspects of the procedures. Some commenters expressed concern that the standard of proof was too low. The "preponderance of the evidence" standard set out in § _____.314(c)(1) is the same standard of evidence contained in the FAR, 48 CFR 9.406–3(d)(3), and in other regulations Governing comparable proceedings throughout the Federal Government. Moreover, this standard has been found adequate by courts reviewing actions under the FAR and other such regulations. For these reasons, the "preponderance of the evidence" standard is retained in the final rule.

Some commenters expressed concern that the regulation does not clearly assign the burden of proof. While the proposed common rule was silent on this point, a new paragraph (c)(2) is added which states that the burden of proof is on the proposing agency.

Many commenters urged that the regulation include an administrative appeal process. The purpose of these regulations is, among other things, to ensure that minimum due process is guaranteed to all respondents. Due process does not require that administrative agencies provide an administrative appeal from its decisions to debar. The final rule allows individual agencies to decide what level, style or avenue of appeal, if any, they wish to provide. This approach is consistent with rules currently in effect for debarment under the FAR, which have been upheld by the courts.

Two commenters objected to the procedures now contained in § _____.314 (a) and (b), "No additional proceedings necessary" and "Additional proceedings necessary," respectively, in which the debarment decision may be based on the administrative record without providing the respondent a fact-finding hearing. The procedural section of the proposed common rule was drafted to conform to the procedures for debarment under FAR. Those regulations have withstood Constitutional challenge. Where material facts are not in dispute, due process does not require a full fact-finding hearing, including confrontation of witnesses. The final rule, like the proposed rule, neither requires agencies to nor precludes them from providing hearings to receive and consider mitigating evidence and other information that may influence the agency's decision.

Section _____.314(d)(2) permits dismissal without prejudice of a debarment action against a person. Should a second agency debar that same person, however, such debarment shall have governmentwide effect, and shall be recognized by the agency that had dismissed its own debarment action.

Section _____.315 of the proposed rule, "Effect of proposed debarment," gave limited effect to a proposed debarment. Concern was expressed that this sort of provision meant, in effect, that persons could be considered guilty before having had an opportunity to defend themselves. In response to this concern, and, since the suspension provision permits agencies to exclude persons viewed as posing a threat to Federal interests pending a debarment decision, this provision was deleted, together with all related references elsewhere in the regulation. Proposed debarments currently do not have governmentwide effect under the FAR, although such effect is proposed in the July 31, 1987 notice of proposed rulemaking (52 FR 28642–46). If the FAR adopts this treatment, this provision will be reconsidered.

Section _____.315 of the final rule, "Settlement and voluntary exclusion," formerly designated § _____.320, reflects changes to clarify the purpose and effect of voluntary exclusions under settlement agreements.

Section _____.320, "Period of debarment," designated as § _____.325 in the proposed rule, is unchanged from the proposed rule. Some commenters urged a shorter period of debarment, and others urged longer periods. The proposed rule language is amended to be made consistent with the FAR. In this regard, the phrase "or indefinite" is deleted from paragraph (a) of the final common rule. Additionally, the word "may" in the final sentence of that paragraph has been replaced by "shall."

The language at the beginning of § _____.320(c) has been amended to improve clarity. Under this paragraph, respondents may request reversal of a debarment or a reduction in its period or

scope. Such request must be in writing and supported by documentation.

Section _____.330(a) of the proposed rule (now designated § _____.325(a), "Scope in general") provided that debarment automatically included all subsidiaries, divisions, and other organizational elements of a participant or an affiliate. The scope of a debarment has been narrowed in the final rule by deleting the term "subsidiaries" from § _____.325(a)(1). As a result, subsidiaries will be treated as affiliates under the rule, and debarring agencies must afford them the same rights to notice and opportunity to respond to the proposed debarment as that given any person proposed for debarment. In other words, affiliates will be considered respondents under the rule if a proposed debarment action includes them. Because of this change, the word "other" has been deleted before "affiliate" in former § _____.330(a)(2) to recognize that there is only one class of affiliates, all of which are entitled to the procedural rights afforded all respondents. As a result of the change affecting affiliates, agencies that also seek to debar particular affiliates of a participant will similarly need to identify such affiliates and provide them with notice of the proposed debarment under § _____.312 and the opportunity to participate in proceedings under § _____.313.

Section _____.325(a)(1) specifically states that a debarment may be limited to particular individuals, divisions or organizational elements of participants. In such cases the notice of proposed debarment under § _____.312 will be directed only to the affected individuals, divisions or organizational elements.

Some commenters objected to the possibility of including affiliates at all in any debarment action where direct culpability cannot be shown. Extension of a debarment to affiliates, regardless of complicity, is necessary to prevent a debarred person from participating in covered transactions through or under the guise of other entities that such person controls.

Section _____.325(b) of the final rule, "Imputing conduct," formerly § _____.330(b), received substantial public comment. While some predicted that imputing misconduct would discourage citizen involvement in community projects, others were concerned that the existence of a cause for debarment with respect to one person would result in debarment of others who were not responsible for the actions in question. The principle of imputing the misconduct of one individual or organization to another, or between individuals and organizations, is a well established principle in the law, and has been used in debarment proceedings under both Federal procurement and nonprocurement programs that predate this rule. The imputed conduct provisions in this rule conform with those in the FAR.

Other concerns regarding this provision are resolved by the language of the rule itself. Some commenters expressed the concern that it is inappropriate to impute conduct to individuals or organizations without regard to their responsibility for or culpability in the misconduct. The language in § _____.325(b) expressly limits imputing conduct to situations where the person to whom it is imputed had knowledge of, approved of, or acquiesced in the misconduct in question, or where such misconduct was done for or on behalf of the person to whom it is imputed. Additional protection is afforded individuals to whom conduct may be imputed by virtue of the procedural protections in the rule. The debarring official is required by these rules to consider all relevant information and mitigating factors presented before rendering a decision. The rule does not permit a person to be debarred based on imputed conduct without just cause.

Section _____.400 General.

Section _____.400(b) is reorganized without substantive change for greater clarity.

Section _____.400(c) is added to incorporate language currently found at 48 CFR 9.407–1(b). This outlines the approach agencies will take in assessing the adequacy of the evidence in support of a suspension.

Section _____.405 Causes for suspension.

Some commenters questioned whether "mere suspicion" that a participant engaged in an activity which would be grounds to debar was sufficient reason to suspend under § _____.405(a)(1). The language is derived from the corresponding FAR provision. 48 CFR 9.407–2(a) provides that suspension may be imposed against "a contractor suspected, upon adequate evidence, of" commission of a covered offense. The provision here similarly protects the interests of suspended persons by requiring that such suspensions based on suspicion of an offense be based on adequate evidence. Further, the provision stating that an indictment shall be considered adequate evidence to support a suspension replicates the corresponding provision in the FAR at 48 CFR 9.407–2(b).

Moreover, § _____.400(b) requires that before imposing a suspension, the suspending official must be satisfied that "immediate action is necessary to protect the public interest. If the gravity of the Federal Government's interest is not deemed sufficient, suspension may not be imposed even if a technical cause to suspend has been established.

In addition, the rule does not preclude an agency from employing other means than suspension to protect its interests. Where circumstances warrant, an agency and a person may enter into an agreement governing that person's participation in agency programs pending resolution of the matter. Agencies are expected to use their judgment in resorting to suspension, balancing the interest to be protected against the effects resulting from imposing a suspension.

One commenter requested clarification of the language contained in § _____.405(b) which reads "Indictment shall constitute adequate evidence for purposes of suspension actions." This provision is consistent with language contained in the FAR. An indictment represents a determination by competent authority that probable cause exists to believe that the named defendant has committed a criminal act; executive agencies are neither authorized nor positioned to question the factual support for the allegations contained therein. Accordingly, an indictment satisfies the standard of § _____.405(a)(1) that there must be "adequate evidence * * * to suspect the commission of an offense." Therefore, as a technical matter, the adequate evidence standard is met. Agencies would be remiss if they failed to acknowledge the significance of the issuance of an indictment and to act upon it where a legitimate Federal Government interest is threatened. Nonetheless, even where an indictment would serve as a basis for suspension, suspension cannot occur unless immediate action is necessary to protect the public interest.

Section _____.410 Procedures.

The provisions contained in § _____.410 of the proposed rule are restructured and simplified to improve their readability. The language is now divided into separate sections, §§ _____.410– _____.413. The substance of the rule, as amended, is essentially unchanged from that of the proposed rule.

HUD has organized its procedural sections differently to accommodate actions for both procurement and nonprocurement debarment and

suspension. See its agency specific preamble.

The language from the proposed rule § _____.410(b)(1), is now contained in substance in § _____.411. The language in paragraph (e) is revised to include reference to "Program Fraud Civil Remedies Act" proceedings, consistent with the change to definition of "civil judgment" at § _____.105(d), as a result of which imposition of a penalty under that act could be a cause for debarment.

Section _____.410(b) (2) and (3) are now contained in substance in § _____.412 (a) and (b), respectively. Section _____.410(b)(4) is now in § _____.413 (a) and (b). § _____.410(b)(5) is now in § _____.413(c). Further, the provisions have been structured to permit individual Federal agencies to insert additional provisions necessary to conform the regulation to their internal operating procedures. Recommendations for substantive change are discussed below.

Many commenters expressed concern about the procedures employed under §§ _____.412—_____.413 to contest a suspension. Several suggested that the procedures deny due process to a respondent. Attention was particularly focused upon the provisions indicating that no additional proceedings will be conducted where suspension is based on an indictment or upon advice of the Department of Justice under § _____.413(a).

The provisions regarding the process to be accorded suspended individuals is derived from the FAR provisions at 48 CFR 9.407–3, albeit in a somewhat reorganized fashion. The FAR provisions have been held to provide adequate due process to protect the interests of suspended contractors. Because these provisions substantively duplicate those provisions, we believe they similarly provide the required due process.

Section _____.415 Period of suspension.

One commenter proposed that the period of suspension be reduced in the final rule. The commenter believed 12 months was too long. The 12-month period noted in the regulation represents an outer bound on the duration of a suspension where a legal or administrative proceeding is not instituted, unless extended to 18 months at the written request of an Assistant Attorney General or United States Attorney. The duration of a suspension is keyed to the legal, debarment, or Program Fraud Civil Remedies Act proceeding. In most cases a suspension would not last 12 months. In cases where a lengthy suspension is expected, it may be necessary for the suspended party to negotiate an alternative arrangement with the agency. Barring such an interim agreement, the agency may need to suspend the person to protect the Federal Government's interest. The period of suspension in the proposed and final rule is identical to the FAR debarment procedures at 48 CFR 9.407–4.

A reference to the Program Fraud Civil Remedies Act is added to this provision. This change is to conform this provision to the change made earlier, making a civil penalty imposed under the Program Fraud Civil Remedies Act a basis for debarment.

Section _____.500 GSA responsibilities.

The term "participant" is replaced by "person" both times it appears in this section to conform to prior changes regarding principals.

Section _____.505 [Agency] responsibilities.

Section _____.505 is substantially revised to conform to the spirit of amendments proposed by the Environmental Protection Agency (EPA) and SBA. Both proposed that agency and participant responsibilities be separately addressed, and that the latter be included in a new § _____.510. Section _____.505 now contains only agency responsibilities.

Paragraph (a) is revised to simplify the language. Paragraph (c) of the proposed rule is deleted as not appropriate for inclusion in the common rule. That provision dealt with dissemination of the List. To the extent that it pertained to dissemination within an agency, it is more appropriately contained in internal agency procedures. To the extent that it dealt with external distribution to participants, due to the addition of § _____.510 to the final rule, participants are not required to use the List. Former paragraph (d) is redesignated § _____.505(c).

Paragraph (d) of the final rule generally incorporates language proposed by EPA, SBA, and the Department of Agriculture. It requires agencies to consult the Nonprocurement List before entering into a primary covered transaction. Paragraph (e) applies the same requirement where the Federal agency is required under the terms of a primary covered transaction to approve principals in that transaction or participants in lower tier covered transactions.

Section _____.510 Participants' responsibilities.

As noted above, this section is added based on the amendments to the common rule proposed by EPA and SBA. Paragraph (a) of this section provides that a participant in a primary covered transaction shall submit the certification contained in Appendix A to this regulation at the time it submits its proposal in connection with any primary covered transaction. This generally follows the requirement contained in § _____.505(e) of the proposed rule. The remainder of this paragraph appeared at the end of § _____.505(e) of the proposed common rule.

In the proposed rule, at former § _____.200(b), participants were asked to certify for themselves and for persons acting in the following capacities: "as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any position charged as a direct cost under the covered transaction." DOD proposed that certification be limited to participants and their principals, similar to the requirements in the proposed FAR provisions governing debarment and suspension under Federal procurement programs published on July 31, 1987 (52 FR 28642–46). Public comments strongly supported this proposal. The final rule requires participants to certify only for themselves and for their principals (see Appendix A). Consistent with this Administration's Federalism policy, States, as defined at § _____.105(s), will not need to certify as to themselves, but will be required to certify as to their principals.

Agencies proposed a number of approaches for enforcement as to lower tier covered transactions. The agency proposals included a variety of combinations of participants' checking the List and obtaining certifications from participants in lower tier covered transactions. Numerous commenters cited the need for uniformity among agencies. However, there was little agreement among the commenters on what approach should be taken. Some preferred checking the List, some preferred certification, and others preferred giving participants the option to do either. § _____.510(b) of the final rule establishes a uniform system, similar to that provided by the proposed

amendment to the FAR for Federal procurement. Participants at any tier are to obtain certifications in the form specified in Appendix B to this final rule from participants, about themselves and their principals, in lower tier covered transactions at the next lower tier.

The proposed common rule included no dollar threshold for lower tier covered transactions. DOD and the National Endowment for the Arts proposed establishing a $25,000 threshold below which no certifications would be required. The comments that were received reflected wide support for establishing a threshold, but disagreed on the dollar amount. Commenters proposed thresholds ranging from $10,000 to $100,000.

As described in the earlier discussion of § _____.110(a)(1), "Covered transaction," the final rule adopts the Federal procurement small purchase threshold (currently $25,000) as a threshold for lower tier covered transactions in the form of procurement contracts, with one exception. The one exception is for contracts with persons to act as principals; for these contracts there is no threshold.

The threshold for procurement contracts under covered transactions, with the one exception, is consistent with the proposed revision to the FAR coverage of subcontracts. As noted above for the broader definition of principals, the one exception is intended to provide adequate coverage for some Federal nonprocurement programs that are substantively different from Federal procurement programs. This broader definition is not intended to create wider enforcement for other Federal programs that are substantively similar to Federal procurement programs.

A number of commenters suggested that certification should be obtained at the time of award rather than at the time a participant submits a proposal in connection with a covered transaction. For many nonprocurement programs this was deemed impractical. To wait until award would force agencies and participants, for example, to process applications only to find that the applicants are excluded. Therefore, the final rule requires participants to submit certifications at the time of proposal. This also is consistent with proposed FAR coverage for Federal procurement programs, where Federal contracting officers will include a certification clause in solicitations as well as contracts.

Some commenters suggested that annual certification of individuals should suffice to ensure that excluded or ineligible persons are not participating in Federal programs. Commenters also noted that any certification requirement might create the need for investigations of personnel and associated recordkeeping burden. The final rule allows the participant to decide the method and frequency by which it determines the eligibility of its principals. If they choose, participants at any tier may, but are not required to, check the Nonprocurement List to determine whether their principals are debarred, suspended, ineligible, or voluntarily excluded. It is noted that nothing in the rule is to be construed to require the participant to establish a system of records in order to render the certification in good faith. Moreover, the knowledge and information upon which a certification is based need not exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. The approach taken by the final nonprocurement rule in this regard is consistent with that taken by the proposed revision to the FAR.

This regulation will become effective October 1, 1988, the start of the next Federal fiscal year. This makes this regulation effective on the same date as the governmentwide grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," implementing OMB Circular A–102, published on March 11, 1988 (52 FR 8034–103).

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We do not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, we have determined that this regulation is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

We certify that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

DEPARTMENT OF ENERGY

10 CFR Part 1036

FOR FURTHER INFORMATION CONTACT: Thomas Brown, Department of Energy, Procurement and Assistance Management Directorate, (MA–441), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9075.

Carol A. Cowgill, Department of Energy, Office of the Assistant General Counsel for Procurement and Finance, (GC–34)1000, Independence Avenue SW. Washington, DC 20585, (202) 586–6902.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) is joining in the joint publication of regulations implementing Executive Order 12549, "Debarment and Suspension," signed by President Reagan on February 18, 1986. The Executive Order required the Office of Management and Budget (OMB) to develop guidelines for agency implementation of the Order. The OMB issued its "Guidelines for Nonprocurement Debarment and Suspension" on May 26, 1987, which were published in the Federal Register on May 29, 1987 (52 FR 20360–20369).

These Guidelines were intended to serve as a model regulation for adoption by the affected agencies. In accordance with section 3 of E.O. 12549, the DOE published a proposed rule on December 24, 1987 at (52 FR 48693–48702) that was consistent with the proposed Guidelines but also contained existing DOE procedures adopted from the DOE procurement and nonprocurement procedures in 10 CFR Part 1035. As required by the OMB, the DOE is participating in the final common rule as supplemented by the DOE specific procedures which were proposed on December 24, 1987. 10 CFR Part 1035 will be amended to reflect that Part 1035 will only apply to DOE procurement debarments and suspensions and will no longer govern the agency's nonprocurement debarments and suspensions.

Five public institutions submitted comments to the DOE. These comments were the identical or substantially the same as the comments these institutions submitted to the OMB on the proposed common rule issued on October 20, 1987

at (52 FR 39015–39062, 39198–39204) and thus are addressed in the common rule preamble.

The DOE is joining other agencies in giving interim final effect to changes in the wording of its December 24, 1987, proposed rule which in effect excludes public international organizations and foreign entities which are governmentally controlled or owned to some extent. In so doing, DOE is dispensing with prior notice and comment pursuant to 42 U.S.C. 7191(c)(1) and 5 U.S.C. 553(b)(3)(B) because the changes represent largely non-discretionary, clarifying, technical amendments to conform the common rule to the actual provisions of section 1(c) of Executive Order 12549. As such, the changes do not pose any substantial issues of fact or law or significant impacts of which the Department could take account consistent with Executive Order 12549. In addition, there is good cause to waive prior notice and comment as impracticable because it is the only method of meeting the Executive Order deadline for publication of implementing regulations one year from the date of the OMB guidelines and achieving the President's policy objectives by uniform agency action. Finally, there is good cause to waive prior notice and comment as unnecessary because a 60-day comment period on the interim final portions of the common rule begins today and the DOE will be able to respond to any relevent comments prior to the effective date of the whole common rule which is October 1, 1988.

The DOE has added definitions to § 1036.110 for awardee, Director, the DOE, and the DOE List. In §§ 1036.110(h)(1) and 1036.110(u)(1), the DOE identifies the Director, Procurement and Assistance Management Directorate as both the debarring and suspending official for the DOE. The Director is also identified in § 1036.215(a) as the person designated for the DOE to grant exceptions. In § 1036.115(c)(1), DOE notes that the debarment and suspension of the DOE procurement contractors is covered by 10 CFR Part 1035.

In §§ 1036.312, 1036.314(d), and 1036.411, the DOE adds the previously proposed DOE procedures for the notice of proposed DOE debarment, notice of the debarring official's decision, and the notice of suspension. Sections 1036.313(1) and 1036.412(a)(1) are added to identify that a request for a meeting should be sent to the Director. In the DOE's proposed rule issued December 24, 1987, the DOE procedures for consideration of voluntary exclusion prior to a final debarment decision were numbered § 1036.320; in the final rule, they are found in Section 1036.315(c).

Subpart F is added to the common rule which contains the additional DOE procedures for debarment and suspension. This subpart is essentially the same as proposed on December 24, 1987. The only substantive change is the deletion of the words "DOE participants" from § 1036.615(b), (c), (d), (e), and (g). This change deletes the requirement for the DOE participants to check the DOE List and the Nonprocurement List prior to making any new, continuation or renewal awards or lower tier covered transactions. Section 1036.615(h) is added as prohibition for DOE participants for awarding, extending or renewing agreements with lower tier participants who fail to complete the certification required by § 1036.510(b).

List of Subjects in 10 CFR Part 1036

Administrative practice and procedure, Nonprocurement debarment and suspension, Grant programs/Energy, Loan programs/Energy, Cooperative agreements.

For the reasons set out in the preamble, Title 10 of the Code of Federal Regulations is amended as set forth below.

G. L. Allen,

Deputy Director, Procurement and Assistance Management Directorate.

1. Part 1036 is added to read as set forth at the end of this document:

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

1036.100 Purpose.
1036.105 Definitions.
1036.110 Coverage.
1036.115 Policy.

Subpart B—Effect of Action

1036.200 Debarment or suspension.
1036.205 Ineligible persons.
1036.210 Voluntary exclusion.
1036.215 Exception provision.
1036.220 Continuation of covered transactions.
1036.225 Failure to adhere to restrictions.

Subpart C—Debarment

1036.300 General.
1036.305 Causes for debarment.
1036.310 Procedures.
1036.311 Investigation and referral.
1036.312 Notice of proposed debarment.
1036.313 Opportunity to contest proposed debarment.
1036.314 Debarring official's decision.
1036.315 Settlement and voluntary exclusion.
1036.320 Period of debarment.
1036.325 Scope of debarment.

Subpart D—Suspension

1036.400 General.
1036.405 Causes for suspension.
1036.410 Procedures.
1036.411 Notice of suspension.
1036.412 Opportunity to contest suspension.
1036.413 Suspending official's decision.
1036.415 Period of suspension.
1036.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1036.500 GSA responsibilities.
1036.505 DOE responsibilities.
1036.510 Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Secs. 644 and 646, Public Law 95–91, 91 Stat. 599 (42 U.S.C. 7254, and 7256); and Executive Order 12549 51 FR 6370 (February 18, 1986), 3 CFR 1986 Comp., p. 189; OMB Guidelines for Nonprocurement Debarment and Suspension, 52 FR 20360 (May 29, 1987).

2. Part 1036 is further amended as set forth below.

a. "[Agency]" is removed and "DOE" is added wherever "[Agency]" occurs.

b. Section 1036.105 is amended by adding paragraphs (g)(3), (t)(3), (w), (x), (y), and (z) to read as follows:

§ 1036.105 Definitions.

* * * * *

(g) * * *

(3) The DOE debarring official is the Director, Procurement and Assistance Management Directorate.

* * * * *

(t) * * *

(3) The DOE suspending official is the Director, Procurement and Assistance Management Directorate.

* * * * *

(w) *Awardee.* Any organization or individual that:

(1) Submits proposals for, or is awarded, or reasonably may be expected to submit proposals for, or be awarded a DOE agreement; or

(2) Conducts business with DOE as an agent or representative of an awardee.

(x) *Director.* The Director, Procurement and Assistance Management Directorate, DOE.

(y) *DOE.* The Department of Energy, including the Federal Energy Regulatory Commission.

(z) *DOE List.* The DOE Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees

maintained by DOE in accordance with § 1036.610 of this part and 10 CFR 1035.15.

c. Section 1036.110 is amended by adding paragraph (c)(1) to read as follows:

§ 1036.110 Coverage.

* * * * *

(c) * * *

* * * * *

(1) Debarment and suspension of DOE procurement contractors is covered by the rules in 10 CFR Part 1035.

d. Section 1036.215 is amended by adding paragraph (a) following the existing text to read as follows:

§ 1036.215 Exception provision.

* * * * *

(a) The DOE authorized designee is the Director, Procurement and Assistance Management Directorate.

e. Section 1036.312 is amended by adding paragraphs (b)(1), (d)(1), (e)(1), (f), and (g) to read as follows:

§ 1036.312 Notice of proposed debarment.

* * * * *

(b) * * *

(1) The notice shall omit any information which, if disclosed, would prejudice an ongoing civil or criminal investigation or a pending or contemplated legal proceeding, or would compromise national security;

* * * * *

(d) * * *

(1) The notice shall cite the DOE procedures in § 1036.600; and

(e) * * *

(1) If a notice of proposed debarment is issued to a person or affiliate who is not suspended, the notice shall state that, for purposes of affected DOE agreements and subagreements, the proposed debarment shall have the effect of a suspension for DOE only.

(f) That within 30 days after receipt of the notice, the respondent may submit, or make a written request for an opportunity to submit, to the Director or designee, information and argument in opposition to the proposed debarment, including any additional specific information that may raise a genuine dispute over the material facts. The submission in opposition may be made in person, in writing or through a representative; and

(g) That the respondent's name and address have been placed on the DOE List.

f. Section 1036.313 is amended by adding paragraph (a)(1) to read as follows:

§ 1036.313 Opportunity to contest proposed debarment.

(a) * * *

(1) A request for a meeting should be sent to the Director. (See § 1036.600(c).)

* * * * *

g. Section 1036.314 is amended by adding paragraphs (d)(1) (v), (vi), (vii) and (viii) to read as follows:

§ 1036.314 Debarring official's decision.

* * * * *

(d) * * *

(1) * * *

(v) Advising whether the decision limits the debarment or suspension action to affected covered transactions involving particular commodities, products, services, or forms of energy, or to projects or work performed in specified geographic regions;

(vi) Stating the names and addresses of the respondents that will be placed on the DOE List;

(vii) Stating that a copy of the debarment notice was sent to GSA and that the respondent's name and address will be added to the Nonprocurement List; and

(viii) Advising that if less than an entire organization is debarred, the identity or description of the organizational element(s) included within the scope of the debarment.

* * * * *

h. Section 1036.315 is amended by adding paragraph (c) to read as follows:

§ 1036.315 Settlement and voluntary exclusion.

* * * * *

(c) At any time prior to the issuance of a final decision under § 1036.314, the Director may, in the public interest, agree, in writing, to terminate a suspension or withdraw a proposed debarment on the conditions that the respondent voluntarily refrain from attempting to obtain, and from entering into, one or more types of DOE or other Federal covered transactions. Failure to observe such conditions shall be an independent cause for debarment or suspension. The name and address of the respondent who is a party to a voluntary exclusion shall be placed on the DOE List and the GSA List. The Director shall not enter into a voluntary exclusion if the proposed debarment is based on conviction of or civil judgment for any of the causes in § 1036.305(a), or if the suspension was based on an indictment for any of the causes in § 1036.305(a).

i. Section 1036.411 is amended by adding paragraphs (c)(1), (f)(1), (h), (i), and (j) to read as follows:

§ 1036.411 Notice of suspension.

* * * * *

(c) * * *

(1) That the notice shall omit any information which, if disclosed, would prejudice an ongoing civil or criminal investigation or a pending or contemplated legal proceeding, or would compromise national security;

* * * * *

(f) * * *

(1) The notice shall cite the DOE procedures in § 1036.600; and

* * * * *

(h) That within 30 days after receipt of the notice, the respondent may submit, or make a written request for an opportunity to submit, to the Director or designee, information and argument in opposition to the suspension, including any additional specific information that may raise a genuine dispute over the material facts. The submission in opposition may be made in person, in writing, or through a representative.

(i) That the suspension is effective as of the date of the notice.

(j) That the respondent's name and address have been placed on the DOE List

j. Section 1036.412 is amended by adding paragraph (a)(1) to read as follows:

§ 1036.412 Opportunity to contest suspension.

(a) * * *

(1) A request for a meeting should be sent to the Director. (See § 1036.600(c)).

* * * * *

k. Subpart F is added to read as follows:

Subpart F—Additional DOE Procedures for Debarment and Suspension

1036.600 Decisionmaking.
1036.605 Coordination with Department of Justice.
1036.610 DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees.
1036.615 Effects of being listed on the DOE and nonprocurement lists.

Subpart F—Additional DOE Procedures for Debarment and Suspension

§ 1036.600 Decisionmaking.

(a) *Definitions.* (1) "Fact-finding panel" means a three-member panel appointed by the Director to conduct a fact-finding conference under paragraph (d) of this section. This panel shall consist of an office director within the Procurement and Assistance Management Directorate, a senior attorney nominated by the General Counsel or designee, and senior official

of a program or other office of the Department.

(2) For purposes of this section, "timely" means mailed or delivered to the Director not later than 30 days after the date of the notice under § 1036.310(b)(1) or § 1036.410(b)(1) or on or before such later date as may be specified in the notice. If the postmark date is affixed by a postage meter and DOE receives the document more than five days after the postmark date, the date of receipt shall be used to determine timeliness.

(b) *Written response.* A timely written response to a notice of suspension or proposed debarment may contain any or all of the following:

(1) A request for a meeting with the Director or designee (§ 1036.600(c));

(2) A request for a fact-finding conference (§ 1036.600(d)); and

(3) Information and argument in opposition to the suspension or proposed debarment including identification of disputed material facts. If the respondent fails to submit a timely written response to notice of suspension or proposed debarment, the Director shall notify the respondent in accordance with § 1036.310(b)(6) or § 1036.410(b)(5) that the awardee remains suspended, or that the awardee is debarred, as applicable.

(c) *Meeting.* Upon receipt of a timely request therefore, the Director shall schedule a meeting with the Director or designee and the respondent, no later than 30 days from the date the request is received. The Director or designee may postpone the date of the meeting if the respondent requests a postponement in writing.

(1) At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for suspension or debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration, or effects of a suspension, proposed debarment, or debarment. The respondent may offer or explain a previous offer to agree to a voluntary exlcusion (§ 1036.210) at the meeting.

(2) Any written information or arguments submitted at or in connection with the meeting shall be included in the administrative record. The Director shall not be required to make a transcript of the meeting unless there are disputed material facts.

(3) Within two weeks following the date of the meeting, the Director shall send a notice to the respondent containing the following information:

(i) Names, organizational affiliations, titles, addresses, and telephone numbers of all individuals who attended;

(ii) A brief description of each document submitted by the respondent;

(iii) A summary of the issues discussed; and

(iv) A statement describing the action the Director has taken or proposes to take.

(d) *Fact-finding conference.* The purposes of a fact-finding conference under this section are to provide the respondent an opportunity to dispute material facts and to make arguments related to a suspension or proposed debarment, and to provide the Director with proposed findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence.

(1) *Appointment of fact-finding panel and notice to respondent.* If the Director determines that a written response or a presentation at the meeting puts material facts in dispute, the Director shall appoint a fact-finding panel. (See § 1036.313(b)). Upon appointment, the panel shall notify the respondent that the case has been referred to the panel and shall schedule a fact-finding conference.

(2) *Appearances.* The Director may be represented at the fact-finding conference by the General Counsel or designee.

(3) *Scope of the fact-finding conference.* The factual issues considered at the conference shall be limited to those identified in the Director's referral and any amendments thereto filed by the Director.

(4) *Procedures.* The fact-finding conference shall be conducted in accordance with applicable procedural rules adopted by the General Counsel or designee. The procedural rules shall be as informal as practicable, consistent with the principles of fundamental fairness, prompt decisionmaking, and with the evidentiary standards for suspension and debarment. (See 10 CFR Part 1035, Appendix A—Rules for Fact-Finding Conferences.)

(5) *Preliminary administrative record.* At least 10 days before the fact-finding conference date, the Director shall file with the fact-finding panel, and mail or deliver to the respondent, a copy of the administrative record as of the date of the transmittal. The copy sent to the respondent shall not include any documents which, as provided in § 1035.7, may not be disclosed; the copy filed with the fact-finding panel shall identify which documents must be sealed and viewed by the fact-finding panel only in camera, as provided in § 1036.605.

(6) *Evidence and argument.* The respondent and the Director shall have the opportunity to submit documentary evidence, to examine and cross-examine witnesses, and to present argument. Only evidence which is relevant to the issues referred for the fact-finding conference and which is reliable and probative shall be admissible.

(7) *Transcript.* The fact-finding panel shall make a transcribed record of the fact-finding conference which shall be transmitted to the Director within 20 days after the hearing record is closed.

(8) *Fact-finding conference report.* Within 30 days after the conference record is closed, the fact-finding panel shall transmit to the respondent (by notice) and to the Director a written report setting forth proposed findings of fact. The findings shall resolve any disputes over material facts based on a preponderance of the evidence if the case involves a proposal to debar, or on adequate evidence if the case involves a suspension. The respondent shall have 30 days from receipt of the fact-finding panel's report to submit written exceptions to the Director.

(9) *Final decision.* If the final decision sustains a proposed debarment, the debarment may begin no earlier than ten days after the date of the notice of final decision a copy of which shall be transmitted to the fact-finding panel.

§ 1036.605 Coordination with Department of Justice.

Whenever a meeting or fact-finding conference is requested, under § 1036.600(b)(1) or (b)(2), the Director's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such official requests in writing that evidence needed to establish the existence of a cause for suspension or proposed debarment not be disclosed to the respondent, the Director shall:

(a) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(b) Rely on such evidence without disclosing it to the respondent. At the fact-finding conference, the Director shall make such evidence available for in-camera inspection to the fact-finding panel. Evidence submitted for in-camera inspection shall be part of the administrative record, but may not be disclosed to the respondent or any member of the public until release is

authorized in writing by an appropriate Department of Justice official or until related legal proceedings are concluded, whichever occurs first.

§ 1036.610 DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees.

The Director shall compile and maintain a list of persons and affiliates who are currently suspended, proposed for debarment, debarred, inelgible or voluntarily excluded under this part and 10 CFR Part 1035. The DOE List shall contain the following information at a minimum:

(a) The person's name and address;

(b) The cause(s) relied upon under this part;

(c) The effect on each action;

(d) The effective date of the action and, in the case of debarment, the expiration date; and

(e) The name and telephone number of the DOE official who can be contacted for additional information about the action.

§ 1036.615 Effects of being listed on the DOE and the nonprocurement lists.

The Director may grant an exception to the prohibitions of paragraphs (a) through (e) of this section by issuing a written determination setting forth the compelling reasons justifying the waiver in accordance with § 1036.215.

(a) DOE shall not solicit, or consider, and shall return any proposal submitted by a contractor, awardee, or person on the DOE List or a person on the Nonprocurement List, to the extent that the solicitation activity or proposal falls within the scope of the suspension, proposed debarment, debarment, ineligibility of voluntary exclusion, as indicated on the DOE List or Nonprocurement List.

(b) DOE shall not award, extend, renew any agreement or primary covered transaction with an awardee or person on the DOE List or on the Nonprocurement List, to the extent that the activity falls within the scope of the suspension, proposed debarment, debarment, ineligibility or voluntary exclusion, as indicated on the DOE List or Nonprocurement List.

(c) DOE shall not approve or consent to any new, continuation, renewal award or extension of a subagreement or lower tier covered transaction with a contractor, awardee, or person on the DOE List and shall not approve or consent to any new, continuation, renewal award or extension of a subagreement or lower tier covered transaction with a person on the Nonprocurement List, to the extent that the award falls within the scope of the suspension proposed debarment, debarment, ineligibility or voluntary exclusion.

(d) DOE shall disapprove or not consent to the selection (by an awardee or participant) or a individual or principal to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is on the DOE List or the Nonprocurement List.

(e) DOE shall not conduct business with an agent or representative whose name appears on the DOE List or the Nonprocurement List.

(f) DOE shall review existing agreements and may initiate a review of any subagreements with a contractor, awardee or person on the DOE List or on the Nonprocurement List for the purpose of determining whether termination or other remedial action, available under the terms of the agreement, subagreement, or applicable law, is necessary to protect the Government's interest.

(g) DOE shall review the DOE List and the Nonprocurement List before conducting a preaward survey or soliciting proposals, making new, continuation, or renewal awards or otherwise extending the duration of existing agreements, or approving or consenting to the award, extension, or renewal of subagreements.

(h) DOE participants shall not award, extend, renew any agreement or lower tier covered transaction with an awardee or person that fails to complete the certification required by § 1036.510(b), or that the participant knows that the certification is false.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

FOR FURTHER INFORMATION CONTACT: Karin L. Genis, Attorney-Advisor, (202) 653–6649.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is joing the joint publication of final regulations implementing Executive Order 12549, "Debarment and Suspension," signed by President Reagan on February 18, 1986. In its agency-specific preamble accompanying the proposed rule, published in the **Federal Register** on October 20, 1987 (52 FR 39018), SBA proposed a number of changes. Many of the concerns underlying those changes have been addressed in the final common rule.

Except with respect to the definition of "Principal," and the section on covered transactions (§ 145.110), the amendments to the final common rule discussed below serve to conform the rule to the programs and organization of SBA. Technical changes have been made to the agency-specific amendments in the proposed rule to conform to the reorganization of the common rule.

The definition of "Principal," (§ 145.105(p)) is amended by adding references to specific types of persons who have a critical influence on SBA nonprocurement programs. The effect of the additions is to include in the definition of "Principal" certain persons who are important to SBA-supported activities.

Section 145.105 is further amended by adding a definition of "SBA." The final common rule permits agencies to insert their own names in places designated by "[Agency]." This definition is needed to clarify that these references to "SBA" are to the Small Business Administration.

Section 145.110(a)(1)(ii)(C) is amended by adding references to specific types of persons who have a critical influence on SBA nonprocurement programs. The effect of the additions is to include in the definition of "Lower Tier Covered Transaction" certain procurement contracts under $25,000 which are important to SBA-supported activities.

Sections 145.313, 145.314, 145.412 and 145.413 are amended to specify that the Office of Hearings and Appeals of SBA shall conduct such fact-finding proceedings as may be necessary to adjudicate disputed material facts in either suspension or debarment proceedings. The language has been expanded to specify that the decision of the Office of Hearings and Appeals is a recommended decision under 13 CFR Part 134, the procedural regulations for the Office of Hearings and Appeals. Under § 134.35 of those regulations, parties to the proceeding may file exceptions to the Office of Hearings and Appeals' decision with the reviewing official of the action in question, here the debarring or suspending official, as appropriate.

List of Subjects in 13 CFR Part 145

Debarment and suspension (nonprocurement).

Title 13 of the Code of Federal Regulations is amended as set forth below.

Dated: May 5, 1988.

James Abdnor,

Administrator.

1. Part 145 is added to read as set forth at the end of this document.

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
145.100 Purpose.
145.105 Definitions.
145.110 Coverage.
145.115 Policy.

Subpart B—Effect of Action

145.200 Debarment or suspension.
145.205 Ineligible persons.
145.210 Voluntary exclusion.
145.215 Exception provision.
145.220 Continuation of covered transactions.
145.225 Failure to adhere to restrictions.

Subpart C—Debarment

145.300 General.
145.305 Causes for debarment.
145.310 Procedures.
145.311 Investigation and referral.
145.312 Notice of proposed debarment.
145.313 Opportunity to contest proposed debarment.
145.314 Debarring official's decision.
145.315 Settlement and voluntary exclusion.
145.320 Period of debarment.
145.325 Scope of debarment.

Subpart D—Suspension

145.400 General.
145.405 Causes for suspension.
145.410 Procedures.
145.411 Notice of suspension.
145.412 Opportunity to contest suspension.
145.413 Suspending official's decision.
145.415 Period of suspension.
145.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

145.500 GSA responsibilities.
145.505 SBA responsibilities.
145.510 Participants responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: 15 U.S.C. 634(b)(6), Executive Order 12549.

2. Newly added Part 145 is further amended as set forth below.

a. Each reference to "[Agency]" is revised to read "SBA"wherever it occurs.

b. Section 145.105 is amended by adding new paragraphs (p)(2) and (w) to read as follows:

§ 145.105 Definitions.

* * * * *

(p) * * *

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) Programs.

* * * * *

(w) *SBA.* The Small Business Administration.

c. Section 145.110 is amended by adding new paragraphs (a)(1)(ii)(C) (*3*) through (*5*) to read as follows:

§ 145.110 Coverage.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(C) * * *

(*3*) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC), and Small Business Investment Company (SBIC) Programs.

(*4*) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC) and section 7(j) Programs.

(*5*) Providers of professional services under the section 7(a) Loan, Certified Development Center (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) Programs.

d. Section 145.313 is amended by adding a new paragraph (b)(3) to read as follows:

§ 145.313 Opportunity to contest proposed debarment.

* * * * *

(b) * * *

(3) In accordance with § 145.314(b)(2), the debarring official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in Part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the debarring official including proposed findings of facts and conclusions of law.

e. Section 145.314 is amended by adding new paragraphs (b)(2)(i) and (ii) to read as follows:

§ 145.314 Debarring official's decision.

* * * * *

(b) * * *

(2) * * *

(i) The Office of Hearings and Appeals shall conduct any proceedings regarding disputed material facts necessary under this section.

(ii) Any party to the debarment proceeding may file exceptions to the recommended decision with the debarring official in accordance with 13 CFR 134.35.

* * * * *

f. Section 145.412 is amended by adding a new paragraph (b)(3) to read as follows:

§ 145.412 Opportunity to contest suspension.

* * * * *

(b) * * *

(3) In accordance with § 145.413(b)(2), the suspending official may refer cases involving disputed material facts to the Office of Hearings and Appeals, which shall conduct any additional proceedings necessary in accordance with the procedures contained in Part 134 of this title. Upon conclusion of such proceedings, the Office of Hearings and Appeals shall issue a recommended decision to the suspending official including proposed findings of facts and conclusions of law.

g. Section 145.413 is amended by adding new paragraphs (b)(2)(i) and (ii) to read as follows:

§ 145.413 Suspending official's decision.

* * * * *

(b) * * *

(2) * * *

(i) The Office of Hearings and Appeals shall conduct any proceedings regarding disputed material facts necessary under this section.

(ii) Any party to the suspension proceeding may file exceptions to the recommended decision with the suspending official in accordance with 13 CFR 134.35.

* * * * *

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

FOR FURTHER INFORMATION CONTACT: Thomas J. Whelan, (202) 453–8251.

List of Subjects in 14 CFR Part 1265

Grants, Cooperative agreements, Debarment and suspension (nonprocurement).

Title 14 of the Code of Federal Regulations is amended as set forth below.

May 17, 1988.

Dale D. Myers,
Deputy Administrator.

1. Part 1265 is added to read as set forth at the end of this document.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1265.100 Purpose.
1265.105 Definitions.
1265.110 Coverage.
1265.115 Policy.

Subpart B—Effect of Action

1265.200 Debarment or suspension.
1265.205 Ineligible persons.
1265.210 Voluntary exclusion.
1265.215 Exception provision.
1265.220 Continuation of covered transactions.
1265.225 Failure to adhere to restrictions.

Subpart C—Debarment

1265.300 General.
1265.305 Causes for debarment.
1265.310 Procedures.
1265.311 Investigation and referral.
1265.312 Notice of proposed debarment.
1265.313 Opportunity to contest proposed debarment.
1265.314 Debarring official's decision.
1265.315 Settlement and voluntary exclusion.
1265.320 Period of debarment.
1265.325 Scope of debarment.

Subpart D—Suspension

1265.400 General.
1265.405 Causes for suspension.
1265.410 Procedures.
1265.411 Notice of suspension.
1265.412 Opportunity to contest suspension.
1265.413 Suspending official's decision.
1265.415 Period of suspension.
1265.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1265.500 GSA responsibilities.
1265.505 NASA responsibilities.
1265.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: National Aeronautics and Space Act, Pub. L. 85–568, July 29, 1958, as amended, Sec. 203(c)(1), Executive Order 12549.

2. Part 1265 is further amended as follows:

a. "[Agency]" is removed, and "NASA" is added wherever "[Agency]" occurs.

b. Section 1265.105 is amended by adding paragraph (w) to read as follows:

§ 1265.105 Definitions.

* * * * *

(w) *NASA.* National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

15 CFR Part 26

FOR FURTHER INFORMATION CONTACT: Barbara L. Spithas, 202–377–5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: In order to determine the extent of coverage of this rule, the Department reviewed the legislation and intent of its nonprocurement programs. Among the transactions not covered by the rule, §§ 26.110(a)(2)(vi) and 26.200(c)(6) exempt a person's eligibility for incidental benefits derived from ordinary governmental operations and §§ 26.110(a)(2)(vii) and 26.200(c)(7) exempt other transactions where the application of these regulations would be prohibited by law.

Following a review of its programs in light of this rule, the Department of Commerce believes that certain of its programs and activities may be properly excluded from the coverage of this rule because they either confer no benefits or the benefits result from routine government activities and are therefore, incidental. These include programs and activities such as assistance available through the export promotion, trade information and counseling, and trade policy programs of the Department and its constituent agencies, and the issuing of licenses and permits under the Magnuson Fisheries Act.

Other Department programs may be exempted from coverage under this rule by other exceptions as set forth in the Executive Order and the common rule. They include programs such as export control programs administered by the Bureau of Export Administration as authorized by the Export Administration Act of 1979, as amended, programs authorized under the Foreign Trade Zones Act, import programs conferring duty-free status on certain imports administered by the International Trade Administration, administration of the Export Trading Company Act, administration of Antidumping and Countervailing Duty statutes, and administration of the Defense Production Act and related authorities covering emergency preparedness activities.

Due to the expanded scope of transactions covered under the final common rule, the Department is adding a new subsection (3) to § 26.110(a) describing the initial scope of the rule's coverage with respect to the Department of Commerce. The Department will review its other nonprocurement program activities to determine whether such activities will be included in the coverage. Based on this review, the Department will issue a notice of proposed rulemaking to obtain public comment on its coverage on or before October 1, 1988, the effective date of the Common rule.

List of Subjects in 15 CFR Part 26

Administrative practice and procedures, Debarment and suspension.

Title 15 of the Code of Federal Regulations is amended as set forth below.

Sonya G. Stewart,
Director for Finance and Federal Assistance.

1. Part 26 is added as set forth at the end of this document.

PART 26—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.
26.100 Purpose.
26.105 Definitions.
26.110 Coverage.
26.115 Policy.

Subpart B—Effect of Actions

26.200 Debarment or suspension.
26.205 Ineligible persons.
26.210 Voluntary exclusion.
26.215 Exception provision.
26.220 Continuation of covered transactions.
26.225 Failure to adhere to restrictions.

Subpart C—Debarment

26.300 General.
26.305 Cause for debarment.
26.310 Procedures.
26.311 Investigation and referral.
26.312 Notice of proposed debarment.
26.313 Opportunity to contest proposed debarment.
26.314 Settlement and voluntary exclusion.
26.320 Period of debarment.
26.325 Scope of debarment.

Subpart D—Suspension

26.400 General.
26.405 Causes for suspension.
26.410 Procedures.
26.411 Opportunity to contest suspension.
26.413 Suspending official's decision.
26.415 Period of suspension.
26.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

26.500 GSA Responsibilities.
26.505 Department of Commerce. responsibilities
26.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 5 U.S.C. 301.

2. Part 26 is further amended as follows:

a. "[Agency]" is removed and "Department of Commerce" is added wherever "[Agency]" occurs.

b. Section 26.110 is amended by adding paragraph (a)(3) to read as follows:

§ 26.110 Coverage

(a) * * *

(3) *Department of Commerce covered transactions.* These Department of Commerce regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards).

* * * * *

DEPARTMENT OF STATE

22 CFR Part 137

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520. Tel. (703) 875–7044.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State establishes this final rule as Part 137 of Title 22 of the Code of Federal Regulations.

Pursuant to § 137.110(a)(2)(vii), the Department of State has determined that this rule does not apply to its export functions under the Arms Export Control Act, Pub. L. 90–629, as amended, and the International Traffic in Arms Regulations (ITAR), 22 CFR Subchapter M. In particular, this rule does not affect the debarment and suspension regulations prescribed in the ITAR (22 CFR Part 127). The Arms Export Control Act contains specific standards on when export privileges may be denied. The debarment and suspension regulations established under the ITAR implement those statutory requirements; application of the non-procurement debarment and suspension system as finalized herein is not authorized under the Arms Export Control Act.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Grant programs-foreign relations, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John J. Conway,

Procurement Executive.

May 13, 1988.

1. Part 137 is added as set forth at the end of this document.

PART 137—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

137.100 Purpose.
137.105 Definitions.
137.110 Coverage.
137.115 Policy.

Subpart B—Effect of Action

137.200 Debarment or suspension.
137.205 Ineligible persons.
137.210 Voluntary exclusion.
137.215 Exception provision.
137.220 Continuation of covered transactions.
137.225 Failure to adhere to restrictions.

Subpart C—Debarment

137.300 General.
137.305 Causes for debarment.
137.310 Procedures.
137.311 Investigation and referrals.
137.312 Notice of proposed debarment.
137.313 Opportunity to contest proposed debarment.
137.314 Debarring official's decision.
137.315 Settlement and voluntary exclusion.
137.320 Period of debarment.
137.325 Scope of debarment.

Subpart D—Suspension

137.400 General.
137.405 Causes for suspension.
137.410 Procedures.
137.411 Notice of suspension.
137.412 Opportunity to contest suspension.
137.413 Suspending official's decision.
137.415 Period of suspension.
137.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants

137.500 GSA responsibilities.
137.505 Department responsibilities.
137.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Lower Tier Covered Transactions

Authority: Executive Order 12549 and 22 U.S.C. 2658.

2. Part 137 is further amended as follows:

a. "[Agency]" is removed and "Department" is added wherever "[Agency]" occurs.

b. Section 137.105 is amended by adding paragraph (w) to read as follows:

§ 137.105 Definitions.

* * * * *

(w) *Department.* Department of State.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

FOR FURTHER INFORMATION CONTACT: Ralph C. Oser (202) 647–8332.

ADDITIONAL SUPPLEMENTARY INFORMATION: Examples of A.I.D. specific covered transactions include A.I.D.-financed cooperating country contracts under A.I.D. Handbook 11, A.I.D.-financed commodity transactions under 22 CFR Part 201, the reimbursement for overseas freight charges under 22 CFR Part 202, and A.I.D.'s investment gurarantee program.

Examples of causes for debarment include failure to furnish information in accordance with the terms of any agreement or subagreement, violation of regulation, offer or acceptance of a bribe or other illegal payment or credit, or commission of a fraudulent act.

The government-wide regulations have been supplemented by A.I.D. to designate the officials authorized to suspend, debar and to grant exceptions (§§ 208.120 and 208.215).

Section 208.105 is further supplemented by adding a definition of "A.I.D." The final common rule permits agencies to insert their own name in places designated by "[Agency]." This definition is needed to clarify that these references to "A.I.D." are to the Agency for International Development.

List of Subjects in 22 CFR Part 208

Accounting, Administrative practice and procedures, Foreign aid grant programs-Foreign relations, Grants Administrator, Loan programs-Foreign relations.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John F. Owens,

Associate Assistant to the Administrator for Management.

1. Part 208 is revised to read as set forth at the end of this document.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

208.100 Purpose.
208.105 Definitions.
208.110 Coverage.
208.115 Policy.

Subpart B—Effect of Action

208.200 Debarment or suspension.
208.205 Ineligible persons.
208.210 Voluntary exclusion.
208.215 Exception provision.
208.220 Continuation of coverered transactions.
208.225 Failure to adhere to restrictions.

Subpart C—Debarment

208.300 General.
208.305 Causes for debarment.
208.310 Procedures.
208.311 Investigation and referral.
208.312 Notice of proposed debarment.
208.313 Opportunity to contest proposed debarment.
208.314 Debarring official's decision.
208.315 Settlement and voluntary exclusion.
208.320 Period of debarment.
208.325 Scope of debarment.

Subpart D—Suspension

208.400 General.
208.405 Causes for suspension.
208.410 Procedures.
208.411 Notice of suspension.
208.412 Opportunity to contest suspension.
208.413 Suspending officials decision.
208.415 Period of suspension.
208.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

208.500 GAS responsibilities.
208.505 A.I.D. responsibilities.
208.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Section 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. Part 208 is further amended as follows:

a. "[Agency]" is removed and "A.I.D." is added wherever "[Agency]" occurs.

b. Section 208.105 is amended by adding paragraphs (g)(3), (t)(3) and (w) to read as follows:

§ 208.105 Definitions.

* * * * *

(g) * * *

(3) The A.I.D. debarring official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

* * * * *

(t) * * *

(3) The A.I.D. suspending official is the Associate Assistant to the Administrator for Management (M/AAA/SER).

* * * * *

(w) *A.I.D.* Agency for International Development.

c. Section 208.215 is amended by adding paragraph (a) following the undesignated paragraph to read as follows:

§ 208.215 Exception provisions.

* * * * *

(a) The Associate Assistant to the Administrator for Management has authority to grant exceptions.

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

FOR FURTHER INFORMATION CONTACT: Charles N. Canestro, United States Information Agency, Management Plans And Analysis Staff, (M/M), Room 818, 301 Fourth Street SW., Washington, DC 20547, Telephone (202) 485–8676.

List of Subjects in 22 CFR Part 513

Grant monitoring, Grants administration, Ineligible grantees.

Title 22 of the Code of Federal Regulations is amended as set forth below.

David I. Hitchcock,

Acting Associate Director for Management.

1. Part 513 is added as set forth at the end of this document.

PART 513—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

513.100 Purpose.
513.105 Definitions.
513.110 Coverage.
513.115 Policy.

Subpart B—Effect of Action

513.200 Debarment or suspension.
513.205 Ineligible persons.
513.210 Voluntary exclusion.
513.215 Exception provision.
513.220 Continuation of covered transactions.
513.225 Failure to adhere to restrictions.

Subpart C—Debarment

513.300 General.
513.305 Causes for debarment.
513.310 Procedures.
513.311 Investigation and referral.
513.312 Notice of proposed debarment.
513.313 Opportunity to contest proposed debarment.
513.314 Debarring official's decision.
513.315 Settlement and voluntary exclusion.
513.320 Period of debarment.
513.325 Scope of debarment.

Subpart D—Suspension

513.400 General.
513.405 Causes for suspension.
513.410 Procedures.
513.411 Notice of suspension.
513.412 Opportunity to contest suspension.
513.413 Suspending official's decision.
513.415 Period of suspension.
513.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

513.500 GSA responsibilities.
513.505 USIA Responsibilities.
513.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; 40 U.S.C. 486(c).

2. Part 513 is further amended as follows:

a. "[Agency]" is removed and "USIA" is added wherever "[Agency]" occurs.

b. Section 513.105 is amended by adding paragraph (w) to read as follows:

§ 513.105 Definitions.

* * * * *

(w) USIA. *United States Information Agency.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. R-88-0831; FR-1676]

24 CFR Part 24

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Assistant General Counsel for Inspector General and Administrative Proceedings, Department of Housing and Urban Development, Room 10266, 451 Seventh Street SW.,

Washington, DC 20410, (202) 755–7200. (This is not a toll-free number.)

DATE: HUD is unable to adopt the interim provisions of the common rule at this time. Under applicable law (see section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)), HUD must submit to the responsible congressional committees an agenda of all its rules that are under development. Any rule that is on that agenda may not be published for comment until it has been submitted to the responsible committee for review. Because HUD's proposed rule on debarment and suspension did not contain those provisions identified as interim provisions in the common rule, HUD cannot adopt the interim provisions of the common rule until the statutory 15-day period has expired. On the expiration of that period, HUD will publish a separate agency-specific preamble adopting the interim provisions of this rule.

ADDITIONAL SUPPLEMENTARY INFORMATION: By publication of this separate preamble the Department adopts the final common rule on nonprocurement debarment and suspension. In addition, the Department is amending the common rule to add provisions relating to debarment and suspension of procurement contractors, HUD-specific limited denials of participation, and hearing procedures.

Background

On November 2, 1987, the Department of Housing and Urban Development published a proposed rule on suspension and debarment (52 FR 42005) incorporating provisions set forth in the interim rule (52 FR 37112, October 2, 1987) and those mandated by Executive Order 12549 and the Office of Management and Budget's (OMB) final Guidelines for Nonprocurement Debarment and Suspension (Guidelines) published May 29, 1987 at 52 FR 20360.

Since the publication of HUD's proposed rule, OMB has decided to publish the final rule on Nonprocurement Debarment and Suspension as a common rule. However, because HUD's regulations on debarment and suspension apply to participants in nonprocurement activities as well as to contractors in procurement activities, the Department is amending the common rule by (1) incorporating provisions in HUD's proposed rule on suspensions and debarments and (2) including provisions that clarify the application of the common rule to HUD programs and activities. The continuation of HUD's system of suspension and debarment, covering both procurement and nonprocurement activities, is consistent with the goal of creating a comprehensive debarment system with governmentwide effect.

Under this final rule, a suspension or debarment by HUD precludes a person's participation in both procurement and nonprocurement activities within the Department. It also excludes a participant from covered nonprocurement transactions, and a contractor from procurement activities throughout the Federal Executive Branch.

This regulation also provides for limited denials of participation with strictly Departmental effect. Limited denials of participation are sanctions of limited duration and scope not warranting governmentwide effect.

The comments received by HUD in response to its proposed and interim rules were addressed in the preamble to the common rule.

HUD's previously published proposed and interim rules are being replaced by the common rule and the amendments cited. Citations contained in this final rule differ significantly from those contained in HUD's previous rules, and a table indicating the corresponding sections of the proposed and final rule is set forth at the end of this preamble. It should be noted that the preamble refers to the final rule's citations, unless otherwise stated.

Section by Section Analysis

A new paragraph (d) is added to § 24.100 to indicate that the purpose of these regulations is also to prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of contractors and participants. This provision was included in the proposed rule at § 24.2.

The definitions of debarment and suspension in § 24.105 (f) and (u) are expanded to reflect that such terms also include sanctions taken to exclude contractors from procurement activities. The definitions of debarment and suspension in the proposed rule, § 24.(4) (i) and (aa) respectively, also indicated that the sanctions would exclude contractors from procurement activities governmentwide.

Definitions for "benefits," "contractor," "hearing officer," "limited denial of participation," and "ultimate beneficiaries" have been included and the definition of "procurement list" has been substituted for "consolidated lists" to reflect the expanded coverage of HUD's regulation at § 24.105 (w)–(aa). These definitions were contained in the proposed rule at § 24.4 (d), (e), (f) (m), (r), and (bb) respectively.

The definition of "principal," § 24.105(p), specifies those persons previously included in HUD's definition of "participant" (§ 24.6(t)) who are now included in the definition of principal. The term "principal" was not defined in the proposed rule, but has been added to the final common rule. Definitions for "control," "grant," "grantee," and "HUD List of Debarred, Suspended and Ineligible Contractors and Participants" have been deleted because of other changes in the rule make these definitions unnecessary.

Those transactions designated in § 24.110(c)(1)(i) (A) and (B) are included as primary covered transactions. They were included as specifically covered activities in § 24.3(a)(2) of HUD's proposed rule.

Persons identified in § 24.110(a)(1)(ii)(C) (*3*)–(*12*) were included within the scope of HUD's definition of participant in § 24.6(t) of the proposed rule.

Paragraph (d) is added to § 24.110 to indicate the coverage of these regulations for contractors, and paragraphs (e) and (f) are added to § 24.200 to indicate the effect of debarment and suspension on contractors. The coverage of contractors, and the effect of the sanctions on contractors, was contained in § 24.8(a) of the proposed rule.

Throughout the proposed rule reference was made to "direct or indirect participation" in HUD programs. Due to changes in the common rule, such language is no longer necessary. As stated in the preamble to the common rule, participation in covered transactions is prohibited whether such participation is direct or indirect.

Other amendments have been made to the common rule relating to suspension and debarment of contractors:

(1) Section 24.110(e) is added to describe the retroactive effect of this rule. This language was contained in § 24.36 of the proposed rule.

(2) Paragraph (d) has been added to § 24.115. It duplicates language contained in § 24.5 of the proposed rule. Language added to § 24.215 concerning the effect of debarment on contractors was contained in § 24.8 of the proposed rule. Paragraphs (c) and (d) have been added to § 24.220 indicating the effect of a suspension or debarment on existing contracts. Similar language was set forth at § 24.8 of the proposed rule.

(3) In the policy section of the proposed rule (§ 24.1, now replaced by

§ 24.120), HUD identified deterrence as a basis for imposing suspensions and debarments. This language was not included in the common rule, and its inclusion by amendment is unnecessary because case law has clearly established that deterrent effect is an appropriate consideration in protecting the public interest.

(4) Paragraph (e) has been added to § 24.200 to reflect the effect of suspension and debarment on contractors. This effect was described in § 24.87 and 24.20 of the proposed rule.

(5) Paragraph (f) has been added to § 24.200 to reflect HUD specific exceptions to the effect of sanctions under this part. Similar language was contained in §§ 24.3 and 24.3a of the proposed rule.

(6) Section 24.305 is amended by adding examples to paragraph (d) that were set forth in § 24.6(c)(7), (8), (9), (10) and (11) of the proposed rule. There is a new paragraph (e) which sets forth the causes for debarring a contractor that were included in § 24.6(a) and (h) of the proposed rule.

(7) The hearing procedures set forth in §§ 24.313, 24.314, 24.411 through 24.413 previously appeared at § 24.12–24.14 of the proposed rule. These sections replace the appeal procedures set forth in identically numbered sections of the common rule. HUD's procedures provide that all contested debarments and suspensions shall be referred to a hearing officer for action, except where there is a pending or contemplated legal proceeding and the Department of Justice has determined that a suspension hearing would prejudice the Department's case. Because the right to a determination by an impartial hearing officer provides greater protection to persons suspended or proposed for debarment than the right to appear before the suspending or debarring official, the use of such procedures will not adversely affect due process or fundamental fairness.

(8) Section 320(c) replaces the reinstatement provision of § 24.15 of the proposed rule. This section allows the debarring official to reduce the period or scope of a debarment. The proposed rule required referral of a request for reinstatement to a hearing officer for recommendation on reinstatement. That provision has been eliminated from the final rule and replaced by the common rule provision in order to provide consistency with the common rule. Paragraph (d) has been added to § 24.320 to indicate that a request to modify or terminate a debarment based on either elimination of causes for debarment or other appropriate reasons may not be considered for at least six months after the final determination to debar. This six-month limitation was contained in § 24.15(a)(2) of the proposed rule.

(9) Paragraph (3) is added to § 24.325(a) to indicate the scope of debarment of a contractor. Paragraph (4) is added to § 24.325(b) to indicate that the rules for imputing conduct also apply to contractors. Similar provisions were contained in § 24.11 of the proposed rule.

(10) Sections 24.411 through 24.413 contain the suspension appeal and hearing procedures set forth in § 24.23 of the proposed rule. As explained in the discussion of §§ 24.312 through 24.314, such procedures meet the required due process standards.

(11) The provision at § 24.413(a) is consistent with the common rule provision at § 24.412(b)(1)(ii) in denying hearing rights based on Department of Justice advice that substantial interests of the Federal Government in pending or contemplated legal proceedings would be prejudiced by a hearing on a suspension based on the same facts. A similar provision was contained in § 24.13(b)(2) of HUD's proposed rule, except that in the proposed rule the hearing officer, rather than the suspending official, was responsible for considering documentary evidence and written briefs submitted by the Respondent. The change of decision-maker has been made to provide consistency with the common rule.

(12) Sections 24.32 and 24.33 of the proposed rule have been deleted. These provisions related to internal agency requirements that have been abolished because of the format adopted by GSA for publication of the procurement and nonprocurement list. All persons currently included on the HUD list will also be included on one or both parts of the GSA list.

(13) Subpart F is added to the common rule to set forth HUD's provisions relating to limited denials of participation. These provisions were contained in Subpart D of the proposed rule. Certain provisions have been changed to clarify the effect and scope of the sanction. Section 24.613 (§ 24.30 of the proposed rule), was changed to reflect that the hearing request must be made within 30 days. The prior 15-day period was inconsistent with § 24.612, (previously § 24.29), and was incorrect.

(14) Also, language has been added to § 24.630 clarifying that a limited denial of participation is superseded by a suspension based on the same facts, and any appeal will be heard solely as an appeal of suspension.

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, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule was listed as item 887 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13865) under Executive Order 12291 and the Regulatory Flexibility Act.

The following list indicates the relationship of the common rule and HUD's proposed rule:

HUD proposed rule	Final rule
24.1—Policy	24.115
24.2—Scope	24.110
24.3—Applicability	24.200–215
24.3a—Relations to other sanctions	24.200
Debarment	
24.5—General	24.300
24.6—Causes	24.305
24.7—Procedures	24.310 through .312
24.8—Effect on Debarment	24.200
24.9—Voluntary Exclusion	24.210 and .315
24.10—Period of Debarment	24.320
24.11—Scope	24.325
24.12—Appeal Procedures	24.313
24.13—Hearing Procedures	24.313
24.14—Determination of Hearing Officer	24.314
24.15—Request for Period Debarment	24.320
24.16—Settlement	24.210 and .315
Suspensions	
24.17—General	24.400
24.18—Causes	24.405
24.19—Procedures	24.410
24.20—Effect on Suspension	24.200 and .215
24.21—Period of Suspension	24.415
24.22—Scope	24.420
24.23—Appeal	24.412 and .413
24.24—Settlements	24.210 and .315
Limited Denial of Participation	
24.25—General	24.600
24.26—Causes	24.605
24.27—Period and Scope	24.610
24.28—Notice	24.611
24.29—Conference	24.612
24.30—Appeal	24.613
Lists, etc. consolidated	
24.31—Lists	24.500
24.32—HUD List	N.A.
24.33—Classifications	N.A.
24.34—Effect of Sanctions	24.200–220
24.35—Certification	24.510
24.36—Retroactivity	24.110

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Title 24 of the Code of Federal Regulations is amended as set forth below.

Dated: May 18, 1988.

J. Michael Dorsey,

Acting Secretary, U.S. Department of Housing and Urban Development.

1. Part 24 is revised to read as set forth at the end of this document.

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION

Subpart A—General

Sec.

24.100 Purpose.
24.105 Definitions.
24.110 Coverage.
24.115 Policy.

Subpart B—Effect of Action

24.200 Debarment or suspension.
24.205 Ineligible persons.
24.210 Voluntary exclusion.
24.215 Exception provision.
24.220 Continuation of covered transactions.
24.225 Failure to adhere to restrictions.

Subpart C—Debarment

24.300 General.
24.305 Causes for debarment.
24.310 Procedures.
24.311 Investigation and referral.
24.312 Notice of proposed debarment.
24.313 Opportunity to contest proposed debarment.
24.314 Debarring official's decision.
24.315 Settlement and voluntary exclusion.
24.320 Period of debarment.
24.325 Scope of debarment.

Subpart D—Suspension

24.400 General.
24.405 Causes for suspension.
24.410 Procedures.
24.411 Notice of suspension.
24.412 Opportunity to contest suspension.
24.413 Suspending official's decision.
24.415 Period of suspension.
24.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

24.500 GSA responsibilities.
24.505 HUD responsibilities.
24.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, (Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Part 24 is further amended as follows:

a. "[Agency]" is removed and "HUD" is added wherever "[Agency]" occurs.

b. Section 24.100 is amended by adding paragraphs (d) and (e) to read as follows:

§ 24.100 Purpose

* * * * *

(d) These regulations also:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of participants and contractors;

(2) Provide for the listing of debarred, suspended and ineligible contractors; and

(3) Set forth the consequences of such listing.

(e) Although this part covers the listing of ineligible contractors, it does not prescribe policies and procedures governing declarations of ineligibility.

c. Section 24.105 is amended by adding paragraphs (f)(1) and (2), (p)(2)–(22), (u)(1) and (2), (v)(1) and (2), and (w) through (cc) to read as follows:

§ 24.105 Definitions

* * * * *

(f) * * *

(1) An action taken by HUD under these regulations shall also exclude a participant from participating in procurement contracts with HUD, and

(2) Shall exclude a contractor from participating in covered transactions with HUD and from Federal procurement activities.

* * * * *

(p) * * *

(2) Loan officers;

(3) Staff appraisers and inspectors;

(4) Underwriters;

(5) Bonding companies;

(6) Borrowers under programs financed by HUD or with loans guaranteed, insured or subsidized through HUD programs;

(7) Purchasers of properties with HUD-insured or Secretary-held mortgages;

(8) Recipients under HUD assistance agreements;

(9) Ultimate beneficiaries of HUD programs;

(10) Fee appraisers and inspectors;

(11) Real estate agents and brokers;

(12) Management and marketing agents;

(13) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;

(14) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD insured loans, or acquired properties including properties held by HUD as mortgagee-in-possession;

(15) Closing agents;

(16) Turnkey developers of projects financed by or with financing insured by HUD;

(17) Title companies;

(18) Escrow agents;

(19) Project owners;

(20) Administrators of nursing homes and projects for the elderly financed or insured by HUD;

(21) Developers, sellers or owners of property financed with loans insured under Title I or Title II of the National Housing Act; and

(22) Employees or agents of any of the above.

* * * * *

(u) * * *

(1) An action by HUD taken under these regulations shall also exclude a participant from participating in procurement contracts with HUD, and

(2) Shall exclude a contractor from participating in covered transactions with HUD and from Federal procurement activities.

(v) * * *

(1) An action taken under these regulations shall also exclude a participant from participating in procurement contracts with HUD, and

(2) Shall exclude a contractor from participating in covered transactions with HUD and from Federal procurement activities.

(w) *Benefits.* Money or any other thing of value provided by, or realized because of the Department. "Thing of value" includes insurance or guarantees of any kind.

(x) *Contractor.* As used in this part, contractor means any individual or other legal entity that:

(1) Submits offers for, or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract (or a subcontract under a Government contract); or

(2) Conducts business with the Government as an agent or representative of another contractor;

(y) *Hearing officer.* An Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary, or by the Secretary's designee, to conduct proceedings under this part.

(z) *HUD.* Department of Housing and Urban Development.

(aa) *Limited denial of participation.* An action taken to immediately exclude from participation, or to immediately impose conditions on the participation, of any person in a program or programs of the Department within a limited geographical area.

(bb) *Procurement List.* A list compiled, maintained, and distributed by the General Services Administration (GSA) (see § 24.500(c)), containing the names and other information regarding contractors debarred or suspended or declared ineligible by agencies under the procedures of this part as well as under other statutory or regulatory authority.

(cc) *Ultimate beneficiaries.* Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors such as those assisted under Section 8 Housing Assistance Payments Contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

d. Section 24.110 is amended by adding paragraph (a)(1)(i)(A), (a)(1)(ii)(C) (*3*) through (*20*), (d), and (e) to read as follows:

§ 24.110 Coverage.

(a) * * *

(1) * * *

(i) * * *

(A) Specially designated transactions are:

(*1*) Transactions regulated by the Interstate Land Sales Act (15 U.S.C. 1701);

(*2*) Transactions regulated by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401);

(ii) * * *

(C) * * *

(*3*) Bonding companies;

(*4*) Borrowers;

(*5*) Purchasers of a property with a HUD-insured or Secretary-held mortgage;

(*6*) Recipients under HUD assistance agreements;

(*7*) Ultimate beneficiaries of HUD programs;

(*8*) Fee appraisers and inspectors;

(*9*) Real estate agents and brokers;

(*10*) Management and marketing agents;

(*11*) Accountants, consultants, investment bankers; architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;

(*12*) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD insured loans, or acquired properties including properties held by HUD as mortgagee-in-possession;

(*13*) Closing agents;

(*14*) Turnkey developers of projects financed with or insured by HUD;

(*15*) Title companies;

(*16*) Escrow agents;

(*17*) Project owners;

(*18*) Administrators of nursing homes and projects for the elderly financed or insured by HUD;

(*19*) Developers, sellers or owners of property financed with loans insured under Title I or Title II of the National Housing Act; and

(*20*) Employees or agents of any of the above.

* * * * *

(d) These regulations also apply to all persons who have participated, are currently participating or may reasonably be expected to participate in Federal procurement programs. For purposes of these regulations, such persons will be referred to as "contractors" and such transactions will be referred to as "procurement contracts." The consequences of a debarment or suspension, as set forth in §§ 24.200(e) apply to contractors in Federal procurement programs, and §§ 24.325 and 24.420 govern the extent to which a specific contractor or its organizational elements would be included within a debarment or suspension action.

(e) *Retroactivity.* Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations (October 1, 1988) regardless of the date of the cause giving rise to the sanction.

e. Section 24.115 is amended by adding paragraph (d) to read as follows:

§ 24.115 Policy

* * * * *

(d) The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision. In this connection, the supplying of information by the contractor to the Government pursuant to the Anti-Kickback Act of 1986 shall be favorable evidence of the contractor's responsibility.

f. Section 24.200 is amended by adding paragraphs (c)(8), (d), (e), and (f) to read as follows:

§ 24.200 Debarment and suspension.

* * * * *

(c) * * *

(8) Debarment for any of the causes set forth in § 24.305(f) shall have no governmentwide effect.

(d) The debarment of a contractor by HUD shall have the following effect:

(1) Exclusion from participation in HUD programs, including receiving contracts and HUD shall not solicit offers from, award contracts to, or consent to subcontracts with, these contractors, unless the Secretary or designee determines in writing that there is a compelling reason for such action.

(2) In addition to exclusion from participation in HUD programs, a contractor's debarment or suspension from procurement for the causes set forth in § 24.305(d) shall be effective throughout the Executive Branch of the Government, in accordance with 48 CFR 9.406–1(c), unless a contracting agency's head, or designee, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e) *Other exceptions.* (1) Sanctions under this part shall also not preclude the receipt of benefits from the sale of the personal residence of an excluded individual or the purchase of HUD-owned housing units offered for all-cash sale without qualification at public sales.

(2) Sanctions against participants whose only involvement in HUD programs is as ultimate beneficiaries, such as subsidized tenants and subsidized mortgagors, may be taken only upon evidence of fraud unless the participant has otherwise been debarred or suspended by another Federal agency.

(3) Sanctions under this part against HUD FHA-approved mortgagees may be initiated only with the approval of the Mortgagee Review Board.

(f) Relationship to HUD administrative sanction procedures. (1) *Sanctions provided pursuant to contract provisions.* Nothing in this part shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other Departmental sanctions.* Where an office of the Department is required by statute, regulation, or

Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation or Executive Order shall take precedence. These alternate procedures include, but are not limited to: Part 200 Previous Participation Review and Clearance procedures, Part 25 Mortgagee Review Board administrative actions, and Part 570 Community Development Block Grant corrective and remedial actions.

g. Section 24.215 is amended by adding paragraph (a) immediately following the undesignated paragraph to read as follows:

§ 24.215 Exception provision.

* * * * *

(a) A contractor's debarment shall be effective throughout the executive branch of the Government, unless a contracting agency's head or his or her designee states in writing the compelling reasons justifying continued business dealings between the agency and the contractor.

h. Section 24.220 is amended by adding paragraphs (c) and (d) to read as follows:

§ 24.220 Continuation of covered transactions.

* * * * *

(c) Notwithstanding the debarment or suspension of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the contracting agency's head or designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(d) Agencies shall not renew current contracts or subcontracts of debarred or suspended contractors, or otherwise extend their duration, unless the contracting agency's head or a designee states in writing the compelling reasons for renewal or extension.

i. Section 24.305 is amended by adding paragraphs (d)(1), (e), and (f) to read as follows:

§ 24.305 Causes for debarment.

(d) * * *

(1) These causes include but are not limited to:

(i) Failure to comply with Title VIII of the Civil Rights Act of 1968 or Executive Order 11063, HUD's Affirmative Fair Housing Marketing regulations or an Affirmative Fair Housing Plan;

(ii) Violation of Title VI of the Civil Rights Act of 1964, section 109 of the Housing and Community Development Act of 1973, section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975;

(iii) Violation of any law, regulation, or agreement relating to conflict of interest;

(iv) Violation of any nondiscrimination provisions included in any agreement or contract;

(e) Debarment of a contractor may be imposed for any of the causes in paragraphs (a), (b), and (d). For purposes of this section, "agreement" is deemed to include "contracts or subcontracts."

(f) In addition to the causes set forth above, HUD may debar a person from participating in any programs or activities of the Department for material violation of a statutory or regulatory provision or program requirement applicable to a public agreement or transaction including applications for grants, financial assistance, insurance or guarantees, or to the performance of requirements under a grant, assistance award or conditional or final commitment to insure or guarantee.

j. Sections 24.313 and 24.314 are revised to read as follows:

§ 24.313 Appeal and hearing procedures.

(a) *Appeal procedures.* Within 30 days of receipt of a notice of proposed debarment, any participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. If no appeal is filed within the time limit, the proposed decision to debar shall be final. For purposes of compliance with this section, notice shall be considered to have been received by the addressee if the notice is properly mailed to the last known adress of such addressee.

(b) *Hearing procedures*—(1) *General.* Hearings shall be governed by the procedures set forth at 24 CFR Part 26 (except as provided in § 24.313 and 24.314) including § 26.16 regarding time computation. Specifically, § 26.16 provides that computation of any period of time prescribed or allowed by this part shall begin with the first business day following the day on which the act, event, development or default initiating the period of time occurred. When the last day of the period computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is seven days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

(2) *Right to hearing.* A participant or contractor, including any affiliate, that has requested a hearing has the right to be heard before a Hearing Officer and to be represented by counsel as follows:

(i) Except as provided in paragraphs (b)(2)(ii) of this section or § 24.412(a), the participant or contractor may request an oral hearing before a hearing officer. Where debarment is based on a finding of civil rights noncompliance after a hearing, however, the hearing officer is bound by the finding of noncompliance reached in the prior hearing.

(ii) Where the action is based solely upon an indictment or conviction, or upon suspension or debarment by another Federal agency, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer;

(3) *Standard of proof in any contested action.* The cause for debarment must be established by a preponderance of the evidence. If the debarment is based upon a conviction, a civil judgment, or debarment by another Federal agency, the standard shall be deemed to have been met. The cause for suspension or limited denial of participation must be established by adequate evidence. If the suspension or limited denial of participation is based upon an indictment or suspension by another Federal agency, the standard shall be deemed to have been met. In determining whether a limited denial of participation should be continued, the hearing officer shall consider any evidence offered by respondent in opposition to HUD's proof as well as evidence of any mitigating circumstances. If the limited denial of participation is based upon a limited denial of participation by another HUD regional or field office, the standard shall be deemed to have been met.

(4) *Burden of proof.* The agency proposing debarment has the burden of proving to establish cause for debarment. The respondent has the burden of proof for establishing mitigating circumstances.

(5) *Consolidation of hearing.* Where a sanction under this part is accompanied or followed by another sanction under this part, the hearings may be consolidated.

§ 24.314 Determination of hearing officer; review of determination.

(a) *Written determination.* After the participant or contractor has been afforded an opportunity to be heard, the hearing officer shall make a written determination on the evidence presented, including, where appropriate, any evidence of mitigating circumstances. The hearing officer shall issue a determination in accordance with Part 26. If it is proposed that the sanction include an affiliate, the hearing officer shall rule specifically whether, and to what extent, the determination applies to the affiliate. The hearing officer's determination shall be transmitted to all appealing parties by certified mail, return receipt requested.

(b) *Transmission of determination.* The hearing officer's determination shall also be transmitted promptly to the HUD official who invoked the administrative sanction, and to the Office of General Counsel.

(c) *Finality and Secretarial Review.* The hearing officer's determination shall be final unless, pursuant to 24 CFR Part 26, the Secretary or the Secretary's designee, within 30 days of receipt of a request decides as a matter of discretion to review the finding of the hearing officer. The 30 day period for deciding whether to review a determination may be extended upon written notice of such extension by the Secretary or his designee. Any party may request such a review in writing within 15 days of receipt of the hearing officer's determination.

(d) Notice of the Secretary's decision to review the hearing officer's determination and notice of the subsequent determination by the Secretary or the Secretary's designee, shall be given in writing, signed by the Secretary or the Secretary's designee and transmitted by certified mail, return receipt requested.

(e) Where a review is granted, the determination by the Secretary or the Secretary's designee shall be based on the record of the initial hearing and shall fully recite the evidentiary grounds upon which the Secretary's determination is made. Such determination shall be issued within 30 days of the decision to grant review, unless written notice is given by the Secretary or designee extending the period for making a determination.

(f) Each determination shall become a part of the record.

(g) *Notice of debarring official's decision.* After determination in a contested action, or after the expiration of the period for requesting a hearing when no request has been received, the debarring official shall issue a final determination:

(1) Referring to the notice of proposed debarment;

(2) Specifying the reasons for debarment;

(3) Stating the period of debarment, including effective dates; and

(4) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authroized designee makes the determination referred to in § 24.215.

(h) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

k. Section 24.320 is amended by adding paragraph (d) to read as follows:

§ 24.320 Period of debarment.

* * * * *

(d) Where respondent's request to reduce the period or scope of debarment is based on reasons set forth in paragraphs (c)(4) or (5) of this section, such request may not be submitted earlier than six months after the final decision to debar. In no event may more than one such request be submitted within any 12-month period.

l. Section 24.325 is amended by adding paragraphs (a)(3) and (b)(4) to read as follows:

§ 24.325 Scope of debarment.

(a) * * *

(3) Debarment of a contractor under these regulations, or by another Federal agency pursuant to 48 CFR Subpart 9.4, constitutes debarment of all its divisions and other organizational elements from all Federal procurement, unless the debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of contracts. The debarment may be extended to include any affiliates of the contractor, if they are specifically named, given written notice of the proposed debarment, and provided with an opportunity to respond.

(b) * * *

(4) The provisions of paragraphs (b)(1) through (3) of this section are also applicable for purposes of imputing conduct to a contractor.

m. Section 24.400 is amended by adding paragraph (d) to read as follows:

§ 24.400 General.

* * * * *

(d) All suspensions shall be for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue. A suspension shall become effective immediately upon issuance of the notice specified in § 24.411. In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General or a United States Attorney requests, in writing, a continuance for an additional six months. In no event shall such a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. The time limitations for suspension contained in this section may be waived by the affected party.

n. Section 24.410 is amended by adding paragraph (c) to read as follows:

§ 24.410 Procedures.

* * * * *

(c) Suspension is a serious action to be imposed when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, the Suspending Official shall consider how much information is available, the credibility of the evidence given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result of all available evidence.

o. Sections 24.411, 24.412, and 24.413 are revised to read as follows:

§ 24.411 Notice of suspension.

(a) Suspension shall be made effective by advising the participant or contractor, and any specifically named affiliates, by certified mail, return receipt requested—

(1) That suspension is being imposed;

(2) That suspension is based on an indictment or other adequate evidence that the participant or contractor has committeed irregularities:

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the participant or contractor. Any such irregularities shall be described in terms sufficient to place the participant or contractor on notice without disclosing the Government's evidence;

(3) Of the cause(s) relied upon under § 24.405 for imposing suspension;

(d) That the suspension is for a temporary period pending the completion of an investigation and such

legal, debarment or Program Fraud Civil Remedies Act proceedings as may ensue;

(e) Of the right to request within 30 days, in writing, a hearing (either oral or on the basis of any written submissions by the respondent) under § 24.412 and 24.413;

(f) Of the potential effect(s) of suspension as set forth in § 24.200.

(g) Of HUD's appeal procedures governing suspensions.

§ 24.412 Appeal procedures.

Within 30 days of receipt of a notice of suspension, a participant or contractor, including any affiliate, desiring a hearing shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10266, Washington, DC 20410.

§ 24.413 Hearing procedures.

If a hearing is requested, it shall be held in accordance with §§ 24.313 and 24.314, except:

(a) Where an Assistant Attorney General has advised in writing that substantial interests of the Government would be prejudiced by an administrative hearing, and the suspending official determines that a suspension is based on the same facts as pending or contemplated legal proceedings referenced by the Assistant Attorney General, there shall be no right to a hearing under this part. The participant or contractor may submit documentary evidence and written briefs for consideration by the suspending official. The suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the Suspending Official extends this period for good cause.

(b) A decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of a suspension for the same cause by any other agency or a debarment by any agency.

p. Section 24.415 is amended by adding paragraph (d) to read as follows:

§ 24.415 Period of suspension.

* * * * *

(d) The time limitations for suspension contained in this section may be waived by the affected party.

q. Section 24.500 is amended by adding paragraph (c) to read as follows:

§ 24.500 GSA responsibilities.

* * * * *

(c) In accordance with 48 CFR 9.404, GSA shall compile and distribute a list of contractors who are debarred, suspended or ineligible.

r. Section 24.505 is amended by adding paragraphs (f) through (h) to read as follows:

§ 24.505 HUD responsibilities.

* * * * *

(f) The agency shall notify GSA within 5 working days after modifying or rescinding an action;

(g) The agency shall, in accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the agency;

(h) Contracting Officers shall check the Procurement List before entering into any contract or before approving any subcontract to determine whether a contractor is debarred, suspended, ineligible or voluntarily excluded.

s. Subpart F is added to Part 24 to read as set forth below:

Subpart F—Limited Denial of Participation

Sec.

24.600 General.
24.605 Causes for a limited denial of participation.
24.610 Period and scope of a limited denial of participation.
24.611 Notice.
24.612 Conference.
24.613 Appeal.

Subpart F—Limited Denial of Participation

§ 24.600 General.

Officials who may order a limited denial of participation. A Regional Administrator, Office Manager, or Director of an Office of Indian Programs is authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except HUD–FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

§ 24.605 Causes for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a participant's or contractor's past performance in a HUD program;

(3) Failure of a participant or contractor to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.305;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee.

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

(11) Imposition of a limited denial of participation by any other HUD regional or field office.

(12) Debarment or suspension by another Federal agency for any cause substantially the same as provided in § 24.305.

(b) *Indictment.* Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* Imposition of a limited denial of participation by any other HUD regional or field office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

§ 24.610 Period and scope of a limited denial of participation.

(a) The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation generally extends only to participation in the program under which the cause arose, except: Where it is based on an indictment, conviction, or suspension or debarment by another agency, it need

not be based on offenses against HUD and it may apply to all programs.

(2) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts, notwithstanding any *quid pro quo* given and whether the Department gives anything in return. "Program" may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary.

(3) The sanction may be imposed for a period not to exceed 12 months, is limited to specific HUD programs, and shall be effective only within the geographic jurisdiction of the office imposing it.

(b) *Effectiveness.* This sanction shall be effective immediately upon issuance, and shall remain effective up to 12 months thereafter. If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.611 Notice.

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by mail, return receipt requested—

(1) That the sanction is effective as of the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 24.605 for imposing the sanction;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;

(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, the official imposing the limited denial of participation shall notify the Participation and Compliance Officer for Housing Programs that no conference has been requested. If a conference is requested within the 30-day period, no notice shall be given unless a decision to affirm all or a portion of the remaining period of exclusion is issued. The Participation and Compliance Officer shall be responsible for notifying all HUD field offices of sanctions imposed.

§ 24.612 Conference.

Upon receipt of a request for a conference as specified in § 24.611(b), the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 24.613. Although the formal rules of procedure contained in 24 CFR Part 26 do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 24.613 Appeal.

Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at § 24.311 through 24.314. Where a limited denial of participation is followed by a suspension, the limited denial of participation shall be superseded by the suspension and the appeal shall be heard solely as an appeal of the suspension.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

FOR FURTHER INFORMATION CONTACT: Marion L. Butler, Taxpayer Information and Education Branch, TR:T:I—Room 7215, 1111 Constitution Avenue NW., Washington, DC 20224 telephone 202–566–4904 (not a toll-free number).

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Grant programs—debarment and suspension, Taxes.

Title 26 of the Code of Federal Regulations, Part 601, is amended as follows:

Michael J. Murphy,
Acting Commissioner of Internal Revenue.

PART 601—[AMENDED]

Paragraph 1. The authority for Part 601 is revised to read as follows:

Authority: Executive Order 12549, and 5 U.S.C. 301 and 552.

Par. 2. Subpart I is redesignated Subpart J.

Par. 3. A new Subpart I is added as set forth at the end of this document.

Subpart I—Governmentwide Debarment and Suspension (Nonprocurement)

General

Sec.	
601.901 (____.100)	Purpose.
601.902 (____.105)	Definitions.
601.903 (____.110)	Coverage.
601.904 (____.115)	Policy.

Effect of Action

601.910 (____.200)	Debarment or suspension.
601.911 (____.205)	Ineligible persons.
601.912 (____.210)	Voluntary exclusion.
601.913 (____.215)	Exception provision.
601.914 (____.220)	Continuation of covered transactions.
601.915 (____.225)	Failure to adhere to restrictions.

Debarment

601.920 (____.300)	General.
601.921 (____.305)	Causes for debarment.
601.922 (____.310)	Procedures.
601.923 (____.311)	Investigation and referral.

Sec.
601.924 (____.312) Notice of proposed debarment.
601.925 (____.313) Opportunity to contest proposed debarment.
601.926 (____.314) Debarring official's decision.
601.927 (____.315) Settlement and voluntary exclusion.
601.928 (____.320) Period of debarment.
601.929 (____.325) Scope of debarment.

Suspension

601.930 (____.400) General.
601.931 (____.405) Causes for suspension.
601.932 (____.410) Procedures.
601.933 (____.411) Notice of suspension.
601.934 (____.412) Opportunity to contest suspension.
601.935 (____.413) Suspending official's decision.
601.936 (____.412) Period of suspension.
601.937 (____.420) Scope of suspension.

Responsibilities of GSA, Agency and Participants

601.940 (____.500) GSA responsibilities
601.941 (____.505) Department of the Treasury responsibilities.
601.942 (____.510) Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Par. 4. Subpart I is further amended by removing "[Agency]" and adding "Department of the Treasury" wherever "[Agency]" occurs.

DEPARTMENT OF JUSTICE

28 CFR Part 67

[Atty. Gen. Order No. 1271–88]

FOR FURTHER INFORMATION CONTACT: Gregory C. Brady, Department of Justice, Office of Justice Programs, 633 Indiana Avenue NW., Room 1268, Washington, DC 20531, (202) 724–6235.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice has adopted a uniform system of nonprocurement debarment and suspension that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grantmaking authority. These include: The Office of Justice Programs (including the Office for Victims of Crime, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics), the National Institute of Corrections, the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation and the Drug Enforcement Administration. With respect to the Drug Enforcement Administration's authority to enter into contractual agreements with State and local law enforcement agencies under 21 U.S.C. 873(a)(7) to provide for cooperative enforcement and regulatory activities, the Attorney General will delegate the authority to grant exceptions, where warranted, under § 67.215 of this rule to the Administrator, DEA, or his designee, for the purposes of these section 873(a)(7) agreements.

List of Subjects in 28 CFR Part 67

Administrative practice and procedures, Grant programs—Law, Grants administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

May 16, 1988.

Edwin Meese III,

Attorney General.

1. Part 67 is added to read as set forth at the end of this document.

PART 67—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
67.100 Purpose.
67.105 Definitions.
67.110 Coverage.
67.115 Policy.

Subpart B—Effect of Action

67.200 Debarment or suspension.
67.205 Ineligible persons.
67.210 Voluntary exclusion.
67.215 Exception provision.
67.220 Continuation of covered transactions.
67.225 Failure to adhere to restrictions.

Subpart C—Debarment

67.300 General
67.305 Causes for debarment.
67.310 Procedures.
67.311 Investigation and referral.
67.312 Notice of proposed debarment.
67.313 Opportunity to contest proposed debarment.
67.314 Debarring official's decision.
67.315 Settlement and voluntary exclusion.
67.320 Period of debarment.
67.325 Scope of debarment.

Subpart D—Suspension

67.400 General.
67.405 Causes for suspension.
67.410 Procedures.
67.411 Notice of suspension.
67.412 Opportunity to contest suspension.
67.413 Suspending official's decision.
67.415 Period of suspension.
67.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

67.500 GSA responsibilities.
67.505 Department of Justice responsibilities.
67.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

2. Part 67 is further amended by removing "[Agency]" and adding "Department of Justice" wherever "[Agency]" occurs.

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 98

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Room S–1522, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523–8904.

List of Subjects in 29 CFR Part 98

Accounting, Administrative practice and procedures, Grant programs—debarment and suspension procedures, Grants administration, Reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations be amended as set forth below.

Ann McLaughlin,

Secretary of Labor.

1. Part 98 is added to read as set forth at the end of this document.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
98.100 Purpose.
98.105 Definitions.
98.110 Coverage.
98.115 Policy.

Subpart B—Effect of Action

98.200 Debarment or suspension.
98.205 Ineligible persons.
98.210 Voluntary exclusion.
98.215 Exception provision.
98.220 Continuation of covered transactions.

98.225 Failure to adhere to restrictions.

Subpart C—Debarment

98.300 General.
98.305 Causes for debarment.
98.310 Procedures.
98.311 Investigation and referral.
98.312 Notice of proposed debarment.
98.313 Opportunity to contest proposed debarment.
98.314 Debarring official's decision.
98.315 Settlement and voluntary exclusion.
98.320 Period of debarment.
98.325 Scope of debarment.

Subpart D—Suspension

98.400 General.
98.405 Causes for suspension.
98.410 Procedures.
98.411 Notice of suspension.
98.412 Opportunity to contest suspension.
98.413 Suspending official's decision.
98.415 Period of suspension.
98.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

98.500 GSA responsibilities.
98.505 Department of Labor responsibilities.
98.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 29 U.S.C. 551, 5 U.S.C. 301.

2. Part 98 is further amended by removing "[Agency]" and adding "Department of Labor" wherever "[Agency]" occurs.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, 653–5320.

List of Subjects in 29 CFR Part 1471

Grants programs, Grant administration.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Kay McMurray,

Director.

1. Part 1471 is added as set forth at the end of this document.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1471.100 Purpose.
1471.105 Definitions.
1471.110 Coverage.
1471.115 Policy.

Subpart B—Effect of Action

1471.200 Debarment or suspension.
1471.205 Ineligible persons.
1471.210 Voluntary exclusion
1471.215 Exception provision.
1471.220 Continuation of covered transactions
1471.225 Failure to adhere to restrictions.

Subpart C—Debarment

1471.300 General.
1471.305 Causes for debarment.
1471.310 Procedures.
1471.311 Investigation and referral.
1471.312 Notice of proposed debarment.
1471.313 Opportunity to contest proposed debarment.
1471.314 Debarring official's decision.
1471.315 Settlement and voluntary exclusion.
1471.320 Period of debarment.
1471.325 Scope of debarment.

Subpart D—Suspension

1471.400 General.
1471.405 Causes for suspension.
1471.410 Procedures.
1471.411 Notice of suspension.
1471.412 Opportunity to contest suspension.
1471.413 Suspending official's decision.
1471.415 Period of suspension.
1471.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1471.500 GSA responsibilities.
1471.505 FMCS responsibilities.
1471.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction

Authority: Executive Order 12549, 29 U.S.C. 175a.

2. Part 1471 is further amended as follows:

a. "[Agency]" is removed and "FMCS" is added wherever "[Agency]" occurs.

b. Section 1471.105 is amended by adding paragraph (w) to read as follows:

§ 1471.105 Definitions

* * * * *

FMCS. Federal Mediation and Conciliation Service.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 280

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slavsky, (202) 697–8335.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) adopts the following rule to govern debarment and suspension for grants, cooperative agreements, scholarships, fellowships and other nonprocurement actions. This rule is not intended to apply to DoD Foreign Military Sales Programs (FMS).

Section 280.200(b), which deals with the effect of action for lower tier covered transactions excludes participation by persons in lower tier transactions who have been suspended or debarred. In addition, § 280.510 requires certifications by participants in lower tier transactions that they are not debarred, suspended, ineligible, or voluntary excluded from covered transactions by any Federal agency. This language is similar to that proposed in a July 31, 1987 Notice of Proposed Rulemaking (52 FR 28642–46) which would amend the FAR to provide for certification by subcontractors and a bar against contractors awarding subcontracts to firms which are suspended or debarred. The current FAR does not cover subcontracts for this purpose unless they are subject to approval by the Federal Government. The language to be included in the FAR has not been finalized and in the event the final FAR treatment differs from that proposed in the July 31 NPRM, the provisions in this rule may be reconsidered and may be amended by the Department.

By adopting this government-wide common rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will establish uniform practices that are also consistent with those being established by other Executive Departments and Agencies.

List of Subjects in 32 CFR Part 280

Administrative practice and procedures, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended as set forth below.

May 12, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

1. Part 280 is added to read as set forth at the end of this document.

PART 280—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

280.100 Purpose.
280.105 Definitions.
280.110 Coverage.
280.115 Policy.

Subpart B—Effect of Action

280.200 Debarment or suspension.
280.205 Ineligible persons.
280.210 Voluntary exclusion.
280.215 Exception provision.
280.220 Continuation of covered transactions.
280.225 Failure to adhere to restrictions.

Subpart C—Debarment

280.300 General.
280.305 Causes for debarment.
280.310 Procedures.
280.311 Investigation and referral.
280.312 Notice of proposed debarment.
280.313 Opportunity to contest proposed debarment.
280.314 Debarring official's decision.
280.315 Settlement and voluntary exclusion.
280.320 Period of debarment.
280.325 Scope of debarment.

Subpart D—Suspension

280.400 General.
280.405 Causes for suspension.
280.410 Procedures.
280.411 Notice of suspension.
280.412 Opportunity to contest suspension.
280.413 Suspending official's decision.
280.415 Period of suspension.
280.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

280.500 GSA responsibilities.
280.505 Military Departments and Defense Agencies responsibilities.
280.510 Participants responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 5 U.S.C. 301.

2. Part 280 is further amended by removing "[Agency]" and inserting "Military Departments and Defense Agencies" wherever "[Agency]" occurs.

DEPARTMENT OF EDUCATION

34 CFR Parts 85 and 668

DATES: In addition to the interim common regulations for which comments are requested in the general preamble for this document, the Department of Education (ED) requests comments on an ED appeal procedure and the ED deviations from the common regulations. The ED provisions for which comments are requested are §§ 85.100(a), 85.200 (a) and (b), 85.201, 85.220(b), 85.314(d)(1)(iv), 85.316, 85.414, and 668.82(e). Comments on these sections must be received on or before July 25, 1988. For each comment please identify the specific section(s) in the regulations to which the comment relates. The provisions of ED's debarment and suspension regulations for which comments are requested in this agency specific preamble are effective on October 1, 1988. If the Secretary determines that comment on these provisions requires changes to the regulations, the effective date for those changes will be specified when the Department publishes in the **Federal Register** its responses to the comments.

ADDRESS: All comments should be addressed to Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3122, GSA Regional Office Building No. 3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Telephone (202) 732-7400.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Rulemaking Considerations

It is the policy of ED to consider comments received in response to a notice of proposed rulemaking (NPRM) before publishing final regulations. However, in this case the Secretary has concluded that publication of an NPRM is unnecessary because these common regulations have been subjected to extensive public scrutiny. OMB has published proposed and final guidelines and 27 agencies have requested comments on implementing regulations either through a voluntary notice of proposed common rulemaking or through separate publications of NPRMs or interim rules. In order to respond to public comments requesting uniform outcomes, OMB has requested all executive agencies to join in this final common rulemaking action. Under section 3 of the Executive order, final regulations must be published within a year after issuance by OMB of the final guidelines, May 26, 1988. Because these common regulations have been subjected to considerable public comment and must be published by May 26, the Secretary has decided, for good cause under 5 U.S.C. 553(b)(B), to dispense with proposed rulemaking on the common regulations.

The development of the deviations for Title IV of the Higher Education Act of 1965 (HEA), as amended, took considerable time due to the complex nature of the statutes involved. As a result, the Department has been unable to publish deviations before this time. As mentioned above, section 3 of the Executive order requires Federal executive agencies to publish final regulations by May 26, 1988. If the Secretary did not publish the Title IV, HEA deviations as final regulations simultaneously with the final common regulations, considerable uncertainty and confusion would result regarding the effect of the debarment or suspension of an educational institution or lender by ED or another Federal agency on participation in Title IV, HEA programs.

Consequently, the Secretary has determined that publication of the Title IV, HEA deviations as proposed rules would be impracticable in the time remaining for publication of the final rules. The Secretary has also determined that a failure to publish the deviations as final rules by May 26, would be contrary to the public interest of having in place a uniform system of debarment and suspension covering nonprocurement transactions by the Federal Government. In consideration of the foregoing, the Secretary, for good cause under 5 U.S.C. 553(b)(B), waives proposed rulemaking on the deviations. The Secretary will accept comments on the proposed deviations. The deadline for receipt of comments and the address to which the comments must be submitted are specified at the beginning of this agency-specific preamble.

Appeals from Debarments and Suspensions Under the Common Regulations

The preamble to the common regulations indicates that agencies have discretion to permit appeals from debarment and suspension decisions. The Secretary has not included any appeal procedures in these final regulations. However, the Secretary is interested in receiving comment about whether the Department should have an appeal procedure and, if so, to whom appeals should be made, if not the Secretary; how long a time period a person should have to appeal a debarment or suspension; and what other procedural limitations should be imposed on the appeal process.

Deviations from the Common Regulations

These regulations do not change the procedures for disqualifying, limiting, suspending, and terminating the participation of educational institutions, lenders, and guarantee agencies under

the student financial assistance programs authorized under Title IV, HEA, as amended.

The procedures used when the Secretary intends to suspend or terminate an educational institution under Title IV of the HEA in conjunction with a debarment or suspension under Executive Order 12549 are described in § 85.316 and § 85.414. These regulations modify the debarment and suspension procedures applicable to educational institutions participating in the Title IV, HEA programs, to make them consistent with the procedural requirements applicable by statute to the suspension and termination of Title IV, HEA participation. *See* section 487(c)(1)(D) of the HEA. The effect of debarments and suspensions by this and other agencies under Executive Order 12549 on Title IV, HEA participation by educational institutions is addressed in § 85.201 and in 34 CFR 668.82(e).

Consistent with § 85.505, the Department will review the list of debarred and suspended entities to determine if action is necessary to debar or suspend an educational institution that has been debarred or suspended by another Federal agency. The Secretary will also initiate before an administrative law judge debarment or suspension proceeding against any educational institution that has been debarred or suspended, respectively, by ED or another Federal agency, if the procedures used did not meet the Title IV, HEA requirements for a formal adjudication, including a hearing on the record before an administrative law judge.

The Secretary strongly believes that lenders debarred by ED or another Federal agency should not be permitted to continue to make loans and receive payments thereon under the financial aid programs authorized by Title IV, Part B, of the HEA. However, section 428(b)(1)(U) of the HEA requires that any eligible lender be permitted to participate in those student loan programs unless it is eliminated as a lender under certain statutory termination criteria and procedures. Thus, these regulations would permit an eligible lender to participate in HEA, Part B, student loan programs even if the lender has been debarred by ED or another Federal agency. 20 U.S.C. 1078(b)(1)(U). However, as the regulations indicate, the Secretary will promptly conduct an audit or program review of the Guaranteed Student Loan Program administration of any lender that is debarred by ED or another Federal agency in order to determine whether grounds also exist to terminate the lender from participation in the Title IV, HEA program. (See § 85.201(b)(2)(i))

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the deviations from the common regulations and whether the Department should have an appeal procedure.

All comments submitted in response to these regulations will be available for public inspection, during and after the common period, in Room 3122, GSA Regional Office Building No. 3, Seventh and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the deviations from the common regulations in this document would require transmission of 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 85

Administrative practice and procedure, Debarment, Grant programs—Education, Grants administration, Suspension.

34 CFR Part 668

Administrative practice and procedures, Colleges and universities, Education, Loan programs—education, Grant programs—education, Student aid.

Dated: May 2, 1988.

William J. Bennett,

Secretary of Education.

(CFDA: Although debarment and suspension will affect general eligibility under all covered assistance programs during the period of debarment or suspension, it is not practicable to list all affected programs because of the great number covered)

The Secretary amends Title 34 of the Code of Federal Regulations as set forth below.

1. A new Part 85 is added as set forth at the end of this document:

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

85.100 Purpose.
85.105 Definitions.
85.110 Coverage.
85.115 Policy.

Subpart B—Effect of Action

85.200 Debarment or suspension.
85.201 Treatment of Title IV, HEA participation.
85.205 Ineligible persons.
85.210 Voluntary exclusion.
85.215 Execption provision.
85.220 Continuation of covered transactions.
85.225 Failure to adhere to restrictions.

Subpart C—Debarment

85.300 General.
85.305 Causes for debarment.
85.310 Procedures.
85.311 Investigation and referral.
85.312 Notice of proposed debarment.
85.313 Opportunity to contest proposed debarment.
85.314 Debarring official's decision.
85.315 Settlement and voluntary exclusion.
85.316 Procedures for Title IV, HEA debarments.
85.320 Period of debarment.
85.325 Scope of debarment.

Subpart D—Suspension

85.400 General.
85.405 Causes for suspension.
85.410 Procedures.
85.411 Notice of suspension.
85.412 Opportunity to contest suspension.
85.413 Suspending official's decision.
85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.
85.415 Period of suspension.
85.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

85.500 GSA responsibilities.
85.505 ED responsibilities.
85.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transactions

Authority: Executive Order 12549; 20 U.S.C. 3474, unless otherwise noted.

2. Part 85 is further amended, as follows:

a. "[Agency]" is removed and "ED" is added wherever "[Agency]" occurs.

b. Paragraph (a) of § 85.100 is revised and an authority citation is added to read as follows:

§ 85.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal

programs and activities. Except as provided in § 85.200, Debarment or Suspension, § 85.201, Treatment of Title IV, HEA participation, and § 85.215, Exception provision, debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

* * * * *

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

c. Section 85.105 is amended by adding a new paragraph (w) and an authority citation is added to read as follows:

§ 85.105 Definitions.

* * * * *

(w) *ED.* The U.S. Department of Education.

(Authority: E.O. 12549; 20 U.S.C. 3474)

d. Paragraphs (a) and (b) of § 85.200 are revised and an authority citation is added to read as follows:

§ 85.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV, HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, ED shall not enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 85.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law and subject to § 85.210, Treatment of Title IV, HEA participation, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transaction (see § 85.110(a)(1)(ii)) for the period of their debarment or suspension. Such persons shall also be excluded from all contracts to provide federally-required audit services regardless of contract amount.

* * * * *

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

e. A new § 85.201 is added, to read as follows:

§ 85.201 Treatment of Title IV, HEA participation.

(a)(1) The debarment of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554–557 (formal adjudication requirements under the Administrative Procedures Act) terminates the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554–557 suspends the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(b)(1) Except as provided in paragraph (a) of this section, the debarment, suspension, proposed debarment, or proposed suspension of an educational institution or lender under E.O. 12549 does not affect the eligibility of the institution or lender to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(2)(i) The Secretary initiates a debarment or suspension proceeding under § 85.316 or § 85.414, respectively, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554.557.

(ii) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

f. Paragraph (b) of § 85.220 is revised and an authority citation is added to read as follows:

§ 85.220 Continuation of covered transactions.

* * * * *

(b) Except as provided in § 85.201, Treatment of Title IV, HEA participation, and § 85.215, Exception provision, the Secretary shall not, and participants shall not, renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible or voluntary excluded.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

g. Paragraph (d)(1)(iv) of § 85.314 is revised and an authority citation is added to read as follows:

§ 85.314 Debarring official's decision.

* * * * *

(d) * * *

(1) * * *

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 85.215 or the debarment or suspension is against—

(A) An educational institution under procedures that do not meet the requirements of § 85.201(a); or

(B) A lender participating in the Title IV, Part B, HEA program.

* * * * *

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

h. A new § 85.316 is added to read as follows:

§ 85.316 Procedures for Title IV, HEA debarments.

(a)(1) If the Secretary debars an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the debarment to ensure that the debarment also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.312, Notice of proposed debarment, and § 85.314(d), Notice of debarring official's decision.

(ii) Instead of the procedures in § 85.313 and § 85.314(a)–(c), the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the debarring official for proceeding under this section.

(b) On appeal from a decision debarring an educational institution, the Secretary issues a final decision after all parties have filed their written materials with the Secretary.

(c) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the debarring official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for debarment as set forth in § 85.305.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

i. A new § 85.414 is added, to read as follows:

§ 85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.

(a) *Title IV E.O. 12549 suspensions.* (1) If the Secretary suspends an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the suspension to ensure that the suspension also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.411, Notice of suspension.

(ii) Instead of the procedures in §§ 85.412, 85.413, and 85.415, the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the suspending official for proceeding under this section.

(3) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the suspending official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for suspension under E.O. 12549 as set forth in § 85.405.

(b) *Continued assistance under Title IV, HEA.* The institution may continue its participation in the Title IV programs until the procedures described in paragraph (a) of this section, except for those relating to appeals to the Secretary, have been completed, unless the Secretary takes an emergency action under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

j. An authority citation is added after each section in Part 85 other than §§ 85.100, 85.105, 85.200, 85.201, 85.220, 85.314, 85.316, and 85.414, to read as follows:

(Authority: E.O. 12549; 20 U.S.C. 3474)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3. Part 668 is amended as follows:

a. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

b. Section 668.82 is amended by adding a new paragraph (e) to read as follows:

§ 668.82 Standards of Conduct.

* * * * *

(e)(1) The debarment of a participating institution under Executive Order (E.O.) 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, terminates the institution's eligibility to participate in the Title IV, HEA programs for the duration of the debarment.

(2)(i) The suspension of a participating institution under E.O. 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, suspends the institution's eligibility to participate in the Title IV, HEA programs.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(3)(i) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(ii) The Secretary initiates a fine, limitation, suspension, or termination action under 34 CFR Part 668, Subpart G, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554–557.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202–523–3214 (FTS 523–3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) makes grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003.

List of Subjects in 36 CFR Part 1209

Administrative practice and procedure, Grant programs—Archives and Records, Grant administration, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended as set forth below.

Dated: April 28, 1988.

Don W. Wilson,

Archivist of the United States.

1. Part 1209 is added as set forth at the end of this document.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

1209.100 Purpose.
1209.105 Definitions.
1209.110 Coverage.
1209.115 Policy.

Subpart B—Effect of Action

1209.200 Debarment or suspension.
1209.205 Ineligible persons.
1209.210 Voluntary exclusion.
1209.215 Exception provision.
1209.220 Continuation of covered transactions.
1209.225 Failure to adhere to restrictions.

Subpart C—Debarment

1209.300 General.
1209.305 Causes for debarment.
1209.310 Procedures.
1209.311 Investigation and referral.
1209.312 Notice of proposed debarment.
1209.313 Opportunity to contest proposed debarment.
1209.314 Debarring official's decision.
1209.315 Settlement and voluntary exclusion.
1209.320 Period of debarment.
1209.325 Scope of debarment.

Subpart D—Suspension

1209.400 General.
1209.405 Causes for suspension.
1209.410 Procedures.
1209.411 Notice of suspension.
1209.412 Opportunity to contest suspension.
1209.413 Suspending official's decision.
1209.415 Period of suspension.
1209.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1209.500 GSA responsibilities.
1209.505 NARA responsibilities.
1209.510 Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 44 U.S.C. 2104(a).

2. Part 1209 is further amended as follows:

a. "[Agency]" is removed and "NARA" is added wherever "[Agency]" occurs.

b. Section 1209.105 is amended by adding paragraph (w) to read as follows:

§ 1209.105 Definitions.

* * * * *

(w) *NARA.* National Archives and Records Administration.

VETERANS ADMINISTRATION

38 CFR Part 44

FOR FURTHER INFORMATION CONTACT: Gail A. Gompf, Director, Office of Intergovernmental Affairs (61), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3116.

ADDITIONAL SUPPLEMENTARY INFORMATION: These final regulations codify the OMB guidelines pursuant to Executive Order 12549. Veterans Administration (VA) programs affected by these regulations include, but are not limited to, affiliation agreements (38 U.S.C. 4101(b)); agencies training counseling staffs at VA Regional Offices; exchange of medical information agreements under 38 U.S.C. 5054(a) and (b); health professional scholarships authorized by 38 U.S.C. 4141–4146; insurance; loan guaranty; provision of training to non-DM&S personnel by Regional Medical Education Centers (RMECs) authorized by 38 U.S.C. 4123(b); State contracts with individuals or organizations for the acquisition or construction of a State home using State home grant funds; State cemetery grants; and vocational rehabilitation and education.

In the area of vocational rehabilitation and education, for example, several programs are affected. The final regulations apply to facilities to which the VA pays training costs for veterans pursuing vocational rehabilitation programs, and costs for veterans receiving evaluation services or independent living services in rehabilitation facilities. Also included are agencies and organizations for which the VA authorizes grants to conduct rehabilitation research and provide training to enhance the skills of counseling and rehabilitation staff, and employers who are receiving payments that represent a portion of a veteran-trainee's wage under the Veterans' Job Training Act (VJTA).

The VA currently disapprove job training programs when the Agency discovers irregularities in them. Under the regulations, the VA could debar offending employers as well. Further, if an employer were debarred or suspended by another agency, even for reasons unrelated to job training, that employer would be unable to participate in VJTA programs, unless specifically excepted from sanctions under 38 CFR 44.215.

Similarly, in the loan guaranty program, the final regulations would affect all nonprocurement program participants, including lenders, builders, participants in the manufactured home loan program (manufacturers, dealers and park operators), fee appraisers, and real estate sales brokers and agents, and their employees. VA may currently impose sanctions on any lender who has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately or to exercise proper credit judgment or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or the Government. A lender who has been suspended or debarred is thereafter barred for the length of the suspension or debarment from making or acquiring by purchase any VA guaranteed loans. In addition, VA suspends or debars on a reciprocal basis lenders who have been denied the benefits of participation in programs administered by the Secretary of Housing and Urban Development (HUD). Under the final regulations, lenders who have been debarred or suspended by their agencies would be unable to participate in the VA loan guaranty program. For example, a lender denied participation in the housing loan programs of the Farmers Home Administration would be unable to participate in the VA Home Loan program, unless specifically excepted under 38 CFR 44.215.

Under 38 U.S.C. 1804(b), VA may currently refuse to appraise any dwelling owned, sponsored or to be constructed by any person identified with housing previously sold to veterans as to which substantial deficiencies have been discovered or where the type of contracts or sale or methods and practices pursued in relation to the marketing of units were unfair or unduly prejudicial to veterans. VA may also refuse to appraise dwellings where the builder or broker has been denied participation in HUD programs. Under the final regulations, dwellings constructed or sold by builders or brokers debarred or suspended by other agencies would not be available for appraisal by the VA, unless a specific exception were granted under 38 CFR 44.215.

The VA has enumerated under the definition of "principal" in §§ 44.105 and 44.110(a)(1)(ii)(C) a listing of participants in the loan guaranty program who are considered to be principals to loan guaranty transactions and whose activities are covered by these regulations.

In the Department of Medicine and Surgery (DM&S), States which qualify are awarded VA grants for construction and acquisition of State veterans home facilities. A suspension or debarment action could arise in a number of situations involving a construction firm with which a State contracts. For instance, there might be fraud or a criminal offense on the part of the contractor in obtaining that public contract. In addition, affiliation agreements, health professional scholarships, the training of non-DM&S personnel by RMECs, and exchange of medical information agreements would all be susceptible to investigation and referral for suspension or debarment by the VA for willful failure of the second party or adhere to terms of the agreement. In each of these situations, the transgressions of the participants could invoke the regulations on debarment and suspension.

However, these final regulations do not cover VA programs permitting VA beneficiaries to obtain services or benefits at VA expense from private providers of their choice. These programs include the fee-basis care program (38 U.S.C. 603), the CHAMPVA (38 U.S.C. 613), and the automobile adaptive equipment program (38 U.S.C. 1902). These programs are excepted because they provide benefits to individuals as personal entitlements without regard to any responsibility on the part of the individual beneficiary (38 CFR 44.110(a)(2)).

The final rules do not impose paperwork or recordkeeping burdens. Only some participants in covered transactions under the rules are small entities for purposes of the Regulatory Flexibility Act. Moreover, only those participants involved in debarment or suspension proceedings would be affected. Consequently, less than a substantial number of small entities will be affected by these rules.

List of Subjects in 38 CFR Part 44

Accounting, Administrative practice and procedures, Agreements, Grant programs—State cemetery and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and Education.

Title 38 of the Code of Federal Regulations is amended as set forth below.

Approved: May 9, 1988.

Thomas K. Turnage,

Administrator.

1. Part 44 is added to read as set forth at the end of this document:

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
44.100 Purpose.
44.105 Definitions.
44.110 Coverage.
44.115 Policy.

Subpart B—Effect of Action

44.200 Debarment or suspension.
44.205 Ineligible persons.
44.210 Voluntary exclusion.
44.215 Exception provision.
44.220 Continuation of covered transactions.
44.225 Failure to adhere to restrictions.

Subpart C—Debarment

44.300 General.
44.305 Causes for debarment.
44.310 Procedures.
44.311 Investigation and referral.
44.312 Notice of proposed debarment.
44.313 Opportunity to contest proposed debarment.
44.314 Debarring official's decision.
44.315 Settlement and voluntary exclusion.
44.320 Period of debarment.
44.325 Scope of debarment.

Subpart D—Suspension

44.400 General.
44.405 Causes for suspension.
44.410 Procedures.
44.411 Notice of suspension.
44.412 Opportunity to contest suspension.
44.413 Suspending official's decision.
44.415 Period of suspension.
44.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

44.500 GSA responsibility.
44.505 Veterans Administration responsibilities.
44.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 (51 FR 6370); 38 U.S.C. 210(c).

2. Part 44 is further amended by removing "[Agency]" and adding "Veterans Administration" wherever "[Agency]" occurs.

3. Section 44.105 is further amended by adding paragraph (p)(2) to read as follows:

§ 44.105 Definitions.

* * * * *

(p) * * *

(2) In the Veterans Administration loan guaranty program, principals include, but are not limited to the following:

(i) Loan officers,

(ii) Loan solicitors,

(iii) Loan processors,

(iv) Loan servicers,

(v) Loan supervisors,

(vi) Office managers,

(vii) Staff appraisers and inspectors,

(viii) Fee appraisers and inspectors,

(ix) Underwriters,

(x) Bonding companies,

(xi) Real estate agents and brokers,

(xii) Management and marketing agents,

(xiii) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under the Veterans Administration loan guaranty program,

(xiv) Contractors involved in the construction, improvement or repair of properties financed with Veterans Administration guaranteed loans,

(xv) Closing agents.

* * * * *

4. Section 44.110 is amended by adding paragraph (a)(1)(ii)(C)(*3*) to read as follows:

§ 44.110 Coverage.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(C) * * *

(*3*) In the Veterans Administration loan guaranty program, such persons include, but are not limited to the following:

(*i*) Fee appraisers and inspectors,

(*ii*) Bonding companies,

(*iii*) Real estate agents and brokers,

(*iv*) Management and marketing agents,

(*v*) Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under the Veterans Administrations loan guaranty program.

(*vi*) Contractors involved in the construction, improvement or repair of properties financed with VA guaranteed loans,

(*vii*) Closing agents.

* * * * *

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

[FRL-3350-8]

FOR FURTHER INFORMATION CONTACT: Robert Meunier or David Sims, at (202) 475-8025.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 26, 1987, the Office of Management and Budget (OMB), issued Governmentwide guidelines governing debarment and suspension by Executive Branch agencies under nonprocurement programs. On October 20, 1987, many agencies joined in proposing a common rule to implement the guidelines. The Environmental Protection Agency (EPA) also published its proposed rule at that time, but not as part of the common rule (52 FR 39198). Since then, OMB has amended the guidelines and determined that all agencies will join the common rule in order to ensure greater uniformity. Comments on EPA's proposed rule were considered in preparing a final common rule and are addressed in the common preamble.

EPA is adopting several additions to the common rule. Under the common rule, agencies have the option to insert additional agency-specific examples to the definitions. The definitions of "debarring official" and "suspending official" under the common rule are being amended by adding subparagraphs (g)(3) and (t)(3) to § ____.105 to designate the Director, Grants Administration Division, as the Agency's debarring and suspending official. In addition, EPA is amending the definition of "Principal" at §_____.105(p) by adding bid and proposal estimators and preparers as an agency-specific example.

Sections _____.110(a)(2)(iv) and _____.200(c)(5) of the final common rule exempt transactions pursuant to national or agency-recognized emergencies or disasters from the effect of a suspension or debarment. This exemption does not apply to transactions under any programs carried out by EPA. Accordingly, § 32.110(a)(2)(iv)(A) and § 32.200(c)(5)(i) are added to clarify these exemptions. In special cases, EPA is authorized to permit a debarred, suspended or voluntarily excluded person to participate in a particular covered transaction by granting an exception under § 32.215.

EPA is adding subparagraph (d) to § 32.115 stating that while Part 32 does not apply to direct Federal procurement activities, which are governed by the

Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4, it is EPA's policy, for purposes of rational and efficient management, to integrate its administration of these two complementary programs.

One commenter sought clarification about whether a person could be debarred or suspended for violating environmental laws. An environmental violation could give rise to a debarment or suspension action under several of the causes at § 32.305, where there is a reasonable connection between the offense committed and future performance under an EPA assistance program. For example, a conviction of civil judgment for falsely certifying hazardous waste disposal manifests could result in debarment under § 32.305(a)(3). The unauthorized disposal of hazardous wastes, such as through "midnight dumping", could result in debarment under § 32.305 (a)(4) or (d). Failure to comply with environmental requirements incorporated into a public contract could result in debarment under § 32.305(b).

The common rule requires a hearing only where there exists a genuine dispute as to facts material to a proposed debarment or suspension. EPA is adding language to §§ _____.313 and _____.412, permitting a respondent to request a hearing regardless of whether there are "material facts" in dispute. This reflects EPA's policy and current practice of affording all respondents the same procedural options for the resolution of pertinent issues. A request for hearing upon suspension, however, is still subject to denial under § 32.412(b)(1)(ii), where pending or contemplated legal proceedings would be prejudiced.

Also, the common rule makes no provision for post-determination review of debarment or suspension decisions. EPA is opting to retain its current post-determination review procedures by adding §§ 32.330 and 32.425, which permit a party to request the debarring/suspending official to reconsider a decision to debar or suspend due to an error of fact or law. EPA is also adding §§ 32.335 and 32.430, which permit discretionary review of debarment and suspension decisions by the Director of EPA's Office of Administration, upon a written appeal filed within 30 calendar days of receipt of the debarring or suspending official's determination. We note that several comments to the proposed common rule recommended that an administrative review process be provided.

The common rule states generally that the "Agency" is authorized to settle debarment and suspension actions. At EPA this authority is vested in the Director, Grants Administration Division, as the debarring and suspending official. Accordingly, EPA is adding subparagraph (1) to § _____.315(a) to reflect this responsibility.

The proposed common rule contained a certification requirement which encompassed a range of important information from which to determine the current eligibility or potential responsibility of the prospective participant. In the final common rule, there are separate certifications, one for primary covered transactions (e.g., assistance recipients) and one for lower-tier covered transactions (e.g., contractors, subcontractors, suppliers). The lower-tier certification is an abbreviated version of the primary-tier certification.

Because EPA is most vulnerable to waste, fraud or abuse at the lower-tier level, EPA is expanding the certification for lower-tier participants by requiring them to certify to much of the same information provided in the certification submitted by primary participants. Accordingly, paragraph (3) and subparagraphs (a), (b) and (c) are being added to the lower-tier certification form.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Assistance programs—environmental protection, Technical assistance.

Lee M. Thomas,

Administrator.

Dated: May 11, 1988.

Title 40 of the Code of Federal Regulations is amended as set forth below.

1. Part 32 is revised to read as set forth at the end of this document:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

Subpart A—General

Sec.

32.100 Purpose.
32.105 Definitions.
32.110 Coverage.
32.115 Policy.

Subpart B—Effect of Action

32.200 Debarment or suspension.
32.205 Ineligible persons.
32.210 Voluntary exclusion.
32.215 Exception provision.
32.220 Continuation of covered transactions.
32.225 Failure to adhere to restrictions.

Subpart C—Debarment

32.300 General.
32.305 Causes for debarment.
32.310 Procedures.
32.311 Investigation and referral.
32.312 Notice of proposed debarment.
32.313 Opportunity to contest proposed debarment.
32.314 Debarring official's decision.
32.315 Settlement and voluntary exclusion.
32.320 Period of debarment.
32.325 Scope of debarment
32.330 Reconsideration.
32.335 Appeal.

Subpart D—Suspension

32.400 General.
32.405 Causes for suspension.
32.410 Procedures.
32.411 Notice of suspension.
32.412 Opportunity to contest suspension.
32.413 Suspending official's decision.
32.415 Period of suspension.
32.420 Scope of suspension.
32.425 Reconsideration.
32.430 Appeal.

Subpart E—Responsibilities of GSA, Agency and Participants

32.500 GSA responsibilities.
32.505 EPA responsibilities.
32.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transaction

Authority: Executive Order 12549; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 9601 et seq.

2. Part 32 is further amended as follows:

a. "[Agency]" is removed and "EPA" is added wherever "[Agency]" occurs.

b. Section 32.105 is amended by adding paragraphs (g)(3), (p)(2), (t)(3), (w), and (x) to read as follows:

§ 32.105 Definitions.

* * * * *

(g) * * *

(3) The Director, Grants Administration Division, is the authorized debarring official.

* * * * *

(p) * * *

(2) Bid and proposal estimators and preparers.

* * * * *

(t) * * *

(3) The Director, Grants Administration Division, is the authorized suspending official.

* * * * *

(w) *EPA.* Environmental Protection Agency.

(x) *Agency head.* Administrator of the Environmental Protection Agency.

c. Section 32.110 is amended by adding paragraph (a)(2)(iv)(A) to read as follows:

* * * * *

§ 32.110 Coverage.

(a) * * *

(2) * * *

(iv) * * *

(A) For the purpose of this paragraph, no transactions under EPA assistance programs are deemed to be pursuant to agency-recognized emergencies or disasters.

* * * * *

d. Section 32.115 is amended by adding paragraph (d) to read as follows:

§ 32.115 Policy.

* * * * *

(d) While Part 32 does not apply to direct Federal procurement activities, which are governed by the Federal Acquisition Regulations (FAR) at 48 CFR Subpart 9.4, it is EPA's policy to integrate its administration of these two complementary debarment and suspension programs.

e. Section 32.200 is amended by adding paragraph (c)(5)(i) to read as follows:

§ 32.200 Debarment or suspension.

* * * * *

(c) * * *

(5) * * *

(i) For the purposes of this paragraph, no transactions under EPA assistance programs are deemed agency-recognized emergencies or disasters.

* * * * *

f. Section 32.215 is amended by adding paragraph (a) after the undesignated paragraph to read:

§ 32.215 Exception provision.

* * * * *

(a) The Director, Grants Administration Division, is the official authorized to grant exceptions.

g. Section 32.313 is amended by adding paragraph (a)(1) to read as follows:

§ 32.313 Opportunity to contest proposed debarment.

(a) * * *

(1) If the respondent desires a hearing, it shall submit a written request to the debarring official within the 30-day period following receipt of the notice of proposed debarment.

* * * * *

h. Section 32.315 is amended by adding paragraph (a)(1) to read as follows:

§ 32.315 Settlement and voluntary exclusion.

(a) * * *

(1) The debarring and suspending official is the official authorized to settle debarment or suspension actions.

* * * * *

i. Sections 32.330 and 32.335 are added to Subpart C, to read as follows:

§ 32.330 Reconsideration.

Any party to the action may petition the debarring official to reconsider a debarment determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the determination.

§ 32.335 Appeal.

(a) The debarment determination under § 32.314 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the debarring official by filing a request with the OA Director within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the debarring official may stay the effective date of a debarment order pending resolution of the appeal. If a debarment is stayed, the stay shall be automatically lifted if the OA Director affirms the debarment.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, and abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.314 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31 or 33 of this subchapter.

j. Section 32.412 is amended by adding paragraph (a)(1) to read as follows:

§ 32.412 Opportunity to contest suspension.

(a) * * *

(1) If the respondent desires a hearing, it shall submit a written request to the suspending official within the 30-day period following receipt of the notice of suspension.

* * * * *

k. Sections 32.425 and 32.430 are added to Subpart D to read as follows:

§ 32.425 Reconsideration.

Any party to the action may petition the suspending official to reconsider a suspension determination for alleged errors of fact or law. The petition for reconsideration must be in writing and filed within 10 calendar days from the date of the party's receipt of the suspension determination.

§ 32.430 Appeal.

(a) The suspension determination under § 32.413 shall be final. However, any party to the action may request the Director, Office of Administration (OA Director), to review the findings of the suspending official by filing a request with the OA Director within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If a review is granted, the suspending official may stay the effective date of a suspension order pending resolution of appeal. If a suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the suspension.

(c) The review shall be based solely upon the record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OA Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.413 or a review under this section shall not be subject to a dispute or a bid protest under Parts 30, 31, or 33 of this subchapter.

l. Appendix B, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transactions, is amended by adding the following paragraphs (3)(a), (3)(b) and (3)(c) to read:

Appendix B—[Amended]

* * * * *

(3) The prospective lower-tier participant also certifies that it and its principals:

(a) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(b) Are not presently indicted for or otherwise criminally or civilly charged by a

governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (3)(a) of this certification; and

(c) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default. Where the prospective lower-tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-50

[FPMR Amdt. H-167]

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Property Management Division, (703) 557-1240.

List of Subjects in 41 CFR Part 101-50

Administrative practice and procedures, Federal surplus property.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Dated: May 13, 1988.

John Alderson,

Acting Administrator of General Services.

1. Part 101-50 is added as set forth at the end of this document.

PART 101-50—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart 101-50.1—General

Sec.

101-50.100 Purpose.
101-50.105 Definitions.
101-50.110 Coverage.
101-50.115 Policy.

Subpart 101-50.2—Effect of Action

101-50.200 Debarment or suspension.
101-50.205 Ineligible persons.
101-50.210 Voluntary exclusion.
101-50.215 Exception provision.
101-50.220 Continuation of covered transactions.
101-50.225 Failure to adhere to restrictions.

Subpart 101-50.3—Debarment

101-50.300 General.
101-50.305 Causes for debarment.
101-50.310 Procedures.
101-50.311 Investigation and referral.
101-50.312 Notice of proposed debarment.
101-50.313 Opportunity to contest proposed debarment.
101-50.314 Debarring official's decision.
101-50.315 Settlement and voluntary exclusion.
101-50.320 Period of debarment.
101-50.325 Scope of debarment.

Subpart 101-50.4—Suspension

101-50.400 General.
101-50.405 Causes of suspension.
101-50.410 Procedures.
101-50.411 Notice of suspension.
101-50.412 Opportunity to contest suspension.
101-50.413 Suspending official's decision.
101-50.415 Period of suspension.
101-50.420 Scope of suspension.

Subpart 101-50.5—Responsibilities of GSA, Agency and Participants

101-50.500 GSA responsibilities (information dissemination).
101-50.505 GSA responsibilities.
101-50.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; and Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Part 101-50 is further amended as follows:

a. "[Agency]" is removed and "GSA" is added wherever "[Agency]" occurs.

b. Section 101-50.105 is amended by adding paragraph (w) to read as follows:

§ 101-50.105 Definitions.

* * * * *

(w) *GSA.* General Services Administration.

§ 101-50.500 GSA responsibilities (information dissemination).

c. Section 101-50.500 is amended by revising the section head to read as set forth above.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, (202) 343-3433.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking on October 20, 1987 (52 FR 39042), separate from the common proposed rule issued by 20 other agencies. As a result of revisions made in the common rule to accommodate agency implementing procedures, the Department is participating in this joint publication. The Department is adding to the list of exceptions under § 12.110(a)(2) transactions entered into pursuant to Pub. L. 93-638, "Indian Self-Determination and Education Assistance Act," since application of the common rule to such transactions is prohibited by this statute. A corresponding change is made in § 12.200(c) to add a reference to these excluded transactions.

Due to the expanded scope of transactions covered under the final common rule, the Department is adopting only the coverage included in § 12.110(a)(1) of its proposed rule as its coverage in § 12.110(a)(3) of the final rule. The Department will review its other nonprocurement program activities to determine whether such activities will be included in the coverage. Based on this review, the Department will issue a notice of proposed rulemaking to obtain public comment on its coverage on or before October 1, 1988, the effective date of the common rule.

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies 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.*).

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.*

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration Grant program. Title 43 of the Code of Federal Regulations is amended as set forth below.

Date: May 17, 1988.

William L. Kendig,

Acting Principal Deputy Assistant Secretary-Policy, Budget and Administration.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: Executive Order 12549 of February 18, 1986; 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-128; OMB Circular A-102.

2. A new Subpart D is added as set forth at the end of this document.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement)

General

Sec.
12.100 Purpose.
12.105 Definitions.
12.110 Coverage.
12.115 Policy.

Effect of Action

12.200 Debarment or suspension.
12.205 Ineligible persons.
12.210 Voluntary exclusion.
12.215 Exception provision.
12.220 Continuation of covered transactions.
12.225 Failure to adhere to restrictions.

Debarment

12.300 General.
12.305 Causes for debarment.
12.310 Procedures.
12.311 Investigation and referral.
12.312 Notice of proposed debarment.
12.313 Opportunity to contest proposed debarment.
12.314 Debarring official's decision.
12.315 Settlement and voluntary exclusion.
12.320 Period of debarment.
12.325 Scope of debarment.

Suspension

12.400 General.
12.405 Causes for suspension.
12.410 Procedures.
12.411 Notice of suspension.
12.412 Opportunity to contest suspension.
12.413 Suspending official's decision.
12.415 Period of suspension.
12.420 Scope of suspension.

Responsibilities of GSA, Agency and Participants

12.500 GSA responsibilities.
12.505 Department of the Interior responsibilities.
12.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 of February 18, 1986; 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–128; OMB Circular A–102.

3. Subpart D is further amended as follows:

a. "[Agency]" is removed and "Department of the Interior" is added wherever "[Agency]" occurs.

b. Section 12.105 is amended by adding paragraphs (g)(3), (t)(3), (w) and (x) to read as follows:

§ 12.105 Definitions.

* * * * *

(g) * * *

(3) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

* * * * *

(t) * * *

(3) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

* * * * *

(w) *Exception official.* The official authorized to grant exceptions under § 12.215 for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(x) *Findings of fact official.* The official authorized to conduct and prepare findings of fact, if required under § 12.314(b)(2) or § 12.413(b)(2), is the Director, Office of Hearings and Appeals, or designee.

c. Section 12.110 is amended by adding paragraphs (a) (2)(viii) and (3) to read as follows:

§ 12.110 Coverage.

(a) * * *

(2) * * *

(viii) Transactions entered into pursuant to Pub. L. 93–638.

(3) *Department of the Interior covered transaction.* These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type of (including subtier awards under awards which are statutory entitlement or mandatory awards).

* * * * *

d. Section 12.200 is amended by adding paragraph (c)(8) to read as follows:

§ 12.200 Debarment or suspension.

* * * * *

(c) * * *

(8) Transactions entered into pursuant to Pub. L. 93–638.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the Comptroller, Policy Division (202) 646–4235.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency incorporates the final rule as Part 17 of Title 44 of the Code of Federal Regulations.

As a general comment, the Federal Emergency Management Agency prohibits by regulations and by written agreement with the State, the use of suspended or debarred contractors for disaster assistance funded under Pub. L. 93–288. We consider our prohibition to be proper and prudent management of Federal funds. We do note that § 17.215 of this common rule authorizes agencies to grant exceptions permitting debarred and suspended parties to participate in otherwise covered transactions upon a determination that there is a need to participate. This would allow us the discretion to permit such participation on a case-by-case basis.

List of Subjects in 44 CFR Part 17

Accounting, Administrative practice and procedures, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements. Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,

Chief, Policy Division.

1. Part 17 is added as set forth at the end of this document.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
17.100 Purpose.
17.105 Definitions.
17.110 Coverage.
17.115 Policy.

Subpart B—Effect of Action

17.200 Debarment or suspension.
17.205 Ineligible persons.
17.210 Voluntary exclusion.
17.215 Exception provision.
17.220 Continuation of covered transactions.
17.225 Failure to adhere to restrictions.

Subpart C—Debarment

17.300 General.
17.305 Causes for debarment.
17.310 Procedures.
17.311 Investigation and referral.
17.312 Notice of proposed debarment.
17.313 Opportunity to contest proposed debarment.
17.314 Debarring official's decision.
17.315 Settlement and voluntary exclusion.
17.320 Period of debarment.
17.325 Scope of debarment.

Subpart D—Suspension

17.400 General.

17.405 Causes for suspension.
17.410 Procedures.
17.411 Notice of suspension.
17.412 Opportunity to contest suspension.
17.413 Suspending official's decision.
17.415 Period of suspension.
17.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

17.500 GSA responsibilities.
17.505 FEMA responsibilities.
17.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Reorg. Plan No. 3 1978.

2. Part 17 is further amended as follows:

a. "[Agency]" is removed and "FEMA" is added wherever "[Agency]" occurs.

b. Section 17.105 is amended by adding paragraph (w) to read as follows:

§ 17.105 Definitions

* * * * *

(w) *FEMA.* Federal Emergency Management Agency.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 76

FOR FURTHER INFORMATION CONTACT: Mr. Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513–D, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245–7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: The definition of "principal" in the common rule provides for Federal agencies to add examples of individuals performing functions that have a critical influence on an agency's covered transactions. We have added "researchers" to the list of examples for HHS because researchers have a critical influence on our covered transactions, and all of our non-procurement debarments have been researchers. (§§ 76.105(p) and 76.110(a)(1)(ii)(C)(*3*).)

We have also added a citation of the Civil Monetary Penalties Act (42 U.S.C. 1320a-7a) to that of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–12) in the definition of "civil judgment." The former holds equivalent status, but is specific to HHS.

List of Subjects in 45 CFR Part 76

Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grant administration.

Accordingly Title 45 of the Code of Federal Regulations is amended to read as set forth below.

Dated: April 29, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

1. Part 76 is revised to read as set forth at the end of this document.

PART 76—GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
76.100 Purpose.
76.105 Definitions.
76.110 Coverage.
76.115 Policy.

Subpart B—Effect of Action

76.200 Debarment or suspension.
76.205 Ineligible persons.
76.210 Voluntary exclusion.
76.215 Exception provision.
76.220 Continuation of covered transactions.
76.225 Failure to adhere to restrictions.

Subpart C—Debarment

76.300 General.
76.305 Causes of debarment.
76.310 Procedures.
76.311 Investigation and referral.
76.312 Notice of proposed debarment.
76.313 Opportunity to contest proposed debarment.
76.314 Debarring official's decision.
76.315 Settlement and voluntary exclusion.
76.320 Period of debarment.
76.325 Scope of debarment.

Subpart D—Suspension

76.400 General.
76.405 Causes for suspension.
76.410 Procedures.
76.411 Notice of suspension.
76.412 Opportunity to contest suspension.
76.413 Suspending official's decision.
76.415 Period of suspension.
76.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants

76.500 GSA responsibility.
76.505 HHS responsibilities.
76.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 and 5 U.S.C. 301.

2. Revised Part 76 is amended as follows:

a. All references to "[Agency]" are revised to read "HHS."

b. Section 76.105 is amended by adding new paragraphs (d)(1), (p)(2), and (w) to read as follows:

§ 76.105 Definitions.

* * * * *

(d) * * *

(1) "Civil judgment" also includes determinations under the Civil Monetary Penalties Act (42 U.S.C. 1320a–7a).

* * * * *

(p) * * *

(2) Researchers.

* * * * *

(w) *HHS.* The Department of Health and Human Services.

c. Section 76.110 is amended by adding a new paragraph (a)(1)(ii)(C)(*3*) to read as follows:

§ 76.110 Coverage

(a) * * *

(1) * * *

(ii) * * *

(C) * * *

(*3*) Researchers.

* * * * *

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

FOR FURTHER INFORMATION CONTACT: Arthur J. Kusinski, Assistant General Counsel, (202) 357–9435. (Not a toll-free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: On July 1, 1987, the Foundation adopted final regulations on "Misconduct in Science and Engineering Research" (45 CFR Part 689). Misconduct as defined in 45 CFR 689.1(a) may be a cause for debarment under § 620.305 (b)(3) or (d) of these regulations.

List of Subjects in 45 CFR Part 620

Administrative practice and procedure, Grants Administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Erich Bloch,

Director.

1. Part 620 is added as set forth at the end of this document.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
620.100 Purpose.
620.105 Definitions.
620.110 Coverage.
620.115 Policy.

Subpart B—Effect of Action

620.200 Debarment or suspension.
620.205 Ineligible persons.
620.210 Voluntary exclusion.
620.215 Exception provision.
620.220 Continuation of covered transactions.
620.225 Failure to adhere to restrictions.

Subpart C—Debarment

620.300 General.
620.305 Causes for debarment.
620.310 Procedures.
620.311 Investigation and referral.
620.312 Notice of proposed debarment.
620.313 Opportunity to contest proposed debarment.
620.314 Debarring official's decision.
620.315 Settlement and voluntary exclusion.
620.320 Period of debarment.
620.325 Scope of debarment.

Subpart D—Suspension

620.400 General.
620.405 Causes for suspension.
620.410 Procedures.
620.411 Notice of suspension.
620.412 Opportunity to contest suspension.
620.413 Suspending official's decision.
620.415 Period of suspension.
620.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

620.500 GSA responsibilities.
620.505 NSF responsibilities.
620.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibilities Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; and section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. section 1870(a)).

2. Part 620 is further amended as follows:

(a) "[Agency]" is removed and "NSF" is added wherever "[Agency]" occurs.

(b) Section 620.105 is amended by adding paragraph (w) to read as follows:

§ 620.105 Definitions.

* * * * *

(w) *NSF.* National Science Foundation.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

FOR FURTHER INFORMATION CONTACT: Arthur Warren, Deputy General Counsel, 682–5418, or Laurence Baden, Grants Officer, 682–5403, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

List of Subjects in 45 CFR Part 1154

Accounting, Administrative practice and procedures, Claims, Grants programs, Grant administration.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Peter J. Basso,

Deputy Chairman for Management.

1. Part 1154 is added to read as set forth at the end of this document.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1154.100 Purpose.
1154.105 Definitions.
1154.110 Coverage.
1154.115 Policy.

Subpart B—Effect of Action

1154.200 Debarment or suspension.
1154.205 Ineligible persons.
1154.210 Voluntary exclusion.
1154.215 Exception provision.
1154.220 Continuation of covered transactions.
1154.225 Failure to adhere to restrictions.

Subpart C—Debarment

1154.300 General.
1154.305 Causes for debarment.
1154.310 Procedures.
1154.311 Investigation and referral.
1154.312 Notice of proposed debarment.
1154.313 Opportunity to contest proposed debarment.
1154.314 Debarring official's decision.
1154.315 Settlement and voluntary exclusion.
1154.320 Period of debarment.
1154.325 Scope of debarment.

Subpart D—Suspension

1154.400 General.
1154.405 Causes for suspension.
1154.410 Procedures.
1154.411 Notice of suspension.
1154.412 Opportunity to contest suspension.
1154.413 Suspending official's decision.
1154.415 Period of suspension.
1154.420 Scope of suspension.

Subpart E—Responsibility of GSA, Agency and Participants.

1154.500 GSA responsibilities.
1154.505 Arts Endowment responsibilities.
1154.510 Participant's responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; 20 U.S.C. 959(a)(1).

2. Part 1154 is further amended as follows:

"a. [Agency]" is removed and "Arts Endowment" is added wherever "[Agency]" occurs.

b. Section 1154.105 is amended by adding paragraph (w) to read as follows:

§ 1154.105 Definitions.

* * * * *

(w) *Arts Endowment.* National Endowment for the Arts.

National Endowment for the Humanities

45 CFR Part 1169

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Acting General Counsel and Deputy General Counsel, National Endowment for the Humanities, Room 530, 1100 Pennsylvania Avenue NW., Washington, DC 20506, Telephone (202) 786–0322.

List of Subjects in 45 CFR Part 1169

Accounting, Administrative practice and procedures, Claims, Grants programs, Grant administration.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Lynne V. Cheney,

Chairman.

1. Part 1169 is added as set forth at the end of this document.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1169.100 Purpose.
1169.105 Definitions.
1169.110 Coverage.
1169.115 Policy.

Subpart B—Effect of Action

1169.200 Debarment or suspension.
1169.205 Ineligible persons.
1169.210 Voluntary exclusion.
1169.215 Exception provision.
1169.220 Continuation of covered transactions.
1169.225 Failure to adhere to restrictions.

Subpart C—Debarment

1169.300 General.
1169.305 Causes for debarment.
1169.310 Procedures.
1169.311 Investigation and referral.
1169.312 Notice of proposed debarment.
1169.313 Opportunity to contest proposed debarment.
1169.314 Debarring official's decision.
1169.315 Settlement and voluntary exclusion.
1169.320 Period of debarment.
1169.325 Scope of debarment.

Subpart D—Suspension

1169.400 General.
1169.405 Causes for suspension.
1169.410 Procedures.
1169.411 Notice of suspension.
1169.412 Opportunity to contest suspension.
1169.413 Suspending official's decision.
1169.415 Period of suspension.
1169.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1169.500 GSA responsibilities.
1169.505 NEH responsibilities.
1169.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction

Authority: Executive Order 12549, 20 U.S.C. 959(a)(1).

2. Part 1169 is further amended as follows:

a. "[Agency]" is removed and "NEH" is added wherever "[Agency]" occurs.

b. Section 1169.105 is amended by adding paragraph (w) to read as follows:

§ 1169.105 Definitions.

* * * * *

(w) *NEH.* National Endowment for the Humanities.

Institute of Museum Services

45 CFR Part 1185

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, (202) 786–0539.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Institute of Museum Services, by notice in the **Federal Register**, published October 20, 1987, 52 FR 39015, 39029, proposed the inclusion in its regulations of a new Part 1185 that would make applicable to IMS programs a rule establishing a uniform system of nonprocurement debarment and suspension. By this document IMS joins other federal departments and agencies in the final common rule and interim final rule regarding nonprocurement debarment and suspension as set forth below.

Public comments on the proposed common regulations were received, and changes have been made in response to those comments. This document incorporates the common, uniform regulatory provisions reflecting the rule, as changed in response to public comments. As revised, the uniform regulations will become a new Part 1185 of the IMS regulations. Except as otherwise provided by regulation, Part 1185, as set forth below, will apply generally to awards to IMS applicants for grants under the general operating support and conservation project support programs, as well as to other forms of federal financial assistance provided by IMS.

List of Subjects in 45 CFR Part 1185

Accounting, Administrative practice and procedure, Grant programs—Museums, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Lois Burke Shepard,

Director.

1. Title 45 of the Code of Federal Regulations is amended by adding Part 1185 as set forth at the end of this document.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1185.100 Purpose.
1185.105 Definitions.
1185.110 Coverage.
1185.115 Policy.

Subpart B—Effect of Action

1185.200 Debarment or suspension.
1185.205 Ineligible persons.
1185.210 Voluntary exclusion.
1185.215 Exception provision.
1185.220 Continuation of covered transactions.
1185.225 Failure to adhere to restrictions.

Subpart C—Debarment

1185.300 General.
1185.305 Causes for debarment.
1185.310 Procedures.
1185.311 Investigation and referral.
1185.312 Notice of proposed debarment.
1185.313 Opportunity to contest proposed debarment.
1185.314 Debarring official's decision.
1185.315 Settlement and voluntary exclusion.
1185.320 Period of debarment.
1185.325 Scope of debarment.

Subpart D—Suspension

1185.400 General.
1185.505 Causes for suspension.
1185.410 Procedures.
1185.411 Notice of suspension.
1185.412 Opportunity to contest suspension.
1185.413 Suspending official's decision.
1185.415 Period of suspension.
1185.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1185.500 GSA responsibilities.
1185.505 IMS responsibilities.
1185.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 20 U.S.C. 961–68.

2. Part 1185 is further amended as follows:

a. "[Agency]" is removed and "IMS" is added wherever "[Agency]" occurs.

b. Section 1185.105 is amended by adding paragraph (w) to read as follows:

§ 1185.105 Definitions.

* * * * *

(w) *IMS.* Institute of Museum Services.

ACTION

45 CFR Part 1229

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Acting Chief, Grants Branch, (202) 634–9150.

List of Subjects in 45 CFR Part 1229

Accounting, Administrative practice and procedures, Grant programs—Volunteer Services, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Donna M. Alvarado,

Director.

1. Part 1229 is added to read as set forth at the end of this document.

PART 1229—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
1229.100 Purpose.
1229.105 Definitions.
1229.110 Coverage.
1229.115 Policy.

Subpart B—Effect of Action

1229.200 Debarment or suspension.
1229.205 Ineligible persons.

1229.210 Voluntary exclusion.
1229.215 Exception provision.
1229.220 Continuation of covered transactions.
1229.225 Failure to adhere to restrictions.

Subpart C—Debament

1229.300 General.
1229.305 Causes for debarment.
1229.310 Procedures.
1229.311 Investigation and referral.
1229.312 Notice of proposed debarment.
1229.313 Opportunity to contest proposed debarment.
1229.314 Debarring official's decision.
1229.315 Settlement and voluntary exclusion.
1229.320 Period of debarment.
1229.325 Scope of debarment.

Subpart D—Suspension

1229.400 General.
1229.405 Causes for suspension.
1229.410 Procedures.
1229.411 Notice of suspension.
1229.412 Opportunity to contest suspension.
1229.413 Suspending official's decision.
1229.415 Period of suspension.
1229.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

1229.500 GSA responsibilities.
1229.505 ACTION responsibilities.
1229.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, Pub. L. 93–113; 42 U.S.C. 4951, *et seq;* 42 U.S.C. 5060.

2. Part 1229 is further amended by removing "[Agency]" and adding "ACTION" wherever "[Agency]" occurs.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[OST Docket 45208; Amdt. 29–1]

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Department of Transportation, Office of the General Counsel (C–10). U.S. Department of Transportation, Washington DC 20590, at (202) 366–9161.

ADDITIONAL SUPPLEMENTARY INFORMATION: On May 26, 1987 the Office of Management and Budget (OMB) issued government-wide guidelines governing debarment and suspension by Executive Branch agencies under nonprocurement programs. On October 20, 1987 many agencies joined in proposing a common rule to implement the guidelines while the Department of Transportation (DOT) published an interim final rule at that time, 52 FR 39056. Substantive differences between DOT's interim final rule and the proposed common rule were minor. Since then, OMB has determined that all agencies, including DOT, will join the final common rule in order to ensure greater uniformity.

In clarification of two provisions of the final rule, it should be noted that in applying the definition in § 29.105(j) of "Legal proceedings" to § 29.415(b), the Department will consider that legal proceedings have been initiated, thereby ensuring the continuation of an on-going suspension, upon the initiation of a grand jury proceeding or the issuance of an indictment or criminal information.

All comments on DOT's interim final rule were considered in preparing a final rule and are addressed in the common preamble.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Government contracts, Loan programs—transportation, Grant programs—transportation, Fraud.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Issued this 17th day of May, 1988 at Washington, DC.

Jim Burnley,

Secretary of Transportation.

1. Part 29 is revised to read as set forth at the end of this document.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
29.100 Purpose.
29.105 Definitions.
29.110 Coverage.
29.115 Policy.

Subpart B—Effect of Action

29.200 Debarment or suspension.
29.205 Ineligible persons.
29.210 Voluntary exclusion.
29.215 Exception provision.
29.220 Continuation of covered transactions.
29.225 Failure to adhere to restrictions.

Subpart C—Debarment

29.300 General.
29.305 Causes for debarment.
29.310 Procedures.
29.311 Investigation and referral.
29.312 Notice of proposed debarment.
29.313 Opportunity to contest proposed debarment.
29.314 Debarring official's decision.
29.315 Settlement and voluntary exclusion.
29.320 Period of debarment.
29.325 Scope of debarment.

Subpart D—Suspension

29.400 General.
29.405 Causes for suspension.
29.410 Procedures.
29.411 Notice of suspension.
29.412 Opportunity to contest suspension.
29.413 Suspending official's decision.
29.415 Period of suspension.
29.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants.

29.500 GSA responsibilities.
29.505 DOT responsibilities.
29.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, 49 U.S.C. 322.

2. Part 29 is further amended as follows:

a. "[Agency]" is removed and "DOT" is added wherever "[Agency]" appears.

b. Section 29.105 is amended by adding paragraphs (g)(3), (t)(3), (w), and (x) to read as follows:

§ 29.105 Definitions.

* * * * *

(g) * * *

(3) *Debarring Official.* For DOT the designated official is the head of a Departmental operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

* * * * *

(t) * * *

(3) *Suspending Official.* For DOT the designated official is the head of a Departmental operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

* * * * *

(w) *DOT.* Department of Transportation.

(x) *Operating administration* includes the Office of the Secretary, the head of which, for the purposes of this rule, is the Assistant Secretary for Administration.

c. Section 29.120 is added to read as follows:

§ 29.120 Saving clause.

Any debarment or suspension initiated before October 1, 1988, shall be governed by Part 29 of the Department's regulations as Part 29 existed immediately before October 1, 1988, including § 29.125 thereof.

d. Section 29.215 is amended by adding paragraph (a) to follow the

undesignated paragraph to read as follows:

§ 29.215 Exception provision.

* * * * *

(a) A debarring or suspending official may grant exceptions and make written determinations under this section.

e. Section 29.315 is amended by adding paragraph (a)(1) to read as follows:

§ 29.315 Settlement and voluntary exclusion.

* * * * *

(a) * * *

(1) An operating administration may settle a debarment or suspension action under this section.

* * * * *

f. Section 29.510 is amended by adding paragraph (b)(1)(i) to read as follows:

§ 29.510. Participants' responsibilities.

* * * * *

(b) * * *

(1) * * *

(i) However, an operating administration may require that a person who enters into a primary covered transaction require the next lower tier participant to include, with conforming modifications, the certification in Appendix A.

* * * * *

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART __—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.

__.100 Purpose.
__.105 Definitions.
__.110 Coverage.
__.115 Policy.

Subpart B—Effect of Action

__.200 Debarment or suspension.
__.205 Ineligible persons.
__.210 Voluntary exclusion.
__.215 Exception provision.
__.220 Continuation of covered transactions.
__.225 Failure to adhere to restrictions.

Subpart C—Debarment

__.300 General.
__.305 Causes for debarment.
__.310 Procedures.
__.311 Investigation and referral.
__.312 Notice of proposed debarment.
__.313 Opportunity to contest proposed debarment.
__.314 Debarring official's decision.
__.315 Settlement and voluntary exclusion.
__.320 Period of debarment.
__.325 Scope of debarment.

Subpart D—Suspension

__.400 General.
__.405 Causes for suspension.
__.410 Procedures.
__.411 Notice of suspension.
__.412 Opportunity to contest suspension.
__.413 Suspending official's decision.
__.415 Period of suspension.
__.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

__.500 GSA responsibilities.
__.505 [Agency] responsibility.
__.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, [citation to Agency rulemaking authority]

Subpart A—General

§ __.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § __.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ __.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or,* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement

programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ ___.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposiied funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign

government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § ____.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § ____.110(a). Sections ____.325, "Scope of debarment," and ____.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ ____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ ____.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § ____.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § ____.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ ____.205 Ineligible persons.

Persons who are ineligible, as defined in § ____.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ ____.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § ____.315 are excluded in accordance with the terms of their settlements. [Agency] shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ ____.215 Exception provision.

[Agency] may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § ____.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § ____.505(a).

§ ____.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § ____.215.

§ ____.225 Failure to adhere to restrictions.

Except as permitted under § ____.215 or § ____.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is

ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ ___.300 General.

The debarring official may debar a person for any of the causes in § ___.305, using procedures established in §§ ___.310 through ___.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ ___.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ ___.300 through ___.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § ___.215 or § ___.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § ___.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ ___.310 Procedures.

[Agency] shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ ___.311 through ___.314.

§ ___.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ ___.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § ___.305 for proposing debarment;

(d) Of the provisions of § ___.311 through § ___.314, and any other [Agency] procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ ___.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ___.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be

arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § ____.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ ____.135 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, [Agency] may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ ____.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ ____.311 through ____.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ ____.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ ____.311 through ____.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ ____.400 General.

(a) The suspending official may suspend a person for any of the causes in § ____.405 using procedures established in §§ ____.410 through ____.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § ____.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ ____.405. Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ ____.400 through ____.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § ____.305(a); or

(2) That a cause for debarment under § ____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ ____.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source

shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* [Agency] shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § ____.411 through § ____.413.

§ ____.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § ____.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § ____.411 through § ____.413 and any other [Agency] procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ ____.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § ____.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ ____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ ____.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § ____.325), except that the procedures of §§ ____.410 through ____.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ ____.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ ____.505 [Agency] responsibilities.

(a) The agency shall provide CSA with current information concerning debarments, suspension, determinations

of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which [Agency] has granted exceptions under § _____.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § _____.500(b) and of the exceptions granted under § _____.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ _____.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to [Agency] if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State

of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B—Certification Regarding Debarment, Suspension, Ineligibilty and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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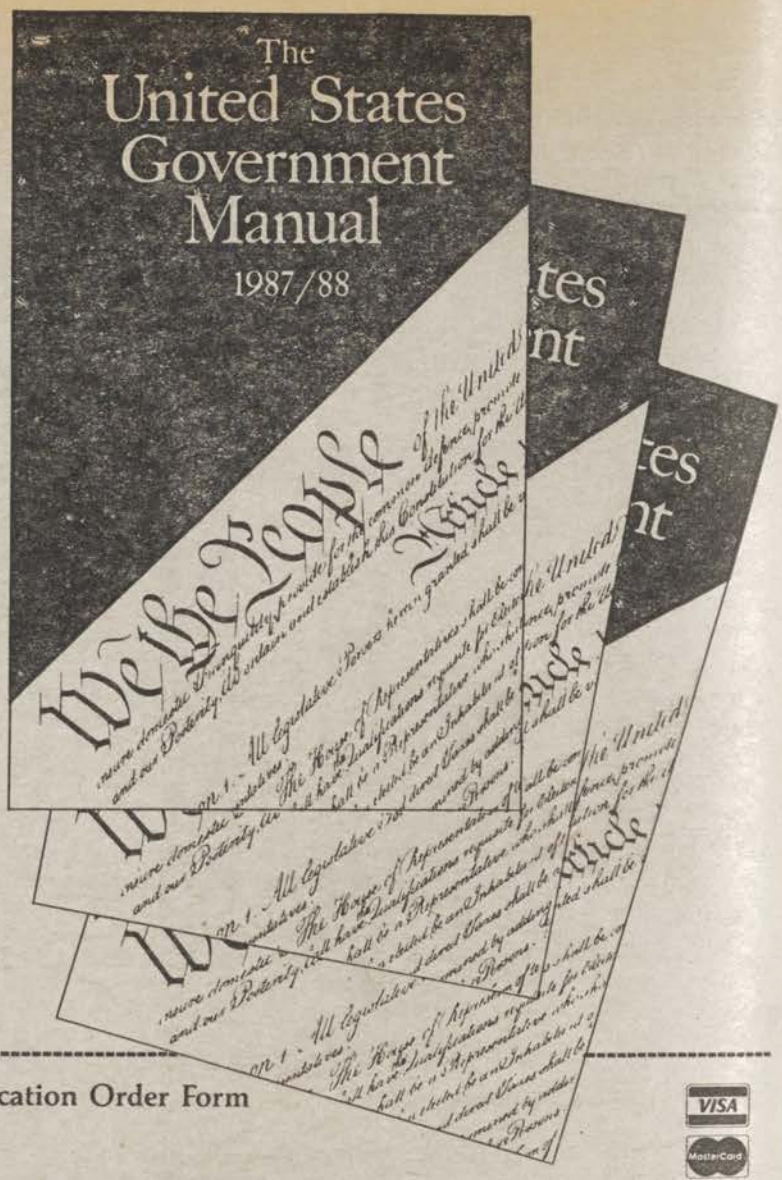
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