7-5-88
Vol. 53 No. 128
Pages 25129-25300

Federal Register

Tuesday
July 5, 1988

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

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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Jurisdictional Changes

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (f) of the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority published at 5 CFR Part 2400 *et seq.* (1987) to provide for changes in the geographical jurisdictions of the Washington, DC and Atlanta Regional Offices concerning unfair labor practice charges and representation petitions arising in Virginia.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel, (202) 382-0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1987).

Appendix A, paragraph (f) of the foregoing rules and regulations sets forth the geographic jurisdictions of the Regional Directors of the Authority. Under paragraph (f), Appendix A, all counties within Virginia, except for Alexandria, Arlington, Fairfax, Fauquier, Loudoun and Prince William, are listed within the geographic jurisdiction of the Authority's Atlanta Regional Office. The above listed counties are within the geographic jurisdiction of the Washington, DC Regional Office. In the best interest of efficient and cost-effective case processing by the Office of the General Counsel, notice of a proposed amendment requiring that all cases arising in Virginia shall be within the geographic jurisdiction of the Authority's Washington, DC Regional Office was published on May 5, 1988, at 53 FR 18843 soliciting comments. No written comments were received.

The address of the Washington, DC Regional Office, as set forth in Appendix A, paragraph (d)(3) of the rules and regulations is as follows:

(3) *Washington Regional Office:* 1111—18th Street, NW., 7th Floor, Washington, DC 20033-0758, Telephone FTS-653-8500, Commercial: 202-653-8500; Mailing Address: P.O. Box 33758, Washington, DC 20033-0758.

For the reason set out in the preamble, Appendix A to 5 CFR Chapter XIV is amended by revising the entry for the state of Virginia and republishing the introductory text in paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Address and Geographic Jurisdictions

* * * * *

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
* * * * *	
Virginia	Washington, DC
* * * * *	

(5 U.S.C. 7134)

Dated: June 28, 1988.

For the Authority.

Jerry L. Calhoun,

Chairman.

Jean McKee,

Member.

Dennis M. Devaney,

Acting General Counsel.

[FR Doc. 88-14992 Filed 7-1-88; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 549, 569a, and 569c

Conservators and Receivers; Priority of Claims

Date: June 23, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as the operating head of the Federal Saving and Loan Insurance Corporation ("FSLIC" or "Corporation") is promulgating as a final rule certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the **Federal Register** of November 27, 1985 (50 FR 48970, 48995) ("Proposed Receivership Regulations"). This final rule adopts § 569c.11 of the Proposed Receivership Regulations (with certain technical modifications to accord with the administration of recent FSLIC receiverships), thereby establishing a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the Code of Federal Regulations. This priority of claims structure replaces the provisions for priorities of unsecured claims in 12 CFR 549.5-1(b) and 569a.7.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; Ronald A. Brown, Associate General Counsel for FSLIC, (202) 377-7044; or Michael B. Phillips, Attorney, Office of General Counsel, (202) 377-6755, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 27, 1985 (50 FR 48970), the Board proposed comprehensive revisions to its regulations covering the conservatorship and receivership of associations with Federal or State charters and the accounts of which are insured by the FSLIC.

Under the Proposed Receivership Regulations, the Board would: (1) Unify FSLIC receivership procedures under new Parts 569a, 569b, 569c, of Title 12 of

the Code of Federal Regulations; (2) adopt procedures for the appointment of FSLIC as a receiver or conservator under section 406(c)(1)(B) of the National Housing Act ("NHA"), 12 U.S.C. 1729(c)(1)(B); and (3) adopt rules governing substantive issues, including priorities in liquidation.

Since the publication of the Proposed Receivership Regulations, the Board has concluded that certain provisions ought to be promulgated in a final rule to provide for the uniform administration of FSLIC receiverships. This would replace a practice in recent receiverships in which the Board has addressed some issues by resolution on a case-by-case basis. The Board may issue other receivership and conservatorship regulations in final form in the near future.

This final rule adopts a section of the Proposed Receivership Regulations, proposed § 569c.11, which covers the priority structure for unsecured claims in receiverships in which the Board appoints the FSLIC as receiver. To provide definitions of key terms used in proposed § 569c.11 and a reference to the scope of new Part 569c for FSLIC receiverships, this rule includes portions of proposed §§ 569c.1 (Definitions) and 569c.2 (Scope), respectively. In addition, two technical changes have been made to clarify the priority treatment of: (1) Administrative expenses of the association in receivership for wages and salaries earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interests of the receivership to retain for a reasonable period of time (*see* new § 569c.11(a)(3)); and (2) claims of the United States for unpaid Federal income taxes (*see* new § 569c.11(a)(8)). Other technical, but not substantial modifications have been made to various portions of new § 569c.11 to reflect recent FSLIC procedures for the conducting of its receiverships.

Approximately twenty comment letters were received with respect to various sections of the Proposed Receivership Regulations. Only two comment letters were received on proposed § 569c.11 ("Priorities"). Neither of these two comment letters addressed the proposed priority of claims structure in proposed § 569c.11(a). These comment letters addressed proposed § 569c.11 (b) and (c), respectively. (For a discussion of the Board's response to these comments, see part IV of this introduction.)

The following sections of this introduction to this final rule include: (a) A review of the statutory authority for the scope of this rulemaking; (b) a description of new § 569c.11; (c) a response to the public comments received on proposed § 569c.11; and (d) an analysis of this rule under the Regulatory Flexibility Act.

II. Statutory Authority for the Scope of this Rulemaking

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(d)(11), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the NHA, 12 U.S.C. 1729(c)(3)(A), the provisions of section 5(d)(11) of the HOLA are applicable to a State-chartered insured institution for which the Board has appointed the FSLIC as conservator or receiver "in the same manner and to the same extent as if such [State-chartered] institution were a Federal association. . . ."

For a discussion of the enlargement of the Board's authority to regulate conservatorships and receiverships under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA, see the introduction to the Proposed Receivership Regulations (50 FR 48970). Concerning the Board's authority to promulgate extensive rules for the receivership and liquidation of FSLIC-insured, State-chartered associations, see section 6 of the Bank Protection Act of 1968, Pub. L. No. 90-389, 82 Stat. 294. Congress based this extension of regulatory powers on the FSLIC's "vital interest in seeing that the liquidation of the [State-chartered] association proceeds in an orderly manner". S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 2530, 2531.

A further revision was made in 1982 extending these powers to receivership appointments under the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), Pub. L. No. 97-320, 96 Stat. 1469, 1482. Section 122(d) of the Garn-St Germain Act added the following statutory override provision as section 406(c)(1)(B)(of the NHA:

"(B)(i)(I) Notwithstanding any provision of the constitution of laws of any State, or of this section, in the event the Federal Home Loan Bank Board determines that any of the grounds specified in section 1464(d)(6)(A) (i), (ii), (iii) of this title exist with respect to an insured institution, other than a Federal association, the Board shall have exclusive power and jurisdiction to appoint the Corporation as sole conservator or receiver of such institution.

(II) In such cases the corporation shall have the same powers and duties with respect to insured institutions as are conferred upon it under subsection (b) of this section with respect to Federal associations.

(ii)(I) The authority conferred by this subparagraph shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered insured institution that the grounds specified for such exercise exist.

(II) If such approval has not been received by the Board within 90 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the board may proceed without State approval only by a unanimous vote of the Board. The corporation may also proceed without State approval if the Corporation has been appointed conservator, receiver, or other legal custodian pursuant to State law under subparagraph (A).".

Pursuant to section 406(c)(3) of the NHA, this final rule promulgated as section 569c.11 applies to receiverships instituted under section 406(c)(1)(B) of the NHA.

In a proposal issued concurrently with the promulgation of this rule, the Board is publishing for comment a rule that would revise priorities of unsecured claims for Federal associations. The proposed revision invites comment on the following alternatives: (1) A recognition of depositor priority over unsecured claims of general creditors in FSLIC or FDIC receiverships of federally chartered associations or savings banks in States with depositor preference legislation; (2) depositor priority for all Federal associations and Federal savings banks, regardless of location; or (3) depositor priority for all Federal savings banks and for all institutions for which the FSLIC is appointed as receiver by the Board.

III. § 569c.11—Priority of Claims in FSLIC Receiverships

New § 569c.11 establishes a priority of claims structure applicable to all FSLIC receiverships. This priority structure replaces previous priorities structures, which included: (a) Section 569a.7 (only applicable to the receivership of State-chartered institutions where the receiver was appointed pursuant to section 406(c)(2) of the NHA), (b) section 549.5-1(b)(5) (applicable to the receivership of federally chartered deposit institutions, which provided depositors in Federal associations with the status of general creditors); and (c) resolutions of the Board in FSLIC receiverships of State-chartered institutions pursuant to

section 406(c)(1)(B) of the NHA, which adopted State law priorities.

For purposes of the administration of FSLIC receiverships, this final rule recognizes State law priorities with respect to depositors in State-chartered institutions, including a proviso in § 569c.11(a)(6) for depositor priority over claims of unsecured general creditors for State-chartered, FSLIC-insured institutions in those States with depositor preference legislation. Under the final form of § 569c.11(a)(6), as in the proposed rule published previously, depositor claims in Federal associations have the same priority status as the claims of unsecured general creditors. This final rule sets forth other elements of the priority structure for FSLIC receiverships substantially in accordance with the proposed rule published previously.

Priorities established for the liquidation of banks and savings and loan associations may affect not only traditional liquidations of assets in an orderly manner conducted over an extended period of time, but also "purchase and assumption" transactions in which substantial portions of the assets and liabilities of a bank or thrift institution are transferred by the FDIC or the FSLIC as receiver to an assuming bank or thrift institution. In some cases, the options available to a receiver may be expanded by changes in priority legislation or rules.

The authority of the FSLIC as receiver to effect a purchase and assumption transaction is contemplated by several statutory and regulatory provisions, including section 406(f) of the NHA, and is specifically granted in section 406(b) of the NHA, which provides that the Corporation as receiver enjoys numerous powers, including authority "to proceed to liquidate [the association's] assets in an orderly manner; or * * * to make such other disposition of the matter as it deems appropriate, whichever it deems to be in the best interest of the association, its savers, and the Corporation." The powers set forth in section 406(b) are those of the FSLIC as receiver of a Federal association (or the FDIC as receiver of an FDIC-insured Federal savings bank). Section 406(c)(1)(B)(i)(II) of the NHA confers such powers upon the FSLIC as receiver of a State-chartered association pursuant to appointment by the Board under section 406(c)(1)(B). The FSLIC as receiver of a State-chartered association pursuant to appointment under section 406(c)(1) or (2) of the NHA has "authority to liquidate such institution in an orderly manner or to make such other disposition of the matter as it deems to be in the best interests of the institution, its savers, and the Corporation." (Section 406(c)(3) of the NHA.)

In purchase and assumption transactions entered into by the FSLIC as receiver of Federal associations or as receiver of associations chartered by States that provide equal priority for depositors and general creditors, the FSLIC has usually effected transfers of substantially all assets and liabilities of such associations, excluding claims having lesser priority than general creditor claims, such as subordinated debt and stockholder claims. If the FSLIC should be appointed receiver for an association chartered by a State that provides for depositor priority over claims of unsecured general creditors, and if the assets of such association should be determined by the Board to be less than the claims of secured creditors and depositors, the FSLIC, at its option, might effect a "purchase and assumption" pursuant to which all claims of general creditor status or higher would be transferred with the assets of the association, or alternatively might effect a purchase and assumption transaction in which deposits and secured claims would be transferred, but general creditor claims would not.

In adopting certain State law priorities for the liquidation of State-chartered institutions, by resolution or by this final rule, the Board has not intended and does not intend to imply that purchase and assumption transactions engaged in by the FSLIC as receiver for State-chartered associations must all be fashioned on the lines of State law priorities. As indicated, the FSLIC may, if it determines that such a disposition is "in the best interests of the institution, its savers, and the Corporation", effect a purchase and assumption transaction that satisfies not only depositors and those having equal or higher priority, but also claimants having a lesser priority. Any disposition will be structured in a manner determined by the FSLIC to be most advantageous to the discharge of its statutory responsibilities.

Under § 569c.11 (a)(1)–(a)(5), several categories of claims, in addition to administrative expenses of the receiver, are accorded priority over claims of general unsecured creditors and depositors, including certain administrative expenses of the association in receivership, claims for wages and salaries, administrative expenses of the association for wages and salaries earned prior to the appointment of the receiver by an employee of the association under certain circumstances, and claims of governmental units for unpaid taxes (other than Federal income taxes).

Under § 569c.11(a)(8), claims of the United States for unpaid Federal income taxes have priority over (1) claims that have been subordinated in whole or in part to general creditor claims, and (2) claims by holders of nonwithdrawable accounts. This modification of the proposed rule arises from section 7507 of the Internal Revenue Code, 26 U.S.C. 7507, and a recent Internal Revenue Service ruling (Rev. Rul. 88–18, I.R.B. 1988–11, 17) finding that "bank and trust company" as that term is used in section 7507 applies to savings and loan associations.

New § 569c.11(b) specifically addresses the right of general creditors and depositors to receive interest after the date of default if a surplus is available and provides that this interest be paid at rates adjusted monthly to reflect the average rate for U.S. Treasury Bills with maturities of not more than 91 days during the preceding three months. The new uniform rate of interest will avoid any uncertainty about the rate to be paid and will eliminate disputes about the possible applicability of State law concerning interest due to creditors or depositors under certain circumstances.

Section 569c.11(c) makes it clear that any claim arising from the rejection or repudiation of an executory contract or an unexpired lease would constitute a general unsecured claim deemed to have arisen on or before the date of default. Such claims would not be administrative expenses of the receiver entitled to Priority under § 569.11 (a)(1)–(a)(4).

Section 569.11(d) sets forth the general rule that claims shall be paid in full, or provision for their payment shall be made, in accordance with the priorities of claims, and that claims of a lesser priority will not be paid before claims of a higher priority. In the event that funds are insufficient to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made *pro rata*. The regulation also provides, however, that (1) distributions to claimants in one or more of the first six priority categories are necessary to conduct the receivership, and (2) the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

The FSLIC's experience as receiver for numerous saving and loan associations indicates that this flexibility is essential in order to perform the functions of the receivership efficiently for the benefit of

all interested parties. Under the terms of the § 569.11(d) exception, advance payment to particular creditors would never be made under circumstances in which any other creditor with a higher priority will ultimately fail to receive payment in full.

Section 569c.11(e) recognizes the right of the depositors of a mutual association to receive any surplus remaining after payment of all claims in full plus interest, under § 569c.11(b). The regulation also provides that such surplus would be distributed to depositors in proportion to the balance of their accounts as of the date of default.

New §§ 569c.1 ("Definitions") and 569c.2 ("Scope") provide necessary definitions and a description of the scope of the Board's statutory authority for purposes of the promulgation of new § 569c.3 In addition, §§ 569a.7 and 549.5–1(b)(5) are revised to remove any conflict between those sections and the priority of claims structure in § 569c.11(a).

IV. Response to Public Comments on Proposed § 569c.11

The following discussion summarizes the two public comments on proposed § 569c.11 and presents the Board's response to those comments.

A Federal regulatory agency for certain financial institutions commented that proposed § 569c.11(b) provided a method of computation for interest on deposit and general creditor claims that was "confusing and possibly ambiguous". The Board has determined that the method of computation of interest in new § 569c.11(b) (which is identical to proposed § 569c.11(b)) is workable and equitable for purposes of the administration of FSLIC receiverships—the reference to the average rate for U.S. Treasury bills with maturities of not more than ninety one days during the preceding three months is readily accessible and objective.

A securities firm commented that proposed § 569c.11(c), which concerns the classification within the list of priorities of rejected executory contracts and unexpired leases, should be clarified. In its comment, the firm proposed that damages for the rejection of an executory contract should be measured as of the point in time of the rejection of the executory contract, not the date of the appointment of the receiver. For purposes of articulating its position, this commenter stated:

> For instance, if the receiver thought that interest rates would move in its favor during the election period, but in fact interest rates moved adversely to it, the receiver should not then be able to terminate the contract and limit the counterparty to its lesser measure of damages as of the date of the appointment of the receiver. Of course, if interest rates indeed moved in the receiver's favor, arguably the counterparty would be disadvantaged, but it would not be deprived of the benefits of its bargain.

Section 569c.11(c) is limited to establishing the priority of a rejected executory contract. The determination of a point in time from which damages should be measured is not within the limited purposes of § 569c.11(c); but this issue will be reviewed in connection with other regulations under Part 569c concerning the conduct of receiverships, to be considered by the Board in the near future.

V. Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. Need for and objectives of the rule. These elements are incorporated above in the **"SUPPLEMENTARY INFORMATION"** regarding this final rule.

2. Issues raised by comments and agency assessment and response. These elements are incorporated above in **"SUPPLEMENTARY INFORMATION".**

3. Significant alternatives minimizing small-entity impact and agency response. The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). This final rule treats all institutions in the same manner, and this rule would not have a substantial impact on small entities.

List of Subjects in 12 CFR Parts 549, 569a, and 569c

Administrative practice and procedure, Reporting and record-keeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 549, Subchapter C, Part 569a, Subchapter D, and adds Part 569c, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 549—POWERS OF RECEIVER AND CONDUCT OF RECEIVERSHIP

1. The authority citation for Part 549 is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 549.5–1 by revising paragraph (b)(5); and by removing the authority citation located at the end of the section to read as follows:

§ 549.5–1 Deposit associations.

* * * * *

(b) * * *

(5) Section 569c.11 shall govern the priorities of unsecured claims with respect to all FSLIC receiverships to which Part 549 is applicable.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 569a—RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL ASSOCIATIONS

3. The authority citation for Part 56a is revised to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Section 569a.7 is revised to read as follows:

§ 569a.7 Priority of claims.

Section 569c.11 shall govern the priorities of unsecured claims with respect to all FSLIC receiverships to which Part 569a is applicable.

5. Add a new Part 569c to read as follows:

PART 569c—RECEIVERSHIP RULES

Sec.
569c.1 Definitions.
569c.2 Scope.
569c.3–569c.10 [Reserved]
569c.11 Priorities.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 569c.1 Definitions.

As used in this part—

(a) "Association" means an insured institution, including a Federal association, for which the Board has appointed the Corporation as receiver;

(b) "Board" means the Federal Home Loan Bank Board;

(c) "Corporation" or "FSLIC" means the Federal Savings and Loan Insurance Corporation, except that, with respect to a federal savings bank for which the

Board has appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver, "Corporation" means the FDIC;

(d) "Default" means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured institution for the purpose of liquidation.

(e) "Depositor" means the holder of a withdrawable account or accounts in an association;

(f) "Federal association" means a Federal savings and loan association or a Federal savings bank chartered by the Board under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464;

(g) "HOLA" means the Home Owners' Loan Act of 1933, as amended; and

(h) "NHA" means Title IV of the National Housing Act of 1934, as amended.

§ 569c.2 Scope.

The rules and regulations of this Part are issued pursuant to the power granted to the Board by section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA to make rules and regulations for the liquidation and dissolution of associations, for associations in receivership, and for the conduct of receiverships; and such rules and regulations apply to all associations. A receiver shall have all powers granted by section 5 of HOLA and section 406 of NHA.

§ 569c.3—§ 569c.10 [Reserved]

§ 569c.11 Priorities.

(a) Unsecured claims against an association or the receiver that are proved to the satisfaction of the receiver shall have priority in the following order:

(1) Administrative expenses of the receiver, including the costs, expenses, and debts of the receiver;

(2) Administrative expenses of the association, *provided* that such expenses were incurred within thirty (30) days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association;

(3) Claims for wages and salaries, including vacation and sick leave pay and contributions to employee benefit plans, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interests of the receivership to engage or retain for a reasonable period of time;

(4) If authorized by the receiver, claims for wages and salaries, including vacation and sick leave pay and contributions to employee benefits plans, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person, by an employee of the association not engaged or retained pursuant to a determination by the receiver pursuant to the third category above;

(5) Claims of governmental units for unpaid taxes, other than Federal income taxes, except to the extent subordinated pursuant to applicable law; but no other claim of a governmental unit shall have a priority higher than that of a general creditor under paragraph (a)(6) of this section;

(6) Claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims which have accrued and become unconditionally fixed on or before the date of default, whether liquidated or unliquidated, except as provided in paragraphs (a)(1) through (a)(5) of this section, *provided*, however, that if the association is chartered and was operated under the laws of a state that provided a priority for holders of withdrawable accounts over such other claims or general creditors, such priority within this paragraph (a)(6) shall be observed by the receiver;

(7) Claims other than those that have accrued and become unconditionally fixed on or before the date of default, including claims for interest after the date of default on claims under paragraph (a)(6) of this section, *provided* that any claim based on an agreement for accelerated, stipulated, or liquidated damages, which claim did not accrue prior to the date of default, shall be considered as not having accrued and become unconditionally fixed on or before the date of default;

(8) Claims of the United States for unpaid Federal income taxes;

(9) Claims that have been subordinated in whole or in part to general creditor claims, which shall be given the priority specified in the written instruments that evidence such claims; and

(10) Claims by holders of nonwithdrawable accounts, including stock, which shall have priority within this paragraph (a)(10) in accordance with the terms of the written instruments that evidence such claims.

(b) Interest after the date of default on claims under paragraph (a)(6) of this section shall be at a rate or rates adjusted monthly to reflect the average rate for U.S. Treasury bills with maturities of not more than ninety-one (91) days during the preceding three (3) months.

(c) If the rejection or repudiation of an unexpired lease or executory contract by the receiver gives rise to a claim for damages, such claims, if allowed, shall be classified as a claim that has accrued and become unconditionally fixed on or before the date of default, and not as an administrative expense of the receiver.

(d) All unsecured claims of any category or class or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full, or provision made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made pro rata. Notwithstanding anything to the contrary herein, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority classes outlined in paragraphs (a)(1) through (a)(6) of this section as the receiver believes are reasonably necessary to conduct the receivership, *provided* that the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

(e) If the association is in mutual form, and a surplus remains after making distribution in full of allowed claims as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the depositors in proportion to their accounts as of the date of default.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15047 Filed 7-1-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-12-AD; Amdt. 39-5967]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which requires modification of the propeller brake electronic control wiring. This amendment is prompted by reports of electrical interference causing the brake to engage prior to command. This condition, if not corrected, could result in an unsymmetrical drag/thrust on landing, and/or damage to the propeller brake and engine.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telepone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to Model ATR-42 series airplanes, which requires modification of the propeller brake electronic control wiring, was published in the Federal Register on March 16, 1988 (53 FR 86323).

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

One commenter supported the proposed AD.

The other commenter objected to a statement in the preamble to the Notice that the unsafe condition addressed by this action is unsymmetrical drag/thrust on landing. The commenter suggested that this was inaccurate and stated that the service bulletin was initiated to prevent damage to the propeller brake by overheating, which could cause damage to the engine. The commenter also stated that the unsafe condition discussed above has never been observed. The FAA does not totally concur with these comments. The FAA agrees that damage to the propeller brake by overheating can occur. Even though there have been no reported incidents of unsymmetrical drag/thrust on landing, there have been reports of electrical interference causing the brake to engage prior to command; in this situation, the potential exists for unsymmetrical drag/thrust to occur on landing.

Since the issuance of the Notice, Aerospatiale has issued Service Bulletin ATR42-61-0016, dated April 28, 1988, which describes procedures for removal of the propeller brake. The FAA has determined that the removal of the propeller brake, in accordance with this service bulletin or in accordance with FAA-approved procedures, is an acceptable alternate means of compliance with the intent of this AD. Accordingly, a new paragraph B. has been added to the final rule to reflect this.

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

It is estimated that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,520.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, as listed in the Aerospatiale Service Bulletin ATR42-61-0013, Revision 1, dated December 8, 1987, certificated in any category. Compliance is required, within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent electrical interference with propeller brake system, accomplish the following:

A. Modify the propeller brake electronic control wiring in accordance with Aerospatiale Service Bulletin ATR42-61-0013, Revision 1, dated December 8, 1987.

B. As an alternate to paragraph A., above, operators may remove the propeller brake from the airplane in accordance with Aerospatiale Service Bulletin ATR42-61-0016, dated April 28, 1988, or an FAA-approved method.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the

Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14934 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-10-AD; Amdt. 39-5966]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires modification of the aft lavatories to reduce the risk of fire. This amendment requires installation of a shroud behind the towel and cup dispensers in the aft lavatories to prevent accumulation of combustible materials behind the aircraft sidewall. Accumulation of combustible materials in this inaccessible location constitutes a fire hazard.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information, when available, may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the addition of a shroud behind the towel and cup dispensers in certain Model 737 aft lavatories, was published in the **Federal Register** on March 10, 1988 (53 FR 7764).

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

The first commenter concurred with the proposed AD.

The second commenter requested clarification of the effectivity intended by the AD and noted that the term "non-modular" used in the text of the AD was not sufficiently descriptive to identify the affected airplanes. The FAA agrees that there may be non-modular lavatories which have a satisfactory design and would, therefore, not be subject to the requirements of this amendment. However, due to the variation and multiple part number configurations possible on Model 737 airplanes, it is not practical to identify each airplane requiring modification. The final rule has been changed to limit the airplane applicability and allow certain existing installations as a means of compliance.

As noted in the preamble to the NPRM, Boeing has developed a design change for production airplanes and is developing appropriate service information which may be an acceptable means of compliance. This information is not yet available, however, and cannot be incorporated into this amendment.

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

It is estimated that 550 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average lavor cost will be $40 per manhour. The cost of parts would not exceed $100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $231,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of subjects in 14 CFR Part 30

Aviation safety, Aircraft

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 1425, equipped with non-modular aft lavatories, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note.—"Non-modular" refers to lavatories which are not stand-alone components, and are assembled on the airplane.

To prevent accumulation of combustible materials behind the airplane sidewall, accomplish the following:

A. Within 3 months after the effective date of this AD, inspect the area behind the towel and cup dispenser for the presence of a shroud enclosing the dispenser back.

1. If the dispenser is equipped with a shroud which prevents material from falling behind the lavatory sidewall and is acceptable to the Manager, Seattle Aircraft Certification Office, or an FAA Principal Maintenance Inspector, no further action is required.

2. If an acceptable existing shroud has not been installed, inspect the area behind the towel and cup dispenser in the aft lavatories and remove all foreign material. Repeat this inspection at intervals not to exceed 3 months, until the requirements of paragraph B., below, are accomplished.

B. Within 15 months after the effective date of this amendment, install a shroud behind the towel and cup dispenser in the aft lavatories, which encloses the dispenser back and prevents material from falling behind the sidewall, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, or an FAA Principal Maintenance Inspector.

C. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14932 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-01-AD; Amdt. 39-5970]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action clarifies an existing airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, which currently requires recurring functional testing of the wing and engine anti-ice control system. To support issuance of the AD, the airplane manufacturer provided to the FAA, detailed instructions for cockpit verification of thermal anti-ice switch and circuit integrity. These instructions failed to recognize certain airplane configuration differences. This action is necessary to clarify the anti-ice functional test instructions applicable to the different airplane configurations.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the FAA issued AD 88-04-04, Amendment 39-5842 (53 FR 3001; February 3, 1988), which requires functional testing of the wing and engine anti-ice control system on Boeing Model 767 series airplanes. That action was prompted by reports of problems associated with the switches used in anti-ice control panels and of the inadequacy of the anti-ice circuit logic that can result in the flight crew not being warned that the engine or wing anti-ice system has not been activated. This condition, if not corrected, could result in an unacceptable ice build-up on the wings or engine inlets.

The requirements of that AD contained detailed instructions to be followed to accomplish the functional test. Boeing assisted the FAA in preparation of those instructions. Since issuance of that AD, however, the FAA has received reports that some instructions were applicable only to airplanes equipped with certain engine configurations. The FAA has determined that the existing AD must be clarified to include detailed instructions for cockpit verification of thermal anti-ice switch and circuit integrity applicable, as appropriate, to airplanes with various engine configurations.

Since this action only clarifies instructions in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Clarification

Pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration clarifies § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1353(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By providing clarification of the requirements of paragraph A.3.a., A.4., and A.17. of AD 88-04-04, Amendment 39-5842 (53 FR 3001; February 3, 1988), as follows:

Boeing: Applies to all Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure wing and engine anti-ice system integrity, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD (March 4, 1988), and thereafter at intervals not to exceed 300 hours time-in-service, perform the following functional test of the wing and engine anti-ice control system:

1. Apply electrical power in accordance with the Boeing Model 767 Maintenance Manual 24-22-00.

2. If the pneumatic system is depressurized, continue to step 3. If the pneumatic system is pressurized, depressurize the pneumatic system in accordance with 767 Maintenance Manual 36-00-00, then go to step 3.

3. Deactivate airplane systems which are adversely affected when air/ground relay system No. 2 is in flight mode by performing deactivation instructions as follows:

a. Open the following circuit breakers and attach DO-NOT-CLOSE identifiers:

Main Power Distribution Panel P6

6J23, Probe Heat R TAT, where installed; some airplanes have L TAT only
6K20, Pitot Heat L AUX—Phase C
6K21, Pitot Heat L AUX—Phase B
6K22, Pitot Heat F/O—Phase B
6K23, Pitot Heat F/O—Phase A
6K24, Pitot Heat R AOA
6K25, Probe Heat R ENG; applicable only to airplanes with PW4000 or PW JT9D-7R4 engines

Overhead Circuit Breaker Panel P11

11T27 ENG Mach Probe HT R; applicable only to airplanes with PW JT9D-7R4 engines.

Fwd Miscellaneous Electrical Equipment Panel P33

33A2 Drain Mast HTG FLT

b. Check that EQUIP COOLING mode selector on pilot's overhead panel P5 is in AUTO.

4. Open LDG GR POS AIR/GND SYST 2 circuit breaker 11U23 or 11U24, as applicable, on P11 overhead circuit breaker panel.

5. On the wing and engine anti-ice module located on the P5 panel, depress and release the wing anti-ice switch.

6. Verify that the switch latches and indicates ON.

7. Verify that both wing anti-ice amber VALVE lights illuminate.

8. Depress and release the wing anti-ice switch.

9. Verify that the switch unlatches and *does not* indicate ON.

10. Verify that both wing anti-ice amber VALVE lights are extinguished.

11. On the wing and engine anti-ice module, depress and release both engine anti-ice switches.

12. Verify that both switches latch and indicate ON.

13. Verify that both engine anti-ice amber VALVE lights illuminate.

14. Depress and release both engine anti-ice switches.

15. Verify that both switches unlatch and *do not* indicate ON.

16. Verify that both engine anti-ice amber VALVE lights are extinguished.

17. Close LDG GR POS AIR/GND SYST 2 circuit breaker 11U23 or 11U24, as applicable.

18. Remove DO-NOT-CLOSE identifiers and close the circuit breakers opened in Step 3.a. The test is complete. Remove electrical power.

B. Any switch or circuit malfunction, identified by a negative verification during the functional test required by paragraph A., above, must be corrected prior to further flight, in accordance with the Boeing Model 767 Maintenance Manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides and acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note—The request should be fowarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the tests required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This clarification becomes effective July 21, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14935 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-76-AD; Amdt. 39-5972]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which requires inspection of the rear fuselage lap joints for cracks, and repair, if necessary. This amendment is prompted by reports of improper bonding of rear fuselage lap joints. This condition, if not corrected, could result in cracking of the rear fuselage skin at lap joint rivet holes, which could lead to a reduced ability of the fuselage structure to withstand design loads.

EFFECTIVE DATE: July 21, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA) of the United Kingdom has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146 series airplanes. Following the introduction of a new bonding technique, manufacturer testing has revealed unsatisfactory bonding that could lead to cracking of the rear fuselage skin at lap joint rivet holes. This condition, if not corrected, could lead to a reduced ability of the fuselage structure to withstand expected loading conditions in service. This new bonding technique has been discontinued.

British Aerospace has issued Service Bulletin 53-70, dated March 4, 1988, which describes eddy current inspections for cracking of the inner and outer fuselage skin, and repair, if necessary. The United Kingdom CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires eddy current inspections of the inner and outer fuselage skins and, if cracks are found, repair prior to further flight, in accordance with the service bulletin previously mentioned.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to certain British Aerospace (BAe) Model 146 series airplanes, as shown in BAe 146 Service Bulletin 53-70, dated March 4, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of the rear fuselage skin, accomplish the following:

A. Prior to the accumulation of 18,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings, inspect lap joints at stringer 2 between stations 541.0 and 672.04 for cracks, in accordance with Service Bulletin 53-70, dated March 4, 1988. If cracks are found which exceed the limits specified, repair before further flight, in accordance with the service bulletin.

B. Prior to the accumulation of 12,000 landings or within 30 days after the effective

date of this AD, whichever occurs later, and thereafter at intervals not to exceed 9,000 landings, inspect lap joints at stringer 10 and stringer 19 between stations 541.0 and 672.04 for cracks, in accordance with Service Bulletin 53-70, dated March 4, 1988. If cracks are found which exceed the specified limits, repair before further flight, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 21, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14933 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-69-AD; Amdt. 39-5971]

Airworthiness Directives; Cessna Model S550 and 552 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Cessna Model S550 and 552 series airplanes by individual letters. This AD requires a visual inspection to ensure that three drain/vent holes, required on the inboard end of each of the four flap panels, have been installed. This action is prompted by a report where a left outboard flap, not equipped with the drain/vent holes, shattered during flight. This condition, if not corrected, could lead to loss of the flap panel during flight, which could result in loss of control of the airplane during critical flight regimes.

DATE: *Effective* July 21, 1988.

This AD was effective earlier to all recipients of Priority Letter AD 88-11-07, dated May 24, 1988.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Citation Jet Marketing Division, Technical Services Department, Attention: Roger Hatfield, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: On May 24, 1988, the FAA issued Priority Letter AD 88-11-07, applicable to certain Cessna Model S550 and 552 series airplanes, which requires visual inspection to ensure that three drain/vent holes, required on the inboard end of each of the four flap panels, have been installed. That action was prompted by a report of an incident wherein the left outboard flap of a Cessna Model S550 series airplane shattered during flight. Investigation revealed that the subject flap was not equipped with the required drain/vent holes. Without these holes, the flaps are pressurized when the airplane is operating at altitude, a condition for which they were not designed. Subsequent to this incident, a second airplane was found with a flap panel without the required holes. This condition, if not corrected, could lead to loss of a flap panel during flight, which could result in loss of control of the airplane during critical flight regimes.

Subsequent to the issuance of AD 88-11-07, the FAA reviewed and approved Cessna Service Bulletins SBS550-57-5 (for Model S550 series airplanes) and 552-57-5 (for Model 552 series airplanes), both dated May 24, 1988, which provide instructions for adding drain holes to the lower surface of the inboard end of each flap, if necessary. The final rule has been revised to reflect the use of this service bulletin as a means to accomplish the requirements of the AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Cessna: Applicable to Model S550 and 552 airplanes, Serial Numbers S550-0001 through S550-0153, and 552-0001 through 552-0017, certificated in any category. Compliance is required prior to further flight after the effective date of this amendment, unless already accomplished.

To prevent loss of a flap panel, accomplish the following:

A. Visually inspect the inboard lower surface of each of the four flap panels to verify that each panel has the three required drain/vent holes, and verify that these holes are unobstructed. If all required holes are installed and unobstructed, no further action is required.

Note.—The drain holes are 3/16-inch diameter and are located approximately one inch outboard of the inboard end of the lower surface of each flap panel. (Reference: Maintenance Manual, Section 5-10-01, "Hour and Calendar Inspection Requirements, Item Z(8), "Flaps;" or Cessna Service Letter SLAS550-57-01, dated May 20, 1988.)

B. If any drain/vent hole in any flap panel is not present or is found to be obstructed, repair or replace prior to further flight, in accordance with Cessna Service Bulletin SBS550-57-5 (for Model S550 series airplanes), dated May 24, 1988; Cessna Service Bulletin 552-57-5 (for Model 552 series airplanes), dated May 24, 1988; or an FAA-approved method.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Cessna Aircraft Company, Citation Jet Marketing Division, Technical Services Department, Attention: Roger Hatfield, P.O. Box 7706, Wichita, Kansas 67277. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

This amendment becomes effective July 21, 1988.

It was effective earlier to all recipients of Priority Letter AD 88-11-07, issued May 24, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14931 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-28; Amdt. 39-5923]

Airworthiness Directives; Dowty Rotol Propeller Model (C)R.354/4-123-F/13 Installed on SAAB SF340 Series Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Dowty Rotol Model (C)R.354/4-123-F/13 propellers by individual telegram. This AD requires a torque check and a magnetic particle inspection of the propeller retaining bolts; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface. This AD is needed because past inspections revealed that propeller retention bolts were loose or below acceptable torque requirements and cracks were found in the backface of the propeller hub which could result in detachment of the propeller.

DATES: *Effective* July 5, 1988, as to all persons except those to whom it was made immediately effective by the individual Telegraphic Airworthiness Directive (TAD) T87-21-51, issued October 15, 1987, which contained this amendment.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of July 5, 1988.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Dowty Rotol Limited, Product Support Division, Cheltenham Road, Gloucester, England or Sully Road, P.O. Box 5000, Sterling, Virginia 22170.

A copy of the service bulletin is contained in the Rules Docket, Docket Number 87-ANE-28, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Systems and Propulsion Branch, ANE-153, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7066.

SUPPLEMENTARY INFORMATION: On October 15, 1987, TAD T87-21-51 was issued and made effective immediately as to all known U.S. owners and operators of certain Dowty Rotol Model (C)R.354/4-123-F/13 propellers. This TAD superseded TAD T87-15-52, issued July 23, 1987. This AD requires torque checks and magnetic particle inspections of the propeller retention bolts, and dye penetrant, ultrasonic, and eddy current inspections of the hub backface. These checks and inspections are necessary to identify possible low torque bolts, or cracks in the backface of the propeller hub. Previous inspections revealed 36 propellers with cracked hubs. This AD is necessary to detect cracks in the hub backface and prevent possible loss of the propeller.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegram, issued October 15, 1987, as to all known U.S. owners and operators of certain Dowty Rotol Model (C)R.354/4-123-F/13 propellers. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

CONCLUSION: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed,

may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Dowty Rotol: Applies to Model (C)R.354/4-123-F/13 propellers installed on, but not limited to, SAAB SF340 series aircraft.

Compliance is required as indicated, unless already accomplished.

To detect cracks in the hub backface and prevent possible loss of the propeller, accomplish the following:

(a) Torque check the 9/16 UNF retaining bolts connecting the hub to the engine flange in accordance with Dowty Rotol Service Bulletin (SB) SF340-61-A21, Revision 4, dated October 1, 1987, (hereinafter referred to as SB SF340-61-A21) within 10 days or 75 hours time in service, whichever occurs first, after the effective date of this AD.

(b) Remove propellers from the aircraft before further flight and inspect and rework in accordance with SB SF340-61-A21, when any of the retaining bolts is found to have a torque value below requirements.

(c) Propellers on which all the retaining bolts are found to meet torque requirements may remain in service an additional 20 days or 150 hours time in service, whichever occurs sooner, before removal; then inspect and rework in accordance with SB SF340-61-A21, unless already accomplished in accordance with earlier revisions to the SB.

(d) Lubricate the retaining bolts with engine oil, and install the propeller in accordance with Dowty Rotol Maintenance Manual procedures and Appendix D of SB SF340-61-A21.

(e) Torque check the 9/16 retaining bolts, remove the propeller from the aircraft, and reinspect in accordance with SB SF340-61-A21, at intervals of 450 hours, but no later than 550 hours time in service since last inspection.

(f) Remove from service before further flight propeller hubs/bolts found to have cracks. Replace with serviceable hubs/bolts.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, ANE-150, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(i) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, ANE-150, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance time specified in this AD.

Dowty Rotol SB SF340-61-A21, Revision 4, dated October 1, 1987, including Appendices A through G, inclusive, identified and described in this document, is incorporated herein and made part hereof pursuant to 5 U.S.C. 552 (a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Dowty Rotol Limited, Product Support Division, Cheltenham Road, Gloucester, England, or Sully Road, P.O. Box 5000, Sterling, Virginia 22170.

This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 87-ANE-28, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 5, 1988, as to all persons except those persons to whom it was made immediately effective by individual TAD T87-21-51, issued October 15, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on May 11, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-14930 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ANE-20; Amdt. 39-5930]

Airworthiness Directives; Hoffmann Aircraft Ges.m.b.H Model H36 Dimona Motor Glider

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Hoffmann Aircraft Ges.m.b.H. Model H36 Dimona motor gliders which requires inspection and replacement of the rod end bearing on the front horizontal tail surface mount with a new design rod end bearing. This action was prompted by the determination that the rod end bearing on the front horizontal tail surface mount may develop cracks from shock loads resulting from improper ground handling. This condition, if not corrected, could result in failure of the horizontal tail surface front mounting with a subsequent loss of the motor glider.

DATES: *Effective*—July 13, 1988.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of July 13, 1988.

ADDRESSES: The applicable technical information and replacement parts specified in this AD may be obtained from Hoffmann Aircraft Ges.m.b.H, Richard Neutra Gasse 5, A-1214 Vienna, Austria. A copy of the service bulletin is contained in the Rules Docket, Docket Number 88-ANE-20, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Munroe Dearing, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30, extension 2710; or John J. Maher, New York Aircraft Certification Office, ANE-172, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION: Hoffmann Aircraft Ges.m.b.H. has determined that cracks may develop in the horizontal tail surface front mount rod end bearing as a result of shock loads induced from improper ground handling. The manufacturer has issued Service Bulletin (SB) No. 15/2, dated January 20, 1987, which recommends inspection of the rod end bearing on the front horizontal stabilizer mount for cracks, before further flight, and replacement of the rod end bearing with a new design rod end bearing before further flight, if the existing rod end bearing is cracked. If not cracked, replace within 50 flight hours of inspection. The FAA is requiring an initial inspection within 10 hours and, if cracked, replacement before further flight. If not cracked, replacement is required within fifty hours or prior to August 1, 1988, whichever comes first. The FAA relies upon certification of the Bundesamt fur Zivilluftfahrt (BAZ), combined with FAA review of pertinent

documentation, in finding compliance of the design of these motor gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Hoffman Aircraft Ges.m.b.H. SB No. 15/2, and the issuance of BAZ Airworthiness Directive No. 53. Based on the foregoing, the FAA has determined that the condition addressed by Hoffman Aircraft Ges.m.b.H. SB No. 15/2 is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued to require inspection and replacement of the rod end bearing on the front horizontal tail surface mount on Hoffman Aircraft Ges.m.b.H. Model H36 Dimona motor gliders.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to the major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Hoffmann Aircraft Ges.m.b.H.: Applies to model H36 Dimona motor gliders certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent failure of the rod end bearing on the front horizontal tail surface mount, accomplish the following:

(a) Within the next ten hours time in service after the effective date of this AD, visually inspect the rod end bearing on the front horizontal tail surface mount using a 5 power or greater magnifying glass for cracks in the area of the threaded shank, in accordance with inspection requirements of paragraph 1 of the Actions section of Hoffmann Aircraft Ges.m.b.H. Service Bulletin (SB) No. 15/2, dated January 20, 1987.

(b) Before further flight, replace cracked rod end bearings (SMXCP 10 M) with a modified rod end bearing, Hirschmann "SMXC 10 special design", in accordance with Work Instruction No. 7, contained in Hoffmann Aircraft Ges.m.b.H. SB No. 15/2, dated January 20, 1987.

(c) Within 50 flight hours after accomplishment of inspection per paragraph (a) of this AD, or prior to August 1, 1988, whichever comes first, replace any rod end bearing (SMXCP 10 M) not replaced in accordance with paragraph (b), in accordance with Work Instruction No. 7, contained in Hoffmann Aircraft Ges.m.b.H. SB No. 15/2, dated January 20, 1987.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone No. 513.38.30, Ext. 2710; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6680.

(e) Upon submission or substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hoffmann Aircraft SB No. 15/2, dated January 20, 1987, including Work Instruction No. 7, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Hoffmann Aircraft, Ges.m.b.H., Richard Neutra Gasse 5, A-1214, Vienna, Austria. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 88-ANE-20, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 13, 1988.

Issued in Burlington, Massachusetts, on May 11, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-14929 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AAL-4]

Alteration of Colored Federal Airway R-39; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Colored Federal Airway R-39 located in the vicinity of Nenana, AK. The Julius, AK, nondirectional radio beacon (NDB), also located in that area has been relocated. This action alters the description of R-39 to reflect the realignment and changes the name of the relocated Julius NDB to Ice Pool, AK.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of Colored Federal Airway R-39 located in the vicinity of Nenana, AK, (50 FR 15581). However, the

Alaskan Regional Office advised that the project to relocate the Julius, AK, NDB had been temporarily delayed until budget problems and priorities have been resolved. Based on this information, Docket 85-AAL-4 was withdrawn (51 FR 23789), effective July 1, 1986. The Julius NDB has now been relocated in the vicinity of Nenana and has been renamed Ice Pool, AK. This action is required due to the NDB relocation and the name change. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns Colored Federal Airway R-39 located in the vicinity of Nenana, AK. The Julius, AK, NDB has been relocated approximately 4 miles northwest of its former location and renamed Ice Pool NDB. R-39 has been realigned over the new Ice Pool NDB. This action amends the description to reflect the realigned R-39. While this action was withdrawn after the close of the comment period, the FAA is reopening the docket and issuing a final rule without further notice and opportunity for comment, in view of the minor nature of the amendment; the earlier opportunity for public comment; and the fact that no comments were received objecting to the proposal.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Colored Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.017 [Amended]

2. Section 71.107 is amended as follows:

R-39 [Amended]

By removing the words "Julius, AK, NDB" and substituting the words "Ice Pool, AK, NDB"

Issued in Washington, DC, on June 21, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-14939 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-5]

Transition Area Establishment; Salem, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Salem, OH, transition area to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Salem Airpark, Inc. Airport, Salem, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, May 13, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Salem, OH, transition area (53 FR 17079).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Salem, OH.

The development of a new VOR-A SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Salem, OH [New]

The airspace extending upward from 700 feet above the surface within a 6-mile radius of the Salem Airpark, Inc. Airport, Salem, OH, (lat. 40°56'55"N., long. 80°51'38" W.), and within 2 miles each side of the Akron, OH VOR/DME 126 radial, extending from the 6-mile radius area to 7 miles northwest of Salem Airpark, Inc. Airport, excluding that portion within the Youngstown, OH, Alliance, OH, and North Lima, OH transition areas.

Issued in Des Plaines, Illinois, on June 16, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–14936 Filed 7–1–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–6]

Transition Area Alteration; Ft. McCoy, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Ft. McCoy, WI, transition area to accommodate both military and civil aircraft utilizing the existing NDB RWY 29 Standard Instrument Approach Procedure (SIAP) to McCoy Army Airfield, Ft. McCoy, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, May 13, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the existing Ft. McCoy, WI, transition area (53 FR 17080).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Ft. McCoy, WI.

The present transition area is being modified to accommodate aircraft utilizing the NDB RWY 29 SIAP. The modification consists of retaining the 11 mile radius and eliminating the existing transition area extension and returning that portion of the airspace to a non-controlled status.

McCoy Army Airfield requested the Federal Aviation Administration (FAA) to review a proposal to include the existing McCoy (CMY) Nondirectional Radio Beacon (NDB) into the National Airspace System (NAS). The intent of the action was to provide a dual use military/civil NDB RWY 29 SIAP to McCoy Army Airfield. This review was accomplished under a separate study to the public. The airspace case number was 87–AGL–149–NR.

The modification of the procedure required the FAA to alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ft. McCoy, WI [Revised]

That airspace extending upward from 700 feet above the surface within an 11 mile radius of the McCoy Army Airfield (Lat. 43°57'36" N., Long. 90°44'12" W.) excluding that portion that overlies the La Crosse, WI, transition area.

Issued in Des Plaines, Illinois, on June 17, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88–14937 Filed 7–1–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 88–AGL–2]

Alteration of Jet Route; Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment realigns Jet Route J–186 located in the vicinity of Appleton, OH. Restricted Areas R–5503 A and B will be relocated eastward to improve the arrival/departure traffic flow in the Cincinnati Municipal and Greater Cincinnati Airports. It is necessary to alter the description of J–186 by relocating the route eastward to ensure the safety of en route traffic in that area.

DATES: Effective date—0910 u.t.c., August 25, 1988.

Comments must be received on or before August 11, 1988.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88–AGL–2, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–2400, Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves relocation of Jet Route J–186 eastward to ensure air traffic operation safety while in the vicinity of Restricted Areas R–5503 A and B during military training activity in that area and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is to relocate Jet Route J–186 eastward to ensure en route traffic air safety while in the vicinity of Restricted Areas R–5503 A and B. Military training conducted within this area is considered hazardous to nonparticipating aircraft. This action improves aviation safety. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to relocate J–186 eastward in the vicinity of Restricted Areas R–5503 A and B due to the military training activity which has been determined to be hazardous to nonparticipating aircraft. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest as safety concerns require the immediate promulgation of this rule.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

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

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–186 [Revised]

From Toccoa, GA; Snow Bird, TN; to Appleton, OH.

Issued in Washington, DC, on June 17, 1988.

Shelomo Wugalter,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–14938 Filed 7–1–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 375

[Docket No. 80507–8107]]

Establishment of Import Certificate/ Delivery Verification Procedure for Australia

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration requires a foreign importer to file an Import Certificate (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List, which identifies those items subject to Department of Commerce export controls. By issuing an IC, the government of the importing country confirms that it will exercise legal control over the disposal of those commodities covered by the IC.

The Bureau of Export Administration also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 373.3(i). By issuing a DV, the government of a country to which an export has been made confirms that the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by Australia warrant inclusion of that country in the IC/DV procedure. This rule amends the Export Administration Regulations by adding Australia to the list of countries that issue Import Certificates and by adding the name and address of the Australian authorities to the list of foreign offices that administer the IC/DV systems.

DATES: This rule is effective July 5, 1988. In accordance with 15 CFR 375.9(b)(2), the Australian Import Certificate must be submitted with export license applications as of August 19, 1988. However, applications will be accepted if supported by either a Form ITA–629P

or the appropriate IC up to October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The Import Certificate and Delivery Verification (IC/DV) requirement set forth in Part 375 supersedes the requirement for Form ITA–629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625–0136) to accompany license applications for exports and reexports to Australia. The Import Certificate and Delivery Verification Certificate are issued by the Government of Australia and do not constitute collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be addressed to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 375

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 375 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 375—[AMENDED]

1. The authority citation for 15 CFR Part 375 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 375.1 [Amended]

2. The table in § 375.1 is amended by adding "Australia" before the entry "Austria" in the column titled "and the country of destination is:".

§ 375.3 [Amended]

3. The list of countries in § 375.3(b) is amended by adding "Australia" before "Austria".

4. Supplement No. 1 to Part 375 is amended by adding a new entry for "Australia" immediately before the entry for "Austria", as follows:

Supplement No. 1 to Part 375—Authorities Administering Import Certificate/Delivery Verification System in Foreign Countries [1]

Country	IC/DV Authorities	System administered [2]
Australia	Director, Technology Transfer and Analysis, Defence Industry and Materiel Policy Division, Department of Defence, Russell Office F–1–46 Canberra, A.C.T. 2600.	IC/DV
.	.	.

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see list on page (ii) under District Office Addresses) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: June 21, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–14873 Filed 7–1–88; 8:45 am]

BILLING CODE 3510–DT–M

15 CFR Part 386

[Docket No. 80504–8104]

Shipper's Export Declaration; Conformance of the Export Administration Regulations With the Foreign Trade Statistics Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 2, 1987, the Bureau of Export Administration published a final rule (52 FR 6137) that conformed certain provisions of the Export Administration Regulations (EAR) with the Foreign Trade Statistics Regulations (FTSR) issued by the Bureau of the Census. The FTSR rule raised the Shipper's Export Declaration filing exemption from $500 to $1,000 for non-mail shipments of commodities. However, the EAR conforming amendment of March 2, 1987 inadvertently raised the filing exemption to $1,000 for mail shipments as well as non-mail shipments. This rule revises the EAR exemption for mail shipments to read $500.

Then on August 31, 1987 (52 FR 32782), the Bureau of the Census again raised the Shipper's Export Declaration filing exemption for non-mail shipments of commodities, this time from $1,000 to $1,500. The exemption applies to non-mail shipments of commodities classified under a single Schedule B number, shipped to Country Group T or V on the same carrier from one exporter to one importer, and not shipped under a validated export license. With the new value limit, exporters are not required to file Shipper's Export Declarations for such shipments if valued at $1,500 or less. This rule amends the EAR to reflect the new limit of $1,500 for non-mail shipments.

EFFECTIVE DATE: This rule is effective July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection, which reduces the paperwork burden, has been approved by the Office of Management and Budget under control numbers 0607–0001, 0607–0018, 0607–0150 and 0607–0152.

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

List of Subjects in 15 CFR Part 386

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 386—[AMENDED]

1. The authority citation for 15 CFR Part 386 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 386.1 [Amended]

2. Section 386.1(b)(2)(i) is amended by revising the reference to "$1,000" to read "$500".

3. Section 386.1(c)(2)(i) is amended by revising the reference to "$1,000" to read "$1,500".

Dated: June 21, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–14874 Filed 7–1–88; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Part 399

[Docket No. 80590–8090]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronics and Precision Instruments

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of CCL entries in the category of electronics and precision instruments.

These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the Export Administration Regulations are necessary to protect U.S. national security interests.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on communication, detection or tracking equipment (ECCN 1502) or radio relay equipment (ECCN 1520), call Monty Baltas, Telecommunications Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377–0730.

For questions of a technical nature on solid state amplifiers (ECCN 1521), lasers (1522), frequency synthesizers (1531), microwave equipment (ECCN 1537), or cathode ray tubes (ECCN 1541), call Robert Anstead, Electronic Components Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377–1641.

SUPPLEMENTARY INFORMATION:

Savings Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before July 19, 1988, may be exported under the general license provisions up to and including August 2, 1988. Any such items not actually exported before midnight (four weeks after date of publication) require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule implements regulatory changes based on COCOM

review, it is not subject to section 13(b) of the EAA. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

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

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), in ECCN 1502A, the "List of Equipment Controlled by ECCN 1502A" and the Advisory Note for the People's Republic of China are revised to read as follows:

1502A Communication, detection or tracking equipment of a kind using ultraviolet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.

* * * * *

List of Equipment Controlled by ECCN 1502A

Notes.—1. This ECCN 1502A controls infrared or ultraviolet sensing devices, not otherwise controlled for export by Supp. No. 2 to Part 370 of the Export Administration Regulations, containing image intensifiers controlled for export by ECCN 1555A on the Commodity Control List.

2. This ECCN 1502A does not control ultrasonic devices that operate in contact with a controlled material to be inspected, or that are used for industrial cleaning, sorting or materials handling, industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems, medical applications, emulsification, homogenization, or simple educational or entertainment devices.

Note.—Simple educational devices are defined as devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

3. This ECCN 1502A does not control underwater ultrasonic communications equipment designed for operation with amplitude modulation and having a communications range of 500 m or less (Sea State 1), a carrier frequency of 40 to 60 kHz and a carrier power supplied to the transducer of 1 W or less.

4. This ECCN 1502A does not control the following equipment:

(a) Industrial equipment employing cells not controlled by ECCN 1548A;

(b) Industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems;

(c) Medical equipment;

(d) Industrial equipment used for inspection, sorting or analysis of the properties of materials;

(e) Simple educational or entertainment devices that employ photo cells;

(f) Flame detectors for industrial furnaces;

(g) Equipment for non-contact temperature measurement for laboratory or industrial purposes utilizing a single detector cell with no scanning of the detector;

(h) Instruments capable of measuring radiated power or energy having a response time constant exceeding 10 milliseconds;

(i) Equipment designed for measuring radiated power or energy for laboratory, agricultural or industrial purposes using a single detector cell with no scanning of the detector and single detector cell assemblies or probes specially designed therefor, having a response time constant exceeding 1 microsecond;

(j) Infrared geodetic equipment, provided that equipment uses a lighting source other than a laser and is manually operated or uses a lighting source (other than a laser or a light-emitting diode) remote from the measuring equipment.

Advisory Note 5 for the People's Republic of China—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of thermal imaging cameras provided that they:

(a) Contain pyroelectric vidicons;

(b) Are designed for fire fighting and buried body detection; *and*

(c) Have optimum sensitivity in the wavelength range from 8 to 14 micrometers.

(For communication equipment employing fiber optics, see ECCN 1519A.)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by revising paragraph (a)(1);

By redesignating paragraph (a)(2) as (a)(3);

By adding new paragraphs (a)(2) and(a)(4) and a NOTE after paragraph (a)(4);

By revising paragraphs (a) and (b) of Advisory Note 2;

By adding paragraphs (c) and (d) to Advisory Note 2; and

By revising Advisory Notes 4 and 6, as follows:

1520A Radio relay communication equipment, specially designed test equipment, and specially designed components and accessories therefor.

* * * * *

List of Equipment Controlled by ECCN 1520A

(a) * * *

(1) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz, employing analog transmission with a capacity of up to 2,700 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(2) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz, employing digital transmission techniques designed for operation at a total bit rate not exceeding 8.5 Mbit per second;

(3) Ground communication radio equipment * * *

(4) TV-receive-only (TVRO) stations for satellite reception specially designed for use at fixed frequencies meeting ITU standards in civil television or sound radio systems in the following frequency ranges:

(i) S-band: 2.5–2.69 GHz;

(ii) C-band: 3.4–4.2 GHz, 4.5–4.8 GHz

(iii) kU- and kA-band: 10.7–12.75 GHz.

Note.—Nothing in the above shall be construed as permitting the export of technology for equipment employing quadrature-amplitude-modulation (QAM) techniques, except technology for installation, operation or maintenance.

* * * * *

ADVISORY NOTE 2: * * *

(a) The equipment is not designed for operation at a total bit rate exceeding 45 Mbit per second;

(b) The equipment does not employ quadrature-amplitude-modulation (QAM) techniques;

(c) No equipment with a base bandwidth exceeding the limits set forth in paragraph (c) of Advisory Note 1 to ECCN 1519A is included; *and*

(d) Associated or integrated multiplex equipment is considered separately under the provisions of ECCN 1519A.

ADVISORY NOTE 3: * * *

ADVISORY NOTE 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by paragraph (a) above for industrial use, *e.g.*, remote supervision, control and metering of oil and gas pipelines, public utility services (*e.g.* electricity networks), including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunication links, provided that:

(a) Microwave radio links employing analog transmission techniques have a capacity not exceeding 2,700 voice channels of 4kHz each;

(b) Microwave radio links employing digital transmission techniques operate at a frequency not exceeding 19.7 GHz and are designed to operate at a total digital bit rate not exceeding 45 Mbit per second;

(c) The equipment does not employ quadrature-amplitude-modulation (QAM) techniques;

(d) Associated or integrated multiplex equipment is considered separately under the provisions of ECCN 1519A.

ADVISORY NOTE 5: * * *

Advisory Note 6 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following radio relay communication equipment:

(a) Analog microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 20 GHz with a capacity of up to 1,920 voice channels of 4kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,920 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(c) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at fixed frequencies not exceeding 20 GHz;

(d) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by (a) or (b) above;

(e) Power amplifiers not exceeding 10 W and 6/4-GHz-transmitters/receivers for communication satellites.

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1521A is amended by revising the heading, by adding a "List of Solid State Amplifiers and Specially Designed Components and Accessories Controlled by ECCN 1521A" and by revising the Notes and Technical Note, as follows:

1521A Solid-state amplifiers having any of the following characteristics, and specially designed components and accessories therefor.

* * * * *

List of Solid-State Amplifiers and Specially Designed Components and Accessories Controlled by ECCN 1521A

Solid-state amplifiers having any of the following characteristics, and specially designed components and accessories that:

(a) Exceed a maximum output power of 2 kW at operating frequencies between 10 and 35 MHz inclusive;

(b) Exceed a maximum output power of 50 W at operating frequencies between 35 and 400 MHz; *or*

(c) Have a product of the maximum output power times the maximum operating frequency of more than 2×10^{10} watt-hertz at operating frequencies above 400 MHz.

Notes.—1. This ECCN 1521A does not control solid state amplifiers with any of the following characteristics:

(a) Specially designed for community television distribution systems; or

(b) Having a "bandwidth" of 10 MHz or less.

2. For amplifiers designed to operate at frequencies above 1 GHz, see ECCN 1537A.

3. For amplifiers specially designed for and intended to work with oscilloscopes, see ECCN 1584A.

4. For amplifiers specially designed for transmitters, see ECCN 1517A.

Technical Note: "Bandwidth" is defined as the range of frequencies over which the power amplification does not drop to less than one half of its maximum value.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the words "Advisory Notes 4 or 6" that appear in the *"GFW Eligibility"* paragraph to read "Advisory Notes 5 or 6";

By adding a Note after paragraph (b)(iii);

By revising the reference in paragraph (b)(xx)(1) to "ECCN 1565A(h)(2)(v)(K)" to read "ECCN 1565A(h)(2)(iv)(K)" and the reference in paragraph (b)(xx)(2) to "ECCN 1565(h)(2)(v)(H)" to read "ECCN 1565A(h)(2)(iv)(H);

By revising Note 1;

By inserting "or" between "output power" and "energy capability" in the last sentence of Advisory Note 5; and

By revising the Advisory Note for the People's Republic of China after Advisory Note 7, as follows:

ECCN 1522A "Lasers" and "equipment containing lasers."

* * * * *

List of "Lasers" and "Equipment Containing Lasers" Controlled by ECCN 1522A

* * * * *

(b)(iii) * * *

Note.—The educational equipment referred to in this paragraph is defined as devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

* * * * *

Technical Note 4—* * *

Note 1.—Nothing in the following shall be construed as permitting the export of technical data for the following specially designed components for "lasers", except for the minimum technical data for their use (*i.e.*, installation, operation and maintenance):

Paragraph (a) does not control uncooled, unsegmented mirrors with glass or dielectric substrates for use as end reflectors for "laser" resonators. (For segmented mirrors, see ECCN 1556A.)

* * * * *

Advisory Note 8 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Tunable pulsed flowing-dye lasers having all of the following characteristics, and specially designed components therefor:

(1) An output wavelength shorter than 0.8 micrometer;

(2) A pulse duration not exceeding 100 ns; *and*

(3) A peak output power not exceeding 15 MW;

(b) CO_2, CO or CO/CO_2 lasers having an output wavelength in the range from 9 to 11 micrometers and a pulsed output not exceeding 2 joules per pulse and a maximum rated average single or multi-mode output power not exceeding 5 kW or a continuous wave maximum rated single- or multi-mode output power not exceeding 10 kW;

(c) Equipment specially designed for medical applications using "lasers" not freed from control by paragraph (a)(vi) above;

(d) "Laser" systems for trimming resistors or thick/thin film electronic circuits;

(e) Equipment incorporating CO_2 "lasers" with average or continuous wave output power not exceeding 5 kW, not exceeding the parameters of ECCN 1091A and specially designed for welding, cutting, bonding or drilling metals for civil applications.

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising the heading to the entry:

By removing the word "Illustrative" that appears in the "Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A";

By revising the reference to "ECCN 1529A(a)" in paragraph (a) to read "ECCN 1529A(a)(1)";

By revising the reference to "1,200 MHz" in the Note after paragraph (b)(2)(iv) to read "1,400 MHz";

By revising paragraph (b)(5);

By revising paragraph (c)(3);

By revising the remaining text to ECCN 1531A that appears after paragraph (d)(2), as follows:

1531A "Frequency synthesizers" (and equipment containing such "frequency synthesizers").

* * * * * *

List of Frequency Synthesizers Controlled by ECCN 1531A

* * * * *

(b) * * *

(5) Having a level of spurious components in the output, measured relative to the selected output frequency, better than:

(i) −60 dB harmonic; or

(ii) −92 dB nonharmonic;

* * * * *

(c) * * *

(3) With a "frequency switching time" of less than 10 milliseconds;

* * * * *

(d) * * *

(2) * * *

Notes.—1. This paragraph does not control "frequency synthesizers" specially designed for use in tuners for entertainment type receivers.

2. See also ECCN 1516A.

(e) Radio transmitters incorporating transmitter drive units, exciters and master oscillators using frequency synthesis, as follows, and specially designed components and accessories therefor:

(1) Having an output frequency of up to 32 MHz with a frequency resolution of better than 10 Hz and with a "frequency switching time" of less than 10 milliseconds;

(2) Having an output frequency from 32 MHz to 235 MHz with a frequency resolution of better than 250 Hz and with a "frequency switching time" of less than 10 milliseconds;

(3) Having an output frequency of more than 235 MHz, *except*:

(i) Television broadcasting transmitters having an output frequency from 470 MHz to 960 MHz with a frequency resolution of not better than 1 kHz and where the manually-operated "frequency synthesizer" incorporated in or driving the transmitter has an output frequency not greater than 120 MHz;

(ii) FM and AM ground communication equipment for use in the land mobile service and operating in the 420 to 470 MHz band, with a power output of 50 W or less for mobile units and 300 W or less for fixed units, with a frequency resolution of not better than 6.25 kHz and with a "frequency switching time" of more than 50 milliseconds;

(iii) Portable (personal) or mobile radiotelephones for civil use, *e.g.*, for use with commercial civil cellular radiocommunications systems having all of the following characteristics:

(A) Operating in the 420 to 960 MHz range;

(B) A power output of 10 W or less; *and*

(C) A "frequency switching time" of 10 ms or more.

Note.—For stored program controlled communications switching equipment used with cellular radio base stations, see ECCN 1567A.

(4) Having more than three different selected synthesized output frequencies available simultaneously from one or more outputs;

(5) With facilities for pulse modulation of the output frequency of the transmitter or of the incorporated "frequency synthesizer";

(6) "Frequency synthesizers" designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameters specified in paragraph (b) above;

Note.—See also ECCN 1517A.

Technical Notes: 1. "Frequency synthesizer" means any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.

2. "Frequency switching time" means the maximum time (*i.e.*, delay), when switched from one selected output frequency to another selected output frequency, to reach:

(a) A frequency within 100 Hz of the final frequency; or

(b) An output level within 1.0 dB of the final output level.

Note 1.—This ECCN does not control equipment in which the output frequency is produced by the addition or subtraction of two or more crystal oscillator frequencies, which may be followed by multiplication of the result.

Advisory Note 2: Licenses are likely to be approved for export to satisfactory civil end-users in Country Groups QWY of equipment controlled by paragraph (b)(3) above, with a "frequency switching time" not less than 5 milliseconds.

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following, and specially designed components and accessories therefor:

(a) "Frequency synthesizers" controlled only by paragraph (a) and not incorporating cesium beam standards;

(b) Instrument "frequency synthesizers" and synthesized signal generators controlled only by paragraphs (b)(1) and (b)(3) and having a maximum output frequency of 18 GHz, provided the "frequency switching time" is 2.0 ms or more;

(c) Instrument "frequency synthesizers" and synthesized signal generators not controlled by paragraph (b)(4) and having a maximum output frequency of 2.6 GHz, provided the "frequency switching time" is 0.3 ms or more;

(d) Conventional synthesizer based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided that:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in paragraph (e)(3)(ii) above remain in force;

(3) The equipment has a "frequency switching time" of 5 ms or more;

(4) The equipment does not employ either frequency agility or other spread spectrum techniques; *and*

(5) The synthesizers must be embedded in the radio receivers or transmitters;

(e) Radio receivers controlled by paragraph (d)(1) above that have 1000 selective channels or fewer.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by removing the word "or" that appears at the end of paragraph (c)(2);

By replacing the colon that ends paragraph (c)(2) with a semicolon;

By revising paragraph (g);

By removing the Note that appears after paragraph (g);

By removing the word "and" that appears at the end of paragraph (1) and by replacing the semicolon that ends the paragraph with a period.

By revising the reference to "(d)(1)" that appears in Advisory Note 1 to read "(d)";

By redesignating Advisory Note 5 as Advisory Note 6 and by adding a new Note 5;

By adding a Note to appear after paragraph (a) and before paragraph (b) of newly redesignated Advisory 6;

By designating the "Note" that appears at the end of 1537A as "Note 7" to appear after newly redesignated Advisory Note 6;

By redesignating the "Advisory Note for the People's Republic of China" that appears after paragraph (1) as "Advisory Note 8 for the People's Republic of China" and by moving it to the end of the text, as follows:

1537A Microwave, including millimetric wave, equipment, including parametric amplifiers, capable of operating at frequencies over 1 GHz (other than microwave equipment controlled for export by ECCNs 1501A, 1517A, 1520A, or 1529A).

* * * * *

List of Equipment Controlled by ECCN 1537A

* * * * *

(g) Phased array antennae and sub-assemblies, designed to permit electronic control of beam shaping and pointing (see Supp. No. 2 to Part 370 of the Export Administration Regulations), and specially designed components therefor (including but not limited to duplexers, phase shifters and associated high-speed diode switches);

* * * * *

Advisory Notes: * * *

Note 5.—Paragraph (g) above is not intended to cover duplexers and phase shifters specifically designed for use in civil television systems or in other civil radar or communication systems not covered by other ECCNs on the Commodity Control List identified by the code letter "A," nor covered by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

ADVISORY NOTES 6. * * *

(a) * * *

Note.—Simple educational devices are defined as devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

(b) * * *

Note 7.—Nothing in the following shall be construed * * *

Advisory Note 8 for the People's Republic of China: * * *

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1541A is amended by revising paragraph (c), by adding a Note to appear after paragraph (c), and by removing paragraph (d), as follows:

1541 Cathode-ray tubes.

* * * * *

List of Cathode-Ray Tubes Controlled by ECCN 1541A

* * * * *

(c) Incorporating microchannel-plate electron multipliers, *except* cathode-ray tubes, having all of the following characteristics:

(1) The microchannel-plate electron multipliers have a hole pitch of 25 micrometers or more;

(2) The tubes are not ruggedized for military use;

(3) The tubes have a horizontal sweep slower than 200 ns/cm; and

(4) The electron gun is mounted parallel to the screen surface.

Note.—Technology for the design or production of cathode-ray tubes incorporating microchannel-plate electron multipliers is not released under this paragraph (c).

* * * * *

Dated: June 22, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-14753 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Optional State Supplementary Payments Calculation; Spousal Deeming

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations provide nationwide implementation of the Court of Appeals decision in *Livermore* v. *Heckler*, 743 F.2d 1396 (9th Cir. 1984). The issue in this case involves the method of calculating optional State supplementary payments in the Supplemental Security Income (SSI) program where spousal deeming is involved. The rules set out a new method of calculating such payments which conforms to the decision of the circuit court.

EFFECTIVE DATE: These rules are effective October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301-965-1758.

SUPPLEMENTARY INFORMATION: These regulations were published as a Notice of Proposed Rulemaking in the **Federal Register** on August 13, 1987 (52 FR 30169). No comments were received.

Section 1614(f)(1) of the Social Security Act (the Act) provides that, for purposes of determining eligibility for and the amount of Federal SSI benefits for an individual whose spouse is living with him or her in the same household but is not eligible for SSI benefits, the individual's income and resources shall be deemed to include the income and resources of the spouse. This is referred to as "spousal deeming". Current regulations (20 CFR 416.1163) provide that when calculating the Federal SSI benefit of an eligible individual living with an ineligible spouse, the eligible individual's income will be combined with that of the ineligible spouse (if the ineligible spouse's income is above a certain amount after allocations for any ineligible children) and subtracted from the Federal benefit rate for a couple. When calculating the State supplementary payment, however, under current regulations (20 CFR 416.2025(b)) we subtract countable income in excess of the Federal benefit rate from one of the existing variations in optional State supplementary payment rates for an eligible individual. Our policy was the subject of litigation in *Livermore* v. *Heckler*, 743 F.2d 1396 (9th Cir. 1984), and *Bouchard* v. *Secretary*, C.A. No. 78-0632-F (D. Mass. 1984). In these cases, it was held that our method of calculating optional State supplementary payments involving spousal deeming was inconsistent with the Act. The courts in this litigation held that the Secretary should calculate those payments by subtracting the excess countable income of these couples from an optional State supplementary payment rate for an eligible couple. We believe that the *Livermore* and *Bouchard* courts' interpretation of the Act, as requiring the application of the same type of rate (couple or individual) in Federal SSI determinations and federally administered optional State supplement determinations, is a reasonable one. Moreover, considering that 74 percent of the cases affected by this regulation (State-supplement-only cases) are California and Massachusetts cases already subject to the *Livermore* and *Bouchard* decisions, we believe it is reasonable to extend the courts' interpretation to all those affected. Therefore, we are applying this policy nationally, except when the State has an individual rate that is higher than the comparable couple rate. In these situations we will continue to use the individual rate. The Notice of Proposed Rulemaking (NPRM) referenced the situation where a State has, or in the future elects, a special individual rate for an eligible individual living with an ineligible spouse and indicated that such a rate will be treated as the couple rate where it is higher than the otherwise applicable eligible couple rate. The NPRM did not cover the anomolous situation where a State has a higher rate for an individual than the comparable couple rate. Section 416.2025(b)(3) has been revised to cover both situations.

Unlike Federal SSI benefits, most States have more than one supplementary payment rate for couples. State payment rates may vary by geographic area, living arrangement, and category, i.e., aged, blind, or disabled (20 CFR 416.2020 through 416.2030). Only four States, Massachusetts, California, Nevada, and Iowa, vary their supplementary payment rates by category. In Massachusetts, under the *Bouchard* ruling, the ineligible spouse is considered to be in the category that yields the lowest couple rate. In California, under the *Livermore* ruling, the ineligible spouse is considered to be in the same category as the eligible individual; i.e., if the eligible individual is disabled, the ineligible spouse will be considered disabled, and the rate for a disabled couple will be used. We have chosen this policy to be implemented in these regulations, because California cases comprise 88 percent of the State-supplement-only cases in the four States that vary their supplement by category. That is, 88 percent of those affected by a choice of which couple rate to apply are covered by the *Livermore* decision. In order to assure a uniform policy, we are effectuating the *Livermore* policy nationwide.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because no Federal SSI program costs are involved and administrative costs would be negligible and resulting State costs are also negligible. In addition, Medicaid costs would be negligible. Therefore a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations impose no new reporting or recordkeeping requirements necessitating Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities since they affect primarily individuals receiving or applying for SSI benefits. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: March 9, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 19, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369, 98 Stat. 1144.

2. Paragraph (d)(2)(iii) of § 416.1163 is revised to read as follows:

§ 416.1163 How we deem income to you from your ineligible spouse.

* * * * *

(d) *Determining your eligibility for SSI.* * * *

(2) * * *

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple. (See § 416.2025(b) for determination of the State supplementary payment amount.)

* * * * *

3. The authority citation of Subpart T of Part 416 continues to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383; sec. 212 of Pub. L. 93–66, 87 Stat. 155; sec. 401 Pub. L. 92–603, 86 Stat. 1485; sec. 8 of Pub. L. 93–233, 87 Stat. 956; secs. 1 and 2 of Pub. L. 93–335, 88 Stat. 291.

4. Paragraphs (b) (1) and (3) of § 416.2025 are revised to read as follows:

§ 416.2025 Optional supplementation; Countable income.

* * * * *

(b) * * *

(1) As provided in § 416.420, countable income will first be deducted from the Federal benefit rate applicable to an eligible individual or eligible couple. In the case of an eligible individual living with an ineligible spouse with income (the deeming provisions of § 416.1163 apply), the Federal benefit rate from which countable income will be deducted is the Federal benefit rate applicable to an eligible couple, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (§ 416.1163(e)(2)).

* * * * *

(3) If countable income exceeds the amount of the Federal benefit rate, the State supplementary benefit will be reduced by the amount of such excess. In the case of an eligible individual living with an ineligible spouse with income (the deeming methodology of § 416.1163 applies), the State supplementary payment rate from which the excess income will be deducted is the higher of the State supplementary rates for an eligible couple or an eligible individual, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (see § 416.1163(e)(2)). For purposes of determining the State supplementary couple rate, the ineligible spouse is considered to be in the same category as the eligible individual.

* * * * *

[FR Doc. 88–14976 Filed 7–1–88; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Purina Mills, Inc.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., has informed FDA of a change of address from 835 South Eighth Street, St. Louis, MO 63102, to P.O. Box 66812, St. Louis, MO 63166–6812. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600. *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Purina Mills, Inc.," and in paragraph (c)(2) in the entry for "017800" by revising the sponsor address to read "P.O. Box 66812, St. Louis, MO 63166–6812."

Dated: June 27, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88–15005 Filed 7–1–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that reflected approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. (April 26, 1988; 53 FR 14788). The NADA provided for use of Type A medicated articles containing 4 and 20 percent fenbendazole for making Type C medicated cattle feeds. In reflecting this approval in the regulations, the assay limits for Type A medicated articles were incorrectly stated as 95–113 percent. This document corrects that oversight by listing the assay limits for Type A articles to read 93–113 percent.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 26, 1988 (53 FR 14788), FDA amended § 558.4 (21 CFR 558.4) to reflect approval of NADA 137–600 filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for use of Safe-Guard™ Type A medicated articles containing 4 and 20 percent fenbendazole for making Type C medicated cattle feeds. A Type C medicated feed requires a 13-day withdrawal period. Because fenbendazole now requires a withdrawal period at the lowest use level in at least one species, it became a Category II drug. Section 558.4(d) was also amended to reflect the change from Category I to Category II. This document amends the table entitled "Category II" in § 558.4(d) by revising the assay limits for Type A articles to read "93–113."

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in the table entitled "Category II" in paragraph (d), in the entry "Fenbendazole" by revising the Type A assay limits (second column) to read "93–113."

Dated: June 27, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–15004 Filed 7–1–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R–88–1400; FR–2437]

Revision to the Performance Funding System: Insurance Costs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: Section 9(a)(3)(A) of the United States Housing Act of 1937, as added by section 118(a)(2) of the Housing and Community Development Act of 1987, requires the Secretary to revise the Performance Funding System (PFS) by June 15, 1988, "to accurately reflect the increase in insurance costs incurred by public housing agencies." This rule will increase the amount included in a public housing agency's/Indian housing authority's (PHA's/IHA's) per unit month allowable expense level for insurance in its next fiscal year by $8.45. This increase in the allowable expense level (AEL) used to compute operating subsidy eligibility for the next fiscal year will result in higher amounts for insurance in following years as well, since each year's AEL is based on the previous year's AEL, adjusted for intervening changes in the PHA's/IHA's housing stock and for inflation. This rule is being issued as an interim rule so that it may take effect before the first round of funding to PHAs in Fiscal Year 1989, but public comments are invited and a final rule will be issued following evaluation of the comments.

DATES: *Comment due date:* September 6, 1988.

Effective date: January 1, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Theodore R. Daniels, Director, Project Financial Management and Occupancy Division, Office of Public Housing, Room 4208, 451 Seventh Street SW., Washington, DC 20410–5000, telephone (202) 755–8145. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Annual Contributions Contract (ACC) and the Mutual Help Annual Contributions Contract (MHACC) between PHAs/IHAs and the U.S. Department of Housing and Urban Development (HUD), require (in section 305 of the ACC and Article IX of the MHACC) that PHAs/IHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the PHAs/IHAs. When the current system of determining the level of operating subsidy to be provided PHAs/IHAs was developed in 1974 and 1975, the AEL for each PHA/IHA was based on the PHA/IHA operating budget of the immediately preceding fiscal year. In the initial year of the PFS, AELs nationally reflected the inclusion of an average of $1.34 per unit month (PUM) for insurance. Since 1975, the amount for insurnace in the AELs has been increased by local inflation factors, bringing the average amount for insurance for fiscal year 1989 to $3.38 PUM.

During recent years, insurance premiums for the required liability, fire and extended coverage increased for many PHAs/IHAs, with a particularly notable increase affecting PHAs/IHAs in the spring of 1985. Many insurance companies withdrew from the marketplace and coverage was either not available or not affordable for a large number of PHAs/IHAs. Some housing agencies used operating reserve funds as well as operating subsidies to pay insurance premiums during that period, jeopardizing their financial solvency.

Congress took several actions in response to this change of circumstances. It passed the Liability Risk Retention Act of 1986 (Pub. L. No. 99–563, 100 Stat. 3170, 15 U.S.C. 3901

note), to permit the formation of risk retention groups and purchasing groups that were authorized to provide liability insurance to policyholders across State lines. It required HUD to distribute some $124 million of the Department's FY 1987 appropriation for operating subsidies to PHAs/IHAs to cover the increase in insurance costs not reflected in the PFS. In the FY 1988 Appropriations Act, Congress directed HUD to distribute $65 million in fiscal year 1988 to PHAs/IHAs to compensate "for insurance costs not covered by the current PFS formula." (H.R. Rep. 498, 100th Cong., 1st Sess. 480.) Subsequently, it enacted the Housing and Community Development Act of 1987 (Pub. L. No. 100–242, 101 Stat. 1815), to require the Department to revise the PFS itself to reflect increased insurance costs.

Six PHA/IHA non-profit insurance entities have been formed and recognized by HUD, for purposes of compliance with ACC/MHACC requirements, as being substantially equivalent to a financially sound and responsible insurance company: Amerind Risk Management Corporation (providing fire, extended coverage, general liability, and fidelity bond coverages to IHAs in 29 States), Assisted Housing Risk Management Association (providing fire, extended coverage and general liability coverages to Illinois PHAs), Housing Authority Risk Retention Group (authorized to provide general liability coverages in all States), Housing Authority Risk Retention Pool (providing fire, extended coverage, and general liability coverages to PHAs in Northern California, Oregon, and Washington), New York Public Housing Authority Reciprocal (providing fire, extended coverage, and general liability coverages to New York PHAs), and North Carolina Housing Authorities Risk Retention Pool (providing fire, extended coverage, general liability and automobile coverages to North Carolina PHAs).

The Department is also experimenting in cost reduction by removing some restrictions in the traditional method of selecting insurance coverage. For example, although many PHAs may, as governmental entities, have sovereign immunity as a defense to litigation, insurance contracts have specified that the insurer could not assert the PHA's sovereign immunity defense. Now HUD is permitting PHAs to solicit bids for insurance with and without that clause, to determine whether coverage is less expensive with the removal of that legal restraint.

In response to the appropriations earmarked for covering higher insurance costs, HUD distributed some $124 million in fiscal year 1987 on the basis of $7.94 PUM. In fiscal year 1988, the Department expects to distribute in a similar manner the $65 million available in this fiscal year that is earmarked to cover increased insurance costs, which will result in approximately $4.36 additional PUM for PHAs/IHAs. To effect a permanent change in the PFS for fiscal year 1989 and subsequent years to reflect increased insurance costs, this rule will increase the amount included in the formula, as described below.

Rulemaking Petition

On November 2, 1987, the Council of Large Public Housing Authorities (CLPHA) submitted a petition for rulemaking to the Department. The petition requested that HUD issue a proposed rule to make the PFS "reflect with reasonable accuracy the cost of insurance for a prototype well-managed public housing project." The petition attached a draft proposal rule that provided for a separate factor to be used for insurance and risk protection in calculating the AEL. This separate factor was then to be adjusted at the end of each year to reflect the actual insurance and risk protection expense for the PHA fiscal year, including insurance premiums paid, contributions to any risk protection reserve, out-of-pocket cost of any claims not covered by insurance, legal and claims settlement expenses, and other risk protection-related costs. The proposed provided for an adjudicatory proceeding in which an Administrative Law Judge (ALJ) would decide any disputes between a PHA and HUD concerning year-end adjustments. Costs were to be controlled by constraining *additional* funding in any year (beyond the estimated risk protection costs) by the availability of operating subsidy and by findings by an ALJ that the difference between estimated and actual risk protection costs was the result of the PHA's/IHA's unreasonable refusal to act to reduce its risk protection costs. The stated intention was to make risk protection costs a "pass-through" item, like utility expenses (which are regulated by local public utility commissions) and independent audits.

While HUD was considering its response to this petition, the Housing and Community Development Act of 1987 was passed by Congress (December 22, 1987) and signed by the President (February 5, 1988). The 1987 Act mandates revision of the PFS to more accurately reflect PHA/IHA insurance costs, although it does not require the approach recommended by CLPHA.

The Department is concerned that the pass-through approach contained in CLPHA's proposed rule would have insufficient incentives for cost containment and that the ALJ procedure would be administratively burdensome and expensive. The insurance industry is not subject to public rate approval commissions, so there is no independent party controlling insurance costs as there is for utility costs. Allowing each PHA/IHA to pass through its costs would permit PHAs/IHAs that have unreasonably high insurance expenses because of a lack of competition in the local insurance industry or for other reasons not directly attributable to an unreasonable refusal by the PHA/IHA to reduce its risk protection costs to continue their practices without penalty. Moreover, if each PHA/IHA could obtain a year-end review of its insurance costs by an ALJ, HUD would have to pay for the costs of staff to investigate the practices of each PHA/IHA that requested an increase over estimated risk protection costs, the costs for one or more Administrative Law Judges and support staff, as well as the costs for an official to review the ALJ's finding and make a recommendation to the Secretary on each case—potentially as many as 3,000 cases. This procedure would be time-consuming as well as costly.

As a result of the very high cost of CLPHA's proposal and its inequity for an insurance cost-conscious PHA/IHA in a year of meager Federal funding, the Department has decided to grant the petition for rulemaking but issue a rule to revise the PFS that increases funding eligibility for insurance by way of an adjustment for FY 1989 that is based on the average actual increase in insurance costs experienced by PHAs/IHAs. This increase in the AEL then will be embedded in the AEL for future years, since each year's AEL is based on the prior year's AEL, adjusted by the local inflation factor used for all non-utility costs. This method of increasing PFS subsidy eligibility treats insurance costs in the same way as other costs, to encourage PHAs/IHAs to find the most cost-effective way to obtain coverage—whether through the use of private insurance, coverage through risk retention groups (PHA/IHA sponsored insurance entities), or some form of self-insurance. The Department believes that this approach satisfies the request for revision in the PFS made in CLPHA's petition and the requirement for change contained in section 118 of the 1987 Act, and this rule is being made effective in

time to assure that there is no gap in special funding for insurance costs from one fiscal year to the next. (For a discussion of the timing, see justification for issuance of an interim rule, below.)

The amount of the adjustment for FY 1989 used in this rule is based on the currently available PHA data for FY 1986, the most recent year for which we have substantial year-end data. HUD has determined that the required insurance coverages—fire and extended coverage, general liability, workers' compensation, automobile liability, flood insurance, boiler coverage, and fidelity bond coverage—would have cost an average of $10.01 PUM, based on a sample of PHAs. (This sample contained PHAs with as few as 104 units and as many as 150,000+ units. It was the original, randomly selected 120 PFS-sample PHAs representing an equal number of three sizes of operation that have been used since the inception of the PFS to adjust the formula on an annual basis, which was supplemented by the addition of all PHAs/IHAs with more than 1250 units.) By trending this $10.01 upward by using the Implicit Price Deflator for State and Local Government Goods and Services factor in the PFS since then (5.6% for 1987, 7.5% for 1988, and an estimated 4.1% for 1989), the estimated average cost of these coverages for FY 1989 was determined to be $11.83 PUM. Since the average amount currently contained in the AEL for required insurance coverages is $3.38 PUM, the amount to be added for this one fiscal year (and thereafter trended by the local inflation factor used for all non-utility costs) is the difference between $11.83 and $3.38, or $8.45.

Since there were not yet any PHA/IHA sponsored non-profit entities offering risk protection coverages in 1986, the data collected for FY 1986 did not include any costs based on rates charged by such entities, which are generally less than premiums charged by private carriers. Therefore, the above projection may actally be greater than if later data could be factored into the calculations. The increasing availability of a number of types of risk protection coverages from such entities may permit some PHAs/IHAs to reduce their costs below the amounts charged by private for-profit insurance carriers.

Based on the estimated number of dwelling units receiving operating subsidy in FY 1989 (1.242 million), full funding of this increase in the AELs would require $125.6 million, or a net increase of $95.6 million for FY 1989 over the $30 million of increased operating subsidy for insurance costs already requested by the Department in the FY 1989 Budget submitted to Congress. If the funds appropriated for PFS are insufficient to cover these requirements, each PHA's/IHA's total operating subsidy will be prorated downward to stay within the limit of the total funds appropriated by Congress.

The current PFS rule, Part 990, does not address the manner of obtaining the required insurance coverages. Section 305 of the ACC and Article IX of the MHACC provide that required coverages must be obtained from the private market, with the general liability, fire and extended coverages subject to competitive bidding procedures. PHAs/IHAs that have sought to participate in PHA/IHA insurance entities (e.g., pools) or to self-insure, have been required by HUD to obtain waivers of applicable provisions of the ACC/MHACC. That procedure will continue; however, this revision to the PFS rule recognizes that risk protection coverage may be obtained under one of these alternative methods, with HUD approval.

Justification for Interim Rule

It is the policy of this Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public procedure are not required by statute, the procedure for advance public comment may be omitted if the Department determines it is impracticable, unnecessary or contrary to the public interest. In this case, a recent statute mandates the revision of the PFS, which is prescribed by regulation, by June 15, 1988. Another statute restricts the Department's rulemaking process, however, requiring an opportunity for Congress to review any rule before it is published for comment, and requiring that the effectiveness of any rule be delayed for thirty days of continuous session of Congress (section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)).

The Department finds that it is impracticable and contrary to the public interest to solicit public comment before issuing this rule. If the Department were to issue a proposed rule (sending it to Congress for review on June 15, 1988), wait for the receipt of comments, and then formulate a final rule after considering the comments, that process along with the statutorily mandated delays, would preclude the Department from having the revision in PFS implemented for the first PHA/IHA fiscal years that are to be funded from HUD's FY 1989 appropriation (i.e., those whose budgets cover 12-month periods starting January 1, April 1, July 1, and October 1, 1989), as anticipated by the statute. Providing the benefit of increased funding eligibility for PHAs/IHAs starting on January 1, 1989 is important to assure that there is no gap in providing additional funding eligibility for insurance costs from federal fiscal year 1988 (in which $65 million above current PFS requirements is being provided) to federal fiscal year 1989.

It should be noted that the process of determining a PHA's/IHA's eligibility for operating subsidy includes submission by the PHA/IHA of an operating budget, based on the PHA's/IHA's calculation of its own AEL for the next budget year and its estimated expenses, approximately three months in advance of the beginning of its fiscal year for approval by HUD. Therefore, a PHA/IHA needs to know substantially in advance of the beginning of its next fiscal year what the rules are for calculation of its AEL. With the publication of this interim rule in the summer of 1988, PHAs/IHAs will have sufficient advance notice of how to calculate the AEL affecting the budgets they need to submit for their first fiscal year under this rule, which may start as early as January 1, 1989.

Despite publication of this rule for effect, the Department does invite public comments on the rule and comments recieved within the sixty day comment peirod will be considered during development of a final rule that will supersede this interim rule.

Findings and Certifications

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that 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 and copying during regular business hours in the Office of Regulations, Room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

Economic Impact. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 (on Federal Regulation) issued by the President on February 17, 1981. Analysis of the rule indicates that it is not likely to have an annual effect on the economy of $100 million or more, since requested funding for FY 1989 includes only $30 million for increased insurance costs. The rule will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State or local government agencies or geographic regions, or have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities. Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because its effect would be to implement a statutory directive to increase subsidy to PHAs/IHAs to reflect increases they have experienced in the costs of insurance coverage in a way that will have the same effect on small and large PHAs/IHAs. The insurance costs experienced by a PHA/IHA is affected more by location and risk factors than on its size. Therefore, the rule provides no differential treatment based on PHA/IHA size.

Regulatory Agenda. This rule was listed as sequence number 1035 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13893) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction. There are no information collection requirements contained in this rule which would be subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

Catalog. The Catalog of Federal Domestic Assistance Program Number is 14.146, Low Income Housing Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development, Low and moderate income housing, Public housing.

Accordingly, 24 CFR Part 990 is amended as follows:

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

1. The authority citation for Part 990 continues to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 990.105, a new paragraph (g) is added, to read as follows:

§ 990.105 Computation of allowable expense level.

* * * * *

(g) *Adjustment for FY 1989.* To reflect the increased costs incurred by PHAs/IHAs to obtain required risk protection coverage (through private insurance, PHA/IHA sponsored insurance entities, or through self-insurance, as approved in accordance with the ACC/MHACC), the calculation of AEL for the PHA's/IHA's fiscal year beginning in 1989 will include an additional step following the determination made in accordance with paragraphs (a) through (f) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding $8.45. This adjustment is a one-time permanent adjustment made only in fiscal year 1989.

Dated: May 31, 1988.

Jacqueline Aamot,

Associate General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–15043 Filed 7–1–88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20 and 252

[T.D. ATF–274]

Manufacture of Articles in a Foreign-Trade Zone—Using Domestic Denatured Distilled Spirits

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

ACTION: Treasury decision, final rule.

SUMMARY: This rule revises regulations in order to implement section 1894 of the Tax Reform Act of 1986, Pub. L. 99–514. Section 1894 amended the fifth proviso of Section 3 of the Foreign-Trade Zones Act (19 U.S.C. 81c) so that commencing October 22, 1986, articles may be manufactured in a foreign-trade zone from domestic denatured distilled spirits, and articles thereof.

EFFECTIVE DATE: These regulations are effective retroactive to October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Petrangelo, Distilled Spirits and Tobacco Branch, (202) 566–7531, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

The fifth proviso of section 3 of the Foreign-Trade Zones Act, 19 U.S.C. 81c, provides that neither the rectification of distilled spirits and wine, nor the manufacture or production of alcoholic products unfit for beverage purposes shall be permitted in a zone. However, the Act was amended by Section 1894 of the Tax Reform Act of 1986, Pub. L. 99–514, to provide that notwithstanding the provisions of the fifth proviso, any article, within the meaning of 26 U.S.C. 5002(a)(14) may be manufactured or produced from domestic denatured distilled spirits, and articles thereof, in a zone. The alcohol in domestic denatured distilled spirits must be produced entirely in the United States, including Puerto Rico. The basic purpose of Section 1894 was to make certain types of manufacturing operations in the United States as desirable, from an investment point of view, as the same types of operations in foreign countries.

Requirements

In order to implement the new law, the regulations which govern the use of denatured spirits have been amended to extend to operations involving the manufacture of articles from domestic denatured distilled spirits in a foreign-trade zone. Persons who wish to manufacture products in a foreign-trade zone from domestic *specially* denatured distilled spirits are required to hold a permit and to otherwise comply with statutory and regulatory provisions pertaining to the procurement or use of such spirits. These permits are issued by ATF under the provisions of 26 U.S.C. 5271(a)(2). Implementing regulations appear at 27 CFR Part 20. In addition, permittees intending to withdraw more than 5000 gallons of specially denatured spirits per annum must file a bond with ATF. There is no requirement for a permit covering the use (without recovery) of completely denatured spirits. However, other sections of Part 20 are applicable to users of completely denatured spirits. The provisions of 27 CFR Part 252 relating to the transfer of specially denatured spirits to a foreign-trade zone for exportation, or storage pending exportation, do not apply to domestic denatured spirits which are transferred to qualified users in a foreign-trade zone free of tax under the provisions of 27 CFR Part 20. Domestic denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of Part 20 may subsequently be transferred domestically from the zone. Specially denatured spirits and

completely denatured spirits are formulations specifically prescribed in 27 CFR Part 21, Subparts D and C, respectively.

Statutory References Expanded

The informational cites at the end of 27 CFR 19.540, 20.2 and 20.161 are expanded to include a reference to the Foreign-Trade Zones Act.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, are satisfied because reporting requirements under 27 CFR Part 20 (Distribution and Use of Denatured Alcohol and Rum) have been approved by the Office of Management and Budget under control number 1512-0336. Similarly, recordkeeping requirements under 27 CFR Part 20 have been approved by the Office of Management and Budget under control number 1512-0337.

Administrative Procedure Act

Since this final rule merely extends existing procedures for permit and bonding requirements with respect to the manufacture of articles in foreign-trade zones, it is found to be unnecessary to issue this final rule with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Petrangelo of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List Of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol, Authority delegations, Chemicals, Claims, Cosmetics, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign-trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine Issuance.

Title 27 CFR is amended to read as follows:

PART 19—[AMENDED]

1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271–5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Section 19.540(a), and the informational cite at the end of the section, are revised to read as follows:

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* (1) Specially denatured spirits withdrawn free of tax under § 19.536(d) shall be shipped in approved containers to the consignee designated on the permit. If such spirits are for export or for transfer to a foreign-trade zone for export or for storage pending exportation, they shall be withdrawn under the applicable provisions of Part 252 of this chapter.

(2) Domestic specially denatured spirits may be transferred to qualified users located in a foreign-trade zone for use in the manufacture of articles under the applicable provisions of Part 20 of this chapter. The alcohol, as defined in 27 CFR Part 20, in domestic specially denatured spirits must be produced entirely in the United States, including Puerto Rico.

(3) When specially denatured spirits are shipped to a qualified user, dealer, or an applicant or prospective applicant under paragraph (c)(2)(ii) of this section, the proprietor shall prepare a record of shipment in accordance with § 19.779. Bulk conveyances used to transport specially denatured spirits shall be secured in accordance with the provisions of § 19.96.

* * * * *

(48 Stat. 999, as amended, 72 Stat. 1362, as amended, 1370, as amended (19 U.S.C. 81c; 26 U.S.C. 5214, 5271))

PART 20—[AMENDED]

3. The authority citation for Part 20 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6055, 7805.

4. Section 20.2 is revised and an informational cite is added at the end of the section, to read as follows:

§ 20.2 Territorial extent.

(a) This part applies to the several States of the United States, the District of Columbia and to denatured spirits and articles coming into the United States from Puerto Rico or the Virgin Islands.

(b) For the purposes of this part, operations in a foreign-trade zone located in any State of the United States or the District of Columbia are regulated in the same manner as operations in any other part of such State or the District of Columbia, with the exception that under this part only domestic denatured spirits may be used in the manufacture of articles in a foreign-trade zone.

(48 Stat. 999, as amended (19 U.S.C. 81c))

5. Section 20.161(a) and the informational cite at the end of the section are revised to read as follows:

§ 20.161 Withdrawals under permit.

(a) *General.* The permit, Form 5150.9, issued under Subpart D of this part, authorizes a person to withdraw specially denatured spirits from the bonded premises of a distilled spirits plant or a dealer. If the permittee is

located in a foreign-trade zone, the permit will be qualified so that the permittee may obtain domestic specially denatured spirits only. The alcohol in domestic denatured spirits must be produced entirely in the United States, including Puerto Rico.

* * * * *

(19 U.S.C. 81c; Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended, 1395, as amended (26 U.S.C. 5271, 5555))

PART 252—[AMENDED]

6. The authority citation for Part 252 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5204–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

7. Section 252.30 is revised, to read as follows:

§ 252.30 Export status.

(a) Distilled spirits and wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States, and beer brewed or produced in the United States may be transferred to a foreign-trade zone for the sole purpose of exportation, or storage pending exportation. Liquors deposited in a foreign-trade zone under this part solely for such purposes are considered to be exported. Export status is not acquired until application on Form 214 for admission of the liquors into the zone has been approved by the district director of customs under the appropriate provision of 19 CFR Chapter I, and the required certification of deposit has been made on the ATF form prescribed in this part.

(b) The provisions of Subpart H of this part do not apply to specially denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of 19 U.S.C. 81c(c). Transfer of domestic specially denatured spirits to a qualified user in a foreign-trade zone is made free of tax under the provisions of Part 20 of this chapter. Such transfer does not place the domestic specially denatured spirits in an export status.

(48 Stat. 999, as amended (19 U.S.C. 81c))

8. The informational cite following § 252.122 is revised to read as follows:

* * * * *

(Sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

Signed: March 30, 1988.

Stephen E. Higgins,

Director.

Approved: April 14, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-14885 Filed 7-1-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 292

Availability to the Public of Defense Intelligence Agency Information

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Intelligence Agency's earlier version of this part which implements the Freedom of Information Act, as amended (5 U.S.C. 552) within the DIA. This revision supercedes a final rule (Federal Register, Vol 51, No. 181 at 33035) published on 18 September 1986 at 32 CFR Part 292. This revision incorporates changes occasioned by the publication of DoD 5400.7-R, the controlling DoD regulation on the FOIA Program.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Hardzog, Freedom of Information and Privacy Act Staff, Defense Intelligence Agency, RTS-1B, Washington, DC 20340-3299; Telephone, 202-373-3910, 3911, or autovon 243-3910.

SUPPLEMENTARY INFORMATION: Subsection (a) of the Freedom of Information act, as amended (5 U.S.C. 552), requires that Federal agencies publish rules "stating the time, place, fees (if any), and procedures to be followed" in making records available to the public.

The Defense Intelligence Agency has determined that this revision is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 292

Freedom of information.

Accordingly, Part 292 of 32 CFR is revised to read as follows:

PART 292—AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY (DAI) INFORMATION

Sec.

Authority: 5 U.S.C. 552.

§ 292.1 Purpose.

This part implements the "Freedom of Information Act (FOIA)," 5 U.S.C. 552, as amended, within the DIA and outlines policy governing release of records to the public.

§ 292.2 Applicability.

The provisions of this part apply to all DIA elements, and govern the public release of records of these elements. This part is effective on July 5, 1988.

§ 292.3 Indices.

The DIA does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect members of the public of the type covered by the indexing requirement of 5 U.S.C. 552 (a)(2) or required to be published for the guidance of the public under 5 U.S.C. 552 (a)(1). The Director, DIA, has therefore determined, pursuant to pertinent statutory and Executive Order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552 as amended.

292.4 Basic policy.

(a) Upon receipt of a written request, the DIA will release to the public records concerning its operations and activities which are rightfully public information. Generally, information, other than that exempted by 5 U.S.C. 552(b), will be provided to the public. The following policy will be followed in the conduct of this program.

(1) The provisions of the FOIA, as implemented by DoD 5400.7-R and this part, will be supported in both letter and spirit.

(2) Requested records will be withheld only when a significant and legitimate governmental purpose is served by withholding them. Records which require protection against unauthorized release in the interest of the national defense or foreign relations of the United States will not be provided.

(3) Requests from Members of Congress will be governed by DoD 5400.4, from the General Accounting Office by DoD 7650.1, and from other agencies and courts by DoD 5400.7–R.

(4) Records will not be withheld solely because their release might result in criticism of DoD or this Agency.

(5) The applicability of the FOIA depends on the existence of an "identifiable record" (5 U.S.C. 552 (a)(3)). Accordingly, if the DIA has no record containing information requested by a member of the public, it is under no obligation to compile information to create such a record.

(6) The mission of the DIA does not encompass regulatory or decisionmaking matters in the sense of a public use agency; therefore, extensive reading room material for the general public is not available. However, unclassified DIA regulations and related material have been placed in the joint reading room managed by DoD Public Affairs.

(7) Pursuant to 5 U.S.C. 552(a)(4)(A) fees may apply with regard to services rendered the public under the Freedom of Information Act. With regard to fees, the specific guidance of Dod, as set forth in DoD Regulation 5400.7–R, will be followed. This schedule of fees is found at § 286.60 *et seq.* Remittances will be personal check or bank draft on a bank in the United States or by U.S. postal money order. Remittances will be made payable to the "Treasurer of the United States" and forwarded to the address listed in § 292.6(b).

(b) This basic policy is subject to the exemptions recognized in 5 U.S.C. 552(b) and discussed in § 292.7 of this part. Even where denial is authorized by 5 U.S.C. 552(b) and § 292.7 of this part, requested records will be provided if no significant and legitimate Government purpose is served by withholding them.

§ 292.5 Specific policy.

(a) Definition of a Record. The products of data compilation, regardless of physical form or characteristics, made or received by the DIA in connection with the transaction of public business and preserved by the DIA primarily as evidence of the organization, policies, functions, decisions, or procedures of this Agency.

(b) The following are not included within the definition of the word "record:"

(1) Library or museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpters, three-dimensional models, vehicles and equipment, whatever their historical value or value as evidence.

(3) Commercially exploitable resources, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data, if not created or used as primary sources of information, about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software and related software documentation, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Any thing that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal notes of an individual not subject to Agency creation or retention requirements, created and maintained primarily for the convenience of an Agency employee, and not distributed to other Agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout.

(c) The prior application of FOR OFFICIAL USE ONLY (FOUO) markings is not conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it will be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate Government purpose is served by withholding the record or portions of it.

(d) A record must exist and be in the possession or control of the DIA at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(e) Identification of the Record. (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables the DIA to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When the DIA receives a request that does not "reasonably describe" the requested record, it will notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below. This Agency is not obligated to act on the request until the requester responds to the specificity letter. When practicable, the DIA will offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the DIA's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inferences of the Category I elements needed to conduct such a search.

(F) Requests for records may be denied only when the official designated in § 292.9 determines that such denial is authorized by this part and the Freedom of Information Act (5 U.S.C. 552).

(g) Initial availability, releasability, and cost determinations will normally be made within 10 working days of the date on which a written request for an identifiable record is received by the DIA. If, due to unusual circumstances, additional time is needed, a written notification of the delay will be forwarded to the requester within the 10 working days period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response. The period of delay, by law, may not exceed 10 additional working days.

§ 292.6 How the public submits requests for records.

(a) Requests to obtain copies of records must be made in writing. The

request should contain at least the following information:

(1) Reasonable identification of the desired record as specified in 292.5, including (if known) title or description, date, and the issuing office.

(2) With respect to matters of official records concerning civilian or military personnel, the first name, middle name or initial, surname, date of birth, and social security number of the individual concerned, if known.

(b) Persons desiring records should direct inquiry to:

Defense Intelligence Agency
ATTN: RTS–1B
Freedom of Information Act Office
Washington, DC 20340–3299

§ 292.7 FOIA exemptions.

The following types of records may be withheld in whole or in part from public disclosure unless othewise prescribed by law.

(a) *Exemption (b)(1).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1–R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified.

(b) *Exemption (b)(2).* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal rules or practices of the DIA if their release to the public would substantially hinder the effective performance of a significant function of the DoD, and they do not impose requirements directly on the general public.

(c) *Exemption (b)(3).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld.

(d) *Exemption (b)(4).* Those containing trade secrets or commercial or financial information that the DIA receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future, or impair some other legitimate Government interest.

(e) *Exemption (b)(5).* Those concerning internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decisionmaking process of an agency, whether within or among agencies or within or among DoD components.

(f) *Exemption (b)(6).* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy.

(g) *Exemption (b)(7).* Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law.

§ 292.8 Filing an appeal for refusal to make records available.

(a) A requester may appeal an initial decision to withhold a record. Appeals should be addressed to:

Director
Defense Intelligence Agency
ATTN: RTS–1 (FOIA)
Washington, DC 20340–3299

(b) Final determination on appeals normally will be made within 20 working days of receipt of the appeal at the above address. If additional time is needed to decide the appeal because of unusual circumstances, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request.

(c) When an appeal is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to judicial review.

§ 292.9 Responsibilities.

When a request of material is received, the following will apply:

(a) RTS–1B

(1) Receives requests and assigns tasking.

(2) Maintains appropriate suspenses and authorizes all extensions of response time.

(3) Acts as the responsible operating office for all Agency actions related to the FOIA.

(4) Drafts and transmits responses on:

(i) The release of records and/or information.

(ii) Obtaining supplemental information from the requester.

(iii) Informing the requester of any fees required.

(iv) The transfer to another element or agency of the initial request.

(5) Fulfills the annual reporting requirement and maintains appropriate records.

(6) Acts as the responsible official for all initial denials of access to the public.

(b) All DIA elements:

(1) When identified by RTS–1B as the Office of Primary Responsibility (OPR) will:

(i) Search files for any relevant records, and/or

(ii) Review records for possible public release within the time constraints assigned, and

(iii) Prepare a documented response in all cases of nonrelease.

(2) All employees are required to read this part to ensure familiarity with the requirements of the FOIA as implemented.

(c) The General Counsel.

(1) Ensures uniformity in the FOIA legal positions within the DIA and with DoD.

(2) Secures coordination when necessary with the DoD General Counsel on denials of public requests.

(3) Acts as the focal point in all judicial actions.

(4) Reviews all final denials.

(d) The Director, and on his behalf the Deputy Director or Executive Director.

(1) Exercises overall staff supervision of the FOIA activities of the Agency.

(2) Acts as the responsible officials for all denials of appeals.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1988.

[FR Doc. 88–14948 Filed 7–1–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Mining and Mining Claims

AGENCY: National Park Service, Interior.
ACTION: Final rule.

SUMMARY: This final rulemaking revised existing National Park Service regulations at 36 CFR Part 9, Subpart A. These regulations govern the exercise of mineral rights within National Park System units in connection with patented and valid unpatented mining claims held under the Mining Law of 1872. The existing regulations were promulgated in 1977. This revision is intended to clarify the scope of the regulations and the relationship of these regulations to regulations governing access in Alaska at 43 CFR Part 36.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol McCoy, Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013-3127, (202) 523-5120.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the **Federal Register** on April 3, 1987, with a 45-day public comment period (52 FR 10866). On May 29, 1987, the National Park Service published a notice in the **Federal Register** extending the public comment period until June 29, 1987 (52 FR 19689). The National Park Service extended the public comment period a second time until September 4, 1987 (52 FR 28850).

During the public comment period, timely written comments were received from 81 sources: 8 corporations, 8 organizations, 1 State governmental agency, 1 State legislator, and 63 individuals. Several of these sources submitted comments on the proposed rule more than once.

In general, comments received from owners of mining claims or persons involved in the mining industry opposed the rule. Comments received from environmental organizations and over half of the individuals supported the proposed revision to 36 CFR 9.1 but were critical of proposed 36 CFR 9.3(d) that states that access across Alaska National Park System units to claims is governed by the regulations at 43 CFR Part 36. A section by section discussion of the public comments follows.

Section 9.1 Purpose and scope.

Thirty-one commenters questioned the authority of the National Park Service to regulate patented mining claims in National Park System units. In response, the Mining in the Parks Act (16 U.S.C. 1901) explicitly directed the Secretary of the Interior to regulate "all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System * * *" (16 U.S.C. 1902), without regard to when the claims were located or patented. The Congress did not modify this direction with the passage of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101, *et seq.*).

In 1977, pursuant to the Mining in the Parks Act, the National Park Service promulgated its current regulations contained at 36 CFR Part 9, Subpart A governing mineral development of patented and valid unpatented claims. The proposed revision at 36 CFR 9.1 made clear that these regulations govern all operations within National Park System units resulting from the exercise of valid mineral rights to mining claims, without regard to how access is gained to the claims. Under 36 CFR 9.2(b) "operations" is defined to include "* * * all activities and uses, * * * regardless of whether such activities and uses take place on Federal, State or private lands."

The proposed language at 36 CFR 9.1 was designed to address any confusion that may have resulted from the Department of the Interior's September 4, 1986, rulemaking (51 FR 31619) at 43 CFR Part 36, governing transportation and utility systems and access in Alaska pursuant to Title XI of ANILCA. ANILCA guarantees, subject to reasonable regulations, adequate and feasible access to inholdings, including valid mining claims, within or effectively surrounded by National Park and other conservation system unit lands in Alaska. ANILCA also provides temporary access across conservation system units to State or private lands outside such units.

In accordance with Title XI of ANILCA, the National Park Service promulgated interim regulations at 36 CFR 13.10-15 on June 17, 1981, governing access within and across National Park System units in Alaska. Those regulations at 36 CFR 13.15(d)(1), stated that "* * * no plan of operations is required for patented claims where access is not across federally-owned parklands." The Departmental rulemaking of September 4, 1986, at 43 CFR Part 36 repealed all of the 36 CFR 13.15(d). Since ANILCA does not amend the Mining in the Parks Act, the Department determined that there was no basis for the exception at 36 CFR 13.15(d)(1). Thus, the provisions of former 36 CFR 13.15(d) no longer apply.

Several commenters concluded that the clarification regarding 36 CFR 13.15(d)(1) adversely affects proposed mining operations because such operations would no longer be exempt from the plan of operations requirements of 36 CFR Part 9, Subpart A. However, the National Park Service knows of no operators who have or would have qualified for the exemption at former 36 CFR 13.15(d)(1), even if that regulation had not been removed.

Two commenters stated that the proposed change to 36 CFR Part 9, Subpart A could affect the subsurface estate owned by Native Regional Corporations in National Park System units in Alaska. The 36 CFR Part 9, Subpart A regulations do not govern mineral activities in connection with Native Corporation-owned subsurface mineral rights established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). Rather, the 36 CFR Part 9, Subpart A regulations govern mineral development in National Park System units in connection with mineral rights established under the Mining Law of 1872 (30 U.S.C. 28 *et seq.*).

Forty-six commenters supported the revision to 36 CFR 9.1 because they said Congress clearly intended the Secretary to regulate all mining activities in National Park System units in connection with mining claims, including patented claims.

In conclusion, the Service is finalizing the language of § 9.1 as proposed.

Section 9.3 Access permits.

Forty-six commenters expressed a negative opinion on proposed § 9.3(d). Proposed § 9.3(d) sought to clarify the relationship of the regulations at 36 CFR Part 9, Subpart A and 43 CFR Part 36. In promulgating 43 CFR Part 36, the Department stated that all access in conservation system units in Alaska would be governed by those regulations. As a result, the National Park Service stated in its proposed rule that, in Alaska, an operator's access to a claim within or outside a unit is governed by 43 CFR Part 36 and thus § 9.3 (a), (b) and (c) are inapplicable.

The commenters correctly pointed out that the Mining in the Parks Act and the regulations at 36 CFR Part 9, Subpart A govern all mining activities in National Park System units in connection with mining claims. The commenters, therefore, concluded that 36 CFR Part 9, Subpart A should govern access to claims in Alaska National Park System units just as 36 CFR Part 9, Subpart A governs access to claims in units outside Alaska. The commenters requested that

the National Park Service delete or modify proposed 36 CFR 9.3(d).

The National Park Service has considered this issue and decided that the proposed regulation at 36 CFR 9.3(d) is necessary to make the mining regulations consistent with the Department's Title XI regulations at 43 CFR Part 36. A detailed explanation of the rationale for 36 CFR 9.3(d) and its practical effect follows.

Access for Inholders. Title XI of ANILCA provides a right of adequate and feasible access for economic and other purposes to inholdings in conservation system units, including National Park System units, in Alaska, subject to reasonable regulations (16 U.S.C. 3170(b)).

On September 4, 1986, the Department promulgated regulations at 43 CFR Part 36 that govern all access across Alaska National Park System units, pursuant to ANILCA and the National Park Service Organic Act (16 U.S.C. 3). These regulations at 43 CFR 36.10 govern "adequate and feasible" access to inholdings within National Park System units in Alaska. ANILCA and the Title XI rulemaking explicitly include mining claims as inholdings (43 CFR 36.10(a)(4)). Moreover, the right of "adequate and feasible access" to an inholding is a right not simply to ingress and egress, but a right to construct larger systems, such as those defined in 43 CFR 36.2(p). (See 51 FR 31624.)

Under the 43 CFR Part 36 regulations, an operator, as an inholder, may secure access to a claim if the desired access is affirmatively provided for by the regulations. Or, if the operator requires more extensive access than that provided affirmatively under the 43 CFR Part 36 regulations, the operator may seek that access by filing a Standard Form (SF) 299 for a right-of-way permit. For operators on mining claims that are inholdings, the regulations provide that the operator may file a proposed plan of operations, pursuant to 36 CFR Part 9, Subpart A as the application for access, in lieu of a SF 299. However, the regulations do not require that operators file plans of operations prior to applying for or obtaining a right-of-way permit for access to a claim. Thus, it is possible that an operator in an Alaska National Park System unit may file a SF 299 for a right-of-way permit for access without first submitting a proposed plan of operations under 36 CFR Part 9, Subpart A.

The forty-six commenters objected to operators independently gaining access to a mine on a claim under 43 CFR Part 36, without first having an NPS approved plan of operations. For example, an operator intending to mine on a claim may wish to bring heavy equipment to a claim, or construct a road or powerline to a claim under the regulations at 43 CFR Part 36, even though the operator has no assurance that the National Park Service will subsequently approve operations on the claim. Since the operator may not conduct any "operations" on the claim without an approved plan, the heavy equipment, road or powerline are of little value for mining the claim. Moreover, such access may result in unnecessary disturbance to park resources.

The 43 CFR Part 36 regulations are written to prevent the type of situations described above. The regulations provide that an inholder's application for a right-of-way permit is tied to the use that the inholder intends for the inholding (43 CFR 36.10(c)(2)). The regulations further require that before issuing a right-of-way permit to the inholder, the National Park Service must determine, among other things, that the method of access sought is necessary "to accomplish the applicant's land use objective" (43 CFR 36.10(e)). If the National Park Service determines that the proposed method of access sought in the application is not necessary for that objective, the National Park Service must specify an alternative route or method of access that will provide the inholder with adequate and feasible access (43 CFR 36.10(e)(2)).

Access to Claims Outside National Park System Units. The regulations at 43 CFR Part 36 also provide access to claims in Alaska that lie outside National Park System units and that are not inholdings as defined by 43 CFR 36.10(a)(4).

Operators on claims outside National Park System units in Alaska may apply for temporary, short-term access across Federal lands in the unit, if such access does not require permanent facilities (43 CFR 36.12). Such operators need not submit a proposed plan of operations under 36 CFR Part 9, Subpart A to gain a permit for access across lands in the National Park System unit in Alaska.

Outside Alaska, the provisions of 36 CFR 9.3(c) continue to govern access across lands in a National Park System unit to claims outside the unit. The regulations at 36 CFR 9.3(c) limit such access to foot, pack animal or designated road. To gain access by designated road, the operator must possess an NPS approved plan of operations covering the access that is proposed, routes, times, frequencies, and methods of ingress and egress. Additionally, the operator must post a bond.

In conclusion, the National Park Service has determined that proposed § 9.3(d) is necessary and adopts it through this final rulemaking.

Federal Paperwork Reduction Act

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

Compliance With Other Laws

The Department of the Interior has determined that this regulation is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this regulation 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.*).

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331, *et seq.*), the National Park Service prepared an environmental assessment on the proposed rulemaking and made it available to the public upon request. Because the language contained in this final rulemaking mirrors the language contained in the proposed rulemaking, no additional analysis was needed to comply with NEPA. Based on the assessment, the National Park Service has concluded that the implementation of this final rule will not have a significant effect on the quality of the human environment. The assessment is on file in the Land Resources Division offices of the National Park Service: Room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127, WASO 660, Washington, DC 20013-7127); and 12795 West Alameda Parkway, Room 221, Denver, Colorado (P.O. Box 25287, Denver, Colorado 80225) and at the National Park Service Alaska Regional Office, 2525 Gambell Street, Room 206, Anchorage, Alaska 99503.

List of Subjects in 36 CFR Part 9

Environmental protection, Mines, National Parks, Oil and gas exploration, Public lands—Minerals resources, Public lands—Right-of-way.

For reasons set out in the preamble, Title 36, Chapter I, Part 9, Subpart A of the Code of Federal Regulations, is amended as follows:

PART 9—[AMENDED]

1. The authority citation for Part 9 continues to read as follows:

Authority: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 *et seq.*); Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 1 *et seq.*);

Act of September 28, 1976 (90 Stat. 1342; 16 U.S.C. 1901 *et seq.*).

2. Section 9.1 is revised to read as follows:

§ 9.1 Purpose and scope.

These regulations control all activities within units of the National Park System resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims without regard to the means or route by which the operator gains access to the claim. The purpose of these regulations is to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units is preserved for the benefit of present and future generations. These regulations apply to all operations, as defined herein, conducted within the boundaries of any unit of the National Park System.

3. Section 9.3 is amended by adding a new paragraph (d) to read as follows:

§ 9.3 Access permits.

* * * * *

(d) In units of the National Park System in Alaska, regulations at 43 CFR Part 36 govern access to claims, and the provisions of 36 CFR 9.3 (a), (b) and (c) are inapplicable.

Dated: May 24, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15022 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-70-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

[FPMR Amdt. G-87]

Prepayment Transportation Audit Procedures

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations for the purpose of implementing Pub. L. 99-627 relating to prepayment audits of transportation bills. This regulation prescribes procedures, conditions, and limitations relevant to any delegation of authority to another agency for the purpose of conducting prepayment audits.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, Office of the Controller, (202) 786-3065 or FTS 786-3065.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) was published on December 23, 1987, (52 FR 48547), inviting comments within 60 days ending February 22, 1988. The period for comments on the proposed rule was extended until March 23, 1988, at the request of a carrier association. The extension was requested and granted prior to the expiration of the comment period.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweight the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Final Regulatory Flexibility Analysis

In accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 603), the following final regulatory flexibility analysis is provided:

(a) A description of the reasons why action by GSA is being considered is provided in the "Reasons and Basis for this Rule" section below.

(b) The objective of this rule is set forth in the "Summary" paragraph above. The legal basis is provided by law, 31 U.S.C. 3726. Any activities conducted pursuant to this rule, when permitted, must be cost-effective or otherwise in the public interest.

(c) This rule may affect all transportation firms doing business with the United States Government to the extent that their bills are selected for prepayment audit by either GSA or its designee. For the most part, it is not expected that the effect will be either adverse or noticeable since this rule requires a prepayment audit to be accurately completed within 15 days. There is, however, the distrinct possibility that prepayment audit activity could occasionally delay otherwise proper payments to carriers. On those occasions, the Government is obligated to pay interest in accordance with the Prompt Payment Act. Further, if it appears that a prepayment audit activity is not continuing to audit in a timely, accurate, or cost-effective manner, GSA has authority to withdraw its delegation of authority. Delegations may involve any mode of transportation and/or type of bill, and in particular instances, may affect a lesser or greater number of similar entities. While they are not being treated any differently than other carriers/forwarders, small general commodity or other freight trucking, trip lease, or forwarding firms; small air carriers/forwarders of freight and/or passengers; small domestic household goods carriers/forwarders (including office and electronic movers); and other small business entities may be less able to handle the adverse cash flow effects of this rule, if any, because of their own peculiar circumstances.

(d) No recordkeeping or reporting is required beyond that which is usual and customary for the ordinary conduct of business.

(e) There are no known Federal rules which duplicate, overlap, or conflict with the proposed rule.

(f) Suggestions from commenting parties to the proposed rule were considered, and if appropriate, adopted. The only known alternative to the final rule is not to publish it. This alternative would result, in many circumstances, in the Government initially paying more for a transportation service than it would be legally required to pay. Congress has already determined that agencies will avoid paying overcharges in the first place and that they will avoid this through the development of a prepayment audit for transportation services. Congress granted no exemptions from this mandate for particular carriers/forwarders or classes of carriers/forwarders, and the granting of exemptions from the rule would be discriminating and counterproductive.

Reasons and Basis for This Rule

Public Law 99-627, dated November 7, 1986, amended section 3726 of title 31 of the United States Code to provide the Administrator of General Services with authority to audit selected transportation bills prior to payment, and to allow the delegation of any authority conferred by section 3726 to another agency or agencies if the Administrator determined that such a delegation would be "cost-effective or otherwise in the public interest."

Since 1975, GSA's Office of Transportation Audits has had Governmentwide responsibility for the postpayment audit of all freight and passenger transportation invoices and

recovery of charges paid by Federal agencies that are not based on the lowest applicable rates. Prior to 1975, the General Accounting Office (GAO) performed the Government's rate audit function.

Historically, there were significant delays from the date of the transportation service to the date the Government made payment, because of the time required by GAO to perform the very intricate rate audit. In the 1940's, in reaction to industry complaints, Congress directed agencies to pay bills for transportation services upon presentation by the carrier with audit after payment.

Determining whether a transportation charge is correct is a complex process. An auditor must possess a thorough knowledge of tariffs (published commercial rates), tenders (special, lower Government rates), contracts (negotiated rates for specific shipments or groups of shipments), and other rate authorities, to properly audit a carrier's bill.

During fiscal year 1987, GSA's Office of Transportation Audits identified more than $58 million in rate overcharges. GSA employs 187 professional and support staff members to handle the large volume of transportation invoices paid by civilian and military activities.

For the most part, GSA intends to exercise its prepayment audit authority primarily in those instances specified in 41 CFR 101–41.103(i) where it can be reasonably concluded that the Government's right to setoff, if necessary, to prevent overpayments and to collect overpayments and other debts, is not adequately protected.

Many agencies believe that a prepayment audit would prevent overpayments. However, knowledgeable of the complexities of auditing transportation payments, GSA concludes that prepayment audit authority should be delegated only to those agencies which clearly demonstrate they are capable of performing a timely, accurate, and cost-effective audit within the requirements of the Prompt Payment Act.

It is not GSA's intention to relinquish its postpayment audit of oversight role.

Discussion of Major Comments, Suggestions, and Determinations, and Actions Taken

All comments received were considered in the final determination. There were nine responses to the NPRM: Six from carrier trade associations, two from carrier companies, and one from a Government department. Both carrier companies filed comments after the deadline of the comment period. Since these two filings were intended as attachments to a carrier association comment which was timely filed, GSA considered the carrier company comments along with the other responses to the proposed rulemaking.

The following summarizes major comments and suggestions, and GSA's determinations and actions taken.

Cost-effectiveness of Rulemaking

Four carrier associations questioned the cost-effectiveness of prepayment audits and expressed the concern that GSA has already made a determination of cost-effectiveness without proof. We have not decided that prepayment audits by any particular Government activity is cost-effective. GSA's rulemaking requires activities to demonstrate cost-effectiveness or other public benefits at the time an agency requests prepayment audit authority. GSA also added paragraph (n) to § 101–41.103 which states that a prepayment audit delegation may be suspended if the cost of the audit exceeds the benefits derived.

One carrier association suggested that specific criteria for determining cost-effectiveness be included in the final rule. This proposal is impractical and has not been adopted because the cost factors incident to the implementation of prepayment audit authority will vary with the situation. In its review of any prepayment audit delegation request, GSA will ensure assertions of cost-effectiveness are based on generally recognized cost elements and that agency evaluations are comprehensive and consider all pertinent data. GSA also plans to exercise continuous oversight of prepayment audit delegations. Cost-effectiveness will be a factor that is reviewed on an on-going basis.

Four carrier associations also questioned whether a prepayment audit could ever be cost-effective if a postpayment audit is also conducted. One carrier association wanted bills subjected to a prepayment audit to be exempted from GSA's postpayment audit. One carrier expressed concern that the same transportation transaction could be ultimately disputed by both prepayment and postpayment auditors. We took no action on these issues. In enacting Pub. L. 99–627, the legislation authorizing prepayment audits, it is clear that Congress anticipated that a dual audit would be conducted. The related House Report (99–932, p. 11) indicates the Congress envisioned a system where the Government would verify the accuracy of most charges before a transportation provider is paid. In addition, the Report makes it clear that the Committee intended no departure from the concept of a centralized audit responsibility with a postpayment audit as embodied in Pub. L. 93–604 (see House Report 93–1300.) GSA acknowledges the cost-effectiveness factor and plans to reallocate postpayment audit resources as agency prepayment audits are proven to be effective in specific modal areas. However, GSA transportation audits oversight responsibility will always require the postpayment audit of some bills as part of its quality control efforts.

Selection of Bills for Prepayment Audit

Concern was expressed by all parties about the method used to select bills for prepayment audit. Comments from the Government department opposed GSA's requirement that the character of the bills to be audited ("case by case basis") be indicated in any request for prepayment audit delegation and recommended a more flexible arrangement where a general delegation would be provided. Carrier industry comments, on the other hand, wanted specific standards incorporated in the rule which would discourage agencies from targeting specific carriers or groups of carriers for prepayment audit. To resolve these issues, GSA made three revisions to the rule. To provide more flexibility for the Government department, GSA removed the phrases "the character of the bills to be audited," (§ 101–41.103(a)); and "the type of bills that are subject to prepayment audit," (§ 101–41.103(f)). To preclude the possibility of discriminatory treatment against a carrier or group of carriers, GSA added subparagraph (m) to § 101–41.103 which specifies that prepayment audits must be conducted in a nondiscriminatory manner.

Special Prepayment Audits of Particular Carriers by GSA

Five carrier associations objected to § 101–41.103(i), and recommended that guidelines be included in the final rule. We adopted this recommendation and revised § 101–41.103(i) to provide criteria as to when GSA may conduct a prepayment audit of carrier bills and to specify the goal of such auditing. One carrier association recommended that § 101–41.103(i) be deleted because the provision of the Bankruptcy Code (11 U.S.C. 362(a)(7)) which stays setoff of prepetition debts upon the filing of the petition requires the Government to pay carriers in bankruptcy. We did not adopt this proposal because such action would waive the Government's right to setoff, as provided in 11 U.S.C. 553. As

clarification, amounts withheld by GSA are limited to the adequate protection of our right of setoff against amounts of existing and projected overpayments and any other debts due to other agencies. Prepayment audits are also conducted to identify excess billings. Actual setoff will be accomplished in accordance with the law. Ultimately, the Bankruptcy Court will decide on what adequate protection is sufficient. See 11 U.S.C. 362(d).

Interest on Late Payments

Some carrier associations expressed concern that a prepayment audit would lead to late or withheld carrier payments because the Prompt Payment Act is ignored by agencies or is an inadequate remedy for late payments because it does not offset carrier cash flow problems. One carrier recommended a definitive list of specific provisions (e.g., the method for calculating interest) be included in the final rule. We did not adopt this proposal because interpretation of the Prompt Payment Act is a matter of agency discretion and may not be augmented by GSA. Some carrier associations recommended amendments which would provide for interest pursuant to the Contracts Dispute Act of 1978. We did not adopt these proposals because claims for transportation services acquired under section 321 of the Transportation Act of 1940, as amended (49 U.S.C. 10721), are not subject to the disputes resolution procedure of the Contract Disputes Act.

Other Actions To Assure Timely Payments

Three carrier associations recommended that provisions be added to the final rule to encourage timely payments by agencies. Some suggested provisions would impose: (a) Termination of prepayment audit authority should accurate audits and notices of overcharge not be completed within 15 calendar days; (b) a minimum percentage of timely payments required during a specific period and loss of audit authority for an equal period should the percentage not be achieved; and (c) a payment equivalent to the interest rate be extracted from an audit contractor or agency for late payments. In response to carrier concerns, GSA added a subparagraph to the final rule (41 CFR 101–41.103(n)) which specifies the conditions under which a prepayment audit delegation may be suspended.

One carrier suggested that agencies with audit backlogs might send transportation bills to GSA as doubtful claims, perhaps citing 41 CFR 101–41.604–2(b)(3), and thereby avoid interest payments. Our rule directs agencies to pay up to the amount that is proper, and to withhold only those amounts which can be reasonably disputed. GSA will not tolerate the type of agency abuse envisioned by the carrier and will take immediate appropriate action should the abuse occur.

While GSA cannot promulgate rules interpreting rights under the Prompt Payment and Contract Disputes Acts, we invite carrier comments on instances of suspected Prompt Payment abuse as a supplement to our postpayment oversight auditing and onsite inspections.

Initial Regulatory Flexibility Analysis

One carrier association expressed the concern that GSA was targeting small household goods carriers in development of the proposed rule. In referencing small carriers in the NPRM, GSA was simply trying to alert small businesses to the proposed rule and elicit their comments since these activities would be the most sensitive to changes in Government payment procedures.

Review of Audit Actions

One carrier association suggested that agency Boards of Contract Appeals (BCAs) must be used as a forum for audit disputes. To be reviewed by the BCA, a claim must be subject to the Contract Disputes Act of 1978. This is not the case for transportation claims arising under section 321 of the Transportation Act of 1940 which are subject to review by GSA, the Comptroller General, or the Court of Claims. (See the Comptroller General's Decision in 62 Comp. Gen. 203.)

Other Dispute Resolution Procedures

One carrier association proposed that agencies be allowed only 10 days to adjudicate a claim, not the 30 days proposed in the rulemaking. This proposal was not adopted. While most claims could be reviewed and a decision reached within 10 days, necessary documentation is not always available and some claims would require additional time. However, GSA will include timely review of claims in its performance reviews of prepayment auditors.

The same carrier association recommended that GSA place time limits on its processing of appeals and provide a standard for review. GSA intends to process claims in accordance with procedures prescribed in 41 CFR 101–41.6. These procedures do not specify time limits for GSA actions but do provide for a complete and independent review based on all facts of the record. We are not adverse to the placement of time limits on GSA claim processing, but those limits ought to be considered in the context of a rulemaking involving all claims.

Required Automation

One carrier association recommended that GSA's requirement concerning use of automation be strengthened to require an agency to demonstrate existing automation capabilities sufficient to handle the estimated volume of transportation bills without payment delays. The Government department, on the other hand, recommended that automation not be required if an opportunity exists to save substantial transportation dollars in a less than fully automated environment. On consideration of both arguments, we determined that full automation should not be a requirement for a prepayment audit delegation and deleted the reference in § 101–41.103(c). The 15-day time constraint and cost-effectiveness requirements imposed by the rulemaking should foster automation. Therefore, we believe no additional regulatory requirement is necessary.

Public Comment on Delegations

Three carrier associations recommended that each proposed delegation of prepayment audit authority be made the subject of public review and comment. We did not adopt this proposal. The purpose of this rulemaking is to establish guidelines which will enable the Administrator of GSA or his/her designee to make prudent decisions on prepayment audit delegation requests. Interested parties, however, may obtain copies of delegation requests under the Freedom of Information Act.

Exemptions for Delegations

One carrier association recommended that transportation bills from air passenger and small package air carriers be exempted from prepayment audit. Three other carrier associations suggested that bills from household goods carriers be exempted. We did not adopt these proposals. Congress' mandate that the Government avoid paying overcharges in the first place is related to all modes of transportation. No exemptions were provided in the authorizing legislation.

Recovery of Administrative Costs

One association recommended the final rule contain a provision imposing fees to cover administrative costs incurred by carries to process claims to

recover amounts "wrongfully" withheld for adjudication. GSA does not have the authority to prescribe rules incident to the recovery of administrative costs. We may, however, withdraw a prepayment audit delegation from any agency abusing its authority.

Content of Notice Advising Carriers of Incorrect Billings

One carrier association suggested that the content of the notice advising carriers of incorrect billings be GSA-prescribed, and another also critical about GSA's failure to prescribe the content of the notice, used as examples notice documents issued by an agency conducting a test of International Through Government Bill of Lading prepayment audits. We did not adopt the proposal of the first association because the specificity of a notice of overcharge varies with transportation mode and the provisions of the rulemaking are as specific as possible. However, we invite carriers to forward examples of an audit activity's failure to provide an adequate notice. GSA will take steps to ensure future notices contain the necessary information.

Prompt Payment Act

Several carrier associations expressed a variety of concerns about the exceptions permitted under the Prompt Payment Act itself. The general exceptions permitted under this legislation are not wtihin our purview, and criticisms could be better addressed by the agency involved, the Office of Management and Budget or the appropriate congressional committee.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding § 101–41.103 and revising § 101–41.401 as follows:

101–41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

101–41.401 Payment of transportation bills.

Subpart 101–41.1—General

3. Section 101–41.101 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 101–41.101 Examination of payments, settlement of claims, and review of requirements.

Section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726), permits transportation bills to be paid prior to audit by the Administrator of General Services or his/her designee in accordance with regulations that the Administrator shall prescribe.

(a) The authority vested in the Administrator of General Services by 31 U.S.C. 3726, as amended, enables the Administrator, or his/her designee, to:

(1) Audit selected transportation bills prior to payment;

(2) Examine, settle, and adjust accounts involving payment for transportation and related services for the account of the United States;

(3) Adjudicate and settle transportation claims by and against the United States;

(4) Deduct the amount of any overcharge by any carrier or forwarder from any amount subsequently found to be due such carrier or forwarder; and

(5) Delegate any authority conferred on the Administrator to another agency or agencies if the Administrator determines that such a delegation would be cost-effective, accurate, timely, or otherwise in the public interest.

* * * * *

4. Section 101–41.103 is added to read as follows:

§ 101–41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

(a) Except for the authority exercised by GSA in § 101–41.103(i), requests for a delegation of authority from the Administrator of General Services to conduct prepayment audits shall be accompanied by a specific and complete description of the organization to perform the audit and the manner whereby the audit will be conducted. Such requests shall demonstrate cost-effectiveness or other public benefits.

(b) Prepayment audits by GSA's Office of Transportation Audits on behalf of itself and/or other agencies, need not be approved by the Administrator because the authority to conduct prepayment audits is already provided by law.

(c) Each request shall include a detailed model of the audit process from receipt of carrier bills to disbursement and the subsequent submission of paid vouchers to GSA for postpayment audit.

(d) The requester shall demonstrate the capability not only to complete an accurate audit within 15 calendar days of receipt of a carrier's bill, but also evidence the ability to generate an accurate notice to the carrier which specifically describes the reason for any full or partial rejection of the carrier's charges, citing the rate authority applicable thereto.

(e) The request shall contain a mechanism to report savings, on a monthly basis and in a manner acceptable to GSA, accomplished by identifying overcharges/overbillings through prepayment audit.

(f) Public notice of delegated authorities will be effected by publication in the **Federal Register** notices section. Such notices will specify the Government department/agency whose bills are subject to such audit and the organization or command; i.e., the activity which will conduct such audits.

(g) Authority delegated in accordance with this section is subject to complete oversight by GSA. This oversight and a test of accuracy will be made through the postpayment audit process and through onsite inspection. To assist in this process, prepayment audit activities (and/or their contractors) are required to stamp each bill so audited with a certification substantially as follows: "I certify that this bill was audited and certified for payment in the amount of $____." The stamp will also indicate both the name of the audit activity and the name of any contractor involved, and be initialed and dated by the auditor. Paid bills that were subject to prepayment audit must be forwarded to GSA, Attn: FWA (Code PA), under separate cover.

(h) Except as provided in § 101–41.604–2, when a prepayment audit results in a reduction to a properly presented invoice, interest penalties will be paid if required by the Prompt Payment Act. The designee must approve for payment the amount claimed by the carrier, reduced only by the amount disputed on prepayment audit, or otherwise allowed to be withheld by law or regulation.

(i) *Unpaid bills.* (1) Notwithstanding any other provision herein, GSA may request that agencies forward unpaid transportation bills approved for payment after prepayment audit by a designee agency (if any), in lieu of payment to the carrier/forwarder, in order to adequately protect the Government's right to setoff or where

the best interests of the Government so require.

(2) These unpaid bills shall be audited only to the extent necessary to prevent excess billings and to adequately protect the Government's right to setoff for identified and projected overpayments, and for known debts owed to other agencies.

(3) Consistent with the purpose of paragraphs (i) (1) and (2) of this section, GSA may conduct a prepayment audit of carrier bills in the following circumstances:

(i) The carrier/forwarder is involved in a proceeding under the Bankruptcy Code as a debtor or possible debtor, or is subject to the control of a receiver, trustee, or other similar representative;

(ii) The carrier/forwarder consistently fails to refund overcharges without assertion of substantial defense or other valid reasons when notified by GSA or any other interested Government agency;

(iii) The carrier/forwarder, without good cause, fails to make timely disposition or settlement of loss or damage or other claims asserted by agencies of the United States;

(iv) The carrier/forwarder owes substantial sums of money to the United States for which no adequate arrangements for settlement have been made;

(v) The carrier/forwarder, as a person or business entity, was determined administratively for valid reasons to be ineligible for payment, unless after review of the facts and in the absence of objection by the U.S. General Accounting Office, it is determined administratively that the best interests of the United States will not be jeopardized by such payment;

(vi) The carrier/forwarder voluntarily withdraws or is otherwise involuntarily terminated from an agency-wide transportation program; or

(vii) Any other circumstances where a reasonable person, in the exercise of ordinary prudence, would conclude that the carrier/forwarder is in such financial condition that is ability to pay debts owed to the Government is questionable.

(4) Carriers/forwarders subject to prepayment audit by GSA for the reasons outlined in § 101–41.103(i)(3), may offer substitute arrangements to adequately protect the Government's right to setoff in consideration for the avoidance of prepayment audit and/or a release of funds deemed adequate by the Government to pursue its right of setoff.

(5) The exercise of actual setoff shall be conducted in accordance with the law.

(j) All forms used by the designee or its audit activity in performing the prepayment audit must be approved by GSA (attn: FWC) prior to usage, and no rules or procedures relative to the prepayment audit may be published by them without GSA approval.

(k) The designee and any audit activity under him/her is required to follow Comptroller General decisions and Federal Property Management Regulations, instructions, and precedents regarding substantive and procedural matters.

(l) The designee may utilize contractors to accomplish the prepayment audit, but contractors are subject to all of the requirements that apply to the designee and his/her audit activity.

(m) Except as provided for GSA in § 101–41.103(i), prepayment audit authority exercised under this paragraph will not be directed to a particular carrier but may be directed toward specific types or categories of bills or exercised in some other nondiscriminatory manner.

(n) GSA will exercise continuous oversight of the delegated prepayment audit authority. A delegation of authority to conduct a prepayment audit may be suspended in whole or in part by the Director, Office of Transportation Audits for failure to properly conduct prepayment audits. Such failures may include any of the following:

(1) Failure to conduct an accurate audit (not less that 85 percent accuracy).

(2) A pattern of failure to make timely payments, or failure to inform carriers within 15 days of defective invoices (Prompt Payment Act time limitations).

(3) Audit not cost-effective, i.e., where the cost of the audit exceeds the benefits derived.

(4) Failure to adjudicate carriers' claims disputing prepayment audit positions of the designee agency within 30 days of receipt.

(5) Failure of the designee, or any audit authority under it to follow Comptroller General decisions, Federal Property Management Regulations, and instructions, or precedents regarding substantive and procedural matters.

(6) Failure to provide information/data, or to cooperate in onsite inspections, necessary to analyze cost-effectiveness or to conduct a quality assurance review.

Subpart 101–41.4—Standards for the Payment of Charges for Transportation Services Furnished for the Account of the United States

5. Section 101–41.401 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101–41.401 Payment of transportation bills.

(a) Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary under 41 CFR 101–41.103(i), each agency or department shall pay any properly documented bill (claim) for freight passenger transportation charges that is not excepted by the provisions of § 101–41.604–2.

* * * * *

Subpart 101–41.6—Claims Against the United States Relating to Transportation Services

6. Section 101–41.604–1 is amended by revising the introductory paragraph to read a follows:

§ 101–41.604–1 Transportation claims payable by agencies.

Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary under 41 CFR 101–41.103(i), each agency or department shall pay any properly documented bill (claim) for freight or passenger transportation charges that is not excepted by the provisions of § 101–41.604–2 provided the following guidelines are observed:

* * * * *

7. Section 101–41.604–2 is amended by adding paragraph (b)(7) to read as follows:

§ 101–41.604–2 Transportation claims not payable by agencies.

* * * * *

(b) * * *

(7) Irreconcilable claims disputing prepayment audit positions of agencies that are subject to a delegation of authority by the Administrator under § 101–41.103. All claims protesting an audit activity's prepayment audit position will be addressed to that activity. The activity shall promptly acknowledge the claim in writing and stamp it with its date of receipt. The activity must adjudicate the claim within 30 days of receipt, but if the authority fails to approve all or any portion of the carrier's claim, it shall make a final decision providing a clear, specific, and detailed written explanation of its position. If the carrier is dissatisfied with the activity's final

decision, it may appeal that decision to GSA, providing a copy of all documentation involved in the record, including a copy of the audit activity's decision. All such appeals shall be forwarded by the carrier to GSA, Attn: FWC (Code PA), Washington, DC 20405.

Dated: June 16, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88-14952 Filed 7-1-88; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-301; RM-5821]

Radio Broadcasting Services; Dunnellon, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C2 for Channel 272A at Dunnellon, Florida, and modifies the Class A license for Station WTRS-FM to specify Channel 272C2, at the request of the licensee, Asterisk Communications, Inc., at coordinates 29-14-06 and 82-24-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-301, adopted May 11, 1988, and released June 8, 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 for Dunnellon, Florida by adding Channel 272C2 and removing Channel 272A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-14958 Filed 7-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-365; RM-5777]

Radio Broadcasting Services; Pella, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of GBA, Inc., substitutes Channel 277C for Channel 277C1 at Pella, Iowa, and modifies its license for Station KFMD(FM) to specify the higher powered channel. Channel 277C can be allotted to Pella 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 41-24-36 and West Longitude 92-55-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 87-365, adopted May 2, 1988, and released June 8, 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 Iowa is amended by revising the entry for Pella by removing Channel 277C1 and adding Channel 277C.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88-14959 Filed 7-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-183; RM-5190 and RM-5441]

Radio Broadcasting Services; Camden and Rockland, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 277B1 for Channel 228A at Rockland, Maine, in response to a counterproposal filed by Passamaquoddy Broadcasting, Inc. The original petition filed by Northern Lights Broadcasting requested the allotment of FM Channel 277B to Camden, Maine. Northern Lights Broadcasting did not file comments in support of a channel at Camden. John J. Pineau did file comments in support of a channel at Camden but has since withdrawn his interest in applying for the channel. In accordance with § 1.420(g) of the Commission's Rules, we shall modify the license for Station WMCM-FM, Rockland, Maine, to specify operation on Channel 277B1, since no other expressions of interest have been received for the channel. Concurrence of the Canadian government has been obtained since Rockland, Maine is within 320 kilometers of the U.S.-Canadian border. In addition, the proposal for Rockland must conform with the technical requirements of § 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine. The coordinates for Channel 277B1 are 44-06-12 and 69-06-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-183, adopted May 2, 1988, and released June 8, 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 Maine by removing Channel 228A and adding Channel 277B1 of Rockland.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–14957 Filed 7–1–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–600; RM–6117]

Radio Broadcasting Services; White Rock, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Torjaq Radio, Inc., substitutes Channel 266C2 for Channel 266A at White Rock, New Mexico, and modifies its permit for Station KTJB to specify the higher powered channel. Channel 266C2 can be allotted to White Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) northeast to avoid a short-spacing to the pending applications for Channel 267A at Albuquerque, New Mexico. The coordinates for this allotment are North Latitude 35–54–12 and West Longitude 106–09–16. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 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. 87–600, adopted May 9, 1988, and released June 8, 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 New Mexico is amended by revising the entry for White Rock by removing Channel 266A and adding Channel 266C2.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–14960 Filed 7–1–88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 128
Tuesday, July 5, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Public Workshop for NRC Rulemaking on Maintenance of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of information to be discussed at workshop.

SUMMARY: On March 23, 1988, the Commission published a final Policy Statement on Maintenance of Nuclear Power Plants. In the Policy Statement, the Commission stated it expected to publish a Notice of Proposed Rulemaking in the near future, and has directed the staff to develop such a Notice of Proposed Rulemaking. In order to solicit information and comment from the public and regulated industry early in the formulation of the proposed rule, NRC plans to conduct a workshop. The agenda of the workshop was published in the **Federal Register** (53 FR 20856) on June 7, 1988. A memorandum from Victor Stello, Jr., Executive Director for Operations, to the Commissioners, dated June 27, 1988, "Proposed Rulemaking for the Maintenance of Nuclear Power Plants," providing information to be discussed at the workshop, is now available for review at the NRC Public Document Room in Washington, DC. The memorandum presents five rulemaking options including a "strawman" rule for the Commission's preferred option. Comments on the "strawman" rule for the preferred Commission option and approaches for other rulemaking options will be solicited at the workshop.

DATE: Workshop will be held on July 11–13, 1988.

ADDRESS: Workshop will be held at the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Memorandum is available for review at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3730.

Dated in Rockville, Maryland this 28th day of June, 1988.

For the Nuclear Regulatory Commission.

Moni Dey,

Task Manager, Advanced Reactors and Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88-15007 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 569c

[No. 88-496]

Conservators and Receivers; Priority of Claims; Depositor Priority

Date: June 23, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is publishing a proposed rule to revise its receivership regulations at 12 CFR 569c.11(a)(6) to establish a priority for withdrawable deposits and accounts, including those of the FSLIC as subrogee or transferee, over unsecured claims of general creditors in receiverships of federally chartered associations or savings banks in States that provide such a priority for depositors in State-chartered savings and loan associations ("depositor preference legislation"). In addition, the Board is requesting public comment whether § 569c.11(a)(6) should be revised to recognize a depositor priority in the administration of FSLIC receiverships of: (1) All Federal associations and Federal savings banks, regardless of location, or (2) all Federal savings bank and all institutions for which the FSLIC is appointed as receiver by the Board.

DATE: Comments must be received by August 4, 1988.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Public comments received on this proposed rule and the request for comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377–6428; Ronald A. Brown, Associate General Counsel for FSLIC, (202) 377–7044; or Michael B. Phillips, Attorney, Office of General Counsel, (202) 377–6755; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction—The Establishment of a Depositor Priority for Purposes of the Administration of FSLIC Receiverships

In a final rule published concurrently with the issuance of this proposed rule, the Board promulgated as a final rule certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the **Federal Register** of November 27, 1985 (50 FR 48970, 48995). The final rule established a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the Code of Federal Regulations.

This proposed rule would amend § 569c.11 to recognize a depositor priority for deposits registered at offices of federally chartered institutions located in States with depositor preference legislation. The Board also requests comment whether this rule should provide (1) depositor priority over general creditors for all Federal associations, regardless of location, or (2) depositor priority over general creditors for all Federal savings banks and all institutions for which the Board appoints the FSLIC as receiver.

Current § 569c.11(a)(6) recognizes State law priorities with respect to depositors for State-chartered institutions, including a provision in that section for depositor priority over claims of unsecured general creditors for FSLIC-insured institutions chartered by those States having depositor preference legislation. Depositor claims in Federal associations have the same priority as the claims of unsecured general creditors.

The primary benefits of revising current receivership regulations at

§ 569c.11(a)(6) to recognize a "depositor preference" for Federal associations (to parallel the coverage for State-chartered institutions under that section) have been described, for purposes of bank receiverships and Purchase and assumption Transactions, by a former Director of the Division of Research and Strategic Planning of the Federal Deposit Insurance Corporation ("FDIC") as follows:

> When state bank have failed in depositor preference states during the past several years, the FDIC has passed only deposits to an acquiring bank. A smaller cash outlay is necessary. Standing in place of depositors who have been made whole through the transaction, the FDIC is entitled to get paid back before other creditors. Contingent claimants (and other creditors) only have access to receivership collections *after* the FDIC has been repaid. The transaction [a Purchase and Assumption Transaction] is thus simpler, losses are more predictable and it is less expensive to the deposit insurance fund.

See S.C. Silverberg, "A Case for Depositor Preference," *Banking and Economic Review* 7, 8, (May 1986).

Twenty-three States have enacted legislation to recognize depositor preference for bank receiverships. These States are: Alaska, California, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

Eight States have enacted legislation to recognize full depositor preference for their savings and loan associations. These States are: Georgia, Indiana, Nebraska, North Carolina, Oklahoma, Texas, Utah, and West Virginia.[1] (South Dakota, Tennessee, and Washington State have enacted statutes providing an extremely limited and minimal depositor priority.)

II. Statutory Authority for the Scope of this Rulemaking

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933, ("HOLA"), 12 U.S.C. 1464(d)(11), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the National Housing Act ("NHA"), 12 U.S.C. 1729(c)(3)(A), the provisions of section 5(d)(11) of the HOLA are applicable to a State-chartered insured institution for which the Board has appointed the FSLIC as conservator or receiver "in the same manner and to the same extent as if such [State-chartered] institution were a Federal association * * *."

For a discussion of the enlargement of the Board's authority to regulate conservatorships and receiverships under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA, see the introduction to the Proposed Receivership Regulations (50 FR 48970). Concerning the Board's authority to promulgate extensive rules for the receivership and liquidation of State-chartered associations for which the Board has appointed the FSLIC as receiver, see section 6 of the Bank Protection Act of 1968, Pub. L. No. 90-389, 82 Stat. 294. Congress based this extension of regulatory powers on the FSLIC's "vital interest in seeing that the liquidation of the [State-chartered] association proceeds in an orderly manner". S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 2530, 2531.

Pursuant to cited authority, the Board is publishing for comment a revision of § 569c.11 that would provide for depositor priority over unsecured claims of general creditors for deposits booked at offices of federally chartered associations or savings banks located in States with depositor preference legislation. The Board asks for comment on alternative revisions of § 569c.11 that would provide (1) depositor priority over general creditor claims for all Federal associations and Federal savings banks, regardless of location or (2) depositor priority for all Federal savings banks and for all institutions for which the FSLIC is appointed a receiver by the Board.

III. FSLIC's Claims as Subrogee

An important element in this proposal for expanding the depositor priority coverage in current § 569c.11(a)(6) is to better protect FSLIC's claims as subrogee to the claims of insured depositors up to the statutory maximum. Section 405(b) of the NHA, 12 U.S.C. 1728(b), directs the FSLIC, in the event of a default by any insured institution, to pay each insured account in such insured institution which is "surrendered and transferred" to the FSLIC. Payment is to be made "as soon as possible either (1) by cash or (2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such member * * *."

Pursuant to section 406(b)(2) of the NHA, 12 U.S.C. 1729(b)(2), the FSLIC as receiver of a Federal association is directed to pay insurance in accordance with section 405 of the NHA. Section 406(b)(2) of the NHA also provides that the FSLIC, upon "surrender and transfer" of an insured account in any Federal association which is in default, shall become subrogated with respect to such account. The provisions of section 406(b)(2) of the NHA are applicable to the FSLIC as receiver of a State-chartered institution under appointment by the Board pursuant to section 406(c)(1)(B) of the NHA.

Under the statute and the doctrine of equitable subrogation, the FSLIC is entitled to exercise the rights of depositors with respect to their insured accounts after making available transferred accounts. Subrogation is a remedy which has been available in courts of equity at least since the seventeenth century.[2] The doctrine is explained as follows in the Restatement of the Law of Restitution:

> Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lienholder.

Restatement of the Law of Restitution Section 162 (1937) ("Restatement"). According to the Restatement, the underlying justification and purpose for subrogation, as with most forms of restitution, is to prevent unjust enrichment. In this regard, the FSLIC's rights are like those of any insurer.

IV. Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. Reasons, objectives, and legal basis underlying the proposed rule. These

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[1] The following list presents citations for the eight State statutory sections recognizing full depositor preference for receiverships involving FSLIC-insured institutions:

(1) *Georgia:* GA. Code Ann. § 7-1-202(a)(2);

(2) *Indiana:* Ind. Code § 28-1-3.1-10(3);

(3) *Nebraska:* Neb. Rev. Stat. § 8-1, 110;

(4) *North Carolina:* N.C. Gen. Stat. § 54B-70(m)(2), (3);

(5) *Oklahoma:* Okla. Stat. Ann. tit. 18, § 381.76(K)(1)(b);

(6) *Texas:* Tex. Rev. Civ. Stat. Ann. art. 852a, § 8.09(g)(3);

(7) *Utah:* Utah Code Ann. § 7-2-15(d); and

(8) *West Virginia:* W. VA. Code § 31A-7-12(a)(3).

[2] 1 G. Palmer, *Law of Restitution* § 1.5(b) (1978); *See Ford v. Stobridge*, 21 Eng. Rep. 780 (Ch. 1692); *Morgan v. Seymour*, 21 Eng. Rep. 525 (Ch. 1637).

elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. Small institutions to which the proposed rule applies. The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFP 121.13(a) (1987). Therefore, small entities to which the proposed rule would apply are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1986.

3. Impact of the proposed rule on small institutions. All institutions, including small institutions, should benefit from the proposal. The proposed rule would impose no new recordkeeping requirements or other additional administrative burden on any insured institution. The Board therefore believes that the proposed rule would not have a significant economic impact on small institutions.

4. Overlapping or conflicting Federal rules. There are no known Federal rules that would duplicate, overlap, or conflict with this proposed rule.

5. Alternatives to the proposed rule. There are no alternatives that would be less burdensome than the proposed in addressing the concerns expressed in the SUPPLEMENTARY INFORMATION set forth above.

List of Subjects in 12 CFR Part 569c

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 569c, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 569c—RECEIVERSHIP RULES

1. The authority citation for Part 569c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 569c.11 by revising paragraph (a)(6) to read as follows:

§ 569c.11 Priorities.

(a) * * *

(6) Claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims which have accrued and become unconditionally fixed on or before the date of default, wether liquidated on unliquidated, except as provided in paragraphs (a)(1) through (a)(5) of this section, *provided*, however, that if the association is chartered and was operated under the laws of a state that provided a priority for holder of withdrawable accounts over such other claims or general creditors, such priority within this paragraph (a)(6) shall be observed by the receiver; and *provided further*, that if deposits of a Federal association are booked or registered at an office of such association that is located in a State that provides such priority with respect to State-chartered associations, such deposits in a Federal association shall have priority over such other claims or general creditors, which shall be observed by the receiver;

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–15048 Filed 7–1–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–73–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require replacement of the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft of the main landing gear with a new bolt, castellated nut, and cotter pin. This proposal is prompted by reports of incidents involving loosening of the self-locking nut which resulted in loss of nut and, in one case, loss of bolt. This condition, if not corrected, could lead to separation of the forward pushrod from the downlock torque shaft, which could result in door jamming that could prevent the extension of the affected landing gear.

DATES: Comments must be received no later than August 25, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–73–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–73–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been several incidents involving Boeing Model 727 series airplanes where loosening of the self-locking nut at the attachment of the downlock forward pushrod assembly to the downlock torque shaft of the main

landing gear has been found. This has resulted in loss of the nut and, in one case, loss of the bolt. Loss of the nut and bolt from the joint can result in separation of the forward pushrod from the downlock torque shaft, which could result in door jamming that could prevent the extension of the affected landing gear.

The FAA has reviewed and approved Boeing Service Bulletins 727-32-0353 and 727-32-0237, Revision 4, both dated February 25, 1988, which describe the procedure for replacing the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft with a new bolt, castellated nut, and cotter pin. The FAA has also reviewed and approved Boeing Service Bulletin 727-32-275, Revision 2, dated March 30, 1984, which describes installation of an improved safety bar. Airplanes that have had the improved safety bar installed during manufacture, or by the incorporation of Boeing Service Bulletin 727-32-275, are not affected by this proposed rule because the affected landing gear on these airplanes can be extended after door jamming.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft with a new bolt, castellated nut, and cotter pin on all airplanes not equipped with the improved safety bar, in accordance with the service bulletins previously mentioned.

It is estimated that 1,018 airplanes of U.S. registry would be affected by this AD, that is would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $366,480.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1432; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, prior to line number 1620, not equipped with the safety bar modification described in Boeing Service Bulletin 727-32-275, Revision 2, dated March 30, 1984, certificated in any category.

Compliance required within the next 2,000 flight hours after the effective date of this AD, unless previously accomplished.

To prevent failure of the main landing gear (MLG) to extend as a result of loosening of the self-locking nut at the attachment of the downlock forward pushrod assembly to the downlock torque shaft, accomplish the following:

A. Modify airplanes listed in Boeing Service Bulletin 727-32-0237, Revision 4, dated February 25, 1988, by installing the bolt, washer, nut, and cotter pin called out in Item 10 of Figure 5 of that service bulletin.

B. Modify airplanes listed in Boeing Service Bulletin 727-32-0353, dated February 25, 1988, by installing the bolt, washer, nut, and cotter pin in accordance with that service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14944 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-77-AD]

Airworthiness Directives; Boeing Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require inspection, and modification, if necessary, of main landing gear door actuators. This proposal is prompted by reports of door actuators failing to unlock due to failure of the pivot trunnions. This condition, if not corrected, could lead to inability to retract or extend the main landing gear.

DATE: Comments must be received no later than August 25, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Moutnain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator of Boeing Model 727 airplanes has reported eleven occurrences of fractured pivot trunnions in the main landing gear door actuators. Four additional actuators were found with cracked pivot trunnions. Examination by Boeing revealed that the pivots cracked due to fatigue. In one case, the operator reported, following takeoff, the right main landing gear would not retract. Examination of the door actuator revealed that the upper main trunnion had fractured and was wedged in the actuator mechanism, preventing the actuator from unlocking. With the actuator locked, the door cannot be opened and the landing gear cannot be retracted or extended. The normal and alternate landing gear extension systems are both rendered inoperative. This condition, if not corrected, could lead to inability to retract or extend the main landing gear.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-0358, dated March 31, 1988, and Sargent Controls Service Bulletin 7-3141-32-06, Revision 1, dated November 2, 1987, which describe inspection and replacement, if necesary, of the main landing gear door actuator pivot.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and replacement, if necessary, of the main landing gear door actuator pivot in accordance with the sevice bulletin previously mentioned.

It is estimated that 1,246 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required initial inspection, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,680. In addition, the required repetitive inspections would take 2 manhours per airplane every 800 flight cycles, which is approximately 1,040 flight hours or .35 years. The average cost associated with the repetitive inspections is approximately $285,000 per year.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of the main landing gear door actuator caused by fracturing of the pivot trunnion, accomplish the following:

A. Within the next 1,600 flight cycles after the affective date of this AD, accomplish the visual inspection of the main landing gear door actuator pivots in accordance with Boeing Service Bulletin 727-32-0358, dated May 31, 1988. Repeat this inspection at intervals not to exceed 800 flight cycles.

B. If any of the pivot trunnion shafts are found loose or missing during the inspection performed in accordance with paragraph A., above, prior to further flight, replace the pivot in accordance with Boeing Service Bulletin 727-32-0358, dated May 31, 1988.

C. Accomplishing the pivot replacement with a part number 3-3141-54 pivot, in accordance with Sargent Controls Service Bulletin 7-3141-32-06, Revision 1, dated November 2, 1987, constitutes terminating action for the initial and repetitive inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-14943 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-9]

Proposed Revision to Fairfield, CA; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Fairfield, CA, control zone. This revision will provide controlled airspace for instrument flight rules (IFR) departures from the Travis AFB Aeroclub airport and will also provide additional controlled airspace for slow climbing large jet departures from Travis Air Force Base (AFB).

DATES: Comments must be received on or before September 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-9, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a reguest to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fairfield, CA, control zone. This revision will provide controlled airspace for IFR departures from the Travis AFB Aero Club Airport and will also provide additional controlled airspace for slow climbing large jet departures from Travis AFB. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

*

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

[Revised]

Within a 5-mile radius of Travis AFB, Fairfield, CA, (lat. 38°15'45"., long. 121°55'35"W.); within 2 miles each side of the Travis VOR (lat. 38°20'40"N., long. 121°48'35"W.) 047° radial extending from the 5-mile radius zone to 10 miles NE of Travis AFB; within 2 miles each side of the Travis VOR 227° radial extending from the 5-mile radius zone to 10 miles SW of Travis AFB; and within 2 miles each side of the 237° bearing from the Travis Aero Club Airport (lat. 38°16'10"N., long 121°58'27"W.) extending from the Travis Aero Club Airport to 5 miles SW of the airport.

Issued in Los Angeles, California, on June 10, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 14941 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-8]

Proposed Establishment of Barking Sands, HI; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700' AGL transition area at Barking Sands, HI. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to the Barking Sands PMRF Airport, Kauai, Hawaii.

DATES: Comments must be received on or before August 31, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700' AGL transition area at Barking Sands, HI. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to the Barking Sands PMRF Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Barking Sands, HI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Barking Sands PMRF Airport (lat. 22°01'18"N., long. 159°47'12"W.); within 2 miles each side of the Barking Sands TACAN (lat. 22°02'12"N., long. 159°47'06"W.) 173° radial extending from the 5-mile radius area to 8.5 miles south of the Barking Sands PMRF Airport; and within 2 miles each side of the Barking Sands TACAN 341° radial extending from the 5-mile radius area to 8.5 miles north of the Barking Sands PMRF Airport.

Issued in Los Angeles, California, on June 10, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-14940 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AWP-10]

Proposed Revision to Flagstaff Pulliam Airport, AZ; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Flagstaff Pulliam Airport, AZ, transition area. This revision will increase the 1200 feet above ground level (AGL) transition area and provide additional controlled airspace for

aircraft in the FRISY intersection holding pattern.

DATES: Comments must be received on or before September 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-10, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Flagstaff Pulliam Airport, AZ, transition area. This revision will increase the 1200 feet AGL transition area and will provide additional controlled airspace for aircraft in the FRISY intersection holding pattern. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Flagstaff Pulliam Airport, AZ [Revised]

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Pulliam Airport (lat. 35°08'18" N., long. 111°40'14" W.); and that airspace extending upward from 1,200 feet above the surface within 9.5 miles each side of the Flagstaff VOR 127° and 307° radials, extending from 8 miles northwest to 19 miles southeast of the VOR, excluding that portion within R-2302; and within that airspace bounded by a line beginning at lat. 35°13'32" N., long. 111°04'28" W.; to last. 35°17'17" N., long. 111°02'32" W.; to lat. 35°22'00" N., long. 111°16'40" W.; to lat. 35°24'00" N., long. 111°26'13" W.; to lat. 35°17'43" N., long. 111°36'07" W.; thence clockwise via the 11.5-mile radius circle of Pulliam Airport; to lat. 35°16'25" N., long. 111°33'02" W.; to lat. 35°19'58" N., long. 111°24'07" W.; to the point of beginning.

Issued in Los Angeles, California, on June 10, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 88-14942 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3408-9; KY-039]

Approval and Promulgation of Implementation Plans; Kentucky; Group III CTG Regulation

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a regulation submitted by the Commonwealth of Kentucky. The regulation, 401 KAR 61:175 "Leaks from existing synthetic organic chemical and polymer manufacturing equipment", relates to Kentucky's State Implementation Plan (SIP) for ozone and is based upon the Group III control techniques guideline (CTG) document. The intent of the regulation is to apply

reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before August 4, 1988.

ADDRESSES: Written comments should be addressed to Jill Perry of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road Building #2, Fort Boone Plaza, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 7, 1984, the Kentucky Division of Air Pollution Control committed to adopt a regulation for sources covered by the Group III CTG document. "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (EPA-450/3-83-006) which was issued by EPA in March 1984. On December 29, 1986, Kentucky submitted a revision to the SIP to add Regulation 401 KAR 61:175.

The regulation requires all applicable facilities to implement a quarterly leak detection program to control fugitive VOC emissions. Upon detection of a leak, a weatherproof and readily visible tag must be affixed to the leaking component. Repair of any affected facility found to be leaking must be made within fifteen (15) days. A recheck of any repaired component is required within five (5) days of the repair.

The regulation also requires that a survey log donoting the location, tag number, date, and stream composition of the leak be maintained for a period of two (2) years after the inspection is completed. In addition, the facility is required to submit to Kentucky a report listing all leaks which were located but not repaired within the prescribed time period.

Proposed Action

This regulation is consistent with the requirements specified in the CTG document (EPA-450/3-83-006). Therefore, EPA is today proposing to approve Kentucky's Group III regulation.

The public is invited to participate in this rulemaking by submitting written comments on the proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Editoral Note.—This document was received at the office of the Federal Register June 19, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-14986 Filed 7-1-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3408-8]

Approval and Promulgation of Implementation Plans; Illinois

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

ACTION: Notice of proposed rulemaking; correction and extension of the public comment period.

SUMMARY: On April 21, 1988 (53 FR 13135), USEPA proposed rulemaking and solicited public comment on a revision to the Illinois State Implementation Plan for Ozone concerning a variance for the Ford Motor facility in Cook County. This notice corrects information that appeared in the proposed rulemaking and extends the public comment period until June 22, 1988.

DATES: Comments must be received on or before June 22, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano at (312) 886-6036 before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulatory Analysis Section, Air and Radiation Branch, Environmental Protection Agency, Region V, Chicago, Illinois, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On April 21, 1988, USEPA proposed rulemaking and solicited public comment on a revision to the Illinois State Implementation Plan for Ozone concerning a variance from Illinois volatile organic compound Rule 205(n)(1) for the Ford Motor facility in Cook County. On page 13135 of the April 21, 1988, **Federal Register** at the bottom of the second column the following was incorrectly stated:

> However, elsewhere in today's **Federal Register**, USEPA is proposing to disapprove Illinois ozone attainment demonstration for Chicago because the presently effective ozone control measures are not sufficient to attain the ozone national ambient air quality standards (NAAQS) by December 31, 1987.

This statement is not correct in that USEPA did not propose to disapprove the Illinois plan elsewhere in the April 21, 1988, **Federal Register**, but instead had proposed to disapprove the Illinois attainment demonstration on this basis on July 14, 1987 (52 FR 26424). This is the correct reference as to when USEPA last proposed to disapprove Illinois' plan. USEPA regrets any inconvenience this incorrect reference may have caused.

At the request of the State of Illinois, USEPA extends the public comment period an additional 30 days until June 22, 1988, to allow additional time to develop comments on this proposed rulemaking.

Dated: June 23, 1988.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 88-14985 Filed 7-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3409-1 TN-056]

Desigation of Areas for Air Quality Planning Purposes; Redesignation of an Ozone Nonattainment Area in Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a request by Tennessee that Roane County be redesignated from nonattainment to attainment for ozone. The redesignation of this county to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 per year and on implementation of EPA-approved control strategies. The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before August 4, 1988.

ADDRESSES: Written comments should be addressed to Melinda Privott of EPA Region IV's Air Program Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Custom House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Melinda Privott, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, Federal Rgister (43 FR 8962), EPA designated Roane County as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Roane County had experienced oxidant violations. Several areas in Tennessee were designated nonattainment of ozone and the State was therefore required to revise their State Implementation Plan (SIP) for ozone. Tennessee drafted and adopted statewide regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II VOC regulations, Tennessee demonstrated attainment of the ozone standard in Roane County. EPA approved Tennessee's ozone SIP on August 13, 1980 (45 FR 53813).

Tennessee has requested that EPA change the attainment status of Roane County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. In the event that three years of ozone data are not available, the most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy.

Tennessee's request for redesignation is based on three years of ambient ozone data. Specifically, the most recent three years of air quality data (1982, 1983, and 1984 for Roane County) show the number of expected exceedances to be less than or equal to 1.0 per year, as is summarized below:

	Exceedances (ppm)	Number of expected exceedances [1]	NAAQS ozone [2]
Roane County:			
1982	none	0.00	0.12 ppm
1983	none		
1984	none		
(Total	0 exceedances).		

[1] Three-year average.
[2] Not to be exceeded more than once per year.

Evidence submitted by the State and the Region IV Air Compliance Branch files have been reviewed to determine if the sources in Roane County to which the VOC regulations apply are fully implementing the EPA-approved control strategy. This review confirms that all sources in Roane County subject to the VOC regulations have either installed and are operating RACT controls or are on an enforceable compliance schedule.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control.

The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), the Administrator has certified that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Editorial note.—This document was received at the office of the Federal Register June 29, 1988.

Dated: June 25, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-14987 Filed 7-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-528; RM-5958]

Radio Broadcasting Services; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: At the request of the petitioner, Contemporary Communications, this document dismisses the petition to substitute FM Channel 262C1 for Channel 262C at Great Falls, Montana. Petitioner filed supporting comments but has since retracted its comments and requests that Channel 262C be allowed to remain as is. No other comments were received in this proceeding. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-528, adopted May 11, 1988, and released June 8, 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.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 88–14956 Filed 7–1–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Magazine Mountain Shagreen (Mesodon magazinensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Magazine Mountain shagreen (*Mesodon magazinensis*) as a threatened species. The snail is found only on Magazine Mountain in Logan County, Arkansas, in a very restricted area and is vulnerable to any land use changes or management activities that may have an adverse effect on it or its habitat. This proposal, if made final, would implement the protections provided by the Endangered Species Act (Act) of 1973, as amended. The Service requests comments and data from the public on this proposal.

DATES: Comments from all interested parties must be received by September 6, 1988. Public hearing requests must be received by August 19, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Pulliam at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

The Magazine Mountain shagreen (*Mesodon magazinensis*) is a dusky brown, or buff colored, medium-sized snail, approximately 13 millimeters (mm) (0.5 inches) wide and 7 mm (0.3 inches) high. The rough shell surface is covered with half-moon, scale-like processes that can be seen with a hand lens. The outer lip of the aperture has a small triangular shaped tooth, the inner side has a blade-like tooth, and there is a small swelling on the basal lip near the center of the shell (Pilsbry and Ferriss 1906).

The Magazine Mountain shagreen was originally described as a subspecies of *Polygyra edentatus* (Pilsbry and Ferriss 1906). Pilsbry (1940) subsequently placed this snail into the genus *Mesodon* and elevated it to specific status. This species can be separated from *M. inflectus*, a similar but widespread species also found on Magazine Mountain, by genitalia differences (Hubricht 1972) and a large maximum diameter of 12.7–14.0 mm (0.50–0.55 inches) for the former and 8.3–13.8 mm (0.33–0.54 inches) for the latter (R.S. Caldwell, Lincoln Memorial University, pers. comm.).

This snail is known only from rock slides on the north slope of Magazine Mountain in Logan County, Arkansas. A single dead specimen was found on the south slope of Magazine Mountain in 1903 (Pilsbry and Ferriss 1906), but this population has not been verified since that time (Caldwell 1986). Preferred habitat is found on approximately 60 percent slope between 600 meters (2,000 feet) and 790 meters (2,600 feet) elevation. Apparently this species prefers cool moist conditions. Therefore, the species moves deeper into the rock crevasses and becomes inaccessible for collection during the warm dry weather in July and August (Caldwell 1986). Because of its limited range, this snail would be vulnerable to any land use change or activities that would have an adverse effect on these rock slides. The species' entire range is within the Ozark National Forest and is classified as a Special Interest Area. The mountain is being considered as a candidate for a Research Natural Area.

On April 28, 1976, the Service published a proposed rule (41 FR 17742–6) to determine 32 species of snails as endangered or threatened, including *Mesodon magazinenisis*. The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn if not finalized by November 1979. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the proposal of April 28, 1976.

The Magazine Mountain middle-toothed snail (recently changed to Magazine Mountain shagreen) was included as a Category 2 species in a Notice of Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species on May 22, 1984 (49 FR 21664). Category 2 included taxa for which information then in possession of the Service indicated that proposing to list the species was possibly appropriate, but for which available data were not judged sufficient to support a proposed rule. In 1986, Dr. Ronald S. Caldwell completed a status survey on this species under contract to the Arkansas Nongame Species Preservation Program. The U.S. Forest Service, the U.S. Army Corps of Engineers, the Arkansas Game and Fish Commission, the Arkansas Division of State Parks, and the Logan County government are all aware of the rarity of this snail and are supportive of the proposal. There is a local concern for the effect listing the snail would have on the proposed development of a State Park on top of the mountain. Certainly, the effect on the snail's habitat would have to be considered during any future developments or land use changes.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Magazine Mountain shagreen (*Mesodon magazinensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of the restricted range of the Magazine Mountain shagreen, it is vulnerable to any land use change or activity that would have an adverse effect on the rock slides where it is found. The Arkansas Division of State Parks is contemplating trading some other land to the Forest Service so that they could develop a State Park on Magazine Mountain. Any construction or recreational activities, such as buildings, roads, pipelines, or trails, could have an adverse effect on the snail if the rock slides on the north slope are disturbed. The U.S. Army would like to use the

National Forest in this area for training exercises. If any troop movements, vehicle movements, or artillery operations affected the north slope, they also could have a negative impact on the snail. These activities, as well as forestry and recreational activities, represent potential threats, unless such activities are planned and conducted with the protection of the north slope of Magazine Mountain in mind. The Service has contacted the U.S. Forest Service, the Arkansas Division of State Parks, and the U.S. Army regarding protection needs of the Magazine Mountain shagreen.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although it is difficult to collect this species during hot, dry periods, a knowledgeable collector could damage the population during a cool period following a rain. Therefore, collecting should be carefully controlled because of this species' rarity and limited range.

C. *Disease or predation.* There are no known diseases or predators that pose a significant threat to the snail.

D. *The inadequacy of existing regulatory mechanisms.* Other than the Special Interest Area designation by the U.S. Forest Service, there are no regulations in effect that provide protection for this species.

E. *Other natural or manmade factors affecting its continued existence.* The Magazine Mountain shagreen is a very rare snail, being found only on part of the north slope of Magazine Mountain at the foot of the cliff. It occurs in small numbers and is dependent on a cool, moist microhabitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Magazine Mountain shagreen as threatened. Since the species has a very restricted range, it is vulnerable to collecting and to any adverse habitat modification. Therefore, it seems appropriate to propose the snail as threatened, defined as likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species", uncontrolled collecting could be a problem. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. In addition, the entire range is in the Ozark National Forest and the U.S. Forest Service is aware of its presence. Protection of this species' habitat will also be addressed through the recovery process and through section 7 jeopardy standard. Therefore it would not be prudent to determine critical habitat for the Magazine Mountain shagreen at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal activities that may be affected by this proposal are any land use changes or activities adversely affecting the habitat, which is exclusively found on U.S. Forest Service land. The U.S. Army is interested in the area for training exercises. However, the north slope could be excluded from this activity.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

If listed under the Act, the Service will review this species to determine whether it should be considered for placement on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Caldwell, R.S. 1986. Status of *Mesodon magazinensis* (Pilsbry and Ferriss), the Magazine Mountain Middle-toothed Snail. Grant Number 84–1 for Arkansas Nongame Species Preservation Program. 18 pp.

Hubricht L. 1972. The land snails of Arkansas. Sterkiana 46:15–16.

Pilsbry, H.A. and J. Ferriss. 1907. Mollusca of the Ozarkian Fauna. Proc. Acad. Nat. Sci., Philadelphia. 1906:529–567.

Pilsbry, H.A. 1940. Land Mollusca of North America (North of Mexico). Acad. Nat. Sci., Philadelphia, Monog. 3, 1(2):575–994.

Author

The primary author of this proposed rule is Mr. John J. Pulliam, III (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "SNAILS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
*	*	*	*	*	*		
Shagreen, Magazine Mountain.	*Mesodon magazinensis*	U.S.A. (AR)	NA	T		NA	NA
*	*	*	*	*	*		

Dated: June 3, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14910 Filed 7–1–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Astragalus osterhoutii and Penstemon penlandii To Be Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine two plants, *Astragalus osterhoutii* (Osterhout milk-vetch) and *Penstemon penlandii* (Penland beardtongue), to be endangered species under the Endangered Species Act (Act) of 1973, as amended. Both species are endemic to Middle Park in Grand County, Colorado, where they grow on shale badlands. Penland beardtongue is only known from the type locality, a set of badlands between Sulphur Gulch and Troublesome Creek, about 5 miles northeast of Kremmling.

The Osterhout milk-vetch occurs in scattered populations over a 12-mile range in Middle Park: From Troublesome Creek on the east, where it occurs with the Penland beardtongue, to Muddy Creek and its tributaries on the west. Both species occur largely on Federal land administered by the Bureau of Land Management, with smaller occurrences on State and private land. Most of the Osterhout milk-vetch occurs on shale benches along Muddy Creek, the possible site of a proposed water storage project (Muddy Creek Reservoir). The Osterhout milk-vetch would be impacted directly by dam construction and inundation, and secondarily by recreational uses and development around the proposed reservoir. The single Penland beardtongue site, 7 miles east of the dam site, is a fragile habitat vulnerable to off-road vehicle damage. Off-road vehicle damage would likely increase if the proposed reservoir is constructed. This proposal, if made final, would implement Federal protection provided by the Act for *Astragalus osterhoutii* and *Penstemon penlandii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 6, 1988. Public hearing requests must be received by August 19, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 529 25½ Road, Suite B113, Grand Junction, Colorado 81505. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Anderson at the Grand Junction address above (303/243–2778 or FTS 322–0351).

SUPPLEMENTARY INFORMATION:

Background

Astragalus osterhoutii and *Penstemon penlandii* are herbaceous perennial wildflowers endemic to Middle Park, a sagebrush basin in north-central Colorado. They are restricted to badlands of Upper Cretaceous Niobrara and Pierre Shale and of Tertiary (Miocene Troublesome Formation) siltstone sediments at 2,250–2,350 meters (7,450–7,700 feet) elevation within 6 miles to the north and east of the town of Kremmling. *Astragalus osterhoutii* Jones was described in 1923 by Marcus Jones (1923) from material collected by George Osterhout, an early Colorado botanist. Osterhout first collected it in fruit July 17, 1905 (specimen 3038), and in flower June 9, 1906 (specimen 3235), about 4 miles below "Sulphur Springs, Grand County." The holotype (at the Pomona College Herbarium, Rancho Santa Ana Botanic Garden, California) is a combination of material from these two specimens. The type locality had been interpreted to be near the town of Hot Sulphur Springs, which is 17 miles east of Kremmling (Barneby 1964, Peterson *et al.* 1981); but, despite several searches, the Osterhout milk-vetch has never been found in this area. However, the population recently located along Troublesome Creek is adjacent to Sulphur Gulch, which contains a sulphur spring (about 6 miles northeast of Kremmling), and this is likely the type locality (Barneby 1987).

Until the 1980's, *Astragalus osterhoutii* was collected only five times from two additional localities: a small population 1 mile northeast of Kremmling and the largest population along Muddy Creek 6 miles north of Kremmling. These populations were discovered by Beath in 1939 and 1940 respectively (Peterson *et al.* 1981). The population along Muddy Creek was further delineated during the preparation of the status report (Peterson *et al.* 1981) and the Rock Creek/Muddy Creek Reservoir Draft Environmental Impact Statement (Grah and Neese 1987). Occurrences along Pass Creek and Red Dirt Creek near Hinman Reservoir, a few miles west of Muddy Creek, were also discovered during inventories for the Draft Environmental Impact Statement (Grah and Neese 1987). During graduate studies at the University of Colorado, Jeff Karron located two sites, 1 mile and 5 miles northeast of Kremmling. These sites probably represent Beath's 1939 locality and Osterhout's original "Sulphur Springs" locality in the Sulphur Gulch/Troublesome Creek vicinity, respectively.

There are an estimated 25,000 to 50,000 Osterhout milk-vetch plants, approximately 90 percent of the total for the species, in the vicinity of Muddy Creek. The remaining 10 percent of the species occurs on the eastern and western extremities of the range at Troublesome and Red Dirt Creek (a tributary of Muddy Creek), respectively.

Penstemon penlandii Weber was independently discovered in the summer of 1986 by David Johnson of Western Resource Development Company (Weber 1986) and the author while on visits to the Osterhout milk-vetch Troublesome Creek site located by Karron. While the Osterhout milk-vetch is found only along one gulch here, the Penland beardtongue population of approximately 5,000 plants extends over the whole series of badlands between Troublesome Creek and Sulphur Gulch, which are approximately one-and a-half miles long and one-half mile wide. This is the only known site for the Penland beardtongue.

Astragalus osterhoutii and *Penstemon penlandii* are both disjunct from their nearest relatives, which occur approximately 150 miles away in southwestern Wyoming and northwestern Colorado: *Astragalus grayi* and *A. nelsonianus* (Barneby 1964), and *Penstemon paysoniorum* (Weber 1986) and *P. gibbensii* (personal observation), respectively. The proposed species may be remnants of a previous extension of northern species southward during glacial or pluvial periods. As such, they can provide clues to past floristic migrations and are scientifically valuable in the study of biogeography. *Astragalus osterhoutii* has also been the subject of evolutionary studies comparing rare and common species of *Astragalus* (Karron 1987).

Astragalus osterhoutii is a tall rush-like plant with linear leaflets and several bright green stems up to 100 centimeters (40 inches) tall. There are 12–25 large white flowers, 2.4 centimeters (1.0 inch) long, per inflorescence (flowering stalk), and stipitate pendulous pods, 4.5 centimeters (1.8 inches) long. *Penstemon penlandii* is a short plant with linear leaves and several clumped, pubescent stems up to 25 centimeters (10.0 inches) tall. There are 5–15 bright bicolored flowers with blue lobes and a violet throat, 1.2–1.5 centimeters (0.5–0.6 inches) long, per inflorescence; the fruits are small brown capsules. Both species are characterized by clusters of showy flowers relative to the size of the plant.

The largest population of the Osterhout milk-vetch occurs on shale benches along Muddy Creek, the site of the proposed Muddy Creek Reservoir. While the lower edges of this population would be inundated by the proposed reservoir, there would be additional impacts to the remainder of the population from associated development and recreational use of the reservoir and the surrounding benches (U.S. Forest Service 1987). Changes in vegetative composition, particularly an increase in big sagebrush density due to past grazing history, may have resulted in a decrease in the size and/or density of Osterhout milk-vetch populations. The Troublesome Creek/Sulphur Gulch badlands, the habitat of both the Osterhout milk-vetch and Penland beardtongue, are a fragile habitat susceptible to damage from off-road vehicle use. Approximately two-thirds of the large Osterhout milk-vetch population along Muddy Creek is on Federal land administered by the Bureau of Land Management (BLM); the remaining one-third is mostly on private land, with two colonies on State land (although the edges of other Osterhout milk-vetch colonies may be within State highway rights-of-way). The small occurrences up Pass Creek and Red Dirt Creek near Hinman Reservoir are on private land. The small site 1 mile northeast of Kremmling is on BLM land, and the Troublesome Creek/Sulphur Gulch populations of Osterhout milk-vetch and Penland beardtongue are on BLM land and private land.

Federal action involving *Astragalus osterhoutii* began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service (Service) published a notice of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants.

Astragalus osterhoutii was included as "endangered" in the July 1, 1975, petition. On December 15, 1980 (45 FR 82485), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Astragalus osterhoutii* was included in these notices as a category 2 species. Category 2 comprises taxa for which the Service possesses information indicating that proposing to list them as endangered or threatened species is possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support listing. The present proposal is based on biological data from Peterson *et al.* (1981), Karron (1987), and Grah and Neese (1987).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *Astragalus osterhoutii*, were treated as being newly petitioned on October 13, 1982. On October 13, 1983, October 12, 1984, October 11, 1985, October 10, 1986, and October 9, 1987, the Service made successive 1-year findings that the petition to list *Astragalus osterhoutii* was warranted, but precluded by other listing actions of higher priority. The present proposal constitutes the next 1-year finding for this species.

Because it was discovered in 1986, after the last notice of review for plants was published in the **Federal Register** in 1985, there has been no previous Federal action involving *Penstemon penlandii*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus osterhoutii* Jones (Osterhout milk-vetch) and *Penstemon penlandii* Weber (Penland beardtongue) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Astragalus osterhoutii* and *Penstemon penlandii* are both naturally rare species. *Astragalus osterhoutii* has only one major population along Muddy Creek, with small scattered outlying colonies up to a distance of 6 miles away. *Penstemon penlandii* is known only from one locality at Troublesome Creek/Sulphur Gulch (which is also the easternmost site of *Astragalus osterhoutii*). The badlands on which an estimated 5,000 individuals of *Penstemon penlandii* occur are currently vulnerable to modification from off-road vehicle use because of their fragile soils, steep topography, and arid environment. There are presently dirt roads running through the badlands which would provide easy access for off-road vehicle use that would likely occur if the Muddy Creek Reservoir is constructed without measures to control off-road vehicle use. The resulting modification of the habitat could result in a curtailment of the range for the Penland beardtongue. The major population of *Astragalus osterhoutii* along Muddy Creek has an estimated 25,000 to 50,000 plants (personal observation; represents about 90 percent of the total for the species) on 132 acres and is threatened by the proposed Muddy Creek Reservoir. With construction of the high dam proposal at 7,485 feet elevation, 18 acres or 14 percent of the Muddy Creek population would be inundated. An alternative lower dam proposal at 7,475 feet would inundate 10 acres or 8 percent of the population (Bio/West 1988). Additional direct losses from reservoir construction could result from the raised water table through perennial soil saturation, and from surface disturbance due to construction activities such as road building, creation of borrow pits, and heavy equipment movement (Grah and Neese 1987). While direct inundation and bench stuffing would destroy only marginal habitat at the lower edges of the population, significant secondary impacts to the benches around the reservoir and along Pass Creek could occur with the building of recreation facilities and increased use of the area by people and off-road vehicles. These potential secondary impacts would be the same for either dam height and could cause destruction, modification, or curtailment of Osterhout milk-vetch habitat or range. Depending upon the degree of future recreational usage, secondary impacts from the Muddy Creek Reservoir may be even greater to the Osterhout milk-vetch than direct impacts from reservoir construction (Grah and Neese 1987). In addition to the direct impacts, 80 acres, or 60 percent of the habitat of *Astragalus osterhoutii*, could be threatened by secondary impacts from recreational activities associated with the Muddy Creek Reservoir proposal (Bio/West 1988). Proposed mitigation plans to offset direct and secondary impacts of the reservoir construction and recreation include management of the habitat remaining around the reservoir to minimize effects to the milk-vetch; fencing the habitat and designing public recreational facilities to minimize the impact on the species; protection of an offsite population west of the reservoir from private recreational development; a monitoring program with possible habitat manipulation; and plant surveys for avoidance of the milk-vetch during construction.

The density of *Astragalus osterhoutii* has been observed to be lower in big sagebrush stands than in the adjacent open benchlands where it normally grows. It may be that the past grazing history has caused an increase in big sagebrush cover with a resultant canopy closure and modification of Osterhout milk-vetch habitat with loss of individuals through lowered densities of populations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been documented. However, both plants have showy flowers and grow in accessible areas, thus both are vulnerable to collecting and vandalism.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal or State laws protecting *Astragalus osterhoutii* and *Penstemon penlandii*. Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* The geogrephically restricted range of the species increases the possibility that one severe inadvertent disturbance, either natural or human-caused, could destroy a significant portion of these species' population and habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus osterhoutii* and *Penstemon penlandii* as endangered. Both are restricted endemics occurring on a limited habitat,

and with only one major population each. *Astragalus osterhoutii* would be impacted directly by construction of the proposed Muddy Creek Reservoir, and secondarily by recreational uses and development around the reservoir. *Penstemon penlandii* is vulnerable to the increased off-road vehicle use that would likely occur as a result of the increased recreational activity associated with completion of the proposed reservoir. There presently exists no opportunity for protection under existing legislation (State and Federal). For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service believes that designation of critical habitat is not prudent for these species at this time because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might increase if detailed critical habitat maps are published. Such maps would identify areas on public and private land, thereby making it more difficult for Federal enforcement agencies to protect the species. Federal involvement in the areas where the plants occur can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting these species' habitat, and such protection will be addressed through the recovery process and through section 7 procedures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Astragalus osterhoutii and *Penstemon penlandii* occur primarily on Federal land administered by the BLM. The BLM's involvement could include section 7 consultation on the proposed Muddy Creek Reservoir, monitoring the impacts of off-road vehicle use, and studying the effects of grazing systems on vegetative composition. The Army Corps of Engineers would also be involved in any section 7 consultation for the reservoir because of the need for a 404 permit. On both Federal and private land, the Service expects that listing would elevate the awareness of these plants' status and foster efforts aimed toward their conservation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to *Astragalus osterhoutii* and *Penstemon penlandii*, it is anticipated that few, if any, trade permits would ever be sought or issued since these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus osterhoutii* and *Penstemon penlandii*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on *Astragalus osterhoutii* and *Penstemon penlandii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, Grand Junction, Colorado (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as

amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Barneby, R. 1964. Atlas of North American Astragalus. Memoirs New York Botanical Garden. 13:429 and 434–436.

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Grah, O. and E. Neese. 1987. Rare plant survey of the Muddy Creek Reservoir site. Unpublished document. Bio/West, Inc., Logan, Utah. 9 p.

Jones, M. 1923. Revision of North American species of Astragalus. Salt Lake City, Utah. p. 251, pl. 64.

Karron, J. 1987. A comparison of the pollination biology, breeding systems, and population genetic structure of geographically restricted and widespread species of Astragalus. Unpublished Ph.D. dissertation, Department of Environmental Population and Organismic Biology. University of Colorado, Boulder, Colorado.

Peterson, J.S., B. Johnston, and W. Harmon. 1981. Status report on *Astragalus Osterhoutii*. State of Colorado Natural Areas Program, Denver, Colorado. 25 p.

U.S. Forest Service. 1987. Rock Creek/Muddy Creek Reservoir Draft Environmental Impact Statement. Rocky Mountain Region, Lakewood, Colorado. 350 p.

Weber, W. 1986. *Penstemon penlandii*. spec. nov. Scrophulariaceae from Colorado. Phytologia 60:459–461.

Author

The primary author of this proposed rule is John L. Anderson, Botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243–2778; FTS 322–0351, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order, under the families Fabaceae and Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
• • • • • • •						
Astragalus osterhoutii	Osterhout milk-vetch	U.S.A. (CO)	E		NA	NA
• • • • • • •						
Scrophulariaceae—Snapdragon family:						
• • • • • • •						
Penstemon penlandii	Penland beardtongue	U.S.A. (CO)	E		NA	NA
• • • • • • •						

Dated: June 3, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14908 Filed 7–1–88; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Anastasia Island Beach Mouse and Threatened Status for the Southeastern Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine the Anastasia Island beach mouse *(Peromyscus polionotus phasma)* as an endangered species and the southeastern beach mouse *(Peromyscus polionotus niveiventris)* as a threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. Both subspecies occur only on the Atlantic beaches of central Florida. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for the mice. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 6, 1988. Public hearing requests must be received by August 19, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Beach mice are pale-colored, coastal-inhabiting subspecies of the oldfield mouse *(Peromyscus polionotus)*, a species which ranges widely throughout much of the southeastern United States. Beach mice occur only along the Atlantic coast of Florida and along the Gulf coast of Alabama and the Florida panhandle. Three subspecies of Gulf coast beach mice, the Alabama beach mouse *(Peromyscus polionotus ammobates)*, Perdido Key beach mouse *(P. p. trissyllepsis)*, and the Choctawhatchee beach mouse *(P. p. allophrys)*, have already been listed as endangered species pursuant to the Act (June 6, 1985; 50 CFR 23872). The present document proposes to list two of the Atlantic coast subspecies. One of these, the Anastasia Island beach mouse *(P. p. phasma)* is being proposed as an endangered species, and the other, the southeastern beach mouse *(P. p. niveiventris)*, is being proposed as

threatened. Both occur only in Florida. The Anastasia Island beach mouse was known historically from the mouth of the St. Johns River, Duval County, south to Matanzas Inlet, St. Johns County. The southeastern beach mouse formerly occurred from Ponce (Mosquito) Inlet, Volusia County, south to Hollywood Beach, Broward County (Humphrey 1987).

The Anastasia Island beach mouse *(Peromyscus polionotus phasma)* was named by Bangs in 1898 as a full species, *Peromyscus phasma*. Osgood (1909) relegated it to subspecific rank under the species *Peromyscus polionotus*. It is one of the largest of the beach mice, ten adults from the type locality averaged 138.5 millimeters (mm) in total length with an average tail length of 53 mm (Osgood 1909). Like all beach mice, it is considerably paler than inland races of *P. polionotus*. The coloration is light ochraceous buff on the back, with pure white underparts, unicolor tail, and rather indistinct white markings on the nose and face (Howell, unpubl. ms., *circa* 1940). The type locality is Point Romo, Anastasia Island, St. Johns County, Florida (Hall 1981).

The Southeastern beach mouse *(Peromyscus polionotus niveiventris)* was named by Chapman as *Hesperomys niveiventris* in 1889. Bangs placed it in the genus *Peromyscus* in 1898, and Osgood (1909) relegated it to subspecies rank under *Peromyscus polionotus*. This is the largest of the beach mice, with 10 adults averaging 139 mm in total length and 52 mm in tail length (Osgood 1909). It is slightly darker and more buffy than *Peromyscus polionotus phasma* but still considerably paler than most inland subspecies (it is similar in coloration to inland *P. p. rhoadsi* but is much larger in size) (Howell, unpubl. ms., *circa* 1940). The type locality is Oak Lodge, east peninsula opposite Micco, Brevard County, Florida (Hall 1981).

Both *Peromyscus polionotus phasma* and *P. p. niveiventris* are restricted to sand dunes mainly vegetated by sea oats *(Uniola paniculata)* and dune panic grass *(Paspalum amarulum)* and to the adjoining scrub, characterized by oaks *(Quercus sp.)*, sand pine *(Pinus clausa)*, and palmetto *(Serenoa repens)* (Humphrey and Barbour 1981, Humphrey 1987). Extine and Stout (1987) studied dispersion and movements of *Peromyscus polionotus niveiventris* on Merritt Island. The habitat of these mice consisted of three contiguous zones of vegetation running parallel with the beach and dune lines. Zone 1 was seaward and supported sea oats; Zone 2 was characterized by clumps of palmetto and sea grape *(Coccoloba uvifera)*, and expanses of open sand; Zone 3 was interior and consisted of dense scrub dominated by palmetto, sea grape, and wax myrtle *(Myrica cerifera)*. Zones 2 and 3 were found to be the preferred habitats of the beach mice, whereas Zone 1 was marginal.

Very little is known about the life history of any of the subspecies of beach mice. The following information pertains mostly to Gulf coast beach mice, but probably applies equally well to subspecies along the Atlantic coast, since Gulf coast and Atlantic coast beach mice are morphologically similar and live in similar habitats.

Blair (1951) found that food plants most utilized by beach mice are various beach grasses and sea oats. The fruits of beach grass are readily available to the mice, but those of sea oats are usually obtainable only after they have been blown down by heavy winds. These foods are often found stored in mouse burrows. Beach mice also probably eat invertebrates from time to time, especially in late spring and early summer when seeds are scarce (Ehrhart *in* Layne 1978).

Beach mice are burrow-inhabiting animals. Ehrhart (*in* Layne 1978), writing about the Atlantic coast subspecies *P. p. decoloratus*, noted that burrow entrances are usually placed on the sloping side of a dune at the base of a shrub or clump of grass. Often old burrows of ghost crabs are utilized, but more commonly the burrows are dug by the mice themselves (Blair 1951). A beach mouse's home range may contain up to 20 burrows in different parts of the range. The burrows are used as safe refuges, nesting sites, and food storage areas.

Along the Gulf coast, much breeding activity was evident in November, December, and early January, and large numbers of immature animals were in the population at that time (Blair 1951). Litter sizes range from two to seven, with an average of about four; young mice reach reproductive maturity as early as six weeks of age. In the laboratory, Bowen (1968) found that a female beach mouse is capable of producing 80 or more young during her lifetime, and that litters are produced regularly at 26-day intervals. Mortality is very high, however. Blair (1951) found that only 19.5 percent of the beach mice on the Gulf coast survived more than the four months from January to early May. Similar breeding activity for the two beach mice considered under this proposal can be expected.

Myers (1983) reported that the following could be beach mouse predators on the Gulf coast dunes: raccoons, skunks, snakes, great blue herons, domestic dogs, and domestic cats. All of these potential predators occur on the Atlantic coast and could prey on beach mice there as well.

Hall (1981) cites two historical records for the Anastasia Island beach mouse (*P. p. phasma*): the type locality at Point Romo, Anastasia Island, St. Johns County; and the beach dunes at the border of the St. Johns and Duval County line. This subspecies, therefore, could have ranged along the ocean dunes from the mouth of the St. Johns River in Duval County south to the end of Anastasia Island at Matanzas Inlet, St. Johns County. A recent survey of this subspecies by Humphrey (1987) was able to locate the mouse only on Anastasia Island, where its remaining habitat is fragmented and discontinuous, and populations are small. Much of its former habitat on Anastasia Island has been converted to lawn or concrete associated with development of houses and condominiums.

The original distribution of the southeastern beach mouse (*P. p. niveiventris*) was along the beach dunes from Ponce (Mosquito) Inlet, Volusia County, south along the coast to Hollywood Beach, Broward County. Recent studies by Humphrey (1987) have disclosed that this mouse still occurs in good numbers at Cape Canaveral and in smaller numbers to the north in Cape Canaveral National Seashore. To the south, from Sebastian Inlet to Hutchinson Island, only a few small, scattered remnant populations survive. South of Hutchinson Island, nearly all of the beach dune habitat has been totally destroyed by housing and condominium developments.

A third Atlantic coast beach mouse subspecies, *Peromyscus polionotus decoloratus*, formerly occurred between the ranges of *P. p. phasma* to the north and *P. p. niveiventris* to the south. This very pale race lived on the beach dunes from Matanzas Inlet, St. Johns County, south to Ponce (Mosquito) Inlet, Volusia County. Humphrey and Barbour (1981) searched extensively for *decoloratus* but were unable to find any existing populations. They concluded that extensive habitat destruction and alteration throughout its entire range had brought about its extinction. The Service intends to place *decoloratus* in Category 3A on the next list of candidate vertebrate species. Category 3A is for those that have been determined to be extinct.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Anastasia Island beach mouse (*Peromyscus polionotus phasma*) and the southeastern beach mouse (*Peromyscus polionotus niveiventris*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Anastasia Island beach mouse (*Peromyscus polionotus phasma*)—Published literature records this subspecies from the type locality at Point Romo, Anastasia Island, St. Johns County, and along the beach dunes at the line between Duval and St. Johns Counties (Hall 1981). Therefore, this mouse could have occurred from the mouth of the St. Johns River in the north, to Anastasia Island in the south. Much of the dune habitat along this beach has been developed around Jacksonville and St. Augustine and no longer is suitable for beach mice. Some suitable habitat occurs between Ponte Vedra Beach and South Ponte Vedra Beach, St. Johns County, in the Guana River Wildlife Management Area, but Humphrey (1987) was unable to find the mice there. In fact, Bangs (1896) reported that these beach mice were absent from the beaches north of St. Augustine. Humphrey (1987) did find populations distributed along the length of Anastasia Island, but reported that much of their former habitat has been converted to lawn or concrete associated with development of houses and condominiums. As a result, the remaining habitat is fragmented and discontinuous, and the populations are small. The number of specimens caught by Humphrey (live-trapped and released) suggests that viable populations may remain only at the ends of Anastasia Island, along the publicly-owned dune grassland of both Anastasia State Recreation Area and Fort Matanzas National Monument. A proposed new bridge across the Matanzas Inlet, scheduled for construction early in the 1990's, would lead directly into the small amount of habitat (about 25 acres) available to this mouse on the Fort Matanzas National Monument. Unless this bridge is carefully planned and constructed, it could be extremely detrimental to the survival of the mouse in this area.

(2) Southeastern beach mouse (*Peromyscus polionotus niveiventris*)—this subspecies occurred on the sand dunes along the beach from Ponce (Mosquito) Inlet, Volusia County in the north to Hollywood Beach, Broward County, in the south (Hall 1981). Bangs (1898) found it to be "extremely abundant on all the beaches of the east peninsula from Palm Beach at least to Mosquito (Ponce) Inlet," and Howell (unpubl. mms., about 1940) found that it was abundant in the 1930's. I.J. Stout (personal communications to Humphrey 1987) also found it abundant in the middle and late 1970's on Cape Canaveral. However, by the early 1970's, M.H. Smith (personal communications to Humphrey 1987) found that most other populations had disappeared. Humphrey (1987), during extensive trapping for the subspecies in 1986, captured southeastern beach mice on Cape Canaveral National Seashore, Merritt Island, Cape Kennedy Air Force Station, the southern half of Sebastian Inlet State Recreation Area, and Pepper Park. He reported that the dune grassland at Cape Canaveral is excellent, extensive habitat for beach mice, and the population density there is apparently high. Northward, the habitat narrows to a single dune in Canaveral National Seashore, where population density appears to be lower. To the south, Humphrey's study suggested that beach mice no longer occur on East Peninsula, where the habitat has been severely disrupted by development. His sampling from Sebastian Inlet to Hutchinson Island shows that only a few, small, fragmented populations of beach mice remain. The subspecies apparently no longer occurs in the southern part of its range where beach development has destroyed its habitat at Jupiter Island, Palm Beach, Lake Worth, Hillsboro Inlet, and Hollywood Beach.

B. *Overutilization for commercial, recreation, scientific, or educational purposes.* Not applicable for either subspecies.

C. *Disease or predation.* (1) Anastasia Island beach mouse (*Peromyscus polionotus phasma*)—House Mice (*Mus musculus*) have colonized much of the dune grasslands on which the Anastasia Island beach mouse depends for survival. The inference that these two mice strongly compete is speculative, but Humphrey and Barbour (1981) presented *prima facie* evidence for competitive exclusion of other subspecies of beach mice by house mice. The situation on Anastasia Island is unprecedented because for the first time beach mice and house mice have been found to co-occur locally. Also, house cats (*Felis cattus*) are widespread on Anastasia Island. Blair (1951) and Bowen (1968) felt that house cats were extremely threatening to beach mouse populations on the Florida West Coast. The effect of these two exotic species—house mice and house cats—on the survival of beach mouse populations is speculative but may be quite important (Humphrey and Barbour 1981). Either a competitor or a predator alone can eliminate another species, and the effects of a competitor and predator together would be additive. On the assumption that native beach mice and exotic house mice compete strongly enough to cause competitive exclusion of the former, Humphrey (1987) inferred that the survival status of the Anastasia Island beach mouse was precarious on Anastasia Island. The population on the northern end of the island may soon disappear. The population appearing to be at least risk is at Fort Matanzas National Monument, where he recorded no house mice. Even here, however, Humphrey feels that the likelihood of colonization by house mice is high, and poses a threat to the beach mice.

(2) Southeastern beach mouse (*Peromyscus polionotus niveiventris*)—Humphrey (1987) found no evidence of house mice colonizing southeastern beach mouse habitat, but activity of house cats was widespread in the areas studied. Although the effects of house cat predation specifically on the southeastern beach mouse are not known, it is known that house cats are a major threat to beach mice elsewhere. Blair (1951) felt that predation by house cats was the single-most important factor affecting the chances of survival of a beach mouse population on Santa Rosa Island in the Florida panhandle, and Bowen (1968) was so concerned about the role of domestic cats as predators on Gulf coast beach mice that he avoided trapping mice wherever he found cat tracks on the beaches. It can be safely assumed that house cats pose as serious a threat to Atlantic coast beach mouse populations as they do to those on the Gulf coast.

D. *The inadequacy of existing regulatory mechanisms.* There are no regulatory mechanisms currently in effect that provide any sort of protection for either the Anastasia Island beach mouse or the southeastern beach mouse, or their habitat. Neither subspecies is listed by the State of Florida, and the Federal Government offers no protection on Federal lands beyond that which

applies to wildlife in general on such lands. Federal listing will provide protection to the animals themselves through section 9 of the Act, and to their habitat on Federal lands or on private lands where Federal funding or Federal permits are involved. In addition, Federal listing of these mice will automatically bring into effect State protection for them as provided for by Florida's Cooperative Agreement with the Federal Government under section 6 of the Act.

E. *Other natural or manmade factors affecting its continued existence.* (1) Anastasia Island beach mouse (*Peromyscus polionotus phasma*)—Except for each end of Anastasia Island, on the Fort Matanzas National Monument and the Anastasia State Recreation Area, the habitat is fragmented and discontinuous, and remaining populations are small. There is apparently little or no gene flow between these small disjunct populations and the probability of loss of genetic viability is high. (2) Southeastern beach mouse (*Peromyscus polionotus niveiventris*)—According to Humphrey (1987) beach erosion may soon become a threat to the population of this subspecies on the Canaveral National Seashore.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these two subspecies of beach mice in determining to propose this rule. Based on this evaluation, the preferred action is to list the Anastasia Island beach mouse as an endangered species, and the southeastern beach mouse as a threatened species.

Relatively secure populations of the Anastasia Island beach mouse occur only on the northern and southern ends of Anastasia Island on the Fort Matanzas National Monument and Anastasia State Recreation Area. Elsewhere, all populations have either already been destroyed or face imminent threats from beachfront developments. Even on the Anastasia State Recreation Area the mice face what appear to be serious threats from competition with house mice and predation by house cats. On the Fort Matanzas National Monument, house cats are plentiful, and there is the distinct possibility that house mice may become established in the near future. In addition, a proposed new bridge across the Matanzas Inlet could be detrimental to the small amount of habitat remaining for this mouse on the Fort Matanzas National Monument. The survival of this subspecies is precarious and it is in danger of extinction throughout all of its range. Therefore, it qualifies for a proposed listing as an endangered species.

The range of the southeastern beach mouse has been substantially reduced and fragmented by habitat conversion and invasion of exotic animals over the past century. These threats are anticipated to continue, and the range of this subspecies ultimately may be limited to public lands that are properly managed. However, because substantial populations remain on the Canaveral National Seashore and on Merritt Island (both publicly owned), the subspecies is one that is not likely to become extinct but rather to become an endangered species within the foreseeable future. It therefore, qualifies for proposal as threatened rather than endangered.

Based on current knowledge, all other alternatives to the proposed listing of the Anastasia Island beach mouse as endangered and the southeastern beach mouse as threatened do not adequately reflect the biological facts and therefore have been rejetted. Critical habitat is not being proposed for reasons described in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Anastasia Island beach mouse and the southeastern beach mouse at the present time. The only viable populations of both subspecies occur on lands managed by Federal or State agencies. These Federal and State agencies have been informed of the occurrence of the mice on lands they manage and must take measures to provide necessary protection for both the mice and their habitat. Therefore, a determination of critical habitat would provide no benefits to the mice over and above that provided by the listing action alone. Outside of Federal and State lands, these beach mice occur in very small, disjunct populations on a number of privately owned parcels of land. To determine each of the small parcels of land as critical habitat would be impossible from a practical standpoint, and might be detrimental to the populations that inhabit them by calling public attention to the presence of the mice. Publication of maps and precise descriptions delineating these areas, as required for a determination of critical habitat, could lead vandals and curiosity seekers to them and might as a consequence result in the destruction of the very fragile habitat that a critical habitat determination is intended to protect. Therefore, since determination of critical habitat on public lands would not benefit the mice, and determination of critical habitat on private lands might be harmful to them, it is not prudent to determine critical habitat for the conservation of the Anastasia Island beach mouse or the southeastern beach mouse.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Federal agencies that might be affected by the Anastasia Island beach mouse and/or southeastern beach mouse proposals and listings include the U.S. Air Force (Cape Canaveral Air Force Station and Patrick Air Force Base), NASA (Kennedy Space Center),

the U.S. Fish and Wildlife Service (Merritt Island and Hobe Sound National Wildlife Refuges), the National Park Service (Canaveral National Seashore and Fort Matanzas National Monument), and, perhaps, the Federal Emergency Management Agency (FEMA).

With the publication of this proposed rule, these Federal agencies will now be required to informally confer with the Service on their activities that are likely to jeopardize the continued existence of the beach mice. If these mice are listed, the agencies need to insure that their activities, authorized, funded, or carried out, are not likely to jeopardize the continued existence of these animals. Except for the National Park Service at the Fort Matanzas National Monument, and, perhaps, the FEMA, impacts on Federal agencies are expected to be minimal. In the case of the Fort Matanzas National Monument, the Park Service will need to insure that a new bridge proposed for the Matanzas Inlet will not jeopardize the survival of the Anastasia Island beach mouse on land it manages at the Monument.

Under the National Flood Insurance Program the FEMA is required to determine whether communities are eligible for Federal flood insurance. If the determination of eligibility for flood insurance by the FEMA authorizes and/or in effect partially subsidizes construction activity that may affect a listed species, then the FEMA must request the initiation of formal section 7(a)(2) consultation. If the species is only proposed for listing, then the FEMA must informally confer under section 7(a)(4). Due to the unknown or hypothetical nature of the consulations and/or conferences, if any, that may occur, it is not now known whether any activities or FEMA's management costs will be affected.

There will be no effect on private landowners from the listing unless their activities involve use of Federal funds or require Federal permits. In such cases, the funding or permitting Federal agency must insure that the activities will not jeopardize the continued existence of the beach mice before they can provide the funds or issue the permits to the private landowner. However, the Service is not aware of any cases at the present time where activities of private landowners would be affected by this requirement.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Anastasia Island beach mouse and/or southeastern beach mouse;

(2) The location of any additional populations of these beach mice, and the reasons why any habitat should or should not be determined to be critical habitat for them as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these beach mice; and

(4) Current or planned activities in the subject areas and their possible impacts on the Anastasia Island beach mouse and the southeastern beach mouse.

Final promulgation of the regulations on the Anastasia Island beach mouse and the southeastern beach mouse will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environment Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Peromyscus. I. Variation in the old-field mouse (*Peromyscus polionotus*). Univ. Texas Studies in genetics 6:49–90.

Author

The primary author of this proposed rule is John L. Paradiso, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216, (904) 791–2580 or FTS 946–2580.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et sq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		
Mouse, Anastasia Island beach.	*Peromyscus polionotus phasma.*	U.S.A. (FL)	Entire	E		NA	NA
Mouse, southeastern beach	*Peromyscus polionotus niveiventris.*	U.S.A. (FL)	Entire	T		NA	NA
*	*	*	*	*	*		

Dated: June 3, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–14909 Filed 7–1–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 128
Tuesday, July 5, 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

Soil Conservation Service

Standish Road Site # 2 Critical Area Treatment RC&D Measure; New York

AGENCY: Soil Conservation Service, USDA.

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 Standish Road Site # 2 Critical Area Treatment RC&D Measure, Clinton County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

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, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for stabilization of an eroding roadbank adjacent to Standish Road. Sediment and boulders dislodged from the eroding bank come to rest on the road surface creating a severe safety hazard to users of the highway. Much of the sediment produced enters Cold Brook, impairing the water quality. The integrity of the roadbank will be assured through the installation of project measures. The planned works of improvement include minor shaping of the bank and vegetating the site with varieties of shrub type plants and grasses.

This Notice of 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 is on file and may be reviewed by contacting Paul A. Dodd.

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

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Paul A. Dodd,

State Conservationist.

Dated: June 23, 1988.

[FR Doc. 88–14980 Filed 7–1–88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Oceanic Gamefish Investigations—Big Game Fishing Log.

Form Number: Agency—N/A; OMB—0648–0031.

Type of Request: Revision of a currently approved collection.

Burden: 100 respondents; 160 reporting/recordkeeping hours; average hours per response .08 hours.

Needs and Uses: NOAA needs to obtain a better understanding of the condition of the Atlantic billfish fishery. A significant portion of the billfish catch is made in organized tournaments which already create records on fishing catch and effort. Tournament organizers will be asked to voluntarily provide this information to NMFS; those not responding may be selected for mandatory reporting. The information will be used to evaluate stock levels and trends in the fishery.

Affected Public: Individuals and small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary/Mandatory.

OMB Desk Officer: John Griffen 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 24, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–14999 Filed 7–1–88; 8:45 am]

BILLING CODE 3510-22-M

International Trade Administration

[A-588-707]

Final Determination of Sales at Less Than Fair Value; Granular Polytetrafluoroethylene Resin From Japan; Antidumping

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that granular polytetrafluoroethylene (PTFE) resin from Japan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially

injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen (202) 377–3464 of Michael J. Ready (202) 377–2613, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Final Determination

We have determined that granular PTFE resin from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On April 14, 1988, we made an affirmative preliminary determination (53 FR 12968, April 20, 1988). The following events have occurred since the publication of that notice.

The questionnaire responses from respondent Asahi Fluoropolymers Co., Ltd. (Asahi) were verified in the United States from May 2 to May 3 and in Japan from May 9 to May 13, 1988.

In accordance with § 353.47 of our regulations (19 CFR 353.47), interested parties were provided an opportunity to comment on our preliminary determination by requesting a public hearing. Interested parties waived their rights to a hearing and submitted comments for the record in briefs dated June 2 and 7, 1988.

While Asahi initially opposed the inclusion of filled PTFE resins within the scope of the order, on March 30, 1988, Asahi withdrew its opposition.

Scope of Investigation

In its petition, Du Pont asked the Department to investigate both filled and unfilled granular polytetrafluoroethylene (PTFE) resin as provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classified under Harmonized System (HS) item 3904.61.00. Although Du Pont does not produce filled PTFE, Du Pont asked that it be included in the investigation to prevent the possible circumvention of any order on unfilled PTFE through the transfer of domestic U.S. filling operations abroad. Du Pont did not request that PTFE dispersions in water and fine powders be covered by this investigation; we accordingly have not included these products in our investigation.

In a March 30, 1988 submission, the respondent Asahi opposed the inclusion of filled PTFE resin within the scope of the investigation. On June 2, 1988, the petitioner reiterated its views that filled and unfilled granular PTFE resins constitute the same "class or kind" of merchandise. On June 7, 1988, Asahi withdrew its March 30 submission. Even though Asahi has withdrawn its opposition, we are still obliged to address the issues raised in order to properly define the merchandise subject to this investigation and any resulting order.

The issue of whether filled resins should be included in this investigation depends on whether it is within the same "class or kind" of merchandise as unfilled resins. In our preliminary determination, the Department found that both filled and unfilled resins are within the same class or kind of merchandise. After carefully reviewing this issue, we have found no reasons to alter this decision.

The product under investigation, granular PTFE resin, consists of three types: Pelletized, fine cut, and presintered. Of these three types only fine cut can be filled. In order to understand the class or kind of merchandise analysis which follows, it is necessary to understand that the various types of granular PTFE share the same production process and that filled granular fine cut PTFE arises from a continuation of this processing.

All three types are produced by the conversion of the tetrafluoroethylene (TFE) monomer into granular resin by suspension polymerization, a process unique to the production of granular, as opposed to other PTFE. This process is designed to enhance the handleability, moldability, physical and electrical properties of all types of granular PTFE resin.

Subsequent to the polymerization process, granular PTFE resin consists of stringy, raw polymers which are wet cut to achieve the desired size, pelletized (agglomerized) and dried. If granular fine cut or presintered resin is desired, the pelletized granular PTFE resin can be ground to form fine cut resin or ground and baked to form presintered resin. Once fine cut granular PTFE resin is formed, a producer may mix certain fillers or extenders, such as glass, bronze, carbon or graphite with the fine cut resin to strengthen the resin or enhance its mechanical properties. Filler can also be used merely to color the intemediate product in order to identify the product's source or dimension where the fabricator is unable to mark the product because of the consistency of PTFE.

In deciding that both filled and unfilled PTFE resin constitute one class or kind of merchandise, we have considered the following factors: (1) General physical characteristics; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the merchandise in question; (4) channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed.

First, filled and unfilled granular fine cut PTFE have the same general physical characteristics. Filled is simply unfilled fine cut PTFE with filler added. The filler is added to strengthen, color, or extend the unfiled fine cut resin. Adding filler is generally a simple process involving the mechanical mixing or stirring of the unfilled fine cut granular PTFE resin with the filler. According to the ITC preliminary determination report, filled PTFE is comprised on average of 20 percent filler material and 80 percent unfilled PTFE. *See* USITC Publication 2043 at A–3 (December 1987). Therefore, within this sub-division of the product under investigation, the base product, granular fine cut PTFE resin, generally constitutes the major portion of the product in question.

Second, with respect to ultimate use and customer expectations, the filling process produces a filled fine cut granular PTFE resin, similar in processabiity to unfilled fine cut granular PTFE resin. Most granular PTFE resin (filled and unfilled) is sold to fabricators. Fabricators expect to further process all granular PTFE resin by molding or extruding the resin under pressure in order to produce a variety of intermediate molded shapes and mechanical parts.

Third, the vast majority of granular PTFE resin is sold directly to fabricators who use the resin to produce a wide range of intermediate mechanical, chemical and electrical products.

Finally, we have no evidence that the manner in which the product was advertised and displayed is not the same.

On balance, we conclude that filled and unfilled granular PTFR resin comprise a single class or kind of merchandise. To exclude filled granular fine cut PTFE resin, which is merely a sub-category of granular fine cut PTFE resin, from this investigation would result in an unduly narrow definition of the product subject to this investigation.

Standing

We preliminarily determined that the petitioner, Du Pont, had standing with respect to both filled and unfilled granular PTFE resins, based on the facts that (1) Du Pont filed its petition on behalf of the granular PTFR resin industry; (2) no producer not excudable under section 771(4)(B) of the Act has objected to the inclusion of filled granular PTFE resin within the scope of the investigation; (3) the ITC preliminarly found that there is one industry producing one like product in the United States; and (4) Du Point manufactures the product under investigation, granular PTFE resin. Therefore, in accordance with section 771(9)(C) of the Act (19 U.S.C. 1677(9)(C)), we preliminarly found that the petition was brought on behalf of the U.S. industry and that Du Pont is an interested party with respect to the "like product", granular PTFE resin.

With respect to claims that the petition was not filed on behalf of the industry producing granular PTFE resins, on June 7, 1988, counsel for Asahi and ICI formally withdrew the March 30, 1988, submission. Therefore, we have no basis to find that the petition was not brought on behalf of the U.S. industry.

Moreover, we have continued to find that Du Pont is an interested party with respect to the "like product," granular PTFE resin, and has standing to bring a case with respect to filled PTFE resin. Although the parties have submitted various arguments on this issue, we have not received sufficient evidence to reach a decision contrary to that in our preliminary determination. Nevertheless, because of the importance we placed in our preliminary determination on the ITC's finding of one like product and one industry, we will not consider Du Pont to have standing with respect to filled granular PTFE resins (since, as noted above, Du Pont does not produce filled), if the ITC determines finally that filled and unfilled are separate like products. As a result, if the ITC finds separate like products, we will rescind the initiation of this investigation as it pertains to filled PTFE resin.

Fair Value Comparisons

To determine whether sales of granular PTFE resin from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Since Daikin failed to respond to our questionnaire, we have determined that use of best information available is appropriate, in accordance with section 776(b) of the Act. This statutory provision requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or oherwise significantly impedes an investigation." Therefore, we have assigned Daikin, as best information available, the margin supplied in the petition. This is the same rate as it was assigned in the preliminary determination.

With regard to Asahi, it did not respond to the Department's request for information concerning sales of filled PTFE resins by ICI Americas Inc. (ICIA), a related party, to unrelated U.S. customers. Therefore, for that portion of its margin attributable to filled PTFE resins, we have assigned it, as best information available, the margin supplied in the petition. This is also the same rate as it was assigned in the preliminary determination.

The period of investigation for granular PTFE resin from Japan was June 1, 1987 through November 30, 1987.

United States Price

For all sales by Asahi of unfilled granular PTFE resin, we based United States Price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated exporter's sales price based on packed, ex-warehouse or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, brokerage and handling charges, ocean freight, marine insurance, U.S. duty, U.S. inland freight, credit expenses and other U.S. selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value for sales of unfilled granular PTFE resin by Asahi based on packed, delivered prices to unrelated purchasers in Japan. We made deductions, where appropriate, for inland freight and insurance, credit and warranty expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: As noted in the "Scope of Investigation" section of our preliminary determination (53 FR 12968, April 20, 1988), the petitioner requested in the petition that filled granular PTFE resin be included in our investigation to prevent probable circumvention of a final dumping order on unfilled granular PTFE resin. On June 2, 1988, petitioner reiterated its views that filled and unfilled granular PTFE resins constitute the same "class or kind" of merchandise.

On June 7, 1988, respondent Asahi withdrew its March 30, 1988 submission in opposition to the inclusion of filled PTFE resins within the scope of the investigation.

DOC Position: As noted in the "Scope of Investigation" section of this notice, we have continued to treat all granular PTFE resins, both filled and unfilled, as one class or kind of merchandise.

Comment 2: Asahi argues that the Department should deduct the amount of indirect selling expenses incurred in the United States market as stated in Asahi's response to the questionnaire because the methodology used to obtain the claimed amount as both reasonable and accurate given the manner in which the product was sold. Asahi claims that the sales under consideration did not require as much technical and/or selling effort as did the sales of other ICIA products and, therefore, should bear a smaller proportion of total U.S. indirect selling expenses.

DOC Position: At verification, ICIA was unable to provide documentation in support of its contention that the sales under consideration should be allocated a smaller proportion of U.S. indirect selling expenses than other products

sold by ICIA. Furthermore, we verified that ICIA's indirect selling expenses were substantially more than what was reported. On June 13, 1988, six weeks after verification of Asahi's questionnaire response, Asahi submitted information in support of its claim. Since the information was not submitted in a timely fashion, we were unable to verify it, and it could not be considered for our final determination. Therefore, we rejected the amount in the questionnaire response and allocated the verified amount of total U.S. indirect selling expenses over total fluoropolymer products sold by ICIA during the same time period.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of granular PTFE resin from Japan that are entered or withdrawn from warehouse, for consumption, on or after April 20, 1988, the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of granular PTFE resin from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Daikin Industries, Inc.	103.00
Asahi Fluoropolymers Co., Ltd.	51.45
All others	91.74

This suspension of liquidation covers imports of granular PTFE resin from Japan as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on granular PTFE resin from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

June 27, 1988.

[FR Doc. 88-15037 Field 7-1-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

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

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit (EFP) to harvest groundfish on domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic (EEZ) zone off the coasts of Washington, Oregon and California. The permit authorizes experimental fishing practices which otherwise would be prohibited by federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

EFFECTIVE DATES: June 1, 1988, through December 31, 1988.

ADDRESS: For further details or for a copy of the permit, write to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, NMFS, 3000 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140; or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in § 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable codends of various mesh sizes in the EEZ off Washington, Oregon, and California was received from Dr. Ellen Pikitch, University of Washington, on March 11, 1988. The major goal of the experimental fishery is to compare the effectiveness of different mesh size gear regulations with the current trip limit regime set forth in the FMP. Current groundfish regulations at § 663.26 prohibit the use of a mesh size smaller than 4½ inches in bottom trawls and prohibit detachable codends if the vessel is carrying a net with smaller than 4½ inch mesh. In addition, the applicant requested that the EFP waive the current trip limits and groundfish quota restrictions for the duration of the experiment. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the **Federal Register** (53 FR 11110, April 5, 1988). No comments were received. The applications was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its April, 1988 public meeting in San Francisco, California. The Council recommended that NMFS issue an EFP, as requested by the applicant, except that each experimental fishing trip should be subject to the trip frequency limits published in the **Federal Register** (53 FR 248, January 6, 1988). NMFS has incorporated the Council recommendations in the terms and conditions of the EFP.

The EFP was issued on May 27, 1988. It authorizes 46 domestic trawl vessels to engage in experimental fishing under the direction of Dr. Pikitch, according to the terms and conditions of the permit, from June 1, 1988, through December 31, 1988, in the EEZ off Washington, Oregon and California. An observer from the University of Washington must be aboard each vessel during experimental fishing and present during the unloading of fish taken from each experimental fishing trip. The permitted vessels are authorized to use detachable codends of various mesh sizes when involved in experimental fishing as directed by the permit holder. The groundfish trip poundage limitations and optimum yield (quota) closures do not apply to each experimental fishing trip; however, the trip frequency limits will apply. The permittee is required to provide advance notification to NMFS of each departure and arrival of vessels conducting experimental fishing. The permittee plans to schedule up to 66 experimental fishing trips under the EFP. The permittee will prepare a comprehensive report on the results of the experimental fishery under a project supported by a Saltonstall-Kennedy grant entitled "West Coast Groundfish Mesh Size Study".

(16 U.S.C. 1801 *et seq.*)

Dated: June 29, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-14996 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Socialist Republic of Romania

June 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Adjusting a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 29, 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: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6497. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 435 and 444 are being increased for carryover. Also, swing is being applied to Category 444, reducing Category 435 to account for swing.

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, published on December 16, 1987). Also see 53 FR 7783, published on March 10, 1988.

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 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

June 29, 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 March 7, 1988, concerning imports into the United States of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 29, 1988, the directive of March 7, 1988 is amended to adjust the previously established limits for wool textile products in the following categories, under the provisions of the current bilateral textile agreement between the Governments of the United States and the Socialist Republic of Romania:

Category	Adjusted twelve-month limit [1]
435	3,623 dozen.
444	58,032 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

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. 88-14998 Filed 7-1-88; 8:45am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania; Correction

June 29, 1988.

In the table in the letter to the Commissioner of Customs published in the **Federal Register** on April 7, 1988 (53 FR 11542), the TSUSA coverage for sublimit 334pt. should be corrected as indicated below:

" " " shall be in Category 334pt. [other than knit athletic jackets) in all TSUSA numbers in Category 334 except 381.0211, 381.3905, 384.0240 and 384.3007.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14967 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Singapore

June 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: July 7, 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) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 340 is being reduced for carryforward used in 1987.

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, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 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

June 29, 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 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 7, 1988, the directive of December 24, 1987 is being amended to adjust to 567,322 dozen [1] the current limit for cotton textile products in Category 340, as provided under the terms of the current bilateral agreement between the Governments of the United States and Singapore.

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. 88-14968 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: CHAMPUS CHOICE Enrollment Form; DD Form X414; and OMB Control Number 0704-0162.

Type of Request: Extension.

Annual Burden Hours: 70.

Annual Responses: 215.

Needs and Uses: The CHAMPUS CHOICE Enrollment Form is used by prospective CHAMPUS CHOICE enrollees. The requested information establishes the eligibility participation in the prepaid health care plan.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: One-time only.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Roscoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 19, 1988.

[FR Doc. 88-15040 Filed 7-1-88; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: Under Secretary of Defense (Acquisition), DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to reducing the amount of data acquired from contractors under defense contracts. These data requirements are imposed in contracts through the citing of Data Item Descriptions (DID's) in the Contract Data Requirements List (CDRL). We suspect that there are DID's which overspecify requirements, are duplications of other DID's, or otherwise result in an unnecessary paperwork burden upon the public. Internal efforts are being undertaken by DoD to reduce the number of these types of DID's. Your help in specifically identifying the DID's which could be eliminated or improved will be appreciated. The input resulting from this request will be used to reduce the number of DID's and thereby reduce the paperwork burden placed upon the public. At this time comments are requested on DID's that fall into the following categories (reference DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDL): ADMN (Administrative); FNCL (Financial); MGMT (Management); QCIC (Quality Control/Assurance and Inspection); SDMP (Standardization and Data Management); TCSP (Technical Support); MISC (Miscellaneous). Comments on other categories of DID's were requested in previous **Federal Register** Notices and will be requested in future **Federal Register** Notices.

DATE: Comments or a request for extension should be received by September 6, 1988. Requests for extensions will be considered on a case-by-case basis.

ADDRESS: Comments should be forwarded to Mr. Carl Berry, Defense Data Management Office, OASD(P&L)DDMO, 5203 Leesburg Pike, Suit 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: A list or a copy of the DID's included in the above categories, or a copy of individual DID's included in the above categories may be obtained from Mr. Carl Berry, Defense Data Management Office, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041, telephone (703) 756-2554.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 39, 1988.

[FR Doc. 88-15042 Filed 7-1-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DOD FAR Supplements Part 19, Small and Disadvantaged Business Concerns; No Form; and OMB Control Number 0704-0218.

Type of Request: Extension.

Annual Burden Hours: 402.

Annual Responses: 1,610.

Needs and Uses: Information concerns certain data required to support evaluation of certain set-aside awards and to provide a basis for required reporting on awards placed in labor surplus areas under combined small business labor surplus procedures. Reporting is necessary to ensure proper evaluation and to obtain a contractor's statement of intent to perform in a labor surplus area.

Affected Public: Small business firms.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27, 1988.

[FR Doc. 88–14984 Filed 7–1–88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 14–15 July 1988 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with strategic weapons requirements, US space policy and developments at the Moscow Summit and future prospects.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 29, 1988.

[FR Doc. 88–15041 Filed 7–1–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

U.S. Army Laboratory Command; Availability of Millimeter Wave Microstrip Circulator for Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a millimeter wave microstrip circulator for exclusive licensing. Inventors at the U.S. Army Electronics Technology and Devices Laboratory (USAETDL) have applied for a patent on a new "drop-in" millimeter wave microstrip circulator. The rights to the circulator belong to the United States Government.

This new circulator is used to allow a millimeter wave transmitter and receiver to share a common antenna, provide protection to millimeter wave transmitter from unwanted incoming signals, or provide injection locking in a transmitter. It consists of a Y-shaped ferrite element which is placed appropriately on the surface of a millimeter wave microstrip circuit and electrically connected to the circuit at the three ports. The research and development of this device has been completed such that working prototypes have been built and successfully demonstrated.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAETDL wishes to exclusively license rights to the millimeter wave microstrip circulator to a party interested in manufacturing and selling the circulator.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Stern, U.S. Army Electronics Technology and Devices Laboratory, ATTN: SLCET–DT, Fort Monmouth, NJ 07703–5000; (201) 544–4666.

Kenneth L. Denton,

Alternate Liaison Officer With the Federal Register.

[FR Doc. 88–14981 7–1–88; 8:45 am]

BILLING CODE 3710-08-M

Senior Executive Service; Performance Review Boards; Membership

AGENCY: Army Department.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert C. Zenda, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research) Office, Under Secretary of the Army.
2. Dr. George E. Dickey, Deputy for Programs, Planning, Review and Evaluation, Office, Assistant Secretary of the Army (Civil Works).
3. Mr. Charles A. Chase, Director, Review and Oversight, Office, Assistant Secretary of the Army (Financial Management).
4. Mr. Eric A. Orsini, Deputy Assistant Secretary of the Army (Logistics), Office, Assistant Secretary of the Army (Installations and Logistics).
5. Mr. William E. Manning, Deputy Assistant Secretary of the Army Readiness, Force Management and Training, Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).
6. Brigadier General Richard D. Beltson, Deputy for Technology and Assessments, Office, Assistant Secretary of the Army (Research, Development and Acquisition).
7. Mrs. Susan Crawford, General Counsel, Office, General Counsel.
8. Mr. Daniel R. Gill, Director, Small and Disadvantaged Business Utilization, Office, Small and Disadvantaged Business Utilization.
9. Mr. Steven Dola, Deputy for Management and Budget, Office, Assistant Secretary of the Army (Civil Works).
10. Major General James F. McCall, Director, Army Budget, Office, Assistant Secretary of the Army (Financial Management).
11. Mr. Michael W. Owen, Principal Deputy Assistant Secretary of the Army (Installations and Logistics), Office, Assistant Secretary of the Army (Installations and Logistics).
12. Mr. John W. Matthews, Deputy Assistant Secretary of the Army (DA Review Boards and Personnel Security) Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).
13. Mr. Joseph R. Varady, Jr., Director for Procurement Policy, Office, Assistant Secretary of the Army (Research, Development and Acquisition).
14. Mr. Michael A. Janoski, Director, Acquisition and Systems Audits, Office, Army Audit Agency.
15. Mr. Thomas W. Taylor, Deputy General Counsel (Installations and Operations) Office, General Counsel.

16. Mr. Thomas A. Grant, Director, Personnel and Force Management Audits, Office, Army Audit Agency.
17. Mr. Peter Stein, Deputy, Administrative Assistant to the Secretary of the Army, Office, Administrative Assistant to the Secretary of the Army.

The members of the Performance Review Board for the Program Executive Officer structure are:

1. Mr. Arthur O. Rosenblum, PEO, Management Information Systems.
2. Mr. Feliciano Giordano, PEO, Networks.
3. Mr. Robert F. Giordano, Deputy, PEO, Command and Control Systems.
4. Mr. Neil Atkinson, Deputy PEO, Communications Systems.
5. Mr. William T. Tobias, Deputy Program Manager, Satellite Communications (SATCOM).
6. Mr. Andrew R. D'Angelo, Deputy PEO, Intelligence and Electronic Warfare.
7. Mr. Michael F. Fisette, Deputy PEO, Ammunition.,
8. Mr. George T. Singley III, PEO, Combat Support Aviation.
9. Mr. Robert D. Hubbard, Deputy Project Manager, Light Helicopter Family.
10. Mr. Jerry L. Chapin, Deputy PEO, Close Combat Vehicles.
11. Mr. Melvin E. Burcz, Deputy PEO, Combat Support.
12. Mr. Clarence A. Tidwell, Deputy PEO, Forward Air Defense.
13. Mr. James B. Emahiser, PEO, Troop Support.
14. Mr. Charles Baronian, Deputy Program Manager, Chemical Demilitarization.
15. Dr. Billy Richardson, PEO, Chemical and Nuclear.
16. Mr. Stephen R. Burdt, Deputy for Program Evaluation, Office, Assistant Secretary of the Army (Research, Development and Acquisition).
17. Mr. Joseph R. Varady, Jr., Director for Procurement Policy, Office, Assistant Secretary of the Army (Research, Development and Acquisition).
18. Major General Ronald K. Andreson, Program Manager, LHX, U.S. Army Aviation Systems.
19. Brigadier General Edward R. Baldwin, Jr., PEO, Communications Systems, U.S. Army Communications-Electronics Command.
20. Brigadier General James W. Ball, PEO, Combat Support System, U.S. Army Tank-Automotive Command.
21. Brigadier General John S. Drosdeck, Jr., PEO, Fire Support System, U.S. Army Missile Command.
22. Brigadier General William J. Fiorentino, PEO, Forward Air Defense Systems, U.S. Army Missile Command.
23. Brigadier General William H. Forster, PEO, Combat Aviation, U.S. Army Aviation Systems Command.
24. BG Paul L. Greenberg, PEO, Ammunition, U.S. Army Materiel Command.
25. Lieutenant General E. R. Heiberg III, Chief of Engineers, U.S. Army Corps of Engineers.
26. Brigadier General Peter M. McVey, PEO, Close Combat Vehicle, U.S. Army Tank-Automotive Command.
27. Brigadier General David A. Nydam, Program Manager, Chemical Demilitarization, U.S. Army Chemical Research and Development Center.
28. Major General Joseph D. Schott, PEO, Command and Control Systems, U.S. Army Communications-Electronics Command.

The members of the Performance Review Board for the Office, Chief of Staff of the Army are:

1. Mr. Elmer M. Mitchell, Chief, Discrimination Division Sensors Directorate, Strategic Defense Command.
2. Doctor Michael J. Lavan, Director, Directed Energy Weapons Directorate, Strategic Defense Command.
3. Brigadier General Charles H. Armstrong, Director, Force Programs Integration, Office, Deputy Chief of Staff for Operations and Plans.
4. Mr. John A. Riente, Technical Director to the Deputy Chief of Staff for Operations, Office, Deputy Chief of Staff for Operations and Plans.
5. Major General James R. Klugh, Assistance Deputy Chief of Staff for Logistics, Office, Deputy Chief of Staff for Logistics.
6. Major General Charles M. Murray, Director, Supply and Maintenance Directorate, Office, Deputy Chief of Staff for Logistics.
7. Major General Donald W. Jones, Assistant Deputy Chief of Staff for Personnel, Office, Deputy Chief for Personnel.
8. Brigadier General (P) Charles A. Hines, Director of Manpower, Office, Deputy Chief of Staff for Personnel.
9. Mr. Charles W. Weatherholt, Deputy Director of Civilian Personnel, Office, Deputy Chief of Staff for Personnel.
10. Major General Jerome B. Hilmes, Commander, Operations Test and Evaluation Agency, OTEA.
11. Ms. Mary H. Smith, Director, Program Management System Development Agency, Office, Chief of Staff.
12. Mr. James D. Davis, Special Assistant to the Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.
13. Brigadier General Paul E. Menoher, Jr., Assistant Deputy Chief of Staff for Intelligence, Office, Chief of Staff for Intelligence.
14. Mr. William S. Rich, Jr., Deputy and Technical Director, U.S. Army Foreign Science and Technology Center, Office, Chief of Staff for Intelligence.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General George K. Withers, Jr., Deputy, Corps of Engineers, USA Corps of Engineers.
2. Mr. Jack Kiper, Chief, Construction Operations Division, Ohio River Division.
3. Major General Peter J. Offringa, Assistant Chief of Engineers, Office of the Chief of Engineers.
4. Brigadier General Patrick J. Kelley, Commanding General, USA Engineering Division, South Pacific.
5. Brigadier General Arthur E. Williams, Commanding General, US Army Engineering Division, Pacific Ocean.
6. Brigadier General Theodore Vander Els, Commanding General, USA Engineering Division, North Central.
7. Mr. Bob Benn, Assistant Director for Research and Development (Military Programs).
8. Mr. Edward T. Watling, Deputy Chief, Engineering Division (Engineering and Construction).
9. Mr. Daniel Mauldin, Chief, Planning Division (Civil Works), Army Corps of Engineers.
10. Mr. William L. Robertson, Deputy Chief Counsel, Headquarters, U.S. Army Corps of Engineers.
11. Mr. William P. Todsen, Chief, Engineering Division, Missouri River Division.
12. Doctor Robert Whalin, Technical Director, U.S. Army Engineer Waterways Experiment Station.
13. Mr. Richard E. Hanson, Chief, Construction Division (Engineering and Construction).
14. Mr. Joe G. Higgs, Chief, Engineering Division, Europe Division.

The members of the Performance Review Board for the U.S. Army Surgeon General are:

1. Major General Robert H. Buker, M.D., Deputy Surgeon General.
2. Major General Billy B. Lefler, D.D.S., Assistant Surgeon General for Dental Services. 3
3. Brigadier General Clara L. Adams-Ender, RN Chief, Army Nurse Corps.
4. Dr. Timothy J. O'Leary, M.D., Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.

5. Dr. Louis S. Baron, PhD, Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research.

6. Dr. Michael A. Chirigos, PhD, Deputy for Science, US Army Institute of Infectious Disease.

7. Dr. Bhupendra P. Doctor, PhD, Director, Division of Biochemistry, Walter Reed Army Institute of Research.

8. Dr. Robert R. Engle, PhD, Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.

9. Dr. Samuel B. Formal, PhD, Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

10. Dr. Elson D. Helwig, M.D., Chairman, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

11. Dr. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Army Forces Institute of Pathology.

12. Dr. Kamal G. Ishak, M.D., Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology.

13. Dr. Frank B. Johnson, M.D., Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology.

14. Dr. Arthur D. Mason, Jr., M.D., Chief Laboratory Division, U.S. Army Institute of Surgical Research.

15. Dr. Fathollah K. Mostofi, M.D., Chairman, Department of Gastrointestinal Pathology, Armed Forces Institute of Pathology.

16. Dr. Henry J. Norris, M.D., Chairman, Department of OB/GYN Pathology, Armed Forces Institute of Pathology.

17. Dr. Howard E. Noyes, PhD, Associate Director for Research Management, Walter Reed Army Institute of Research.

18. Dr. Joseph V. Osterman, PhD, Special Assistance for Biotechnology, US Army Medical Research and Development Command.

19. Dr. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology

20. Dr. James A. Vogel, PhD, Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine.

21. Dr. Florabelle G. Mullick, M.D., Assoc. Dir, Group D. Center for Advanced Pathology, Armed Forces Institute of Pathology.

22. Dr. Leslie H. Sobin, M.D., Assoc. Director for Scientific Publications, Armed Forces Institute of Pathology.

23. Dr. Liselotte Hochholzer, M.D., Chairman, Department of Pulmonary and Mediastoral Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Major General Charles D. Bussey, Deputy Chief of Staff for Personnel, Headquarters, U.S. Army Materiel Command.

2. Major General Joseph D. Schott, Program Executive Officer, Control Systems for Command.

3. Brigadier General James Hall, Program Executive Officer, Combat Support.

4. Brigadier General Donald R. Williamson, Deputy Commanding General, U.S. Army Aviation Systems Command.

5. Brigadier General John S. Drosdeck, Jr., Program Executive Office, Fire Support.

6. Brigadier General Terrence L. Arndt, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command.

7. Brigadier General Peter D. Hildago, Deputy Commanding General for Chemical Material, U.S. Army Armament, Munitions and Chemical Command.

8. Brigadier General Joseph Raffiani, Jr., Deputy Commanding General for Armament and Munitions, U.S. Army Armament Munitions and Chemical Command.

9. Brigadier General Edward R. Baldwin, Program Executive Officer, Communications Systems.

10. Brigadier General George A. Bombell, Director, Joint Tactical Command, Control and Communications.

11. Mr. Joseph A. Floyd, Assistant Deputy for Procurement and Readiness, U.S. Army Tank Automotive Command.

12. Mr. Henry B. Jones, Director for Procurement and Production, U.S. Army Tank Automative Command.

13. Mr. Melvin E. Burcz, Deputy Program Executive Officer, Combat Support.

14. Mr. Altert A. Dawes, Chief Counsel, U.S. Army Tank Automotive Command.

15. Dr. Richard M. Carlson, Director, Research and Technology Activity, Research, Development and Engineering Center, U.S. Army Aviation Systems Command.

16. Mr. Donald W. Schmitz, Director for Procurement and Production, U.S. Army Aviation Systems Command.

17. Mr. Daniel M. McEneany, Director of Engineering, Research, Development and Engineering Center, U.S. Army Aviation Systems Command.

18. Mr. David V Gaggin, Deputy, Avionics Research and Development Activity, Research, Development and Engineering Center, U.S. Army Aviation Systems Command.

19. Mr. Harry J. Peters, Technical Director, U.S. Army Test and Evaluation Command.

20. Mr. John A. Lockerd, Technical Director/Chief Scientist, White Sands Missile Range, U.S. Army Test and Evaluation Command.

21. Mr. James A. Wise, III, Technical Director, National Range Operations, U.S. Army Test and Evaluation Command.

22. Mr. Grady H. Banister, Jr., Technical Director, Electronic Proving Ground, U.S. Army Test and Evaluation Command.

23. Mr. James C. Kelton, Technical Director, USA Combat Systems Test Activity, U.S. Army Test and Evaluation Command.

24. Dr. Lothar L. Salomon, Scientific Director, Dugway Proving Ground, U.S. Army Test and Evaluation Command.

25. Mr. William L. Vomocil, Technical Director, Yuma Proving Ground, U.S. Army Test and Evaluation Command.

26. Mr. Raymond G. Pollard, Director for Test, U.S. Army Test and Evaluation Command.

27. Mr. James B. Emahaiser, Program Executive Officer, Troop Support.

28. Mr. Harold L. Mabrey, Director for Procurement and Production, U.S. Army Troop Support Command.

29. Mr. Moris K. Zusman, Director, Logistics Support Directorate, Belvoir Research, Development and Engineering Center, U.S. Army Troop Support Command.

30. Dr. Robert W. Lewis, Director, Science and Advance Technology Directorate, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

31. Dr. Abner S. Salant, Food Engineering Directorate, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

32. Mr. Kenneth A. Reinhart, Director Individual Protection Directorate, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

33. Dr. Larry C. Mixon, Director for Structures, Research, Development and Engineering Center, U.S. Army Missile Command.

34. Mr. Truman W. Howard, III, Director of Product Assurance, U.S. Army Missile Command.

35. Dr. Clarence G. Thornton, Director, Electronics Technology and Devices Laboratory, U.S. Army Laboratory Command.

36. Dr. John T. Fraiser, Director, Ballistic Research Laboratories, U.S. Army Laboratory Command.
37. Dr. George A. Neece, Scientific Advisor, Army Research Office, U.S. Army Laboratory Command.
38. Dr. John D. Weisz, Director, Human Engineering Laboratory, U.S. Army Laboratory Command.
39. Mr. Bruce M. Fonoroff, Associate Technical Director for Research and Technology, U.S. Army Laboratory Command.
40. Dr. Edward S. Wright, Director, Army Materials Technology Laboratory, U.S. Army Laboratory Command.
41. Mr. A. David Mills, Assistant Deputy Chief of Staff for Supply, Maintenance and Transportation, Headquarters, U.S. Army Materiel Command.
42. Mr. Michael C. Sandusky, Assistant Deputy Chief of Staff for Program Analysis and Evaluation, Headquarters, U.S. Army Materiel Command.
43. Dr. Kenneth J. Oscar, Assistant Deputy Chief of Staff for Systems Management, Headquarters, U.S. Army Materiel Command.
44. Mr. Anthony V. Campi, Technical Director/Director, Research, Development and Engineering Center, U.S. Army Communications-Electronics Command.
45. Mr. Victor J. Ferlise, Chief Counsel, U.S. Army Communications-Electronics Command.
46. Mr. James M. Skurka, Assistant Deputy for Procurement and Readiness, U.S. Army Communications-Electronics Command.
47. Mr. Seymour J. Lober, Deputy Chief of Staff for Product Assurance and Testing, Headquarters, U.S. Army Materiel Command.
48. Dr. William C. McCorkle, Jr., Technical Director for Missile Command and Director, Research, Development and Engineering Center, U.S. Army Missile Command.
49. Dr. Richard G. Rhoades, Associate Director for Technology, Research, Development and Engineering Center, U.S. Army Missile Command.

The members of the Performance Review Board for the Consolidated Commands are:

1. Brigadier General Richard G. Larson, Commander, Military Traffic Management Command, Western Area.
2. Mr. Thomas D. Collingsworth, Special Assistant for Transportation Engineering, Military Traffic Management Command.
3. Brigadier General Theodore G. Stroup, Jr., Deputy Chief of Staff for Resource Management, Training and Doctrine Command.
4. Mr. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, Training and Doctrine Command.
5. Mr. Leonard J. Mabius, Technical Director/Chief Engineer, Office of the Commanding General, Headquarters, USA Information Systems Command.
6. Brigadier General Alonzo E. Short, Jr., Commanding General, Army Information Systems Engineering Command, Information Systems Command.
7. Mr. C. Cary Jones, Assistant Deputy Chief of Staff for Engineering and Housing, USA Europe and Seventh Army.
8. Major General W. H. Gourley, Director, Personnel, J1, Forces Command.
9. Mr. William S. Fraim, Deputy Director (Civilian Personnel, Directorate of Personnel, J1) Forces Command.
10. Mr. William M. Wilkerson, Deputy Director, Directorate of Resource Management, J8, Forces Command.

Carol Blea,

Acting Chief, Senior Executive Service Office.

[FR Doc. 88-15027 Filed 7-1-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management; Carrier Disqualification Procedures; Proposed Revision

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

ACTION: Proposed revision of regulation and request for public comment.

SUMMARY: The Military Traffic Management Command (MTMC) proposes to revise its regulation concerning carrier disqualification procedures. This action is necessary to accommodate changes in statutes, regulations, and administrative procedures that have occurred since the last revision was published on 12 December 1984. The intent of the revision is to clarify and improve processing procedures within MTMC's various disqualification programs. Since these programs form an integral part of the relationship between MTMC and its carriers, MTMC requests public comment on the proposed revision prior to its publication in final form.

DATES: Comments must be submitted on or before August 4, 1988.

ADDRESS: Comments on the revision and requests for full text copies of the proposed revision should be addressed to the Office of the Staff Judge Advocate, Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Room 405, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Wiliam J. Dowell (MTMC General Attorney), 703-756-1580 or Captain Bjarne R. Henderson (Assistant Staff Judge Advocate), 703-756-1581.

SUPPLEMENTARY INFORMATION: As the single manager of traffic management for the Department of Defense (DOD), MTMC is responsible for ensuring that DOD passenger, freight, and personal property transportation services are procured only from qualified carriers. In the event of unsatisfactory performance or other appropriate circumstances, the procedures defined in MTMC Regulation 15-1 are used to verify whether a carrier is presently responsible and thereby eligible for continued participation in DOD transportation programs.

The proposed revision would supersede Headquarters, MTMC and MTMC area command procedures heretofore published in MTMC Regulation 15-1, Transportation and Travel, Procedure for Disqualifying and Placing Carriers in Non-use (12 December 1984) (49 FR 44124), and in Chapter 42 of the Defense Traffic Management Regulation (31 July 1986). The significant changes contained in the proposed revision are as follows:

a. "Non-use" is incorporated into disqualification; the term "probation" redefines concept of "suspended disqualification."

b. Area command board disqualification authority is expanded to include outbound, inbound, and intra-area traffic instead of outbound traffic only.

c. Carriers who fail to meet objective criteria (e.g., operating authority, insurance, or program approval) are excluded from the hearing procedures.

d. Examples of disqualification causes and conditions are expanded and clarified.

e. Guidelines for coordination of MTMC's disqualification program with other agency and suspension programs are included.

f. Expedited procedures are included for decisions by board chairpersons where the carrier fails to exercise its right to a hearing or submit a written response.

g. Appeal and reconsideration procedures are clarified. Appellate review of facts (other than new evidence not previously available) is limited to evidence presented to and considered by a board.

h. The scope of parties eligible for disqualification is expanded to include

carrier affiliates, agents, and individuals.

Pursuant to requirements codified at 41 U.S.C. 418b, MTMC is providing notice of this proposed revision and offering a 30-day period for receiving and considering the views of all interested parties. Because of the draft revision's length and specialized nature, full text copies will be mailed to interested parties upon written request. Timely written comments will be reviewed and considered for incorporation prior to publication of the regulation in final form.

Nelson H. Maier, Jr.

Colonel, U.S. Army, Chief of Staff.

[FR Doc. 88-15026 Filed 7-1-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Greenbrier River Basin Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Huntington District currently is studying potential flood damage reduction measures for the Greenbrier River Basin. Catastrophic floods in November 1985 prompted a redirection of ongoing studies to provide a more comprehensive examination of flood problems and solutions thereto. Implementation of flood damage reduction measures could impact on resources in the basin. Consequently, the Huntington District Engineer has determined that the preparation of a Draft Environmental Impact Statement (DEIS) may be necessary.

Questions about the proposed action and DEIS can be answered by: Mr. John P. Justice, Jr., P.E., 502 Eighth Street, Huntington, West Virginia 25701, Phone: 304-529-5712.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* As of the date of this notice, the Huntington District does not know which, if any, of the flood damage reduction alternatives being considered will be recommended for implementation. From the alternatives being evaluated, flood reduction measures may be recommended to the Congress for authorization.

2. Efforts during the preliminary study involved screening studies and a detailed phase. The following options were initially considered: Tributary dam system; headwater dam system; main stem dams; floodwalls and/or levees; nonstructural; and, no action. As a result of the screening studies, some alternatives were screened out and others were modified. The preliminary study was completed with an evaluation of a combination tributary/headwater dam system, main stem dams, floodwalls and/or levees, nonstructural, and no action.

These study efforts were discussed at great length at numerous public meetings and workshops with the residents of the Greenbrier River Basin during the period January 1986 through February 1988. The preliminary phase of the study concluded that there was a federal interest in proceeding with a feasibility study for flood control in the Greenbrier Rvier Basin. Alternatives that survived the preliminary study process are: Nonstructural; no action; and, a main stem dam at various locations on the Greenbrier River between the communities of Marlinton and Cloverlick. The reservoir being evaluated varies in size and performance capabilities. The results of the feasibility study may lead to a recommendation for authorization of one of these alternatives by Congress.

3. a. A draft feasibility report containing a summary of investigations is scheduled for completion in 1989. Public involvement will continue throughout the study in the form of workshops, information furnished to the local media, and individual contacts. A public meeting will be held following the completion and distribution of the draft report and DEIS, and the public can formally present their views regarding the tentatively recommended plan. Federal, state, and local agencies as well as other interested organizations will be afforded the opportunity to be represented or attend the meetings.

b. Major significant environmental impacts to be analyzed in the DEIS are:

- Impacts of impoundments on existing terrestrial and aquatic resources.
- Social and cultural impacts resulting from implementation of an alternative.
- Wild and scenic river status for portions of the Greenbrier River.
- Institutional implications of cost-sharing.
- Economic impacts resulting from implementation of alternatives.

c. The U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S. Forest Service, National Park Service, U.S. Soil Conservation Service, West Virginia Department of Commerce, West Virginia Department of Natural Resources, and West Virginia Governor's Office of Economic and Community Development have been invited to serve as Cooperating Agencies in the preparation of the DEIS.

d. Full compliance with all environmental protection statutes and regulations will be accomplished prior to, or as a result of, the circulation of the draft EIS. The federal and local entities responsible for enforcing these laws will be consulted throughout the planning process to ensure these requirements are adequately met. A brief discussion of the District's consulting efforts on major statutes follows. The U.S. Environmental Protection Agency and the West Virginia Air Quality Control Commission will be consulted to assure compliance with the Clean Air Act, as amended, 42 U.S.C. 1857h-7, *et seq.* The U.S. Environmental Protection Agency in addition to the West Virginia Department of Natural Resources, will review the project for compliance with the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.* Several agencies of the U.S. Department of the Interior and their related local agencies, will provide input throughout the planning process to assure compliance with requirements pertaining to natural, recreational, cultural, historical, and archeological resources. Consultation with the U.S. Fish and Wildlife Service will ensure compliance with the Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661, *et seq.* The U.S. Fish and Wildlife Service and the West Virginia Department of Natural Resources will each provide input concerning the Endangered Species Act, as amended, 16 U.S.C. 1531, *et seq.* The U.S. Park Service Office of Archeological and Historical Preservation, the National Advisory Council on Historic Preservation, and the West Virginia Historic Preservation Officer will each be consulted throughout all project planning and construction stages concerning statutes such as the Archeological and Historical Preservation Act, as amended, 16 U.S.C. 469, *et seq.*; and the Preservation of Historic and Archeological Data Act (88 Stat. 174) (Pub. L. 93-291) and Executive Order 11593. Input from the U.S. Park Service, West Virginia Department of Natural Resources, and the West Virginia Department of Commerce will ensure the project's compliance with recreation related requirements such as the Federal Water Project Recreation Act, as amended, 16 U.S.C. 460-1 (12), *et seq.* The U.S. and West Virginia Departments of Agriculture will be advising the Huntington District on requirements to comply with the Farmlands Protection Policy Act (Pub. L. 97-98) (7 CFR Part 658). Consultation and advice will be sought from the U.S.

Forest Service concerning impacts on both national forest lands and the national wild and scenic river system. The U.S. Soil Conservation Service (SCS) will be consulted concerning prime and unique farmlands, as well as potential impacts on SCS facilities within the Greenbrier River Basin.

4. No additional public scoping meetings are anticipated during DEIS development.

5. It is anticipated that the DEIS will be made available for public review in 1989.

Date: June 10, 1988.

David J. Hall,

Captain, U.S. Army, Deputy District Engineer.

[FR Doc. 88-15028 Filed 7-1-88; 8:45 am]

BILLING CODE 3710-GM-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 September 27–28, 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 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 552(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, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: June 27, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14969 Filed 7-1-88; 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 September 7–8 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 the 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 will 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, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: June 27, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14970 Filed 7-1-88; 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 October 11–12, 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 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, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: June 27, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14971 Filed 7-1-88; 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 November 2–3, 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 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, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: June 27 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14972 Filed 7-1-88; 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-Electric Battle Management Task Force will meet September 21–22, 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, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: June 28, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14973 Filed 7-1-88; 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-Electric Battle Management Task Force will meet August 9–11, 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 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, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: June 28, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88-14974 Filed 7-1-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-19-NG]

Hydro Engineering Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 6, 1988, of an application filed by Hydro Engineering, Inc. (Hydro Engineering), for authorization to import from TransCanada PipeLines Limited (TransCanada) up to 8,250 Mcf per day of natural gas over a 15-year term to fuel a combined cycle cogeneration facility to be owned and constructed by Ada Cogeneration at the Amway World Headquarters in Ada, Michigan.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 4, 1988.

FOR FURTHER INFORMATION CONTACT:

William L. Durbin, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9516.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6667.

SUPPLEMENTARY INFORMATION: Hydro Engineering, a corporation organized under the laws of the State of Washington with its principal place of business in Tiburon, California, intends to import gas from TransCanada on behalf of Ada Cogeneration, a limited partnership and developer of the cogeneration facility, for use as the project's primary energy source. Hydro Engineering is a general partner in Ada Cogeneration.

According to the application, the gas would be imported at the point of interconnection between the existing gas transmission facilities of TransCanada and Great Lakes Transmission Company (Great Lakes) at or near Emerson, Manitoba. The gas would then be delivered to ANR Pipeline Company (ANR) at ANR's Crystal Falls, Michigan, interconnect with Great Lakes. ANR would deliver the gas to the facilities of Michigan Consolidated Gas Company (MichCon) at or near Grand Rapids, Michigan, from where the gas would be delivered to the site of the cogeneration facility. MichCon will construct approximately 7,200 feet of 8-inch pipeline necessary to deliver the gas to the cogeneration site or will upgrade the existing pipeline to the size. In addition, MichCon will construct approximately 1,000 feet of 8-inch service pipeline on the Amway World Headquarters site to the facility.

Construction of the cogeneration facility is scheduled to be completed by late 1989 or early 1990, at which time the initial delivery of natural gas would take place. The applicant estimates that the facility would begin taking the daily contract quantity on or before March 1, 1992. The project's gas-fired combustion turbine combined cycle cogeneration unit will burn No. 2 fuel oil for back-up purposes and is expected to produce up to 80,000 lb/hour of 100 psig process steam for use at Amway's office and manufacturing complex and 29.5 kW of electricity. All electricity produced by

the facility would be purchased by Consumers Power Company (Consumers), located in Jackson, Michigan, under a 35-year term power sales agreement dated June 29, 1987.

Hydro Engineering furnished with its application copies of a December 2, 1987, precedent agreement and a proposed gas purchase agreement with TransCanada. The initial term of the proposed purchase contract is 15 years after delivery begins with provision for contract extensions in five-year increments through the 35-year term of the power sales agreement between Ada Cogeneration and Consumers. The contract provides for a daily contract quantity (DCQ) of 8,250 Mcf of gas subject to certain adjustments. Hydro Engineering agrees to purchase from TransCanada all of the gas required to supply the project. The applicant may adjust the DCQ up or down (1) in any amount (not to exceed project requirements) prior to the initial delivery date, and (2) by 10 percent at any time within two years of the initial delivery date. This adjustment right is exercisable only once during each of the above periods.

The gas purchase contract establishes a two-part, demand-commodity border price. The demand component would be a monthly charge equal to the DCQ times the sum of the tolls for firm transportation of the gas on Canadian pipelines. The commodity charge would be comprised of a base charge ($1.65 (U.S.) per MMBtu) multiplied by a price adjustment mechanism less a percentage of the demand charges. The price adjustment mechanism will reflect a change in the fuel and operating costs of existing and future coal-fired generating stations on Consumer's system.

In support of its application, Hydro Engineering states that by linking the price paid for the gas with the costs of producing alternate supplies of electricity on Consumer's system, its proposed arrangement should allow the imported gas and the price of electricity generated by the facility to remain cost competitive during the term of the gas purchase contract. Hydro Engineering notes that it sought to negotiate with numerous domestic producers gas supply terms comparable to those contained in the proposed gas purchase contract agreed to by TransCanada, but that the majority declined to support the long-term nature and the price adjustment mechanism provision in the contract. This, according to the application, demonstrates a regional need for the Canadian gas supplies.

With respect to the security of its supply source for the term of its contract, Hydro Engineering states that the natural gas supply to support this project is 26.4 Tcf of natural gas currently dedicated or otherwise available for delivery to TransCanada and/or its agent, Western Gas Marketing, Ltd. In addition, the gas purchase agreement provides that deliveries to the Ada Cogeneration project cannot be curtailed unless TransCanada similarly curtails existing domestic (Canadian) and foreign customers.

The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). To the extent there are any issues that are unique to cogeneration facilities, the ERA may consider these in making a public interest determination. Further, in accordance with the National Environmental Policy Act of 1969, no final decision will be issued in this proceeding until the DOE has considered the environmental effects of any such decision.

Parties that may oppose this application should comment in their responses on the issue of the competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., August 4, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention my request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issue based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–15052 Filed 7–1–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88-02-NG]

Northern Minnesota Utilities; Authorization to Import and Export Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Northern Minnesota Utilities (NMU) blanket authorization to import and export natural gas from and to Canada. The order issued in ERA Docket No. 88-02-NG authorizes NMU to import, export and re-import up to 66.43 Bcf over a two-year period for system supply or sales in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-15053 Filed 7-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 8706-004]

Kittitas Reclamation District; Surrender of Preliminary Permit

June 29, 1988.

Take notice that Kittitas Reclamation District, Permittee for the Keechelus to Kachess Project No. 8706, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8706 was issued September 27, 1985, and would have expired August 31, 1988. The project would have been located on a proposed pipeline between Lake Keechelus and Lake Kachess in Kittitas County, Washington.

The Permittee filed the request on April 20, 1988, and the preliminary permit for Project No. 8706 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14979 Filed 7-1-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3409-2]

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 Administration and Resource Management

Title: Technical and Financial Reports Submitted in Accordance with Contracts Requirements. (EPA ICR #1039).

Abstract: The Government contractor's technical and financial reports are used by program officials to monitor their progress in providing required services. Not only is technical progress tracked, but current and future costs for completing the project are also tracked on a monthly basis.

Burden Statement: Public reporting burden for this collection of information is estimated to average 58.28 hours per response for government contractors. This estmate includes time for contractors to complete monthly reports. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503.

Respondents: Government Contractors.

Estimated No. of Respondents: 1,400.

Estimated Burden: 979,256 hours.

Frequency of Collection: Monthly.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., 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)

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1448, Survey of Indoor Air Quality Diagnostic and Mitigation Firms, was approved 5/31/88 (OMB #2060-0166; expires 10/31/88).

EPA ICR #1230, New Source Review and Prevention of Significant Deterioration Permitting Programs, was not approved.

Date: June 24, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-14988 Filed 7-1-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3409-3]

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) abstraced 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 Water

National Pollutant Discharge Elimination System (NPDES)

Title: NPDES Discharge Monitoring Report (EPA ICR No. 0229)

Abstract: Any facility discharging wastewater must obtain a permit,

periodically monitor its discharges, and report to EPA or the state permitting authority. EPA and the states use the data to assess compliance with permit conditions.

Respondents: Businesses, publicly owned treatment works, and other facilities discharging wastewater.

Estimated No. of Respondents: 81,414.

Estimated Average Response Frequency: 9.9 per year.

Estimated Average Time Per Response: 18.1 hours.

Total Estimated Annual Burden: 14,551,229 hour.

Office of Solid Waste and Emergency Response

Title: Information Requirements for Hazardous Waste Storage and Treatment Facilities. (EPA ICR # 0814.)

Abstract: This clearance package provides burden hours associated with the information requirements for tank and container facilities. Under RCRA, each hazardous waste facility must apply for an operating permit. The required information is submitted voluntarily or when EPA calls in Part B of the RCRA permit application. The information will be used by EPA to determine eligibility for a RCRA permit.

Respondents: Owners and Operators of Hazardous Waste Facilities.

Estimated No. of Respondents: 196.

Estimated Average Time Per Response: 386 hours.

Frequency of Collection: Varies depending on term of permit.

Total Estimated Annual Burden: 75,625.

Send comments regarding the burden estimates, or any other aspects of these collections of information, including suggestions for reducing these burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 2046

and

Timothy Hunt (for ICR # 0229) or Marcus Peacock (for ICR # 0814), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084)

Date: June 24, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-14989 Filed 7-1-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3408-7]

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessments for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22, as amended on an interim final basis at 52 FR 30671 (August 17, 1987). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules, as amended. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceedings for the assessment of penalties:

In the Matter of Floyd Spilman, dba Magna Plating Company 3063 N. California Avenue, Burbank, CA 91504; EPA Docket No. IX-FY88-31; filed on June 24, 1988, with Regional Hearing Clerk, U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California, 94105, (415) 974-8036; proposed penalty, $30,000, for violations of pretreatment categorical standards and local limits.

In the Matter of A-H Plating, Inc., 1837 Victory Place, Burbank, California, 91504, EPA Docket No. IX-FY88-32; filed on June 24, 1988, with Regional Hearing Clerk, U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California; 94105, (415) 974-8036; proposed penalty, $45,000, for violations of pretreatment categorical standards and local limits.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaints or other documents filed in these proceedings, comment upon the proposed assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

In order to provide opportunity for public comment, EPA will not issue a final order assessing a penalty in these proceedings prior to 30 days after publication of this notice.

Dated: June 24, 1988.

Keith Takata,

Acting Director, Water Management Division.

[FR Doc. 88-14990 Filed 7-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

June 23, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Yvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0104

Title: Temporary Permit to Operate a Part 90 Radio Station

Form No.: FCC 572

Action: Extension

Respondents: Individuals, State or local governments, Business (including

small business), and Non-profit institutions
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 17,023 Recordkeepers @ six minutes each
Needs and Uses: Applicants eligible to hold a radio station authorization in the Private Land Mobile Radio Service may use this form to acquire a temporary permit to operate their radio station during the processing of an application for license grant. The form is retained by the applicant and is valid for 180 days, and becomes a permanent part of the station's records.

OMB No.: 3060–0079
Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License
Form No.: FCC 610–B
Action: Extension
Respondents: Non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 1,000 Responses @ five minutes each
Needs and Uses: Filing is required to renew or modify the existing station license. The data is used by examiners to determine the applicant's continued eligibility.

OMB No.: 3060–0054
Title: Application for Exemption from Ship Radio Station Requirements
Form No.: FCC 820
Action: Extension
Respondents: Individuals and Business (including small business)
Frequency of Response: On occasion
Estimated Annual Burden: 100 Responses @ two hours each
Needs and Uses: Filing is required by applicants for exemption from radio provisions of statute, treaty or international agreement. The data is used by examiners to determine the applicant's qualifications for the requested exemption.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.
[FR Doc. 88–14963 Filed 7–1–88; 8:45 am]
BILLING CODE 6712-01-M

Application; Allen County Broadcasting Ldt. Partnership, 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. Allen County Broadcasting Limited Partnership; New Haven, IN.	BPH–870615MC	88–295
B. Joseph G. Parson; New Haven, IN.	BPH–870615MG	
C. Larko Communications, Inc.; New Haven, IN.	BPH–870615ML	
D. Frank Kovas; New Haven, IN.	BPH–870615NC	

2. Pursant 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 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, D
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

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. 88–14964 Filed 7–1–88; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Alfred A. Johnson 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. Alfred A. Johnson; Crawford, Georgia.	BPH–870505KA	88–294
B. Georgia Family Radio Limited Partnership; Crawford, Georgia.	BPH–870506KB	
C. Crawford Broadcasting Company, Inc.; Crawford, Georgia.	BPH–870506KC	
D. Crawford FM Limited Partnership; Crawford, Georgia.	BPH–870506KD	

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

1. Comparative, All
2. 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 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. 88–14965 Filed 7–1–88; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 79–184; FCC 88–179]

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet North Atlantic Telecommunications Needs During the 1991–2000 Period

AGENCY: Federal Communications Commission.

ACTION: Final rule of particular applicability.

SUMMARY: This rule establishes policies and guidelines for the construction and

use of cable and satellite facilities to meet demands for common carrier services in the North Atlantic Region during the 1991–2000 period. The Commission concluded that the United States International Service Carriers' (USISCs) plan to introduce a TAT–9 digital optical fiber cable system as early as 1991 with landing points in the United States, Canada, the United Kingdom, France and Spain, is in the public interest. In reaching this conclusion, the Commission found that introduction of the TAT–9 cable in 1991 will: (1) Meet the specific service requirements for digital cable facilities; (2) provide digital connectivity with the Mediterranean cable systems; (3) provide restoration for the optical fiber TAT–8 cable and other facilities while increasing both media and path diversity; (4) promote national security interests by satisfying the operational requirements of Department of Defense in the Atlantic and Mediterranean regions; (5) provide further technological innovations which should provide users with the widest range of service options; (6) further enhance intermodal and intramodal competition; and (7) promote international comity. The Commission concluded that there is insufficient information to reach any decision on the number and type of follow-on-satellites (FOS) to the INTELSAT VI series to be deployed in the North Atlantic Region during the planning period. Finally, the Commission decided that there was no present basis for consideration of private and cable satellite facilities in the North Atlantic planning process.

EFFECTIVE DATE: August 4, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jodi L. Cooper, International Facilities Division, Common Carrier Bureau, (202) 632–7265.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Common Carrier Docket No. 79–184, FCC 88–179, adopted May 18, 1988 and released June 24, 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.

Summary of Report and Order

1. The Commission initiated this proceeding on January 15, 1988, with the release of a Notice of Proposed Rulemaking (NPRM), published on January 27, 1988 (53 FR 2285), for the purpose of developing policies and guidelines for the authorization of cable and satellite facilities to meet demands for common carrier services in the North Atlantic Region during the 1991–2000 period. Comments in this proceeding were filed on February 16, 1988 and reply comments were filed on March 2, 1988.

2. In the NPRM, the Commission tentatively concluded that introduction of an optical digital fiber TAT–9 cable system as early as 1991 with landing points in the United States, Canada, the United Kingdom, France and Spain, is in the public interest. The Commission, after evaluating the Comsat alternative plans and the plan submitted by the USISCs, recommended that the plan submitted by the USISCs be accepted in order to best serve the public interest in meeting the telecommunications needs of the North Atlantic during the 1991–2000 time frame. In reaching this tentative conclusion the Commission applied criteria including demand flexibility, cost, service reliability, digital connectivity, furtherance of the Commission's pro-competitive policies, satisfaction of defense communications requirements and foreign correspondent acceptance.

3. The Commission requested additional information in the NPRM on the following issues: (1) The need for providing digital connectivity with the Mediterranean Region through TAT–9 rather than a TAT–8 spur; (2) whether authorized digital cable facilities (i.e. TAT–8) will provide sufficient demand flexibility to meet the USISCs' perceived demand for digital terrestrial services and the amount of capacity required to fill that demand; (3) the allocation of contract awards for construction of the various TAT–9 cable segments and how excess capacity, particularly on the U.S. end, will be owned; (4) whether DoD's circuit projections were included in the USISCs' circuit projections; and (5) information pertaining to costs. Additionally, the Commission specifically requested further comment from the USISCs on the issue of a Portugal landing point. Comments were received from the USISCs, Communications Satellite Corporation (Comsat), Private Transatlantic Telecommunications System, Inc. (PSI), Pan American Satellite (PAS), DoD and Submarine Lightwave Cable System (SLC).

4. The USISCs maintained that TAT–9 is the "core of the facilities plan" developed by them in conjunction with foreign correspondents for meeting the region's telecommunications needs for the 1991–2000 period. In addition to providing a necessary restoration alternative for the TAT–8 cable and other facilities, the USISCs asserted that TAT–9 provides other benefits such as increasing media and path diversity in the region, establishing digital connectivity with the Mediterranean Region, increasing intramodal and intermodal competition, promoting international comity and introducing the latest developments of fiber optic technology to the region. DoD supported installation of TAT–9, pointing out that its wideband digital requirements in the AOR, not reflected in the USISCs' forecast, could quadruple over the next five to ten years. The USISCs maintained that the DoD projections, when combined with their own forecasts, may exceed the capacity of TAT–8 early into the planning period. Therefore, they asserted that there is a need for an additional fiber optic cable in 1991.

5. Comsat did not oppose the tentative conclusion of the Commission to approve the introduction of the TAT–9 as early as 1991, assuming that the Commission also accepted the Agreement on circuit loading between Comsat and AT&T. (On April 14, 1988, the Commission released its Order ending circuit distribution guidelines on AT&T and approving an Agreement between AT&T and Comsat that was intended as a replacement for Commission imposed circuit distribution guidelines (3 FCC Rcd 2156, 53 FR 13270 (April 22, 1988)). PSI contended that the availability of the capacity of its PTAT–1 cable should be considered as an external maketplace reality and as an important consideration in the Commission's public policy determinations with respect to facility authorizations. Similarly, PAS argued that the Commission should consider its facilities in this proceeding stating that there are certain services that they would be able to offer carriers via the PAS satellite. Finally, SLC inquired about the design of the TAT–9 in addition to excess capacity and new services issues.

6. The Commission concluded that the USISCs' plan to introduce a TAT–9 optical fiber cable in the North Atlantic Region, linking the United States, Canada, the United Kingdom, France and Spain, is in the public interest. In reaching this conclusion the Commission found that introduction of the TAT–9

cable in 1991 will: (1) Meet the specific service requirements for digital cable facilities; (2) provide digital connectivity with the Mediterrean cable systems; (3) provide restoration of the optical fiber TAT–8 cable and other facilities, including the capability for self-restoration of the French leg of the TAT–8 cable; (4) increase media and path diversity; (5) satisfy the operational requirements of DoD in the Atlantic and Mediterrean regions; (6) provide further technological innovations which should provide users with the widest range of service options; and (7) promote international comity.

7. The Commission concluded that there is no present basis for consideration of private facilities in the North Atlantic planning process. Although these systems were intended to introduce a meaningful level of intramodal and intermodal competition with common carrier facilities, the Commission noted that these systems were authorized as alternatives to, and not substitutes for, common carrier traffic systems. The Commission also concluded that there is insufficient information before them to reach any conclusions as to the number and type of FOS to the INTELSAT VI series to be deployed during the planning period. However, the Commission expects that INTELSAT, in reaching a final decision on FOS, will take into account the amount of capacity that will exist in the region with the introduction of TAT–9 in 1991. Finally, with respect to a Portugal landing point, the Commission pointed out that Portugal announced its plans to construct a new digital cable system (TAGIDE–2) between Portugal and France which would allow connection of both TAT–8 and TAT–9 to Portugal via France. Therefore, the Commission concluded that the USISCs should not be required to pursue this matter further.

Ordering Clauses

8. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 303(r) and 403 (1976) that we adopt the following policy guidelines for the North Atlantic Region:

We find that a TAT–9 digital fiber optic submarine cable, as described in paragraph 3, with a ready for service date as early as 1991, is in the public interest.

9. It is further ordered that PSI's request to file a response to the reply comments of the USISCs is denied.

10. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605, it is ordered, that sections 603 and 604 of the Act do not apply because the policy guidelines adopted herein is a rule of particular applicability and economic impact on AT&T and other members of USISCs which are not small entities, and is, hence, not subject to the Regulatory Flexibility Act.

11. It is further ordered that CC Docket 79–184 remains open for additional proceedings upon further order of the Commission.

12. It is further ordered that the Secretary of the Commission shall cause a summary of this Report and Order to be published in the **Federal Register** and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–14961 Filed 7–1–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–723; FHLBB No. 5691]

Charter Federal Savings Bank, Randolph, NJ; Final Action, Approval of Conversion Application

Date: June 27, 1988.

Notice is hereby given that on June 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Charter Federal Savings Bank, Randolph, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–15051 Filed 7–1–88; 8:45 am]

BILLING CODE 6720–01–M

Lynnwood Savings and Loan Association, Lynnwood, WA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Lynnwood Savings and Loan Association, Lynnwood, Washington, on June 24, 1988.

Dated: June 28, 1988.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–15049 Filed 7–1–88; 8:45 am]

BILLING CODE 6720–01–M

Stanford Savings and Loan Association, Palo Alto, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Stanford Savings and Loan Association, Palo Alto, California, on June 24, 1988.

Dated: June 27, 1988.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–15050 Filed 7–1–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on June 23, 1988, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed 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.: 201–200063–001

Title: NYSA–ILA Assessment Agreement.

Parties:

New York Shipping Association, Inc.
International Longshoremen's Association, AFL–CIO

Synopsis: The agreement provides that effective July 1, 1988, the assessment rate will be reduced from $5.85 to $2.85 per ton on cargo originating at or destined for North American points more than 260 miles from the Port of New York/New Jersey.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 28, 1988.

[FR Doc. 88–15036 Filed 7–1–88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Ken Lehat & Associates, Inc., 5 Beekman Street, New York, New York 10038; Officers: Kenneth Lehat, President, Esfir Lekho Lehat, Vice President

NIMA Transport, Inc., 7615 Cambridge, Houston, Texas 77054; Officers: Mardy Ann Schweitzer, President, Nilda Valles, Vice President/Secretary

C.F.K. Logistics Inc. A/K/A CFK Line, 345 W. 74th Place, Hialeah, Florida 33014; Officers: William E. Perry, President, Richard A. Cuneo, Secr., Mitchell E. Greene, V. Pres.

Global International Freight Forwarder, Inc., 4455 E. 10 Ave., Hialeah, Florida 33013; Officers: Antonio Machado, President/Dir., Nilda Machado, Vice President/Sec./Dir., Robert Villanueva, Senior Vice President

Techno Export Inc. dba Customhouse Broker & Freight Forwarder, 182–30 150th Road—Rm. 207A, Jamaica, N.Y. 11434; Officer: Pierre Gawi, President

United Express Freight Forwarding, Inc., 710 S. Old Ranch Road, Arcadia, CA 91006; Officers: Pauline Liu, President/Secretary, Frank K. Liu, Vice President/Treasurer

Norse Shipping Service, Inc., 681 Mill Street, Rahway, N.J. 07065; Officers: Trygve Bernhardsen, President, Barry Tien, Vice President

Andrew Buchanan Rogers, 7258 SPA Rd., North Charleston, S.C. 29419; Officer: Andrew Buchanan Rogers, Sole Proprietor

Blue Sky Forwarding Corp., 114 Liberty Street, Suite 702, New York, N.Y. 10006; Officer: Sunder Sakhrani, President

Fracht FWO Inc., 147–39 175th Street, Suite 204, Jamaica, N.Y. 11434; Officers: Ruedi Reisdorf, Director, Roland Meier, President/Director, Tahera Thaver, Vice President

J.H. World Express, Inc., 5316 W. 144th St., Lawndale, CA 90260; Officers: James Hsu, President, Mei-Sung Hsu, Secretary.

By the Federal Maritime Commission.

Dated: June 28, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–15035 Filed 7–1–88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060188 AND 062488

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Boral Limited, Warren Reed and Rita Sprinkel Living Trust, Fontana Paving, Inc	88-1671	06/01/88
Procordia AB, American Brands, Inc., The American Tobacco Company	88-1500	06/03/88
ITT Corporation, BICC plc, Sealectro Corporation	88-1565	06/03/88
General Electric Company, Artra Group Incorporated, Ultrasonix, Inc	88-1579	06/03/88
B/S Investments, The Allen Group Inc., The Allen Group Inc	88-1601	06/03/88
Lex Service PLC, Campbell Automotive Group, Inc., Campbell Automotive Group, Inc	88-1631	06/03/88
Johnson Group Cleaners PLC, Dryclean U.S.A., Inc., Dryclean U.S.A., Inc	88-1654	06/06/88
MagneTek, Inc., The Ohio Transformer Corporation, Ohio Transformer Corporation	88-1657	06/06/88
Fritz R. Kundrun, Pohang Iron & Steel Co., Ltd., Tanoma Coal Company, Inc	88-1665	06/06/88
Prime Motor Inns, Inc., EG Associates, a PA limited partnership [L.P.], Luxury Development Associates, L.P	88-1673	06/06/88
Prime Motor Inns, Inc., ACP Budget Associates, L.P., Luxury Development Associates, L.P	88-1674	06/06/88
Prime Motor Inns, Inc., 1985 ACP Budget Associates, L.P., 1985 Luxury Development Associates, L.P	88-1675	06/06/88
Prime Motor Inns, Inc., 1986 ACP Budget Associates, L.P., 1986 Luxury Development Associates, L.P	88-1676	06/06/88
Bechtel Investments, Inc., Transco Energy Company, Petro Source Corporation	88-1693	06/06/88
Daimler-Benz AG, Gould, Inc., Gould, Inc	88-1697	06/06/88
LEP Group PLC, William R. Berkley, The National Guardian Corporation	88-1698	06/06/88
William J. Stoecker, CNW Corporation, Douglas Dynamics, Inc	88-1716	06/06/88
Wind Point Partners II, L.P., George R. Lees, PBM Industries Inc	88-1719	06/06/88
Leonard Tow, Voting Trust of the Providence Journal Company, Michiana Metronet, Inc., South Bend Metronet, Inc	88-1581	06/07/88
Marvin Josephson, Josephson International Inc., Josephson International Inc	88-1706	06/07/88
C. Itoh & Co., Ltd., Mazda Motor Corporation, Mazda Distributors (West), Inc	88-1725	06/07/88
Sumitomo Corporation, C. Itoh & Co., Ltd., Mazda Motors of America (East), Inc	88-1726	06/07/88
PacifiCorp, Placid Oil Company, Blacklake Pipeline Company	88-1727	06/07/88
Sumitomo Corporation, Mazda Motor Corporation, Mazda Motors of America (East), Inc	88-1730	06/07/88
Ford Motor Company, BDM International, Inc., BDM International, Inc	88-1731	06/07/88
Ares-Serono S.A., The Proctor & Gamble Company, Baker Instruments Corporation	88-1734	06/07/88
C. Itoh & Co., Ltd., Sumitomo Corporation, Mazda Distributors (West), Inc	88-1752	06/07/88
JWP Inc., University Industries, Inc., University Industries, Inc	88-1623	06/08/88
Cromptom & Knowles Corp., Ingredient Technology Corp., Ingredient Technology Corp	88-1637	06/08/88
Siemens Aktiengesellschaft, Burdick Corporation, Burdick Corporation	88-1616	06/09/88
Pacific Enterprises, Pay'n Save, Inc., Pay'n Save, Inc	88-1634	06/09/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060188 AND 062488—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Humana Inc., Maxicare Health Plans, Inc., Maxicare Kentucky, Inc. and Maxicare San Antonio, Inc.	88-1642	06/09/88
Allied-Lyons PLC, River Oaks Agricorp, River Oaks Agricorp	88-1661	06/09/88
Enron Corp., Tesoro Petroleum Corporatrion, Tesoro Crude Oil Company	88-1668	06/09/88
Del E. Webb Corporation, Nevada Casino Associates, Limited Partnership, Nevada Casino Associates, Limited Partnership	88-1688	06/09/88
CDI Corp., James Bronce Henderson Residuary Trust, Detroit Center Tool, Inc	88-1692	06/09/88
Dr Michael Otto, General Mills, Inc., Eddie Bauer, Inc	88-1702	06/09/88
Edward P Evans, Macmillan, Inc., Macmillan Information Company, Inc	88-1710	06/09/88
All Nippon Airways Co., Ltd., La Compagnie Nationale Air France, Tag-Arcon-Pioneer, Ltd	88-1717	06/09/88
Onset Corporation, Momentum Technologies, Inc., Momentum Technologies, Inc	88-1729	06/09/88
Budget Rent a Car Corporation, Budget Rent-A-Car of Washington-Oregon, Inc., Budget Rent-A-Car of Washington-Oregon, Inc	88-1564	06/10/88
Leonard Tow (Century Communications Corp.), Billy J. Parrott, Roanoke Valley Cellular Telephone Company	88-1567	06/10/88
Xerox Corporation, Datacopy Corporation, Datacopy Corporation	88-1624	06/10/88
Highness Kosan Co., Inc., Ronald L. Fenolio, Koko Marina Shopping Center	88-1740	06/10/88
Cawsl Corp., Oxford First Corp., Oxford First Corp	88-1757	06/10/88
Harry Weinberg, Alexander & Baldwin, Inc., Alexander & Baldwin, Inc	88-1778	06/10/88
GenCorp Inc., Bailey Corporation, Bailey Manufacturing Corporation	88-1625	06/14/88
Mr Sumner M. Redstone, WMS Industries, Inc., WMS Industries, Inc	88-1645	06/14/88
Sonat Inc., W.L. Sudderth, SMK Energy Corp. and SMK Resource Co	88-1744	06/14/88
Sonat Inc., Michael H. Neufeld, SMK Energy Corporation and SMK Resource Co	88-1747	06/14/88
Freeport-McMoRan Inc., Tesoro Petroleum Corporation, Tesoro Petroleum Corporation	88-1787	06/14/88
Herbert H. Haft, Kenneth M. Herman, Jumbo Food Stores, Inc	88-1663	06/15/88
Daishowa Paper Mfg. Co. Ltd., Merrill & Ring Inc., Merrill & Ring Inc	88-1737	06/15/88
Michael C. Cameron and Karen P Cameron, W. Galen Weston, Peter J. Schmitt Co., Inc	88-1774	06/15/88
Amerada Hess Corporation, Phillips Petroleum Company, Phillips 66 Natural Gas Company	88-1641	06/16/88
Daimler-Benz AG, AEG-Westinghouse Transportsysteme Beteiligungsgesells, AEG-Westinghouse Transportsysteme Beteiligungsgesells	88-1695	06/16/88
Westinghouse Electric Corporation, AEG-Westinghouse Transportsysteme Beteiligungsgesells, AEG-Westinghouse Transportsysteme Beteiligungsgesells	88-1696	06/16/88
Vodavi Technology Corporation, Isoetec Communications, Inc., Isoetec Communications, Inc	88-1715	06/16/88
Forest Laboratories, Inc., E.I. du Pont de Nemours and Company, E.I. du Pont de Nemours and Company	88-1756	06/16/88
Hirschmann Foundation, PHH Group, Inc., PHH Executive Air Fleet, Inc	88-1773	06/16/88
The Broken Hill Proprietary Company Limited, The Penn Central Corporation, Gulf Energy Holding Inc	88-1681	06/17/88
R.T Holdings S.A., Alan Bond, Amber Baking Inc	88-1686	06/17/88
Wetterau Incorporated, Scott B. Laurans, Scott B. Laurans	88-1691	06/17/88
XTRA Corporation, Forsch Corporation, Evans Trailer Leasing Company	88-1714	06/17/88
Blockbuster Entertainment Corporation, Major Video Corp., Major Video Corp	88-1768	06/17/88
Caterpillar Inc., Beirne Carter, Carter Machinery Company, Incorporated	88-1771	06/17/88
Royal Dutch Petroleum Company, T E. Pawel, Concord Oil Company	88-1775	06/17/88
Bear Island Timberlands Co., L.P., Peter Kiewit Sons', Inc., KMI Continental Hardwood, Inc., KMI Continental	88-1791	06/17/88
RCS III, a limited partnership, IMS Holdings, IMS Holdings	88-1798	06/17/88
Sir Run Run Shaw, Grosvenor Kaanapali Associates, Grosvenor Kaanapali Associates	88-1799	06/17/88
Sy Syms, Stanley Blacker, Stanley Blacker, Inc	88-1801	06/17/88
Beta Partners, Merlin J. Norton, Norton Enterprises, Inc	88-1813	06/17/88
Merv Griffin, Donald Trump, Resorts International, Inc	88-1828	06/17/88
Donald J. Trump, Merv Griffin, Resorts International Inc	88-1829	06/17/88
Merv Griffin, Donald J. Trump, Resorts International, Inc	88-1855	06/17/88
The Walt Disney Company, GenCorp Inc., GTH-102, Inc	88-1527	06/19/88
PacifiCorp, James Hooker, Ceres Capipal Corporation	88-1667	06/19/88
Dyckerhoff AG, Southdown, Inc., Moore McCormack Resources, Inc	88-1776	06/20/88
McDonnell Douglas Corporation, USF&G Corporation, Capital Re Corporation	88-1816	06/20/88
AMR Corporation, Wings West Airlines, Inc., Wings West Airlines, Inc	88-1819	06/20/88
International Paper Company, The Saalfeld Paper Company, The Saalfeld Paper Company	88-1820	06/20/88
AMR Corporation, Wings West Airlines, Inc., Wings West Airlines, Inc	88-1822	06/20/88
THORN EMI PLC, The Drexel Burnham Lambert Group Inc., FTS Incorporated	88-1835	06/20/88
Daniel J. Sullivan, Jack U. Dalton, Kolpak Holdings, Inc	88-1841	06/20/88
Daniel J. Sullivan, Hisham Araim, Holpak Holdings, Inc	88-1842	06/20/88
Lear Siegler Holdings Corp., Clarity Holdings Corp., AFG Auto Glass, Inc	88-1699	06/21/88
Fleming Companies, Inc., Bessemer Securities Corporation, American Foodservice Supply, Inc	88-1720	06/21/88
PepsiCo, Inc., Pepsi Cola Bottling Company of Annapolis, Inc., Pepsi Cola Bottling Company of Annapolis, Inc	88-1733	06/21/88
Sherman C. Vogel, Ezra and Cecile Zilkha; c/o Union Holdings, Inc., Union L. P. Gas System, Inc	88-1739	06/21/88
The Renco Group, Inc., The LTV Corporation, LTV Steel Corporation	88-1754	06/21/88
Fleming Companies, Inc., Pittco Associates L.P., Malone & Hyde, Inc	88-1764	06/21/88
Mobil Corporation, Atlantic Richfield Company, Atlantic Richfield Company	88-1782	06/21/88
Atlantic Richfield Company, Mobil Corporation, Mobil Producing Texas & New Mexico, Inc	88-1783	06/21/88
Gulf+Western Inc., Aetna Life and Casualty, Aetna Life and Casualty	88-1732	06/22/88
Fiserv, Inc., GLENFED, Inc., GESCO Corporation	88-1749	06/22/88
Arabian Investment Banking Corporation (INVESTCORP) E.C., E.P. Limited, BVL International Limited	88-1751	06/22/88
Nitto Electric Industrial Co., Ltd., Avery International Corporation, Permacel	88-1763	06/22/88
Horseshoe Club Operating Company, Del Webb Corporation, Del Webb Corporation	88-1815	06/22/88
Counsel Corporation, Wessex Corporation, Wessex Corporation	88-1833	06/22/88
SSM Health Care, Sisters of St. Francis, Mt. Vernon, Ill., Inc., Sisters of St. Francis, Mt. Vernon, Ill., Inc	88-1694	06/23/88
Harry S. Flemming, Wormald International Limited, Wormald Security, Inc	88-1762	06/23/88
Evangelical Health Systems Corporation, South Chicago Health Care Corporation, South Chicago Health Care Corporation	88-1767	06/23/88
Draka Holding B.V., BIW Cable Systems, Inc., BIW Cable Systems, Inc	88-1800	06/23/88
Dunavant Enterprises, Inc., Producers Holding Company, Producers Holding Company	88-1708	06/24/88
The First Women's Bank, The Chase Manhattan Corporation, The Chase Manhattan Bank, N.A.	88-1772	06/24/88
Basler Handels—Gesellschaft AG, Johnny Appleseed's, Inc., Johnny Appleseed's, Inc	88-1785	06/24/88
Klaus J Jacobs, Rowntree PLC, Rowntree PLC	88-1817	06/24/88
The Australian Gas Light Company, Alcorn International, Inc., Alcorn International, Inc	88-1865	06/24/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060188 AND 062488—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
OXOCO, Inc., Amfac, Inc., Amfac Distribution Corporation	88-1869	06/24/88
RCK Holdings, Ltd., Jacob Krauszer, Dairy Stores, Inc	88-1888	06/24/88
Bertram R. Firestone, The McKnight Foundation, Calder Race Course, Inc	88-1904	06/24/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 88- Filed 7-1-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Advisory Committee on the FTS2000 Procurement; Closed Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Committee on the FTS2000 Procurement will meet on July 15, 1988, from 9:00 a.m. to 3:30 p.m., in the board room of the MITRE Corporation, 7525 Colshire Drive, McLean, VA 22109. The agenda will relate to (1) competitive range recommendations; (2) current status including the results of the operational capability demonstrations; and (3) negotiation issues and strategy.

The entire meeting will be closed to the public because procurement sensitive matters, especially the initial evaluations of vendor proposals and the negotiation issues and strategy will be discussed. The exemptions for closing the meeting are cited in 5 U.S.C. 552b(c)(4) and (9)(B) (Government in the Sunshine Act).

Questions regarding this meeting should be directed to John J. Landers (202) 523-5308.

Dated: June 22, 1988.

John J. Landers,
Director, Office of Administration, Information Resources Management Service.

[FR Doc. 88-14949 Filed 7-1-88; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0248]

Drug Export; Platinol AQ Injection 1 mg/1 ml (Cisplatin)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bristol-Myers Co. has filed an application requesting approval for the export of the human drug Platinol AQ injection one milligram per one milliliter (1 mg/1 ml) (Cisplatin) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 29857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Myers Co., 345 Park Ave., New York, NY 10154, has filed an application requesting approval for the export of the drug Platinol AQ injection 1 mg/1 mL (Cisplatin), to Canada. The product is for human use in the treatment of cancer. The application was received and filed in the Center for Drug Evaluation and Research on June 15, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 15, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 16, 1988.

Sammie R. Young,
Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-15006 Filed 7-1-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Environmental Health Sciences; Environmental Health Sciences Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 25-26, in Building 18

Conference Room, North Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on July 25 from 9 a.m. to approximately 10:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 25, from 10:30 a.m. to adjournment on July 26, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun or Carol Shreffler, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meetings and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 24, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–15000 Filed 7–1–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2-Amino-5-Nitrophenol

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 2-amino-5-nitrophenol, a coloring component in semi-permanent hair dyes that produces red and gold/blond shades. 2-Amino-5-nitrophenol has also been used in the manufacture of C.I. Solvent Red 8, an azo dye for synthetic resins, lacquers, and wood stains.

Two-year toxicology and carcinogenesis studies were conducted by administering 2-amino-5-nitrophenol (98% pure) by gavage in corn oil 5 days per week to groups of F344/N rats and B6C3F$_1$ mice of each sex in 16-day, 13-week and 2-year studies. In the 2-year studies, male and female rats were given doses of 0, 100, or 200 mg/kg and male and female mice were given doses of 0, 400, or 800 mg/kg.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity[1] for male F344/N rats that received 100 mg/kg 2-amino-5-nitrophenol, as shown by the increased incidence of acinar cell adenomas of the pancreas. Reduced survival of male F344/N rats that received 200 mg/kg decreased the sensitivity of this group for detecting a carcinogenic response. There was no evidence of carcinogenic activity for female rats that received 100 or 200 mg/kg per day. Marginally increased incidences of preputial or clitoral gland adenomas or carcinomas (combined) occurred in male and female F344/N rats administered 200 mg/kg 2-amino-5-nitrophenol. There was no evidence of carcinogenic activity for B6C3F$_1$ mice that received 400 mg/kg 2-amino-5-nitrophenol; reduced survival of B6C3F$_1$ mice that received 800 mg/kg caused this group to be considered inadequate for detecting a carcinogenic response.

The Study Scientists for this bioassay is Dr. R. Irwin. Questions or comments about the contents of this technical report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3340; FTS: 629–3340.

Copies of Toxicology and Carcinogenesis Studies of 2-Amino-5-Nitrophenol in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies) (TR 334) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541–3991; FTS: 629–3991.

Dated: June 22, 1988.

David P. Rall,

Director.

[FR Doc. 88–15001 Filed 7–1–88; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1,2-Epoxybutane

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 1,2-epoxybutane, used primarily as a stabilizer in chlorinated hydrocarbon solvents (e.g., 1,1,1-trichloroethane, trichloroethylene, and dichloromethane).

Toxicology and carcinogenesis studies of 1,2-epoxybutane were conducted by exposing groups of 50 animals per species and sex to the chemical by inhalation 6 hours per day, 5 days per week. Rats were exposed at concentrations of 0, 200, or 400 ppm for 103 weeks and mice at 0, 50, or 100 ppm for 102 weeks.

Under the conditions of these 2-year inhalation studies, there were clear evidence of carcinogenic activity[1] of 1,2-epoxybutane for male F344/N rats, as shown by an increased incidence of papillary adenomas of the nasal cavity, alveolar/bronchiolar carcinomas, and alveolar/bronchiolar adenomas or carcinomas (combined). There was equivocal evidence of carcinogenic activity for female F344/N rats, as shown by the presence of papillary adenomas of the nasal cavity. There was no evidence of carcinogenic activity for male or female B6C3F$_1$ mice exposed at 50 or 100 ppm. 1,2-Epoxybutane exposure was associated with adenomatous hyperplasia and inflammatory lesions of the nasal cavity in rats and inflammatory lesions of the nasal cavity in mice.

The study scientist for this bioassay is Dr. June Dunnick. Questions or comments about the contents of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4811; FTS: 629–4811.

Copies of Toxicology and Carcinogenesis Studies of 1,2-Epoxybutane in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies) (TR 329) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effect ("no evidence"); and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Triangle Park, NC 27709. Telephone: (919) 541–3991; FTS: 629–3991.

Dated: June 22, 1988.

David P. Rall,

Director.

[FR Doc. 88–15002 Filed 7–1–88; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Trichloroethylene

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of trichloroethylene, an industrial solvent used primarily for vapor degreasing and cold cleaning of fabricated metal parts.

Toxicology and carcinogenesis studies were conducted by administering tricholoroethylene (more than 99% pure, stabilized with 8 ppm diisopropylamine) in corn oil by gavage at doses of 0, 500, or 1,000 mg/kg per day, 5 days per week, for 103 weeks to groups of 50 male and 50 female ACI, August, Marshall, and Osborne-Mendel rats.

Under the conditions of these 2-year gavage studies of trichloroethylene in male and female ACI, August, Marshall, and Osborne-Mendel rats, trichloroethylene administration caused renal tubular cell cytomegaly and toxic nephropathy in both sexes of the four strains. However, these are considered to be inadequate studies of carcinogenic activity [1] because of chemically induced toxicity, reduced survival, and deficiencies in the conduct of the studies. Despite these limitations, tubular cell neoplasms of the kidney were observed in rats exposed to trichloroethylene and interstitial cell neoplasms of the testis were observed in Marshall rats exposed to trichloroethylene.

Copies of Toxicology and Carcinogenesis Studies of Trichloroethylene in Four Strains of Rats (ACI, August, Marshall, Osborne-Mendel) (Gavage Studies) (TR 273) are available without charge from NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991; FTS: 629–3991.

Date: June 22, 1988.

David P. Rall,

Director.

[FR Doc. 88–15003 Filed 7–1–88; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments which cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Seminole Indian Land Claims Settlement Act of 1987; Validation of Settlement Agreement

June 27, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of findings and publication of settlement agreement.

SUMMARY: Notice is hereby given that the events enumerated in section 4(b) of the Seminole Indian Land Claims Settlement Act of 1987, Pub. L. 100–228, have occurred. This notice, and the publication of the Settlement Agreement included herein, are required by section 5(a)(2) of the Act.

DATE: Any action by an "Indian, Indian nation, or tribe of Indians, other than the Seminole Tribe * * *", whose claims are extinguished hereby, will be barred unless filed in the United States District Court for the Southern District of Florida by July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Stan Webb, Bureau of Indian Affairs, Division of Real Estate Services, 1951 Constitution Avenue NW., Washington, DC 20245, Telephone: (202) 343–2951.

SUPPLEMENTARY INFORMATION: The Seminole Indian Land Claims Settlement Act of 1987, Pub. L. 100–228, was enacted to implement the following Settlement Agreement, which was executed on October 29, 1987, by representatives of the Seminole Tribe of Indians of Florida, the State of Florida, and the South Florida Water Management District.

Settlement Agreement

It is hereby stipulated and agreed between the parties that the above-entitled case shall be settled in accordance with the terms of this Settlement Agreement (hereafter referred to as the "Agreement") and upon its approval by the Court. For the purpose of this Agreement, the parties shall be named and defined as follows:

Plaintiff, the Seminole Tribe of Indians of Florida (hereafter referred to as the "Tribe") is recognized by the State of Florida, pursuant to Chapter 285, Florida Statutes, and is an Indian tribe recognized by the United States and organized under the Indian Reorganization Act of 1934, 25 U.S.C. 476, with a constitution and bylaws approved by the Secretary of the Interior pursuant to that Act. The Tribe approves this Agreement through its duly recognized and authorized Tribal Council, and its approval of this Agreement will bind the Tribe and any predecessor or successor in interest and all members thereof.

The State of Florida (hereafter referred to as the "State") approves this Agreement throught the Governor and Cabinet as the Board of Trustees of the International Improvement Trust Fund and as head of the Department of Natural Resources.

The South Florida Water Management District (hereafter referred to as the "District") approves this Agreement through action by its Governing Board.

The term "lands or natural resources," as used in this Agreement, shall mean any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

Witnesseth

Whereas, the parties recognize that a settlement of this litigation could not have been reached unless the Agreement included an extinguishment of any and all outstanding or potential claims the Tribe might have against the State, with the exception of the right-of-way claim involving Highway 441 across the Seminole Hollywood (Dania) Reservation, which may have arisen at anytime prior to the effective date of this Agreement; and

Whereas, the parties further recognize that implementation of this settlement will require action by the Congress of the United States and the Legislature of the State; and

Whereas, it is the intent of this Agreement to resolve all outstanding disputes and differences between the State, the District and the Tribe, and, in particular, to extinguish all claims presently in existence or arising out of any previous actions, inactions, or duties of the State or the District, with the exception of the Highway 441 claim mentioned above, so that the future relations between the State, its citizens, the District and the Tribe will be one of harmony, cooperation, friendship and peace; and

Whereas, the parties further recognize that if, for any reason, the Agreement fails to become final and binding, the Tribe shall have the right to reassert its land claims, to renew its objection to the Modified Hendry County Plan, to again enjoy full use and possession of the approximately six sections of Seminole State Reservation land north of the southern boundary of the L–4 works and the approximately 14,720 acres within Conservation Area 3A, and further that the State and the District shall retain all their defenses in the lawsuit *Seminole Tribe of Indians of Florida* v. *State of Florida, et al.*, described herein below.

Now therefore, the Seminole Tribe, the State of Florida, and the South Florida Water Management District stipulate and agree as follows:

1. The parties agree that upon the effective date of this Agreement, the lawsuit filed in 1978 by the Tribe, styled *Seminole Tribe of Indians of Florida* v. *State of Florida, et al.*, Case No. 78–6116–CIV.–NCR, shall be dismissed with prejudice to the Plaintiff upon the joint motion of the parties hereto. No appeal or review is to be sought by any of the parties.

2. *Effective Date.* This Agreement shall not become final and shall be without any binding force or effect until:

a. The Tribe and the District have executed the Escrow Agreement attached hereto as Exhibit A in order to place $4,500,000 in funds into escrow.

b. The following two events have occurred:

(1) The Tribe has executed the sales agreement attached hereto as Exhibit B, offering to sell to the State all of its state reservation lands north of the south boundary of the L–4 works (approximately six section). The sale price shall be either two million dollars ($2,000,000); or, if these lands are determined to contain more than 3,840 acres, the price shall be the greater of two million dollars ($2,000,000) or the average of the State's land appraisal price computed on a per acre basis multiplied by the number of acres in the approximate six sections described hereinbelow at paragraph 4(d); and

(2) The State has accepted the offer pursuant to the terms set out in the sales agreement.

c. The United States Congress enacts appropriate legislation, which: (1) Approves the conveyances to be made or recognized by the Tribe pursuant to this Settlement Agreement; (2) provides for the extinguishment of the claims of the Tribe to lands or natural resources in Florida, as specified in this Agreement; (3) approves the water rights compact between the Tribe, the State and the District with respect to Seminole tribal water rights, surface water management and related developmental and environmental considerations to be attached hereto as Exhibit C; and (4) directs the transfer to the United States in trust for the Tribe as an Indian Reservation those portions of the Seminole Reservation established under the provisions of Chapter 285, Florida Statutes, remaining in the Tribe's beneficial ownership after implementation of this Agreement. A draft of this proposed federal legislation which reflects the intentions of the parties is to be attached hereto as Exhibit D. It is understood that the provisions of the draft bill, reflecting the regulatory concerns of the State and the District, shall be part of any transfer of Seminole tribal lands into federal trust, unless otherwise agreed by the parties.

d. The State enacts appropriate legislation providing for the approval and implementation of this Agreement. A draft of this proposed state legislation, which reflects the intentions of the parties, is attached hereto as Exhibit E.

e. The Tribe, the District and the State center into a Water Rights Compact (Exhibit C) which: (1) Commits the Tribe to follow the essential principles of the state water rights system as presently codified in Chapter 373; Florida Statutes and the rules of the District; (2) creates alternative water rights in the Tribe as described in said Water Rights Compact, replacing the Federal water rights presently asserted by the Tribe; (3) provides a mechanism for resolving conflicts between the Tribe, the State and other water users without litigation; (4) allows the Tribe to engage in reasonable development of its federal reservations and avoids penalizing the Tribe for not heretofore participating in the State's permit system codified in Chapter 373, Florida Statutes; and (5) provides essential protection for endangered wetlands within reservation boundaries.

This Agreement shall become effective as of the signing of the Agreement by the last of the parties to execute upon the effective date of the above-described federal legislation, the effective date of the above-described state legislation, the effective date of the above-described Water Rights Compact or the date of the approval of this Agreement and dismissal of the lawsuit described in paragraph 1 by the Court, whichever last occurs.

3. *Cooperation of Parties.* The parties agree to cooperate fully in requesting and supporting passage by the United States Congress and the Florida Legislature of the statutes described in paragraph 2, above.

The parties also agree that further proceedings in this lawsuit shall be stayed while the settlement is pending, provided, however, that this stay shall terminate on December 31, 1987, or earlier if the Court determines that favorable action by either Congress or the Legislature within a reasonable time does not seem likely.

4. *Commitments of the Tribe.* The Tribe agrees:

a. To the extinguishment of any right, title, interest, or claim the Tribe may now posses in any public or private lands or natural resources in Florida, other than hunting, fishing, trapping and frogging rights conferred by state law, and certain "excepted interests" consisting of:

(1) The Seminole West Big Cypress, Brighton and Hollywood (Dania) Federal Reservations, the lands of which are held in trust for the Tribe by the United States, as recognized and described in the records of the Bureau of Indian Affairs, United States Department of the Interior. It is understood that there are minor problems as to the exact status of title of certain tribal lands within the aforementioned Seminole Federal Reservations. Nothing in this Agreement is intended to alter the status of title of any lands within or adjacent to said reservations; (2) all lands purchased by or donated to the Tribe which are held in fee by the Tribe or a corporation wholly owned by the Tribe or in trust by the United States for the benefit of the Tribe; (3) those portions of the state reservation established under the provisions of Chapter 285, Florida Statutes, which are to be transferred to the United States in trust for the Tribe as an Indian Reservation pursuant to this Agreement; (4) rights recognized in the Tribe in the Everglades National Park pursuant to 16 U.S.C. 410(b), and in the Big Cypress National Preserve pursuant to 16 U.S.C. 698(j)(k) and in the Big Cypress area pursuant to Section 380.055 Florida Statutes; and (5) the non-exclusive right of the Tribe to hunt, trap, fish and frog in those portions of the Seminole State Reservation being transferred to the State under subsection e of this paragraph. The Tribe also agrees to the extinguishment of any and all claims which the tribe may have other than the foregoing "expected interests" involving lands or natural resources in the State arising at any time prior to the effective date of this Agreement; provided, however, that nothing in this Agreement or otherwise shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State based on use and occupancy or acquired under fedeal or state law by any individual Indian which is not derived from, or through the Tribe, its predecessor or predecessors in interest, or some other American Indian Tribe. Further, that nothing herein shall be construed to limit the right of the Tribe to convey interests in any of the excpeted lands listed in this subsection to tribal members. The rights, titles, intersts and claims outside the "excepted interests" with are being extinguished or waived by the Tribe; include, but are not limited to:

(i) Any and all claims the Tribe might have to any public or private lands or natural resources in Florida which are based upon claims of aboriginal title;

(ii) Any and all other claims the Tribe might have to any public or private lands or natural resources in Florida; such as claims or rights based on executive order or recognized title, including but not limited to: (a) Any claims the Tribe might have to all or any part of the approximately five million (5,000,000) acres of lands allegedly set aside in Florida for use and benefit of the Seminole Indian Nation, including the Tribe, during the period 1839–1845, or at any other date, by Executive Order of the United States Government, commonly known as the "Macomb" Reservation Area; (b) any claim based upon the grant and withdrawal of title to the State Indian Reservation in Monroe County, specifically returned to the State by Section 285.06, Florida Statutes; and (c) any claim based upon the alleged grant of a license to Seminole Indians residing in Florida by the Board of Commissioners of State Institutions on April 5, 1960;

b. To the extinguishment of any and all other claims, without regard to the "expected interests" specified above in paragraph 4a, related to the following matters:

(1) Any and all claims arising out of any alleged breach of fiduciary relationship between the Tribe and the State, acting in a capacity as trustee for the Tribe, arising out of any actions or inactions by the State prior to the date this Agreement is executed by the parties;

(2) Any and all claims against the State, the District or its predecessor, the Central and South Florida Flood Control District, for trespass damages or use and occupancy of any lands or natural resources in the State occurring prior to the effective date of this Agreement with the exception of the Highway 441 right-of-way claim mentioned above;

(3) Any and all other claims against the State and the District, or its predecessor, the Central and South Florida Flood Control

District, arising out of any actions or inactions by the State or the District in regulating the use, flow, management, or storage of water, including the construction of canals and levees, at any time prior to the effective date of this Agreement;

(4) Any and all other claims by the Tribe against the State and the District related to any of the matters listed in this paragraph 4b and in paragraphs 4a(1) and (2) above, or arising out of any actions or inactions whatsoever by the State, or the District, including but not limited to real property, tort, tax, contract, or constitutional claims prior to the date this Agreement is executed by the parties with the exception or the Highway 441 right-of-way claim mentioned above.

c. To withdraw its pending request for a public hearing by the Corps of Engineers on the Modified Hendry County Plan and cease all opposition to any approval required thereof, including but not limited to approval by the Corps of Engineers.

d. Take necessary steps for conveyance to the State of the Tribe's lands in Palm Beach and Broward Counties, north of the south boundary of the L-4 works. The State shall convey an easement to the District for maintenance of its presently constructed project works in Sections 7, 8 and 9, Township 48 South, Range 35 East, Broward County, Florida. The State shall also convey an easement to the Tribe giving the Tribe full rights of access to the lands the Tribe is retaining from the East Big Cypress Reservation and for access to the lands in Conservation Area 3A, which are being transferred to the State but where the Tribe has reserved hunting, fishing, trapping and frogging rights.

e. To take necessary steps to transfer to the State full fee title in the approximately 14,720 acres of that portion of the state reservation east of the western boundary of the L-28 works and south of the southern boundary of the L-4 works, with the Tribe to retain non-exclusive rights to hunt, fish, trap and frog in said area. The State, acting by and through the Trustees of the Internal Improvement Trust Fund, upon approval by Congress of transfer of lands from the Tribe, shall convey an easement (hereinafter "the flowage easement") to the District for the flowage and storage of water and all rights necessary for the conduct of the federally authorized project for central and south Florida and to fulfill the statutory obligations of the District pursuant to the laws and rules of the State as they presently exist or as they may exist in the future. A copy of the transfer documents (deeds) are to be attached hereto as Exhibit F.

5. *Commitments of the State and the District.* The State and the District agree:

a. Subject to prior compliance with the provisions of Chapter 253, Florida Statutes, to pay the Tribe the sum of six million five hundred thousand dollars ($6,500,000) and provide five hundred thousand dollars ($500,000) in services by the District for water project design and construction, as requested by the Tribe. The District promises to use its best efforts to obtain matching federal funds for this project.

b. That the amount of six million five hundred thousand dollars ($6,500,000), to be paid to the Tribe by the State and the District, shall be paid as follows:

(1) Subject to prior compliance with Chapter 253, Florida Statutes, the State shall, for the purchase of the approximately six sections of lands north of the south boundary of the L-4 works in Palm Beach and Broward Counties, pay the Tribe either two million dollars ($2,000,000) or, if the lands constitute more than 3,840 acres, the greater of two million dollars ($2,000,000) or the average of the State's land appraisal price computed on a per acre basis multiplied by the number of acres in the approximate six sections.

(2) The and consisting of 14,720 acres lying within Water Conservation Area 3 shall be transferred to the State in fee for the sum of four million five hundred thousand dollars ($4,500,000) with one million dollars ($1,000,000) being attributable to the flowage easement and three million five hundred thousand dollars ($3,500,000) attributable to the fee title subject to the flowage easement.

(a) The one million dollars ($1,000,000) for the flowage easement shall be paid by the State and the District with each contributing one-half of the amount, or $500,000 each, provided that the District shall pay the entire sum initially and shall be reimbursed by the State.

(b) The fee simple title (subject to the flowage easement) in that portion of the Seminole Reservation within Water Conservation Area 3, consisting of approximately 14,720 acres will be transferred to the State Trustees of the Internal Improvement Trust Fund (TIITF) for the sum of three million five hundred thousand dollars ($3,500,000). The State shall, immediately upon such transfer, convey a perpetual easement to the District, which shall include sufficient rights for the District to construct, operate and maintain the federally authorized project and fulfill its obligations pursuant to Chapter 373, Florida Statutes, and which shall be sufficient to prevent and restrict any and all encroachment or uses of the area which may be in conflict with the maintenance of the area as a water conservation area. This amount will be paid by the State and the District with each contributing one-half of the amount, or one million seven hundred fifty thousand dollars ($1,750,000) each; provided, however, that (i) initially the District shall provide the entire sum; (ii) the District shall be reimbursed by the State in the sum of one-half of the actual appraised value of the remaining fee simple interest in the event that the required appraisals do not support the intended contribution of one million seven hundred fifty thousand dollars ($1,750,000). The State shall use its best efforts to place the State's share of this acquisition on the CARL fund list in order to complete the acquisition as soon as possible; and (iii) if the State Department of Natural Resources (DNR) cannot predict the listing and acquisition of this interest ptior to the legislative session of 1988, the DNR and the Attorney General's Office (AGO) will request the funds from the Florida Legislature. The amount sought will be the lesser of one-half of the appraised value or one million seven hundred and fifty thousand dollars ($1,750,000).

(c) The District shall provide water management services in aid of the development of Seminole Indian lands on the remaining reservation west of Levee 28, including West Big Cypress and/or at the Brighton Reservation in the value of no less than five hundred thousand dollars ($500,000). This amount shall be estimated by the District, with the concurrence of the Tribe, by evaluating the actual cost of the work to be done. The District will work with the Tribe and the Bureau of Indian Affairs in an effort to procure matching funds from the Federal government of a nature and from sources to be determined. The parties to this Agreement agree to use best efforts to resolve any dispute arising with respect to implementation of this subsection. Disputes under this subsection which cannot be resolved by informal means will be submitted to compulsory arbitration, with a panel of five arbitrators. The Tribe shall choose one arbitrator, the State shall choose one arbitrator, the District shall choose one arbitrator, and the fourth and fifth arbitrators shall be chosen according to the rules of the American Arbitration Association.

c. To waive any and all claims for offsets, including but not limited to tort or contract claims, which were or could have been asserted against the Tribe by the District, or by the Trustees of the Internal Improvement Trust Fund or any other agency of the State prior to the date this Agreement is executed by the parties.

d. To release any and all interest in the three sections of land located in the state reservation in Broward County and subject to the provisions of the August 8, 1950 Dedication Deed from the Board of Commissioners of State Institutions to the Central and South Florida Flood Control District but not needed for conservation purposes, said lands described in Sections 7, 8 and 9, Township 48 South, Range 35 East, Broward County, Florida.

e. The Trustees of the Internal Improvement Trust Fund shall execute a dedication deed valid under Chapter 285, Florida Statutes, conveying in its entirety the State's interest in the approximately fifteen sections of the state reservation west of the western boundary of the L-28 works and south of the southern boundary of the L-4 works, said lands being situated in Township 48 south, Range 35 east, lying and being in Broward County, Florida. Said conveyance shall be to the United States in trust, and as a Reservation, for the Tribe and shall be subject to the restrictions applicable thereto found in the federal legislation (Exhibit D) the State Legislation which authorizes the Compact (Exhibit E) as well as Fla. Stat. Ann. Section 285.16.

6. The State and the District agree to use their best efforts to obtain suitable land to be made available to the Tribe which is equal in value to some or all of the compensation to be paid to the Tribe under paragraph 5 hereof. It is understood that if such land cannot be found, then the 6.5 million doller fund provided in paragraph 5 hereof, shall be earmarked for the purchase of land, if possible, by the Tribe is understood that the Tribe will not exercise the option specified

herein unless there is a subsequent agreement between the State and the Tribe that said lands shall be conveyed by the State to the United States in trust for the Tribe as an Indian Reservation pursuant to the terms embodied in the federal legislation, Exhibit D. If the Tribe exercises the option to accept compensation in the form of land, the monetary payment to the Tribe shall be reduced by the appraised value of the lands actually transferred in trust to the United States for the benefit of the Tribe.

When the Settlement Agreement is approved by the United States District Court for the Southern District of Florida, the lawsuit entitled *Seminole Tribe of Indians of Florida*, v. *State of Florida, et al.*, Case No. 78-6116-CIV, will be terminated.

The events enumerated in section 4(b) of the Act have now occurred, to wit: (1) The State and the District have placed $4,500,000 and $2,000,000 in separate escrow accounts with the Sun Bank Trust Banking Group, pursuant to an Escrow Agreement incorporated into the Settlement Agreement; (2) the State of Florida has enacted legislation to implement the Settlement Agreement, including the *Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District* incorporated therein; and (3) the State and the District have waived any claims for offsets against the Tribe, pursuant to Paragraph 5(c) of the Settlement Agreement.

Pursuant to section 5(a)(2) of the Act, the publication of this notice will operate to (1) validate the "transfers, waivers, releases, relinquishments, and other commitments made by the Tribe in the Settlement Agreement," including the *Water Rights Compact;* (2) extinguish "all claims to lands within the State based upon aboriginal title by the Tribe or any predecessor or successor in interest", not including those "excepted interests" defined in paragraph 4(a) of the Settlement Agreement; (3) retroactively approve and validate the questionable land/resource transfers upon which the extinguished claims were based; and (4) bar any actions based on extinguished claims, unless such actions are filed by July 5, 1989.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 88-15032 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-02-M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, July 15, 1988.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m., for the following reasons:

Renewal of Commercial Occupancy Certificates.

Land Protection Plan.

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Steven H. Lewis,

Acting Regional Director.

Date: June 27, 1988.

[FR Doc. 88-14975 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations; District of Columbia, et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 25, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 20, 1988.

Patrick Andrus,

Acting Chief of Registration, National Register.

DISTRICT OF COLUMBIA

Washington

Chesapeake and Potomac Telephone Company Building, 730 Twelfth St. NW.

IOWA

Allamakee County

Fish Farm Mound Group (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley (MPS)

Slinde Mound Group (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley (MPS)

Iowa County

Indian Fish Weir

Lee County

Fort Madison, *Beck, Chief Justice Joseph M., House*, 630 Avenue E.

MINNESOTA

Ramsey County

St. Paul, *Manhattan Building*, 360 N. Robert St.

MONTANA

Cascade County

Great Falls, Chicago, *Milwaukee and St. Paul Passenger Depot*, River Dr., N.

Custer County

Miles City, *Mountain States Telephone and Telegraph Company*, 908 Main St.

Miles City, *Olive Hotel*, 501 Main St.

Deer Lodge County (also in Silver Bow)

Anaconda (also in Butte), *Butte, Anaconda and Pacific Railway Historic District*, Right-of-way begins in Butte and travels to Anaconda, generally along course of Silver Bow Creek

Musselshell County

Roundup, *St. Benedict's Catholic School*, 524 First St., W.

NEW MEXICO

Eddy County

Carlsbad vicinity, *Rattlesnake Springs Historic District*, W. of US 62-180, off CR 418

NORTH CAROLINA

Yadkin County

Yadkinville, *Second Yadkin County Jail*, 241 E. Hemlock St.

OREGON

Douglas County

Winston, *Moyer, C. E., Nurseries Property*, 8374 Old Hwy. 99, S.

Jackson County

Fort Lane Military Post Site

Ashland, *Lucas, Robert and Ruth, House and Rose, Mary E., House*, 59, 77 Sixth St.

RHODE ISLAND

Bristol County

Little Compton, Whalley, William, Homestead, 33 Burchard Ave.

Providence County

Cranston, *Sheldon House*, 458 Scituate Ave.

Cranston, *Westcote*, 101 Mountain Laurel Dr.

Cranston, *Westcott, Nathan, House*, 150 Scituate Ave.

Cranston, *Wood, Arad, House*, 407 Pontiac Ave.

[FR Doc. 88-15023 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 301X)]

Burlington Northern Railroad; Company Abandonment Exemption; Cass County, ND

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 8.07-mile line of railroad between milepost 0.54 near Fargo and milepost 8.50 near Horace, in Cass County, ND.

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 lien (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 August 4, 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 field by July 15, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 25, 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: Peter M. Lee, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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 July 10, 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) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-15132 Filed 7-1-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Other Statutes; A&F

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States of America v. A & F Materials Company*, Civil Action No. 83-2123 was lodged with the United States District Court for the Southern District of Illinois. The first amended complaint filed by the United States in this action alleged that AM International, Inc. ("AMI") is jointly and severally liable to abate conditions presenting an imminent and substantial endangerment at a hazardous waste facility located in Greenup, Illinois, pursuant to section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and section 7003 of the Resource Conservation and Recovery Act. The first amended complaint also alleged that AMI is liable under section 107 of CERCLA and section 311(e) of the Clean Water Act to reimburse the United States for costs incurred in responding to releases and threatened releases of oil and hazardous substances from the Greenup facility.

The proposed decree requires AMI to withdraw objections to a proof of claim previously filed by the United States in *In re AM International, Inc.*, (Bkr.Ct. N.D. Illinois), a pending bankruptcy reorganization of AMI pursuant to Chapter 11 of the Bankruptcy Code, and to take necessary steps to secure allowance of such claim in the amount of $100,000. Upon allowance of the United States' bankruptcy claim, the United States would receive a distribution in accordance with the provisions of the Amended Plan of Reorganization approved by the Bankruptcy Court. Under the terms of this plan, the United States would receive approximately $81,000 in cash and 9000 shares of common stock of Newcorp, a corporation formed pursuant to the reorganization proceeding.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and should refer to *United States v. A & F Materials Company, Inc.*, D.J. Ref. No. 90-7-1-140.

The proposed Consent Decree may be examined at the office of the United States Attorney, 750 Missouri Avenue, East St. Louis, Illinois 62203 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20503. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (ten cents per page

[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* (not printed), served March 8, 1988.

[2] *See, Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

reproduction cost) payable to the Treasurer of the United States.

Roger Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-14950 Filed 6-30-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA; USX Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 8, 1988, a proposed consent decree in *United States v. USX Corporation*, Civil Action No. H 82-3945 was lodged with the United States District Court for the Southern District of Texas, Houston Division. The proposed consent decree resolves a judicial enforcement action brought by the United States against USX Corporation for the violation of a prior consent decree entered into on April 26, 1983 pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.*

The proposed consent decree requires the defendant to meet certain limitations on emissions from its No. 1 Electric Arc Furnace Shop and to pay the sum of twenty-five thousand dollars ($25,000.00) to the United States Government as a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. USX Corporation*, D.J. Ref. 90-5-2-1-572.

The proposed consent decree may be examined at the office of the United States Attorney, 515 Rusk Avenue, Houston, Texas 77702.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-14951 Filed 7-1-88; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Fermi-2 Technical Specifications (TSs) to delete the Non-regenerative Heat Exchanger Outlet Temperature-High signal from the listing of Reactor Water Cleanup (RWCU) system isolation signals.

The Need for the Proposed Action

The proposed changes to the TSs are required to eliminate an unnecessary isolation signal. Elimination of this signal would assure timely restoration of the RWCU following an isolation to enhance reactor water level control and reactor water chemistry control without loss of filter-demineralizer high temperature resin protection. The isolation signal is not an accident mitigation function and is not utilized in the RWCU leak detection system. The signal is intended to prevent damage of the filter demineralizer resins in the event the temperature exceeds 140°F. This function will still be retained in the system design.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would eliminate from the Fermi-2 TSs an unnecessary isolation signal and allow the RWCU to be returned to service in a timely manner to enhance reactor water level control and reactor water chemistry control. The isolation signal has no accident mitigation function and is not utilized in the RWCU leak detection system. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed amendment involves changes to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing was published in the **Federal Register** on May 11, 1988 (53 FR 16801). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributed to the facility but could result in prolonging an outage with attendant costs and consequently result in an unnecessary loss of power to the grid.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' 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 license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated March 10, 1988, as supplemented April 21, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 28th day of June 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-15009 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

Application for License To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATION

Name of application, Date of application, Date received, Application No.	Material type (percent)	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 6-20-88, 6-22-88, XSNMO2388	93.3 enriched uranium	12.600	11.737	Fuel for BER-II reactor	West Germany.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

Dated this 28th day of June 1988, at Rockville, Maryland.

[FR Doc. 88-15008 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on July 20, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 20, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC Staff Resolution Position for USI A-45: "Shutdown Decay Heat Removal Requirements." The Subcommittee will also discuss the status of the proposed resolution of Generic Issue 99: "Improved Reliability of RHR Capability in PWRs."

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. Paul Boehnert (telephone 202/634-3267) 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.

Date: June 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-15012 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on July 21, 1988, Room 1130, 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:

Thursday, July 21, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

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 open to the public, 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, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 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.

Date: June 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review

[FR Doc. 88-15011 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on TVA Organizational Issues; Notice of Meeting

The ACRS Subcommittee on TVA Organizational Issues will hold a meeting on July 22, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, July 22, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the generic lessons learned from the Staff's review of TVA in regard to the restart of Sequoyah 2.

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. Dean Houston (telephone 202/634-3267) 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.

Date June 27, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-15010 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-16055-SP ASLBP No. 87-545-01-SP (Suspension Order) and Docket No. 30-16055-OM ASLBP No. 87-555-01-OM (Decontamination Order)]

Advanced Medical Systems, Inc., Order Setting Prehearing Conference

June 28, 1988.

Atomic Safety and Licensing Board: Before Administrative Judges, Robert M. Lazo, Chairman, Harry Foreman, Ernest E. Hill.

Counsel for the Licensee, Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio 44041, and counsel for the NRC Staff are directed to appear at a prehearing conference on Wednesday, July 20, 1988, beginning at 1 p.m. at the Commission's Hearing Room, Fifth Floor, East West Towers, 4350 East West Highway, Bethesda, Maryland.

The parties shall be prepared to present their respective views on the legal and factual issues surviving for hearing in each of these two related proceedings. In particular, the parties shall be prepared to specify the relief sought by each in both proceedings. The parties shall also attempt to arrive at a joint position as to the issues and present their position orally at the beginning of the prehearing conference. Once the issues for hearing have been identified, the scope of discovery on the issues and the schedule for hearing will be addressed.

Dated at Bethesda, Maryland, this 28th day of June, 1988.

It Is So Ordered.

For The Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 88-15013 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 150 to Facility Operating License No. DPR-49, issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative (the licensee), which revised the Technical Specifications for operation of the Duane Arnold Energy Center (the facility) located in Linn County, Iowa. The amendment was effective as of the date of its issuance.

The amendment revises requirements for logic system functional testing by extending the interval for performance of those tests from annually to once per operating cycle (typically 18 months), clarifying the definition of "Logic System Functional Test," and revising other sections to reflect new testing practices.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10

CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1988 (53 FR 15931). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated December 11, 1987, (2) Amendment No. 150 to License No. DPR–49, (3) the Commission's related Safety Evaluation dated June 23, 1988 and (4) the Environmental Assessment dated June 10, 1988 (53 FR 22588). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

A copy of items (2), (3) and (4) may be obtained upon request addresssed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 23rd day of June 1988.

For the Nuclear Regulatory Commission.

M.D. Lynch

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–15014 Filed 7–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co. et al. Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 132 to Facility Operating License No. DPR–44 and Amendment No. 135 to Facility Operating License No. DPR–56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised the Technical Specifications for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania. The amendments were effective as of the date of issuance. The subject changes in the organizational structure are to be completed within ninety (90) days of the issuance of the amendments.

The amendments modified section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, (III) a revised composition of the Plant Operations Review Committee and (IV) several administrative changes.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 23, 1987 (52 FR 48593). On January 22, 1988 the Commonwealth of Pennsylvania filed a document entitled "Commonwealth of Pennsylvania's Petition To Intervene, Request for Hearing and Comments Opposing No Significant Hazards Consideration." On April 1, 1988 the Commission issued an Order which referred the matter to the Chairman of the Atomic Safety and Licensing Board Panel for consideration of whether the petition to intervene should be granted. The Order also indicated that the request for a discretionary formal restart hearing on matters outside the scope of this proceeding would be addressed in a separate letter to Governor Casey. This letter, which concluded that such hearings are unnecessary, was issued on April 6, 1988.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it had determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendments have been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that the amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

For further details with respect to the action see (1) the application for amendments dated November 19, 1987, as augmented by information in the "Plan for Restart of Peach Bottom Atomic Power Station, Section I, Corporate Action" dated November 25, 1987 and in revisions to Section I of the Plan submitted on April 8, 1988, (2) Amendment No. 132 to License No. DPR–44, (3) Amendment No. 135 to License No. DPR–56, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education, Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 22nd day of June 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–15015 Filed 7–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; 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. 64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 located in Westchester County, New York. The application for amendments is dated May 9, 1988.

This amendment would revise the Technical Specifications 5.3 and 5.4 to allow the replacement of the existing high density spent fuel storage racks with maximum density storage racks. This replacement would result in an increase in the spent fuel storage capability of the spent fuel pool.

The Indian Point 3 spent fuel pool currently has 840 total storage cells. There are currently 368 fuel assemblies stored in the spent fuel pool. By 1994, it is expected that full core discharge capability will not be available. In order to expand the storage capacity of the spent fuel pool, the existing high density storage racks will be replaced with maximum density storage racks. The design of the replacement racks will facilitate a more dense storage of spent fuel. This replacement will result in a spent fuel pool storage capacity of 1345 fuel assemblies.

The maximum density storage racks are designed for a fuel enrichment of up to 4.5 w/o U–235, which is higher than the currently allowable maximum of 4.3 w/o U–235. This amendment would also increase the maximum fuel enrichment allowed in the spent fuel pool and the reactor core from 4.3 w/o to 4.5 w/o U–235.

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 August 3, 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 pre-hearing 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 shall be filed with the Secretary of the Commission, United States 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 Robert A. Capra: 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 Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

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 proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.)

The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated May 9, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commisison.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 88–15016 Filed 7–1–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25846; File No. SR–AMEX–88–15]

Proposed Rule Change; American Stock Exchange, Inc.; Relating to Increased Flexibility in Determining Position and Exercise Limits

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 June 16, 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 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 amend Rule 904 as set forth below.

Note: Italics indicates material proposed to be added.

Rule 904—No Change.

* * * Commentary

.01 through .06—No change.

.07 The position limit shall be 8,000 contracts for options:

(i) On an underlying security which had trading volume of at least 40,000,000 shares during the most recent six-month trading period; or

(ii) On an underlying security which had trading volume of at least 30,000,000 shares during the most recent six-month trading period and has at least 120,000,000 shares currently outstanding.

The position limit shall be 5,500 contracts for options:

(i) On an underlying stock which had trading volume of at least 20,000,000 shares during the most recent six-month trading period; or

(ii) On an underlying stock which had trading volume of at least 15,000,000 shares during the most recent six-month trading period and has at least 40,000,000 shares currently outstanding.

The position limit shall be 3,000 contracts for all other options.

The Exchange will review the volume and outstanding share information of all underlying stocks every six months to determine which limt shall apply. A higher limit will be effective on the date set by the Exhange while any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of an intervening six-month review. *However, if subsequent to a six-month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.*

.08 No change.

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 that its rules be amended to provide greater flexibility in the establishment of position limits for stock options.

Currently, position limits for individual stock options are determined in accordance with a three-tiered system established in April 1985. Pursuant to this sytem, an underlying stock which meets specific standards governing trading volume and/or number of outstanding shares, will qualify the overlying option for either 8,000, 5,500 or 3,000 contract position limits. Under current practices, the Exchange reviews the volume and outstanding share information of all underlying stocks every six months—in January and July—and determines the contract limit that applies for the following six months. If an underlying stock meets the requirements of a higher position limit, the higher limit is effective the first business day following the January or July expiration.

Frequently, an underlying stock meets or surpasses the eligibility requirements for a higher position limit prior to the next six-month review. Usually this occurs when a stock becomes subject to heavy trading activity or splits its shares, thus increasing the number of outstanding shares. Under current rules, an option so qualified for a higher position limit still remains at the lower limit until the next semi-annual review is conducted. Limiting an option otherwise qualified for a higher position limit to the lower limit can discourage participation by institutions and other market participants with substantial hedging needs.

Therefore, it is proposed that if the Exchange determines that an underlying stock has become eligible for the higher position limit prior to the next six month review, the Exchange may, in its discretion, immediately increase such position limits to the next higher limit. It should be noted that no change to the existing criteria relating to outstanding shares and/or trading volume is being proposed.

The proposed 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 in that it will help provide liquidity to certain options

without increasing the potential for market manipulation.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, 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 July 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

June 24, 1988.

[FR Doc. 88-14993 Filed 7-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25863; File No. SR-Amex-88-14]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc. Relating to Specialist Capital Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 14, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") 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 Amex. 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 Amex is proposing to amend Exchange Rule 171 to require each registered specialist to maintain a cash or net liquid asset position in the amount of $600,000 or in an amount sufficient to assume a position of 60 trading units of each security in which such specialist is registered, whichever amount is greater.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed 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 Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 171 currently requires each specialist unit to maintain cash or net liquid assets equal to the greater of $100,000 or an amount sufficient to assume a position of 20 trading units of each speciality security. The proposed amendment would increase the minimum dollar requirement to $600,000 and the trading unit requirement to 60 units. These increases are intended as preventive measures designed to ensure that capital levels will be sufficient to enable specialists to carry out their affirmative obligations in turbulent markets, and more closely align specialist financial requirements with actual capital needs in view of changing market and economic conditions.

Commentary to Rule 171 would be added to create an exception to the 60 trading unit requirement for securities for which the Exchange is not the primary marketplace. This exception would retain the 20 trading unit standard for such securities in recognition of the limited role Amex specialists play with respect to specialty securities that may be traded or priced principally in another U.S. market.

(2) *Basis*

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objectives of section 6(b)(5) in that it is designed to promote fair and equitable principles of trade and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. 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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-88-14 and should be submitted by July 26, 1988.

IV. Commission Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 11(b) which permits national securities exchanges to promulgate rules regulating the activities of specialists as necessary or appropriate in the public interest, for the protection of investors, and to maintain fair and orderly markets, and section 6(b)(5) which directs that the rules of a national securities exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

The Commission believes that, in view of the market volatility encountered during and in the period since the October 1987 market break, it is appropriate to approve the proposed increases in capital requirements and trading unit position requirements for Amex specialists. The Commission staff study on the October 1987 market break found that while specialist capital appears sufficient during normal trading situations, it will not be sufficient if markets continue at present volatility levels.[1] The report also stated that additional specialist capital might ensure that in any future down market specialists do not reach the limit of their buying power or become in jeopardy of failing. The Commisison believes that the proposed rule change will provide an increased level of protection against market volatility for specialists, and ensure that specialists' buying power is not jeopardized.[2]

The Commission believes that the requirements of the proposed rule are reasonable and that conformity with these standards will not be unduly burdensome on Amex specialist units. In this regard, the Amex has stated that all of its specialist units are already in compliance with the requirements of the proposed rule.[3] Finally, the Commission notes that it views this increase in specialist capital requirements as an interim measure by the Amex to ensure the adequacy of specialist financial responsibility requirments in light of market conditions. The Commission anticipates that additional changes to specialist capital requirements may be proposed by Amex as it continues to study this issue.

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 Exchange may impose increased capital requirements and trading unit position requirements on specialists as soon as possible to help ensure greater specialist liquidity as a response to recent market volatility. It is important that the Exchange be assured immediately of the adequacy of its specialists' financial capacity in light of increased market volatility.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: June 28, 1988.

[FR Doc. 88-14994 Field 7-1-88; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-16458; 812-6771]

Mortgage Bankers Financial Corporation I, et al.; Application

June 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Mortgage Bankers Financial Corporation I ("MBFC I") Mortgage Bankers Financial Corporation ("Mortgage Bankers"), Michael J. BeVier and John W. Biasucci.

Relevant 1940 Act Section: Order requested under section 6(c).

Summary of Application: Applicants seek an order amending an existing order, Investment Company Act Rel. No. 15061 (April 16, 1986) ("Existing Order") which exempts MBFC I from all provisions of the 1940 Act, to further exempt MBFC I and certain Affiliates and Trusts (as defined below) from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations and sale of equity interests.

Filing Dates: The application was filed on June 23, 1987, and amended on April 25, May 18, and June 22, 1988. A fourth amendment will be filed during the notice period, the substance of which is included herein.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Service the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 712 Rugby Road, Charlottesville, Virginia 22903.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney at (202) 272-3026 or Brion R. Thompson, Special Counsel at (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. MBFC I, a Delaware corporation, is the surviving corporation from the

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[1] The October 1987 Market Break, a Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February 1988, at p. xviii.

[2] The Commission recently approved a similar proposed rule change by the New York Stock Exchange, Inc. ("NYSE") (SR-NYSE-88-12) increasing the capital requirements and trading unit position requirements for NYSE specialists. See Securities Exchange Act Release No. 25677, May 6, 1988, 53 FR 17286.

[3] According to the Exchange, as of June 17, 1988, all Amex specialists meet or exceed the standards in the proposed rule. Telephone conversation betwen James M. McNeil, Assistant Vice President, Amex, and Robert Sevigny, Attorney, Division of Market Regulation, on June 17, 1988.

merger of the former Mortgage Bankers Financial Corporation I, to which the Existing Order was granted, and its parent, Mortgage Bankers Financial Corporation. The only purposes of MBFC I are to issue collateralized mortgage obligations or other evidences of indebtedness (the "Bonds") secured by Mortgage Collateral (as defined below) in one or more series (the "Series") and to establish Affiliates or Trusts (as defined below), each of which will issue one or more Series of Bonds. The proceeds from such issuances will be used to purchase Mortgage Collateral or will be loaned to borrowers ("Borrowers") pursuant to funding agreements between MBFC I and Borrowers ("Funding Agreements") for use in connection with the funding or acquisition of Mortgage Collateral and other activities incidental to or necessary for such purposes including the sale of residential or beneficial interests in a Trust ("Beneficial Interests"), or participation interests in a pool of Mortgage Collateral ("Participation Interests") or "Excess Interests" (as defined herein). The voting stock of MBFC I is owned by Messrs. BeVier and Biasucci. Mr. BeVier is the Chairman of the Board, the Treasurer and a 50% shareholder of MBFC I. Mr. Biasucci is a Director, the President, the Secretary and a 50% shareholder of MBFC I.

2. Messrs. BeVier and Biasucci own all the voting stock of Mortgage Bankers, a financial intermediary which specializes in the structuring, issuance and administration of collateralized securities. Mortgage Bankers will provide administrative accounting and clerical services to MBFC I pursuant to a management agreement.

3. Applicants seek to amend the Existing Order to permit MBFC I, any other limited purpose finance company (an "Affiliate") issuing Bonds and residual interests on the same terms and conditions applicable pursuant to the application to MBFC I, which is similar in structure to MBFC I and which is owned by any of the Applicants, and any trust (a "Trust") established or to be established by the Applicants or an Affiliate (each, an "Issuer") to issue Bonds secured by Mortgage Collateral and to permit the sale of Beneficial Interests in such Trusts, Participation Interests in a pool of Mortgage Collateral, and/or Excess Interests in the Agency Certificates held by a Trust or in a pool of Mortgage Collateral.

4. Applicants state that "Mortgage Collateral" consists of (i) mortgage loans secured by first liens on single (one-to-four family) residential properties ("Mortgage Loans"), (ii) fully modified pass-through certificates guaranteed as to payment of principal and interest by the Government National Mortgage Association ("GNMA Certificates"), (iii) guaranteed mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (iv) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (v) stripped mortgage backed securities issued or guaranted by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") ("Stripped Mortgage Backed Securities") (GNMA Certificates, FNMA Certificates, FHLMC Certificates and Stripped Mortgage Backed Securities are collectively referred to herein as "Agency Certificates"), (vi) other pass-through certificates evidencing an undivided interest in pools of Mortgage Loans ("Private Mortgage Certificates") and (vii) Funding Agreements secured by Mortgage Loans, Agency Certificates or Private Mortgage Certificates. Mortgage Collateal and any reserve funds, credit supports, collection accounts or other collateral for Bonds are sometimes collectively referred to herein as "Bond Collateral." Agency Certificates and Private Mortgage Certificates are collectively referred to herein as "Mortgage Certificates." Each Series of Bonds issued may contain one or more classes of variable or floating rate Bonds ("Variable Rate Bonds"), each of which will have a fixed maximum rate or rates of interest ("Interest Rate Cap" or "Interest Rate Caps") payable on the Bonds.

5. MBFC I issues the Bonds pursuant to indentures (the "Indentures") between MBFC I and independent trustees (the "Indenture Trustees"), as supplemented by a supplemental indenture with respect to each such Series. Any Affiliate organized by an Applicant will operate in the same manner as MBFC I, as described herein.

6. MBFC I assigns and (other than in the case of uncertificated or "book entry" securities) physically delivers to the Indenture Trustee, as security for the Bonds, its entire right, title and interest in any Mortgage Collateral. Payments on the Mortgage Collateral are the primary source of funds for payments of principal and interest due on the Bonds. The scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds plus income received thereon are sufficient to make the interest payments on and amortize the principal of the Bonds by their stated maturity.

7. The Trusts will be formed by MBFC I or an Affiliate for the limited purpose of issuing one or more Series of Bonds, investing in certain Mortgage Collateral which will be used to collateralize such Bonds or purchasing Mortgage Collateral from MBFC I or an Affiliate subject to the lien of the Indenture for the Series of Bonds secured by such collateral. Each Trust will be established pursuant to a separate deposit trust agreement (the "Deposit Trust Agreement") between MBFC I or an Affiliate and an independent trustee for the holders of the beneficial interests of the Trusts (the "Owner Trustee"). Pursuant to each such Deposit Trust Agreement, MBFC I or an Affiliate will, except as described below, assign to each Trust Bond Collateral (which will be deposited with the Indenture Trustee for the Series of Bonds secured by such collateral) which the Owner Trustee will purchase in whole or in part from MBFC I or an Affiliate or from third parties, on behalf of the Trust with the proceeds of the issuance of the Bonds.

8. In certain circumstances MBFC I or an Affiliate may transfer its remaining interest in the Bond Collateral, including any Mortgage Certificates securing the Bonds it has issued, to a Trust. The Trust's interest in such Bond Collateral will be subject to and subordinate to the lien of the Indenture and the rights of Bondholders. The Trust's interest in the Bond Collateral will be limited to that portion of the Bond Collateral exceeding that level necessary to make the interest payments on, and amortize the principal of, the Bonds by their stated maturity. The Mortgage Certificates will remain in the possession of the Indenture Trustee (or, in the case of "book entry" certificates, will remain registered in the name of the Indenture Trustee) to maintain the Indenture Trustee's first priority perfected security interest and lien on such Certificates. Each such Trust will purchase the residual interest in the Bond Collateral from MBFC I or an Affiliate with the proceeds of a private placement of Beneficial Interests in the Trust. Except for the fact that the Trust itself will not issue the Bonds directly and will not be a party to the Indenture for such Bonds, it will be structured and operated in accordance with the description of the Trusts herein and in the Application.

9. The Owner Trustee for each Trust will be a bank or trust company or other fiduciary organized under the laws of the United States or any state. The Owner Trustee will not purchase any

Beneficial Interests itself, but will function as the legal stakeholder of the assets of the related Trust for the benefit of the owners of the Beneficial Interests. Under each Deposit Trust Agreement, the Owner Trustee is obligated to collect all amounts released from the lien of the Indenture by the Indenture Trustee for the Bonds to pay all expenses of the Trust, including its own fees, and to remit the balance to the owners of the Beneficial Interest on a pro rata basis.

10. Initially, all of the Beneficial Interests in each Trust will be held by MBFC I or an Affiliate. However, upon the issuance of the Bonds, or at some later time, MBFC I or an Affiliate may sell, directly or through a firm engaged in investment banking, commercial banking or mortgage banking or dealing in mortgage-related securities, Beneficial Interests in any Trust to (i) sophisticated instutional investors ("Eligible Institutions") or (ii) non-institutions which are "accredited investors" as defined in Rule 501 under the Securities Act of 1933 ("1933 Act") ("Accredited Investors") in compliance with the conditions below. (Eligible Institutions and Accredited Investors are collectively referred to herein as "Eligible Investors").

11. The Applicants may also sell Participation Interests in the cash flow on Mortgage Collateral not required to pay interest on and principal of the related Series of Bonds and any related expenses without forming a Trust. Such sale of Participation Interests will be subject to the restrictions enumerated above and herein as to sales of Beneficial Interests in a Trust.

12. In connection with the issuance of certain series of Bonds secured in whole or in part by Agency Certificates, MBFC I, an Affiliate or a Trust may purchase all the right, title and interest in and to the Agency Certificates except for the right to receive that portion of the interest payable thereunder not necessary to pay the debt service on the bonds secured by such Agency Certificates (the "Excess Interest"). The ownership of the Excess Interest need not be transferred to MBFC I, such Affilaite or such Trust. In such circumstances, MBFC I, such Affiliate or such Trust acquires full control over the Agency Certificates, including all rights exercisable upon default against the issuer or guarantor thereof. The owner or owners of the Excess Interest will assign its or their rights to the Excess Interest to the Indenture Trustee as security for the Bonds and Indenture Trustee will have a perfected first priority security lien and interest on each Agency Certificate underlying such Excess Interests. In the event of default on such Bonds, the Excess Interest will be available to satisfy principal and interest payments due to Bondholders.

13. The Excess Interest may subsequently be sold by the owner thereof, which will be a firm engaged in mortgage banking, investment banking or commercial banking or dealing in mortgage-related securities only to Eligible Investors and only upon the terms and conditions provided herein for the sale of Beneficial Interests and Participation Interests. No sale or transfer of the Excess Interest will affect the pledge of the entire related Mortgage Certificate or Mortgage Certificates as security for the full payment of principal and interest on the Bonds, including the assignment by the owner or owners of the Excess Interest of its or their rights to such Excess Interest to the Indenture Trustee. The document providing for any such sale or transfer will provide that the related Certificates remain pledged under the Indenture to secure the Bonds. Each such firm will represent that it is an Eligible Institution and will convenant that it will transfer the Excess Interests only in compliance with the agreement creating such interests. Each purchaser of an Excess Interest will be required to make the representations set forth in the application required of purchasers of Beneficial or Participation Interests and agree to comply with the terms of the agreement creating such interests.

14. Applicants represent that the creation of Excess Interests does not disadvantage the Bondholder in any way because, from the Bondholder's standpoint, it is as if the Excess Interest had in fact been transferred to the issuer of the Bonds. The entire Agency Certificate is pledged to secure the Bonds and, in the event of default under the Indenture, the Indenture Trustee may foreclose on the Agency Certificate, including the Excess Interests.

Applicants' Legal Conclusions

The Applicants' submit that granting the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because: MBFC I, and Affiliate or any Trust are not the type of entities that the provisions of the 1940 Act are intended to regulate; Applicants may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; the Applicants' activities are intended to serve a recognized and critical public housing need; Bondholders will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by an Indenture Trustee representing their interests under the Indenture; and the prospective purchasers of Beneficial Interests, Participation Interests or Excess Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number.

Applicants' Conditions

Applicants agree that the requested order may be expressly continued on the following:

A. Conditions Relating to the Bond Collateral

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration either pursuant to section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States to non-U.S. persons in reliance upon an opinion of U.S. counsel that registration is not required. No single offering of Bonds sold both within and outside the United States would be made without registraton of all such Bonds under the 1933 Act, without obtaining a no-action letter permitting such offering or otherwise complying with applicably standards then governing such offerings. In all cases, Applicants will adopt agreements and procedures reasonable designed to prevent such Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to U.S. investors in United States offerings.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the 1934 Act. In addition, the Mortgage Collateral underlying the Bonds issued by MBFC I, an Affiliate or a Trust will be limited to Mortgage Loans, Private Mortgage Certificates, GNMA Certificates, FNMA Certificates, FHLMC Certificates, Stripped Mortgage Backed Securities and Funding Agreements. In the event that Beneficial Interests in a Trust, Participation Interests in a pool of Mortgage Collateral or Excess Interests are sold or otherwise transferred to persons or entities unaffiliated with MBFC I or any Affiliate, the Mortgage Collateral related to such Interests will be limited to Agency Certificates or Funding Agreements secured by Agency Certificates.

3. If new Mortgage Collateral is substituted, the substitute collateral

must (*i*) be of equal or better quality than the collateral replaced, (*ii*) have similar payment terms and cash flow as the collateral replaced, (*iii*) be insured or guaranteed at least to the same extent as the collateral replaced, and (*iv*) meet the conditions set forth in conditions A.2, 4 and 6 of this notice. In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgage Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Mortgage Loans may be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. New Private Mortgage Certificates may be substituted for Private Mortgage Certificates initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. New Funding Agreements may be substituted for initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under this condition.

4. All Mortgage Loans, Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian (the "Custodian"). Neither the Indenture Trustee nor the Custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of any of the Applicants or of the master servicer or originating lender of any Mortgage Loans that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Custodian. The Indenture Trustee will have a first priority perfected security or lien interest in and to all Bond Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one Rating Agency that is not affiliated with the Issuer of the securities or with any of the Applicants or the holder of a controlling interest in a Trust. The Bonds will not be redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

6. The master servicer of any Mortgage Loans (including, for purposes of this paragraph, mortgage loans underlying Private Certificates) pledged as Mortgage Collateral may not be an affiliate of the Indenture Trustee. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee. Any master servicer and any other servicer of a Mortgage Loan will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential Mortgage Loans. The agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration or eligible for purchase by FNMA or FHLMC.

7. So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of MBFC I, each Affiliate and each Trust and in addition will report on whether the anticipated payments of principal and interest on the Bond Collateral relating to a Series of Bonds continue to be adequate to pay the principal and interest on such Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Indenture Trustee.

B. Conditions Relating to Variable-Rate Bonds

1. Each Series of the Bonds to be issued with one or more classes of Variable Rate Bonds will have a fixed maximum Interest Rate Cap or Interest Rate Caps payable (which may vary from period to period) on the Bonds.

2. The Bond Collateral pledged to secure a Series of Bonds will be sufficient to provide for the full and timely payment of such Bonds then outstanding, assuming the maximum applicable interest rates for each specified period on Variable Rate Bonds.[1] Specifically, reduction of interest payments due on a Series of Bonds that contains a class or classes of Variable Rate Bonds will not result in the release of any of the Bond Collateral (except as aforesaid) from the lien of the Indenture prior to the payment in full of the Bonds.

C. Conditions Relating to the Sale of Beneficial Interests, Participation Interests and Excess Interests

1. If the sale of Beneficial Interests in a Trust results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of such Trust from the Applicants, the relief afforded by any Commission order granted pursuant to this Application would not apply to any Series of Bonds issued by such Trust subsequent to such change of control. Similarly, if the sale of Participation Interests in Mortgage Collateral held by MBFC I or an Affiliate or the sale of equity interests in MBFC I or such Affiliate results in such a transfer of control of MBFC I or such Affiliate from the Applicants, the relief afforded by any Commission order granted pursuant to the Application would not apply to any Series of Bonds issued by MBFC I or such Affiliate subsequent to such change of control.

2. The owners of the Beneficial Interests will agree to be bound by the terms of the applicable Deposit Trust Agreement. The owners of Participation Interests, or Excess Interests, will agree to be bound by the terms of the agreement creating such Interest.

3. Beneficial Interests, Participation Interests and Excess Interests will be offered and sold only to (a) Eligible Institutions or (b) Accredited Investors. Accredited Investors will each purchase at least $200,000 of Beneficial Interests, Participation Interests or Excess Interests, and have a net worth at the time of purchase that exceeds $1,000,000 (exclusively of primary residence). Eligible Institutions will have such knowledge and experience in financial and business matters as to be capable of evaluating risks and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests in mortgage-related securities, such as those represented by Beneficial Interests, Excess Interests and Participation Interests. Accredited Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing

[1] In the case of a Series of Bonds that contains a class or classes of Variable Rate Bonds, a number of mechanisms have been described in the application which will ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the Variable Rate Bonds. Applications will give the Commission notice by letter of any additional mechanisms which may be identified in the future before they are utilized in order to give the Commission an opportunity to raise any questions as to the appropriateness of their use. In addition, sufficient mechanisms will be in place to ensure the payment of principal of and interest on Variable Rate Bonds secured by Stripped Mortgage Backed Securities. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

Beneficial Interests, Participation Interests or Excess Interests, will have direct, personal and significant experience in making investments in mortgage-related securities and, because of such knowledge and experience, will be able to understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Eligible Institutions include mortgage lenders thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts, mutual funds or other institutions that customarily engage in the purchase of mortgages and other types of mortgages collateral. Each such mutual fund will be required to satisfy itself that any such purchase will comply with the provisions of section 12(d)(1) of the 1940 Act.

4. Each sale of Beneficial Interests, Participation Interests or Excess Interests will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the 1933 Act.

5. In no event will Applicant sell Beneficial Interests, Participation Interests or Excess Interests related to any Trust or Series of Bonds to more than 100 investors, of which no more than 15 will be Accredited Investors. The Deposit Trust Agreement relating to each Trust or the Participation Agreement relating to Participation Interests will prohibit the transfer of any Beneficial Interest or Participation Interest if there would be more than 100 beneficial owners of any class of Interests. In the event MBFC I, an Affiliate or a Trust issues Participation Interests or Beneficial Interests in a pool of Mortgage Collateral with respect to which Excess Interests have been created, the maximum permitted number of holders of such Participation Interests or Beneficial Interests and of Excess Interests, will be fixed, with the number of holders of such types of interests limited in the aggregate to 100 (including no more than 15 Accredited Investors in the aggregate). The permitted number of holders will not be dependent on the actual number of holders of the other. In connection with any such transaction, the Applicants will fix the maximum number of holders of each type of interest and the Deposit Trust Agreement or similar agreement pursuant to which Participation Interests or Beneficial Interests are issued and the agreement pursuant to which the Excess Interests are created will prohibit the transfer of each such class of interests, if the transfer would result in more than the permitted number of holders (i.e., no more than 100).

6. Each purchaser of Beneficial Interests, Participation Interests or Excess Interests will represent (other than a firm engaged in investment banking, mortgage banking or commercial banking or dealing in mortgage-related securities through which such interests are sold to Eligible Investors) that it is purchasing such securities for investment purposes only and that it will hold such securities in its own name and not as nominee for undisclosed investors. Each such firm will represent that it is an Eligible Institution, and will covenant that it will transfer the Beneficial Interests, Participation Interests or Excess Interests only in compliance with the underlying Deposit Trust Agreement or similar agreement, which will provide for transfer only to those Eligible Institutions and Accredited Investors in accordance with the conditions and representations described in the Application. No sale or transfer of the Excess Interest will affect the pledge of the entire related Mortgage Certificate or Mortgage Certificates as security for the full payment of principal and interest on the Bonds, including the assignment by the owner or owners of the Excess Interest of its or their rights to such Excess Interest to the Indenture Trustee.

7. No owner of Beneficial Interests, Participation Interests or Excess Interests will be affiliated with the Indenture Trustee; no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in MBFC I, any Affiliate, or any Trust will be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds; and the Owner Trustee will not purchase any Beneficial Interests, but will function as a legal stakeholder for the assets of the Trust.

8. The Applicants will secure the consent of each Affiliate and Trust to comply with all of the representations and conditions set forth in the application.

D. Conditions Relating to REMICs

1. The election by an Issuer to be treated as a real estate mortgage investment conduit (a "REMIC") will have no effect on the level of the expenses that will be incurred by such Issuer. All administrative fees and expenses in connection with the administration of any Issuer that elects to be treated as a REMIC will be paid or provided for in a manner satisfactory to the Rating Agency or Agencies rating the Bonds. If an Issuer elects to be treated as a REMIC it will provide for the payment of administrative fees and expenses, by the methods set forth in the application.

2. Each Issuer will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all such methods are selected.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14995 Filed 7-1-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1068]

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: The proposed information collection is made necessary by the Hague Convention on the Civil Aspects of International Child Abduction and Pub. L. 100-300. The requested information will be used in evaluating applicants' claims, locating abducted children, and advising applicants about available legal remedies. The Convention enters into force for the United States on July 1, 1988, therefore the Department of State is requesting an expedited (5 day) OMB review. The following summarizes the information collection proposal submitted to OMB:

Type of request: New

Originating office: Bureau of Consular Affairs

Title of information collection: Application for Assistance Under the Hague Convention on Child Abduction.

Form number: DSP-105

Frequency: On occasion
Respondents: Individuals
Estimated number of responses: 100
Average hours per response: 1
Total estimated burden hours: 100

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: A copy of the proposed form is published herewith. Comments and questions should be directed immediately to (OMB) Francine Picoult (202) 395–7340 or Gail J. Cook (202) 647–3538.

Date: June 28, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

BILLING CODE 4710-24-M

UNITED STATES DEPARTMENT OF STATE

OMB NO. 1405-0000
EXPIRES 00-00-00
Estimated Burden – 1 Hour

APPLICATION FOR ASSISTANCE UNDER THE HAGUE CONVENTION ON CHILD ABDUCTION

SEE PRIVACY STATEMENT ON REVERSE

I. IDENTITY OF CHILD AND PARENTS

CHILD'S NAME *(LAST, FIRST, MIDDLE)*		DATE OF BIRTH	PLACE OF BIRTH	
ADDRESS *(Before removal)*		U.S. SOCIAL SECURITY NO.	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY
HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES	

FATHER			MOTHER		
NAME *(Last, First, Middle)*			NAME *(Last, First, Middle)*		
DATE OF BIRTH	PLACE OF BIRTH		DATE OF BIRTH	PLACE OF BIRTH	
NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:	NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY: NO.:
CURRENT ADDRESS AND TELEPHONE NUMBER			CURRENT ADDRESS AND TELEPHONE NUMBER		
U.S.SOCIAL SECURITY NO.			U.S.SOCIAL SECURITY NO.		
COUNTRY OF HABITUAL RESIDENCE			COUNTRY OF HABITUAL RESIDENCE		
DATE AND PLACE OF MARRIAGE AND DIVORCE, IF APPLICABLE					

II. REQUESTING INDIVIDUAL OR INSTITUTION

NAME *(Last, First, Middle)*	NATIONALITY	OCCUPATION
CURRENT ADDRESS AND TELEPHONE NUMBER		PASSPORT/IDENTITY CARD COUNTRY: NO.:
COUNTRY OF HABITUAL RESIDENCE		
RELATIONSHIP TO CHILD	NAME, ADDRESS, AND TELEPHONE NO. OF LEGAL ADVISER, IF ANY	

III. INFORMATION CONCERNING THE PERSON ALLEGED TO HAVE WRONGFULLY REMOVED OR RETAINED CHILD

NAME *(Last, First, Middle)*		KNOWN ALIASES
DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY
OCCUPATION, NAME AND ADDRESS OF EMPLOYER	PASSPORT/IDENTITY CARD COUNTRY: NO.:	U.S. SOCIAL SECURITY NO.
CURRENT LOCATION OR LAST KNOWN ADDRESS IN THE U.S.		

HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES

FORM 6-88 DSP-105

OTHER PERSONS WITH POSSIBLE ADDITIONAL INFORMATION RELATING TO THE WHEREABOUTS OF CHILD
(Name, address, telephone number)

IV. TIME, PLACE, DATE, AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

V. FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

VI. CIVIL PROCEEDINGS IN PROGRESS, IF ANY

VII. CHILD IS TO BE RETURNED TO:

NAME *(Last, First, Middle)*	DATE OF BIRTH	PLACE OF BIRTH

ADDRESS	TELEPHONE NUMBER

PROPOSED ARRANGEMENTS FOR RETURN TRAVEL OF CHILD

VIII. OTHER REMARKS

IX. DOCUMENTS ATTACHED (PREFERABLY CERTIFIED)

☐ DIVORCE DECREE ☐ PHOTOGRAPH OF CHILD ☐ OTHER _____
☐ CUSTODY DECREE ☐ OTHER AGREEMENT CONCERNING CUSTODY _____

SIGNATURE OF APPLICANT AND/OR STAMP OF CENTRAL AUTHORITY	DATE	PLACE

PRIVACY ACT STATEMENT

THIS INFORMATION IS REQUESTED UNDER THE AUTHORITY OF THE INTERNATIONAL CHILD ABDUCTION REMEDIES ACT, PUBLIC LAW 100-300. THE INFORMATION WILL BE USED FOR THE PURPOSE OF EVALUATING APPLICANTS' CLAIMS UNDER THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, LOCATING ABDUCTED CHILDREN, AND ADVISING APPLICANTS ABOUT AVAILABLE LEGAL REMEDIES. WITHOUT THE REQUESTED INFORMATION, U.S. AUTHORITIES MAY BE UNABLE EFFECTIVELY TO ASSIST IN LOCATING ABDUCTED CHILDREN.

Comments concerning the accuracy of the burden hour estimate on page 1 may be directed to OMB, OIRA, State Department Desk Officer, Wash., D.C. 20503.

[FR Doc. 88-15039 Filed 7-1-88; 8:45 am]
BILLING CODE 4710-24-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on June 15, 1988

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 15, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone, (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once very three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "for Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date on publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 15, 1988.

DOT No: 3080.
OMB No: 2130–0505.
Administration: Federal Railroad Administration.
Title: Steam Locomotive Inspection.
Need for Information: To assure safe operation of steam locomotives.
Proposed Use of Information: FRA uses this information to assure that carriers make inspections and repair defects in steam locomotives as required by the Locomotive Inspection Act.
Frequency: Recordkeeping, On Occasion, Monthly, Annually.
Burden Estimate: 511 Hours.
Respondents: Railroads.
Form (s): Agency does not provide forms.

DOT No: 3081.
OMB No: 2130–0526.
Administration: Federal Railroad Administration.
Title: Control of Alcohol and Drug Use in Railroad Operations.
Need for Information: To deter use of alcohol or drug involvement in railroad operations.
Proposed Use of Information: FRA and the railroad industry uses this information to determine the extent of the alcohol and drug problems and to curtail any widespread use.
Frequency: Recordkeeping, on Occasion.
Burden Estimate: 3,394 Hours.
Respondents: Railroads.
Form (s): FRA F 6180.73 and FRA F 6180.74.

DOT No: 3082.
OMB No: 2127–0535.
Administration: National Highway Traffic Safety Administration.
Title: Production Reporting System for Automatic Occupant Restraint Compliance.
Need for Information: This standard specifies performance requirements for the protection of vehicle occupants in crashes.
Proposed Use of Information: Compliance with FMVSS No. 208 (Occupant Crash Protection) requires motor vehicle manufacturers to comply with a 3-year phase-in schedule introducing air bags, or other automatic restraints.
Frequency: Annually for 3 years.
Burden Estimate: 838 Hours.
Respondents: 23 Manufacturers.
Form (s): None.

DOT No: 3083.
OMB No: 2125–0196.
Administration: Federal Highway Administration.
Title: Time Records.
Need for Information: To meet the requirements of 49 CFR 395.8(1) to provide an exemption from the driver's record of duty status for drivers operating within a 100 air-mile radius of the location to which they report for work.
Proposed Use of Information: For FHWA and motor carriers to determine compliance with maximum time limitations as required by 49 CFR 395.3.
Frequency: Recordkeeping/6 months.
Burden Estimate: 10,804,553.
Respondents: Motor carriers.
Form (s): None.

DOT No.: 3084.
OMB No.: 2120–0034.
Administration: Federal Aviation Administration.
Title: Medical Standards and Certification FAR–67.
Need for Information: FAA Act of 1958, Section 602 requires airmen to be physically able to perform the duties of the certificate sought.
Proposed Use of Information: The information collected is used to show applicant eligibility.
Frequency: On occasion.
Burden Estimate: 1,149,025 Hours.
Respondents: Individuals.
Form(s): FAA Forms 8500–7, –8, –14, –20.

DOT No.: 3085.
OMB No.: 2127–0539.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard.
Need for Information: To provide for the identification of certain motor vehicles and their major replacement parts to impeded motor vehicle theft.
Proposed Use of Information: Manufacturers of passenger automobiles identify new model introductions that are likely to be high-theft lines as defined in Title VI of the Motor Vehicle Information and Cost Savings Act.
Frequency: One time only.
Burden Estimate: 4,216.
Respondents: Manufacturers.
Form(s): None.

DOT No.: 3086.
OMB No.: 2106–0007.
Administration: Department of Transportation/Office of the Secretary.
Title: Navigation of Foreign Civil Aircraft Within the United States.
Need for Information: Renewal of OMB Approvals.

Proposed Use of Information: Implement provisions of section 1108(b) of the Federal Aviation Act of 1958, as amended; monitor foreign civil aircraft operations in the United States.

Frequency: On occasion.

Burden Estimate: 573.

Respondents: Foreign Civil Aircraft Operators.

Form(s): OST F 4509, Application for Foreign Aircraft Permit or Special Authorization under Part 375.

DOT No.: 3087.

OMB No.: 2115–0557.

Administration: U.S. Coast Guard.

Title: Advance Notice of Vessel Arrival and Departure and Waiver.

Need for Information: This information collection requirement is needed to safeguard the United States against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, of vessels, harbors, and waterfront facilities. It is further needed to establish, operate, and maintain vessel traffic services.

Proposed Use of Information: The Coast Guard Captain of the Port uses this information for (1) vessel traffic supervision; (2) oil and hazardous substance spill; (3) firefighting contingency planning; (4) controlling vessels from Warsaw Pact nations and vessels from nations not permitted to enter U.S. waters or certain U.S. ports; (5) controlling free flag vessels carrying Communist country nationals in the crews; and (6) targeting certain type vessels for examination. It is also used to determine if a waiver of the regulations can be granted.

Frequency: On occasion.

Burden Estimate: 52,060.

Respondents: Vessel Operators.

Form(s): None.

DOT No.: 3088.

OMB No.: 2115–0077.

Administration: U.S. Coast Guard.

Title: Letter of Intent.

Need for Information: This information collection requirement ensures compliance with 33 U.S.C. 1221. It is needed to alert Coast Guard and enforcement personnel that a facility falling under the regulation is planned or an existing facility has changed ownership and to provide a point of contact in case of an emergency.

Proposed Use of Information: This information is used to identify terminals at which oil and hazardous materials transfer operations will take place. It is a preventive measure against oil and hazardous materials pollution.

Frequency: On occasion.

Burden Estimate: 720.

Respondents: Owners/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No.: 3089.

OMB No.: 2115–0506.

Administration: U.S. Coast Guard.

Title: Declaration of Inspection.

Need for Information: This information collection requirement is needed to ensure compliance with 33 U.S.C. 1221. It provides a method for determining whether vessels and facilities transferring oil or hazardous materials have followed established procedures.

Proposed Use of Information: The Coast Guard uses this information to identify potential or actual violations of the pollution prevention regulations. The record is further used to determine culpability in spill and accident investigations.

Frequency: On occasion.

Burden Estimate: 60,000.

Respondents: Owners/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No.: 3090.

OMB No.: 2115–0078.

Administration: U.S. Coast Guard.

Title: Operations Manual and Amendments.

Need for Information: This information collection requirement is needed to ensure compliance with 33 U.S.C. 1221. It makes certain that procedures are established and amended, as necessary, for transferring oil to reduce the number of oil spills caused by defective procedures and human effort.

Proposed Use of Information: This information is used to ensure that adequate pollution prevention measures are in place. Once the manual is approved, it becomes a guide for the persons-in-charge of transfer operations.

Frequency: On occasion.

Burden Estimate: 12,232.

Respondents: Owner/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No.: 3091.

OMB No.: 2115–0120.

Administration: U.S. Coast Guard.

Title: Transfer Procedures.

Need for Information: This information collection requirement ensures compliance with 33 U.S.C. 1221. It is needed to make certain that proper transfer procedures are available to crewmembers who may be involved with transferring oil or hazardous materials from tank to tank within the vessel.

Proposed Use of Information: The vessel personnel use this information whenever they transfer oil or hazardous materials from tank to tank within the vessel. It provides a means of ensuring that new personnel become familiar with the complex systems of pumps, piping and valving used for the procedure.

Frequency: On occasion.

Burden Estimate: 32,742.5.

Respondents: Owner/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No.: 3093.

OMB No.: 2115.

Administration: U.S. Coast Guard.

Title: Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports.

Need for Information: This information collection is needed to permit alternative examinations of Offshore Supply Vessels (OSV) of less than 400 gross tons operating from foreign ports. This alternative will replace the need for the Coast Guard to conduct examinations for reinspections of OSV's that are continuously employed outside of the United States.

Proposed Use of Information: The Coast Guard Officer in Charge of Marine Inspection units will use this information to evaluate the alternative examination program and to ensure that the above mentioned vessels remain fit for the route and service specified in the original certificate of inspection.

Frequency: Annually.

Burden Estimate: 780.

Respondents: Offshore supply vessel owner/operators.

Form(s): None.

DOT No.: 3094.

OMB No.: New.

Administration: Federal Railroad Administration.

Title: Class II and Class III Railroad Infrastructure Study.

Need for Information: To respond to request in Senate Report accompanying FY 1988 Continuing Resolution.

Proposed Use of Information: To prepare a report from the Secretary of Transportation to the House and Senate Committees on Appropriations on deferred maintenance and delayed capital improvements on Class II and Class III Railroads.

Frequency: One Time.

Burden Estimate: 960 Hours.

Respondents: Class II and Class III Railroads.

Form(s): One time questionnaire.

Issued in Washington, DC on June 15, 1988.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 88-15033 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-88-25]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 25, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 28, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of Relief Sought
23358	Clarke Outdoor Spraying Company, Inc.	14 CFR 91.31(a)	To extend Exemption No. 4309 that allows petitioner, under certain conditions, to carry passengers in restricted category aircraft.
24934	American Airlines Flight Academy	14 CFR Part 121, Appendix H, Phase II, par. 2(a)(i).	To allow petitioner to administer the airline transport pilot certification (ATPC) check in a Phase II simulator to airmen who do not meet the experience qualifications of Appendix H, Part 121. These airmen would exercise the ATPC only during the en route cruise portion of transoceanic flights as described in § 121.543(b)(3).
25629	Air Transport Association of America	14 CFR 63.37(b)(7)	To allow the flight engineers of any Part 121 certificate holder to satisfy the aeronautical experience requirements for a flight engineer certificate with a class rating by substituting successful completion of training in an approved Part 121 initial flight engineer training course for completion of a Part 63, Appendix C flight engineer training course. This exemption, if granted, would only apply to airmen who hold commercial pilot certificates with instrument ratings.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
23980	United States Hang Gliding Association	14 CFR 91.17 and 103.1(b)	To extend Exemption No. 4144, as amended, that allows petitioner to tow unpowered ultralights with a powered ultralight. Grant, June 22, 1988, Exemption No. 4144B.
25344	General Electric Aviation Service Operation Pte. Ltd. of Singapore.	14 CFR 145.73(a)	To amend Exemption No. 4873 that allows petitioner to perform maintenance, preventive maintenance, and alteration of certain GE-manufactured aircraft with no restriction as to their geographic scope of operation. This amendment, if granted, would include additional GE-manufactured parts. Grant, June 16, 1988, Exemption No. 4873A.
25424	Douglas Aircraft Company	14 CFR 121.312	To allow the manufacture of two DC-10-30 model airplanes without complying with the interim requirement of a heat release rate of 100 kilowatts per square meter and a peak heat release of 100 kilowatt-minutes per square meter for certain cabin interior materials. Grant, June 23, 1988, Exemption No. 4931.
25431	Helicopter Association International	14 CFR 21.181(a)(1), 43.13, 91.27(a), and 135.143(b).	To allow petitioner's members engaged in Part 135 operation of single-engine helicopters to conduct those operations with inoperative equipment and/or systems. Partial Grant, June 20, 1988, Exemption No. 4952.
25552	The Commissioner of the Department of Alaska Department of Transportation.	14 CFR 45.29(h)	To amend Exemption No. 4910 that allows persons operating aircraft within, to, or from the State of Alaska to operate their aircraft without displaying 12-inch nationality and registration marks when penetrating the Alaska Air Defense Identification Zone (ADIZ) or Defense Early Warning Identification Zone (DEWIZ). Grant, June 23, 1988, Exemption No. 4910A.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25555	SilverStar Aviation, Inc.	14 CFR 135.271(g)	To allow petitioner to assign certain of its flight crewmembers to other duties during a helicopter emergency medical evacuation service assignment. These duties would be limited to conducting training, public relations, or routine transportation missions. Denial, June 22, 1988, Exemption No. 4954.
25577	Lake Union Air Service, Inc.	14 CFR 135.203(a)(1)	To allow pilots of petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace. Grant, June 22, 1988, Exemption No. 4953.

[FR Doc. 88-14945 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 163 (6th Meeting) on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 6th meeting of RTCA Special Committee 163 on Unintentional or Simulataneous Transmissions that Adversely Affect Two-Way Radio Communications to be held on July 25-27, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of the minutes of the fifth meeting, (3) review task assignments, (4) review the third draft of the MOPS, (5) assignment of tasks, (6) other business, (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1988.

Herbert P. Goldstein,

Desginated Officer.

[FR Doc. 88-14946 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 22, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions, (2) approval of minutes of the meeting held on May 13, 1988, (3) Executive Director's Report, (4) Special Committee Activities Report for May-June 1988, (5) Fiscal and Management Subcommittee Report on mid-year review of RTCA 1988 budget, (6) review text for RTCA Federal charter proposal, (7) consideration of proposals to establish new special committees, (8) other business, and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-14947 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 23, 1988.

By Direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Burial Benefits.
3. VA Form 21-530.
4. This form is used to determine basic eligibility and whether the person who paid the veteran's burial expenses should be paid, or if expenses are unpaid, whether the creditor is to be paid.
5. On occasion.

6. Individuals or households; Businesses or other for-profit.

7. 389,760 responses.

8. 129,920 hours.

9. Not applicable.

Extension

1. Department of Veterans Benefits.

2. Student Verification of Enrollment for a Course Leading to a Standard College Degree (Under Chapter 30, Title 38, U.S. Code).

3. VA Form 22–8979.

4. This form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree under chapter 30 of Title 38, U.S. Code.

5. On occasion.

6. Individuals or households.

7. 60,508 responses.

8. 5,042 hours.

9. Not applicable.

[FR Doc. 88–14954 Filed 7–1–88; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of System Notice; Revised System of Records

AGENCY: Veterans Administration.

ACTION: Notice correction.

SUMMARY: In the **Federal Register** of June 24, 1988 (53 FR 23845–23847), the Veterans Administration (VA) published a notice revising certain paragraphs and considering the addition of 14 new routine use statements in the system of records entitled, "Veterans' Spouse or Dependent Civilian Health and Medical Care Records-VA" (54VA136). In this notice, one paragraph was improperly formatted and one word was inadvertently omitted. The VA hereby corrects those errors.

Dated: June 27, 1988.

Priscilla B. Carey,

Chief, Directives Management Division.

In FR Doc. 88–14242, published in the **Federal Register** of June 24, 1988, page 23846, first column, in "Categories of Individuals Covered by the System:," paragraph 3 is corrected to read as follows:

* * * * *

3. The surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct; and

Who are not eligible for medical care under CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) or Medicare.

* * * * *

[FR Doc. 88–14953 Filed 7–1–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 128
Tuesday, July 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

June 29, 1988.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 24398, Tuesday, June 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Wednesday, July 6, 1988.

CHANGE IN THE MEETING:

Open Session

The items listed below have been added to the agenda:

- Regulations Implementing section 504 of the Rehabilitation Act in the Commission's Federally Conducted programs: FINAL RULE: Response to Public Comment on Notice of Proposed Rulemaking.
- Advance Notice of Proposed Rulemaking on Employee Benefit Plans Under section 4(f)(2) of the ADEA.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: June 29, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued June 28, 1988.

[FR Doc. 88-15068 Filed 6-30-88; 10:16 am]

BILLING CODE 6570-06-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 12, 1988.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED: FY 1990 Budget.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15133 Filed 6-30-88; 3:37 pm]

BILLING CODE 7035-01-M

Corrections

Federal Register
Vol. 53, No. 128
Tuesday, July 5, 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket No. RM87-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Correction

In rule document 88-13344 beginning on page 22139 in the issue of Tuesday, June 14, 1988, make the following corrections:

§ 161.3 [Corrected]

1. On page 22161, in the third column, in § 161.3(j), in the first line, "August 15, 1988" should read "September 12, 1988".

§ 250.16 [Corrected]

2. On page 22162, in the third column, in § 250.16(c)(2), in the third line, "August 15, 1988" should read "September 12, 1988".

3. In the same column, in § 250.16(d)(1), in the 11th line, "August 15, 1988" should read "September 12, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-368-P]

Medicare Program; Effect of Appeals on the Hospital-Specific Portion of the Prospective Payment Rate

Correction

In proposed rule document 88-13227 beginning on page 22028 in the issue of Monday, June 13, 1988, make the following correction:

§ 412.71 [Corrected]

On page 22032, in the second column, in § 412.71(b)(2), in the fourth line, after "is" insert "the hospital's most".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 1003

[BERC-393-P]

Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care

Correction

In proposed rule document 88-13513 beginning on page 22513 in the issue of Thursday, June 16, 1988, make the following correction:

§ 1003.109 [Corrected]

On page 22526, in the third column, in § 1003.109(a)(5), in the last line, after "penalty" insert "and assessment and the period".

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 5, 1988

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 251 and 280

Geological and Geophysical Exploration of the Outer Continental Shelf; Prospecting for Minerals Other Than Oil, Gas, and Sulphur; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 251 and 280

Geological and Geophysical (G&G) Exploration of the Outer Continental Shelf; Prospecting for Minerals Other Than Oil, Gas, and Sulphur

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes a separate set of requirements designed to govern geological and geophysical (G&G) prospecting and scientific research activities relating to minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) of the United States. The rule recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, allowing balanced, orderly G&G prospecting and scientific research for minerals other than oil, gas, and sulphur while protecting the human, marine, and coastal environments; preserving and maintaining free-enterprise competition; and minimizing or eliminating conflicts between OCS G&G prospecting and scientific research activities and other users and uses of the OCS. This final rule is the first in a series of three rules designed to establish a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella or Jane A. Roberts; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone: (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with G&G prospecting and scientific research in the OCS for minerals other than oil, gas, and sulphur; the leasing of such OCS minerals; and operating activities associated with production of such OCS minerals. The new regulations are designed in recognition of the differences between the OCS activities associated with the discovery, development, and production of oil and gas and those associated with minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees and permittees under these regulations), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with G&G prospecting and scientific research and the discovery, development, and production of OCS minerals other than oil, gas, and sulphur;

(2) Assure that States, and through the States local governments which are directly affected by OCS mineral mining activities, are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS G&G prospecting and scientific research and mineral mining activities and other users and uses of OCS resources;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for producing OCS mineral resources other than oil, gas, and sulphur which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for G&G prospecting and scientific research and wise management of the natural resources of the OCS including OCS minerals other than oil, gas, and sulphur.

This final rule is the first part of the regulatory regime to govern OCS mineral mining activities associated with minerals other than oil, gas, and sulphur and establishes practices and procedures specific to the activities associated with G&G prospecting and scientific research for OCS minerals other than oil, gas, and sulphur. Regulations are also being developed to govern leasing and postlease activities to develop and produce OCS minerals other than oil, gas, and sulphur. Notices of proposed rules will be published for those regulations in the near future.

Background

On September 28, 1945, the United States declared its jurisdiction over the natural resources of the continental shelf with the Truman Proclamation, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed on the Continental Shelf." At the same time, President Truman placed these natural resources under the jurisdiction of the Secretary of the Interior (Secretary) by Executive Order, pending enactment of legislation. Congress passed the OCS Lands Act (OCSLA) in 1953 and delegated the administration of the OCS mineral resources of the United States to the Department of the Interior (DOI), giving legislative expression to the Truman Proclamation. Section 8(k) of the OCSLA provides the legal authority for leasing OCS minerals other than oil, gas, and sulphur in the OCS.

This final rule is an action within DOI's statutory authority and is intended to promote and encourage private enterprise in the development of economically sound and stable domestic materials industries in the national interest and provides an appropriate level of protection for the human, marine, and coastal environments.

Under the National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601 *et. seq.*), the President is "* * * to encourage Federal agencies to facilitate availability of domestic resources to meet critical needs." The statute further mandates that the President direct "* * * the Secretary of the Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21(a) of this title * * *." Section 21(a) of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) provides the following:

> The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs. * * *

President Reagan reemphasized these themes in April 1982 by stating in the National Minerals and Materials Program Plan that this country will seek to reduce its dependence on imported minerals by eliminating barriers to the development of marine mineral resources. The MMS believes that issuance of comprehensive regulations for activities associated with OCS mineral discovery, development, and production which recognize the need for environmental protection and the

avoidance of unnecessary conflict with other users of the oceans is in full accord with Federal policies. Implementation of this rule is appropriate in view of the resource potential in areas of U.S. jurisdiction and the long lead times projected for development of certain OCS minerals other than oil, gas, and sulphur.

The lack of comprehensive regulations applicable to prospecting, leasing, and the recovery of minerals other than oil, gas, and sulphur from the OCS may have inhibited interest in development of a domestic marine mining industry. This has not been the case in Europe and Asia where vigorous marine mining industries have developed with government regulation. This rule is intended to dispel uncertainty and demonstrate governmental commitment to OCS minerals development and production. Regulations at 30 CFR Parts 251 and 256 are presently applicable to prelease prospecting activities and to the leasing of all OCS minerals. However, these existing regulations were designed primarily for oil and gas and to a lesser degree sulphur, and MMS believes that there is a need for regulations optimally designed for use with OCS minerals other than oil, gas, and sulphur.

In the United States, industry interest in OCS mining has been focused on heavy metal placers, strategic minerals, sand and gravel, and phosphorite. Table 1 lists the permits that have been issued under existing regulations by MMS and its predecessor Agencies to prospect for OCS minerals other than oil, gas, and sulphur.

TABLE 1.—GEOLOGICAL AND GEOPHYSICAL PERMITS ISSUED BY DOI TO PROSPECT FOR OCS MINERALS OTHER THAN OIL, GAS, AND SULPHUR

OCS Region	Permittee	Minerals of Interest	Year
Atlantic	Newport News Shipbuilding	Phosphate	1966
Pacific	Ocean Resources, Inc	Phosphorite	1967
Pacific	Bear Creek Mining Co	Phosphorite	1967
Atlantic	Global Marine, Inc	Sand and gravel	1969
Atlantic	Ocean International, Inc	Heavy minerals	1969
Pacific	Global Marine, Inc	Sand and gravel	1969
Atlantic	Deepsea Ventures, Inc	Manganese nodules	1970
Gulf of Mexico	Radcliff Materials, Inc	Sand and gravel	1975
Alaska	Harding Lawson	Sand and gravel	1982
Alaska	Sohio	Sand and gravel	1982
Alaska	Tenneco	Sand and gravel	1982
Alaska	Geocubic	Sand and gravel	1983
Alaska	Geocubic	Sand and gravel	1983
Alaska [1]	Woodward	Sand and gravel	1983
Alaska [1]	Woodward	Sand and gravel	1983
Alaska	Sohio	Sand and gravel	1983
Alaska	Dames & Moore	Sand and gravel	1983
Alaska	Dames & Moore	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1983
Alaska	McClelland	Sand and gravel	1983
Alaska [1]	McClelland	Sand and gravel	1983
Alaska [1]	Harding Lawson	Sand and gravel	1984
Alaska [1]	Harding Lawson	Sand and gravel	1984
Alaska	Ertec	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	MTS	Sand and gravel	1984
Alaska	Comap	Sand and gravel	1984
Alaska [1]	Comap	Sand and gravel	1984
Alaska	Sohio	Sand and gravel	1984
Alaska [1]	Sohio	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Union	Sand and gravel	1984
Alaska	McClelland	Sand and gravel	1984
Alaska	McClelland	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1985
Alaska	Harding Lawson	Sand and gravel	1986
Atlantic [2]	E. I. Du Pont de Nemours & Company, Inc	Heavy minerals	1986
Atlantic [2]	Associated Minerals Co	Heavy minerals	1986
Pacific	East-West Center	Cobalt-rich crusts	1986
Alaska [2]	Inspiration Gold, Inc	Heavy minerals	1986
Atlantic	Geomarex	Carbonate sands	1987

[1] No geological or geophysical data acquisition activities were initiated under these permits.
[2] Two separate permits were issued, one for geological work and one for geophysical work.

Gold is being recovered from placer deposits in Alaska's State waters near Nome, and sand and gravel are being produced from Lake Erie and the lower bay of New York Harbor in New Jersey's and New York's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal OCS waters.

Due to the growing interest in OCS minerals, MMS is working closely with the Bureau of Mines (BOM) to assess the economic feasibility of mining OCS minerals. Two studies dealing with sand and gravel and heavy mineral placers were completed in early 1987: "An Economic Reconnaissance of Selected Sand and Gravel Deposits in the U.S. Exclusive Economic Zone," Open File Report 3–87, and "An Economic Reconnaissance of Selected Heavy

Mineral Placer Deposits in the U.S. Exclusive Economic Zone," Open File Report 4–87. Both of these reports are available from the BOM, Division of Minerals Availability, 2401 E Street NW., Washington, DC 20241. Preliminary indications are that heavy mineral placers, sand and gravel, and precious metal placers in near-shore waters have the nearest term potential for development. Other published studies on OCS minerals include the evaluation of cobalt-rich manganese crusts, polymetallic sulfides, and phosphorites.

The MMS is working closely with a number of coastal States through joint State/Federal task forces to study the engineering, economic, and environmental aspects associated with marine mining. Six task forces have been established involving 10 coastal States: Hawaii; Oregon and California; Georgia; North Carolina; Alabama, Louisiana, Mississippi, and Texas; and Alaska.

Most mineral activity on continental shelves is for sand and gravel for use as construction aggregate and fill. The most extensive marine sand mining occurs in Japan where approximately 1,000 small dredges produce 60 to 70 million tons of sand (and some gravel) annually for use in concrete as well as for fill. This is about one-fifth of all sand and gravel mined in Japan.

The other major sand and gravel mining area in the world is northern Europe, in the North Sea and English Channel, where about 100 dredges annually produce 40 to 50 million tons of sand and gravel, largely for use as concrete aggregate. The United Kingdom, the Netherlands, Denmark, and France are the major producers. The United Kingdom obtains an estimated 15 percent of its total concrete aggregate by marine mining.

Next to sand and gravel, the largest marine mining operations are for tin in Indonesia and Thailand where significant production results from seabed dredging and where continued exploration and development can be anticipated. In Thailand, large-scale marine tin mining operations accounted for nearly half of that nation's production of almost 37,000 metric tons (tin content) in 1986.

Phosphorite deposits also hold promise for development in the near term. One of the most promising prospects is the phosphorite deposit of the Chatham Rise east of New Zealand. A New Zealand company, Fletcher Challenge, has been exploring the deposit on the Chatham Rise in association with two West German firms, Preussag and Salzgitter. It has been reported that German mining engineers are designing mining equipment to recover these deposits which lie in 1,200 feet of water. Other prospective phosphorite deposits are located off the coast of West Africa. These deposits have been under investigation by the French.

A major deep ocean project in the Red Sea, now under consideration, is the development of metalliferous muds containing zinc, copper, and silver in 6,500 feet of water. This project is now entering the pilot stage of production that will involve a 5-year investigation of mining and processing strategies. A Saudi-Sudanese joint commission is managing the project with technical assistance provided by German and French firms.

Exploration activity for manganese nodules is also continuing, at a pace significantly reduced from the 1970's, in international waters in the Clarion-Clipperton fracture zone in the northeastern equatorial region of the Pacific Ocean.

A West German firm, Preussag, in cooperation with Japanese and U.S. firms, is also conducting detailed investigations of cobalt-rich manganese crusts in the Hawaiian Archipelago and Johnston Island EEZ's as well as other mid-Pacific areas. One or more Japanese firms have been exploring for polymetallic sulfides in the Pacific basin for the past 2 years and have now added cobalt enriched manganese crusts in the mid-Pacific area to their exploration objectives.

Minerals other than oil, gas, and sulphur in the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Another strategic mineral possibility is platinum. Existing world ore reserves for these minerals are adequate for the foreseeable future, but with respect to cobalt, nickel, and manganese, they are controlled by relatively few producer countries that could potentially leverage commodity prices.

The OCS deposits that have nearer term economic potential include heavy-mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The OCS polymetallic sulfide deposits containing zinc, copper, lead, silver, and other metals have long-term but little near-term potential as they pose new mining problems and must compete with a large number of alternative onshore domestic and foreign sources. Economic production from OCS deposits, as in onshore deposits, is ultimately dependent upon cost-competitive mining systems, ore grade, and commodity markets.

The MMS recognizes the potential for environmental impacts as a result of G&G prospecting and some scientific research. These possible impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Some potential impacts that may be postulated now may never come to pass as experience provides added knowledge and modifies expectations and practices. Under DOI's case-by-case approach, issues common to all forms of OCS mining and all commodities will be covered by regulations governing G&G prospecting and scientific research, leasing, and operations. Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are proposed. Commodity-specific issues will be covered by specially designed lease stipulations specified at the time the OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval for the conduct of leasehold activities. Based on this approach and information obtained as a result of MMS's Environmental Studies Program (ESP), MMS believes that protection of the environment can be compatible with the recovery of minerals from the OCS.

The MMS has prepared OCS Report No. 87–0035, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," to provide the public with an early overview of the likely activities and potential impacts on the environment resulting from prospecting and postlease operations. The likely mining activities and their potential impacts will be covered in more detail in the environmental evaluations carried out as part of the decisionmaking process for all phases of OCS minerals mining.

Detailed coverage of potential environmental issues is not practicable at this point in time since many uncertainties remain at this early stage with respect to the nature, magnitude,

location, and rate of future G&G prospecting and scientific research activities. Many types of ore deposits exist in a variety of environmental settings requiring a diverse set of prospecting and mining technologies. This raises questions as to whether a meaningful assessment can be conducted at this time. However, this regulatory program is designed to ensure that necessary environmental evaluations will be conducted prior to permit issuance.

Further, through the National Environmental Policy Act (NEPA) process, MMS's preparation of prelease environmental evaluations addressing proposals to lease individual commodities in identified areas will provide a series of opportunities for public involvement in the evaluation of environmental impacts. It is anticipated that an Environmental Impact Statement (EIS) will be prepared in connection with the decision to hold the first lease sale in an area. The additional site-specific and technology-specific environmental impact evaluations, which will be conducted during the evaluation of proposed leasehold activities, will provide further opportunities for public participation.

Two sale-specific EIS's have been completed or are in the process of completion. They are for: (1) Sand and gravel in the Beaufort Sea off Alaska, published as a final EIS in March 1983, and (2) cobalt-rich manganese crusts in the Hawaii and Johnston Island EEZ's, published as a draft EIS. The notice of availability for the Hawaii draft EIS was published in the **Federal Register** on March 27, 1987 (52 FR 9958), with public comments due by June 25, 1987. The comment period was subsequently reopened from December 10, 1987, until February 8, 1988. A draft EIS was published in December 1983 for metalliferous sulfides in the Gorda Ridge area off California and Oregon. This EIS was cancelled in the **Federal Register** on March 31, 1988 (53 FR 10447). Lease sale EIS's such as these will be augmented by additional environmental documentation prior to postlease development and production operations.

Program History

Federal study of OCS mining began as an outgrowth of the concern with mineral shortages during and after World War II and the Korean Conflict. In the early 1950's, President Truman created the Paley Commission to investigate means to avoid shortages. This was followed by major studies by the National Academy of Sciences (NAS), the National Academy of Engineering (NAE), and others which further focused attention on the critical nature of steadily declining mineral resources in terms of U.S. and foreign supplies, U.S. vulnerability, and national goals.

During the period of 1958 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations under the OCSLA as a basis for the actions. Over $54 million was received by the Federal Government in bonuses and rents during this period (see Table 2).

TABLE 2.—MINERALS MANAGEMENT SERVICE

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
Gulf of Mexico Salt & Sulphur Lease Offerings: [1]									
1	10/23/54	Sul-LA	108	523,630	5	$1,233,500	5	0	5
8	05/19/60	Sa-LA	10	22,085	1	75,250	1	0	1
13	12/14/65	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	09/05/67	Sa-LA	8	16,995	1	30,564	1	0	1
20	05/13/69	Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S	02/24/88	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Total			955	2,279,806	109	53,906,995	75	34	183
Pacific Phosphate Lease Offering: [2]									
PH	12/15/61	So-CA	16	80,640	6	122,000	6	0	6

[1] Total Amount of All Bids Received for All Lease Offerings—$82,527,068. Total Amount of All Rentals for All Lease Offerings—$297,860.
[2] Total Amount of All Bids Received—$122,000. [Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.]

In 1970, in its report to Congress, the Public Land Law Review Commission concluded that the regulations associated with the OCSLA, which were designed primarily for oil and gas development, were not conducive to the development of other minerals. The Commission also stated that a location system was not desired and that where competition is known to exist, competitive bidding procedures should be utilized. The rules being proposed for the leasing of minerals other than oil, gas, and sulphur are consistent with the Commission's report. The benefits of leasing were reiterated in 1975 by the NAS/NAE Panel on Operational Safety in Marine Mining in its comprehensive report entitled "Mining in the Outer Continental Shelf and the Deep Ocean." This study examined basic issues including the importance and potential of OCS mining, mining technology, environmental protection and safety, regulations, and leasing. The panel recommended that operations be undertaken in representative areas.

Draft OCS hard minerals leasing and postlease operating regulations and a draft EIS were published in 1974. Following public comment, DOI undertook a series of actions culminating in the present policy of leasing on a case-by-case basis in consultation with adjacent States. A proposed long-range program for resource evaluation and lease management was drawn up by the U.S. Geological Survey (USGS) in 1974 but was not funded.

In November 1977, the Directors of the USGS and the Bureau of Land Management (BLM) recommended establishment of an inter-Agency task force to develop policy recommendations for leasing OCS minerals other than oil, gas, and sulphur. The resulting Program Feasibility Document, published in 1979 with 18 technical appendices, concluded that sufficient national interest and economic incentives existed to support selected commercial-scale mining in the OCS.

On January 19, 1982, DOI announced approval of the development of a leasing program for OCS minerals other than oil, gas, and sulphur on a case-by-case basis. The Secretary published a notice of interpretation in the **Federal Register** on December 8, 1982 (47 FR 55313), relating to DOI's jurisdiction over OCS minerals other than oil, gas, and sulphur. Further clarification was published on January 19, 1983 (48 FR 2450).

The case-by-case approach to the leasing of OCS minerals other than oil, gas, and sulphur was selected to provide practical experience with the variety of potential mineral resources found in the OCS, the different potential environmental settings, and the range of potential technology that might be used. The case-by-case approach provides for management flexibility, opportunity for effective coastal State participation, and extensive environmental review. The regulations will establish a broad regulatory framework; the subsequent lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and lease development proposals will facilitate the consultation and coordination processes authorized under Federal law.

As a first step in the preparation of regulations under this case-by-case approach, an advance notice of proposed rulemaking for regulations to govern G&G prospecting and scientific research activities associated with minerals other than oil, gas, and sulphur in the OCS was published in the **Federal Register** on December 7, 1984 (49 FR 47871), and a notice of proposed rulemaking on the same subject was published in the **Federal Register** on March 26, 1987 (52 FR 9758).

Public Comments and Agency Responses

The following discussion summarizes the comments received as a result of the request for comments and recommendations contained in the notice of proposed rulemaking. Agency responses are also included.

Section 280.0

Comment—One commenter asserted that the information collection required approval from the Office of Management and Budget (OMB); and that if OMB refuses to approve or substantially reduces the information collection requirements, then the rule as a whole should not go forward.

Response—The information collection requirements of this final rule have been approved by OMB under 44 U.S.C. 3507 and assigned OMB clearance number 1010–0072.

Section 280.1

Comment—Numerous commenters questioned DOI's authority over marine mining under the OCSLA.

Response—Section 8(k) of the OCSLA states, as follows:

> The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

Thus, section 8(k) specifically and clearly authorizes the Secretary to lease minerals in the OCS other than oil, gas, and sulphur.

Comment—Several commenters disagreed with DOI's interpretation of its jurisdiction under the OCSLA, specifically as to the definition of the OCS. Some of the commenters expressed the opinion that the Presidential Proclamation on the EEZ was not intended to impact on OCS jurisdiction. Other commenters opined that the definition has no basis in international law.

Response—In an opinion dated May 30, 1985, the Solicitor of DOI concluded that the OCSLA definition of "Outer Continental Shelf" includes all lands seaward of those granted to the States in the Submerged Lands Act (43 U.S.C. 1301 *et seq.*) to which the United States claims jurisdiction and control under international law. The Presidential Proclamation on the EEZ formally claimed U.S. jurisdiction to a minimum of 200 nautical miles from its coasts. The 1958 Geneva Convention on the continental shelf defined a nation's continental shelf as "the seabed and subsoil of submarine areas * * * outside the area of the territorial sea, to a depth of 200 meters, or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas." Since the seabed and subsoil of submarine areas beyond 200 miles may admit to the exploration of the natural resources of the area, the OCS encompasses, at a minimum, an area within 200 nautical miles of the coasts of the 50 States. The "continental shelf" doctrine in international law is a legal, not geologic or geographic, concept. The United States regards the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as reflecting existing or evolving customary international law, aside from those parts which cover deep seabed mining beyond national jurisdiction and which are purely contractual. The international community now accepts that the continental shelf extends to a minimum of 200 nautical miles for all nations, essentially concurrent with the 200-mile EEZ, and may extend beyond 200 miles if certain criteria are met. The United States recognizes both the continental shelf and EEZ doctrines set forth in UNCLOS as codifications of existing customary international law. Both confirm U.S. sovereign rights and control over the seabed adjacent to our coast. The DOI considers that the OCSLA is both meaningful and adequate as a basis for management of the mineral resources of the submerged lands of the United States adjacent to the 50 States and beyond those lands granted to the States by the Submerged Lands Act. The DOI recognizes that the OCSLA does not provide it jurisdiction over the entire EEZ, namely, those areas adjacent to lands over which the United States exercises jurisdiction and control but which are not one of the States (e.g., Johnston Island).

Comment—Several commenters asserted that the OCSLA was an inappropriate and inadequate vehicle for marine mining for a number of reasons. Some said that the OCSLA was too oil and gas oriented and was never intended for marine mining. Others said the OCSLA did not adequately balance national and State interests and provided few, if any, mechanisms for State involvement in a marine mining program. Still others stated that the requirement for up-front competitive cash-bonus bidding was a disincentive to the development of a marine mining industry. They generally favored a preference-right system similar to that under the Deep Seabed Hard Minerals Resources Act (DSHMRA), administered by the National Oceanic and Atmospheric Administration (NOAA). (The NOAA has a program to issue licenses for manganese nodule recovery from the deep seabed areas beyond the limits of exclusive U.S. jurisdiction.) Others felt that environmental safeguards under the OCSLA were inadequate. In light of these objections, six commenters recommended that DOI desist from further rulemaking under the OCSLA and request new legislation.

Response—The recommendation to stop the promulgation of rules under the OCSLA and seek new legislation was not adopted. Section 8(k) specifically and clearly places authority for the leasing of OCS minerals with DOI and provides the Secretary with broad

authority to prescribe appropriate terms and conditions for OCS mining activities. Leases have previously been issued for salt and phosphates. Recognizing the differences between oil and gas and other minerals, the OCSLA allows greater flexibility in the administration of a program for the leasing and development of other OCS minerals.

States are being encouraged to participate jointly in planning for the development of a marine mineral program. Ten coastal States have been and are actively involved in joint State/Federal task forces or other coordinating mechanisms that have been developed with the intent of providing better consultation and coordination as well as effective opportunities for communication between all parties and to assure consideration of the concerns of all interests.

The MMS's Environmental Studies Program (ESP) has developed a wealth of data and information about the marine environment. Application of this and additional environmental information will enable MMS to develop and require adequate environmental safeguards. Environmental impact evaluations and the definition of measures for effective mitigation will be accomplished by MMS in conjunction with actions taken and approvals for activities given under the OCSLA.

These rules apply to all minerals other than oil, gas, and sulphur. Prior to final promulgation of these rules, 30 CFR Part 251 covered all minerals in the OCS. This final notice also revises § 251.1 to limit the applicability of Part 251 to oil, gas, and sulphur. While the activities to be conducted under Parts 251 and 280 permits may be similar or identical, the mineral(s) involved determines which rules apply. After the effective date of these rules, permits under Part 251 are only needed if the G&G exploration or scientific research activities relate to oil, gas, or sulphur. Any other G&G activity, whether commercial or research, will be governed by these rules. However, if a person wishing to conduct G&G activities is looking for all minerals including oil, gas, and sulphur, a permit under these rules is sufficient. Two separate permits are not necessary. The rules at Part 251 are currently being reviewed in toto, and all references to minerals other than oil, gas, and sulphur in sections other than § 251.1 will be proposed for deletion along with any other proposed changes to the part.

Section 280.2

Comment—One commenter objected to the singular definition of an adjacent State. It was pointed out that there may be more than one adjacent State.

Response—The comment has been accepted. The definition of adjacent State has been revised to more accurately reflect the concerns of an adjacent State and that an adjacent State could be more than one State.

Comment—The term "CZMA" is defined in proposed § 280.2 but is not used in the text of the rules.

Response—The term was inappropriately included in the list of definitions and is not included in the final rule.

Comment—One commenter stated that the definition of G&G data and information needs clarification. According to their interpretation, only data that has been documented by location and time can technically be considered usable data subject to these regulations.

Response—Location and, to a certain extent, time are important parts of physical measurements. The definition of G&G data and information has been deleted and new definitions added for "data" and "information."

Comment—There was one comment stating that the word "portions" should be replaced by "materials constituting or within the seabed" in the definition of geological sample.

Response—The first part of the definition is believed to be clear as written. The phrase concerning the location and time has been stricken as unnecessary and the phrase "acquired while conducting prospecting or scientific research activities" added to make the wording of the definition more precise.

Comment—A single comment was received stating that the word "geological" should be stricken from the definition of interpreted geophysical information.

Response—The definition has been eliminated.

Comment—A commenter found the definition of lease too ambiguous and stated that the authorization of activities should be clarified by stating which specific mineral deposits were within specific geographic areas.

Response—The definition of lease is written to recognize the dual meaning of the term as commonly used; i.e., as the contract document or the property covered by the contract. The definition has been reworded to more clearly state those meanings. Also, the term "specific" has been added before "minerals."

Comment—A commenter stated that the inclusion of geothermal resources in the definition of mineral deposits was too broad for a reasonable interpretation of the OCSLA. In their opinion, new legislation would be required before this permit program could be undertaken.

Response—New legislation is not required. The definition of mineral deposit has been replaced with the definition of minerals which refers to the definition in section 2(q) of the OCSLA. Section 2(q) defines the term minerals to include "* * * oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from 'public lands' * * *." Tracking the language of the OCSLA best serves the purpose of these regulations.

Comment—Comments were received from seven groups on the definition of OCS. Five of these asserted that the EEZ and OCS were separate and legally distinct. They stated that there is no jurisdictional or at least questionable authority for Federal Agencies under the OCSLA for the rules. They stated that the Presidential Proclamation on the EEZ made reference to existing jurisdiction, thereby implying no change in the status quo as regarding the authority of the DOI to regulate minerals in the EEZ. They stated that legislation is required to resolve these issues. One commenter wanted a more inclusive definition of OCS to include Archipelago ridges, island slopes, and terraces which are not geologically related to the continental shelf. Another commenter wanted to change the definition of OCS to include the jurisdiction and control of the United States under international law for purposes of the OCSLA. This would take account of legal developments since the OCSLA was enacted, including the EEZ Proclamation of March 10, 1983.

Response—As previously stated, the OCS includes the EEZ and such additional submerged lands off the coasts of the 50 States to the seaward limit of the continental shelf. The authority for these regulations comes from specific authorization contained in the OCSLA; therefore, a definition of the OCS which is consistent with the provisions of the OCSLA is appropriate for these regulations. The definition of the OCS is not solely based on the geologic continental shelf. Archipelago ridges are included in the OCS if they "* * * appertain to the United States and are subject to its jurisdiction, control, and power of disposition * * *" provided in the OCSLA (43 U.S.C. 1332(1)).

Comment—Comments were received from three groups on the definition of

person. Two commenters were concerned that the definition excluded foreigners. Another commenter stated that this definition is much broader than under the oil and gas exploration regulations and, therefore, may require foreigners to obtain a permit.

Response—The definition has been revised so that text parallels the regulations in 30 CFR Part 251 which prior to promulgation of these rules covered all minerals. Nonresident aliens are clearly excluded from the definition. Nonresident aliens who want to carry out prospecting activities that are subject to these rules must incorporate in the United States or work through a U.S. subsidiary.

Comment—Three comments were received from universities and a Federal Agency on the definition of prospecting activities. They were concerned that scientific research would be subject to these regulations. To encourage marine scientific research, they would exclude such research from the regulations.

Response—The definition of prospecting relates to G&G activities having a commercial purpose; therefore, prospecting permits are required for such activities no matter who is conducting the activities. Generally scientific research does not have a commercial purpose and a prospecting permit would not be required. The definition of G&G scientific research includes by definition a requirement that the data and information will be made available to the public at the earliest practicable time. If data and information are not to be made available, then the activities are considered to have a commercial purpose, and a prospecting permit is required.

To meet the Secretary's responsibilities under the OCSLA and other applicable laws, G&G scientific research permits are required where explosives are proposed for use or where a test borehole will be drilled to a depth greater than 300 feet. The use of explosives poses a threat to OCS natural resources which may be unacceptable where endangered species or marine mammals may be harmed. Test drilling operations to a depth greater than 300 feet may permit oil and gas from a shallow accumulation to escape into and pollute the sea or may permit seawater to enter and pollute a freshwater aquifer.

The final rule excludes G&G scientific research from the requirement for a permit if—

(1) The scientific research activities will not interfere with or endanger operations under any lease or right-of-way maintained or issued pursuant to the OCSLA;

(2) The scientific research activities will not be unduly harmful to aquatic life in the area; result in pollution; create hazardous or unsafe conditions; unreasonably interfere with the other uses of the area; or disturb any site, structure, or object of historical or archaeological significance; and

(3) The person conducting the scientific research activities or operating the vessel from which the research is to be conducted has consulted and coordinated the activities with the other users of the area.

Any person who is planning to conduct G&G scientific research activities and has questions as to whether the activities fit under the criteria or who the other users are in an area is encouraged to contact MMS for assistance in determining whether the planned activities qualify.

If proposed activities cannot be modified to meet the criteria cited above, then such activities are barred by section 11 of the OCSLA and cannot be permitted under any type of authorization.

Federal Agencies are excluded from the requirements of these regulations as provided for in the OCSLA.

Comment—One commenter wanted a definition of superjacent waters added so that the scope and area of the G&G data would be better defined.

Response—The definition of G&G data has been deleted. The word "superjacent" has been replaced with "overlying" in the definition of geological sample; therefore, a definition of superjacent is unnecessary.

Section 280.3

Comment—Several parties commented on provisions requiring a permit for all seafloor survey or sampling activities, regardless of the motive behind the activities. Most opined that exemptions should be made for certain categories (i.e., university research, basic research, academic research and surveys, defense oriented research, and marine scientific research). Three of the commenters pointed out that the imposition of such a requirement for foreigners would be inconsistent with U.S. ocean policy.

Response—The OCSLA states that "[A]ny agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the Outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area * * *." Whether "exploration" activities have a potential to adversely impact the marine environment depends upon the nature of the activity and not on whether the activity is conducted to gain data and information in the name of research or for a commercial enterprise. The MMS has responsibilities for the prevention of undue harm to the environment or interference with other uses of the OCS. The MMS has revised § 280.3 to specify that prospecting permits are required for activities which are conducted for commercial purposes. Scientific research permits are required if a borehole is to be drilled deeper than 300 feet or explosives are to be used. Permits are only required for "persons" who are defined to exclude foreigners.

Provision has also been made in § 280.3 for oral approval by the Director of plan revisions or emergency permit applications to be followed by written confirmation of oral requests and approvals.

Section 280.4

Comment—Two commenters stated that a permit term of 2 years is somewhat shorter than would be needed to properly evaluate the mineral potential of a large section of the OCS. Because of the high cost of mobilization requirements, coupled with extremes in offshore weather, they suggested a permit term of 3 or 4 years. Another commenter suggested that "good cause" for extending a permit should be more clearly defined. Another commenter stated that there should be a total time limit that a permit can remain in force.

Response—Under the final rule, the initial permit will be for a term of up to 3 years and may be extended by the Director for up to 2 additional years for "good cause" (e.g., the amount of additional activity to be performed, time required to obtain equipment, or for severe weather conditions).

This gives a longer permit term, defines "good cause," and sets a limit of 5 years on the time period that a permit can remain in force.

Section 280.5

Comment—Several commenters asserted that requiring applications 60 days prior to initiation of planned activities was too short. It was suggested that 90 days would allow more time for Federal, State, and local review. Another commenter opined that MMS should have a deadline for approval as the applicant has the 60-day timeframe.

Response—The 60-day timeframe has been retained. However, the provision in § 280.11(a) for applications to be sent to States has been changed to provide that

States will be notified and a copy of the application provided immediately upon following the submission of an application. Section 280.5(e) specifies that the Director shall approve, disapprove, or require the applicant to modify an application within 30 days after the submission of the application for a permit. The MMS anticipates approving applications within the 30-day timeframe. In the event circumstances require the preparation of an environmental impact statement (EIS), the time for MMS action would be extended by the time required to prepare the assessment, and adjacent States would be afforded an opportunity for review and comment on the proposed activities.

The requirement to provide a description and map of the proposed area(s) in the application has been revised to allow for submission of a general description at the time of application if more detailed information is not available at that time. However, more detailed location information is to be submitted prior to approval and initiation of the specific activity.

Comment—Several commenters stated that it was unclear whether the plan was part of the application or a separate document.

Response—Section 280.5 has been amended to add paragraphs (b)(1)(vii) and (d)(8) to clarify that the prospecting and scientific research plans are part of the permit application.

Comment—Several States were concerned with the provision of § 280.5(b)(2) that applicants should indicate which data and information they considered proprietary. The commenters stated that much of the application information was necessary for State review.

Response—The MMS believes it necessary to protect proprietary data and information from unauthorized disclosure. Section 280.5(b)(2) allows the applicant to identify what it considers proprietary. It is still the Director's responsibility to determine what data and information will be protected as proprietary. In addition, provision is made under which States can enter into an agreement with MMS to permit access to proprietary data and information.

A provision has been added to allow the Director to approve conversion of permits issued under Part 251 to permits under these rules. Existing permits which are converted would be subject to all requirements under these rules.

Section 280.6

Comment—Generally, the commenters were supportive of the requirement for a prospecting plan. However, several commenters stated it should not be required for scientific research.

Response—Researchers are required to obtain a G&G scientific research permit if they propose to drill a borehole to a depth greater than 300 feet or use solid or liquid explosives. In those cases, a plan is needed to allow MMS to evaluate the proposed activities and either approve, disapprove, or require modification of the application. Section 280.6(c) was added to provide a means of applying for a permit when all required information is not available (e.g., when a ship of opportunity will be used). Researchers whose activities qualify under § 280.3(c) are not required to get a permit or submit a plan.

Comment—Several commenters suggested that the prospecting plan include baseline environmental information to characterize marine environmental conditions and biological resources. They asserted that environmental monitoring would be meaningless without such information.

Response—The MMS's ESP has developed considerable data and information concerning the marine environment which are transferable directly to evaluation of potential impacts of G&G prospecting and scientific research activities on the marine environment. Under § 280.6(a)(6) of the final rule, a description of the anticipated environmental consequences of each activity is required; (a)(7) calls for mitigation measures to offset environmental impacts and (a)(8) requires submission of a monitoring plan for approval. The MMS anticipates that baseline information will be submitted as the foundation for the information required in paragraphs (a) (6), (7), and (8). To the extent that adequate background information is not submitted with the plan, MMS can request that such information be provided to assist it in evaluating the plan.

Comment—Two commenters requested inclusion of information about the probable port of operations and onshore support facilities. It was also suggested that coastal zone management (CZM) concurrence be required for permits.

Response—It is expected that the name and location of the expected port of operation, if any, will be included in the application for approval of a permit and in a plan. It is not expected that information concerning onshore support facilities will be needed because the permitted activities are not expected to generate a significant level of onshore support activity. To the extent that other Federal, State, or local governmental approvals are needed for related onshore activities, the information should be provided relative to that approval. The suggestion that CZM concurrence be required for permits was not adopted.

Comment—A number of commenters were concerned about multiple-use conflicts and stated that they should be addressed in the plan.

Response—Section 280.6(a)(10) of the final rule requires the submission of a description of potential conflicts with other users. In addition, one of the requirements for researchers under § 280.3(c) is for consultation and coordination with other users to avoid or minimize conflicts.

Comment—One commenter requested inclusion of the anticipated volume and type of liquid and solid wastes and proposed disposal means.

Response—A phrase has been added to § 280.6(a)(3) that equipment descriptions shall emphasize safety and pollution-prevention features. It should also be noted that permits for discharges into the ocean or ocean dumping are regulated by other Agencies such as the Environmental Protection Agency (EPA).

Comment—A commenter suggested that the plan require inclusion of any known reefs in the area.

Response—It is expected that known reefs will be identified as part of the description of the location(s) and activity(s) to be conducted as well as the description of anticipated environmental consequences of the activities the applicant proposes.

Comment—One commenter said that § 280.6 should provide for copies of the plan to be given to adjacent States.

Response—Section 280.11(a) of the final rule provides that a copy of the application and plan be given to adjacent States as notification of proposed activities. Thus, inclusion of this provision in § 280.6 is unnecessary.

Section 280.7

Comment—Several commenters suggested that the introductory phrase in § 280.7(a) was improperly worded by having the word "unreasonably" apply to all categories listed below. It was also recommended that some criteria be provided for determining what is reasonable or unreasonable.

Response—The section has been rewritten to clarify that persons conducting activities under this rule should not create conditions that pose an unreasonable risk of the listed occurrences. The reasonableness relates to the risk and not the listed occurrences. Because of this

clarification, criteria are not needed for determining the reasonableness of the listed occurrences.

Comment—A commenter suggested that a mechanism or procedure was necessary to handle the situation where oil and gas and other minerals existed in the same area.

Response—Section 280.7 requires that activities authorized under this part not interfere with or endanger operations pursuant to existing leases or permits.

Comment—Some commenters wanted a permittee to notify MMS of any archaeological resources in addition to not disturbing them (§ 280.7(a)(4)).

Response—Identification of any known archaeological resources is already required as part of a plan in § 280.6(a)(9). The final report under § 280.8(a)(4) also requires a summary of effects of activities on archaeological resources. Any previously unknown archaeological resources should be identified in the final report.

Comment—Several commenters agreed with the concept of multiple use but pointed out the potential for interference with military operations.

Response—The MMS recognizes the potential for prospecting or scientific research activities to interfere with military activities in some areas of the OCS. The MMS currently coordinates its oil and gas activities with the Department of Defense (DOD) pursuant to the Memorandum of Agreement (MOA), dated July 20, 1983. The MOA covers all minerals; therefore, DOD is also expected to be involved with planning and coordinating the MMS's activities with respect to OCS minerals other than oil, gas, and sulphur. As a result of military use, some areas of the OCS are completely off limits; others are restricted as to types and timing of activities; and still others are subject to temporary short-term abandonment, such as when rocket launches occur at Vandenberg Air Force Base, California. The MMS interface with the military has been successful and will continue.

Comment—Several States requested participation as observers along with MMS under § 280.7(b). Other States requested that they be allowed to inspect activities and possibly contract with MMS to carry out the Federal inspection responsibility.

Response—The level of participation by adjacent States will vary. It is anticipated that the level of participation for a specific adjacent State will be dictated by the degree to which the Governor of that State wants to participate, and mutually acceptable conditions can be established. While the final rule does not discuss contracting with States, cooperative agreements are permissible under Federal law and can be considered on a case-by-case basis.

Comment—Some States requested that States see all substantial changes to plans required under § 280.7(c). They also requested a definition of a substantial change and that any such changed plan go through the same review as a new plan.

Response—Substantial changes to approved permits and plans will be treated in the same manner as a new application. What constitutes a substantial change will vary with the circumstances and, therefore, cannot be specifically defined. A permittee is required to conduct activities in accordance with the approved plan. Therefore, any substantive change from the approved plan needs MMS approval before the change is made. The level of review depends on the nature of the proposed change and its potential for adverse effects. Copies of applications for permission to change approved plans will be forwarded to adjacent States immediately upon their submission to MMS.

Section 280.8

Comment—A commenter took exception to the statement in the preamble to the proposed rule concerning the frequency of reporting. It was asserted that in addition to whale migration, there were many other unusual circumstances, particularly off Alaska, that would require more frequent reporting.

Response—The MMS recognizes that there are other situations where reporting more frequently than quarterly should be required. Whale migration in the Beaufort Sea was only cited as an example of such a situation.

Comment—A commenter questioned the requirement to submit final reports outside of the normal timeframe if a sale was scheduled to be held within 60 days. The commenter did not consider 60 days adequate to assess data and information for holding a sale. The information in the final report should be necessary prior to consideration of a sale.

Response—It is not anticipated that the 60-day requirement will be utilized very often. The majority of data and information concerning an area will have been gathered and analyzed in order to decide whether to schedule a lease offering. However, some permittees do gather "last minute" data for use in preparing their bids on tracks offered for lease. The MMS also needs to have those data.

Comment—A commenter questioned how MMS could ensure the accuracy and impartiality of the environmental effects information contained in the reports required under § 280.8.

Response—Under § 280.7, the permittee is required to allow the Director to be present on any cruise. It is expected that an MMS official will be present on selected cruises. The MMS reports from the cruises, the reports of other permittees or lessees in the area, and the environmental information available to MMS through the ESP and other studies will provide MMS with enough data and information to evaluate the accuracy and impartiality of reports.

Comment—A number of States requested that adjacent States routinely receive copies of reports.

Response—Adjacent States can make arrangements with the appropriate OCS Regional Director to receive copies of reports, subject to the requirements to protect confidentiality under § 280.13.

Section 280.9

Comment—Some States requested that they have access to samples acquired by permittees.

Response—Section 280.13 has been amended to specifically include samples as part of the material available for inspection by States, subject to the requirement to protect confidentiality under § 280.13.

Comment—Several States suggested that States be able to archive any samples or data that permittees intend to discard after the retention period is over.

Response—States are free to negotiate with permittees regarding access to samples and data which the permittee intends to discard. After the time prescribed in § 280.9 for retaining data, information, and samples expires, MMS has no further control over what a permittee does with the material. The MMS has no objection to a transfer of materials to an adjacent State.

Comment—It was commented that records should not simply be kept but should be submitted to MMS in their entirety.

Response—The MMS does not want, need, or desire to bear the continuing costs for warehousing all the data, information, and samples obtained under every permit. The purpose of the retention periods in § 280.9 is to allow MMS to inspect data, information, and samples and decide which, if any, MMS desires to obtain. It would be unnecessarily costly and administratively burdensome to have to reproduce and ship these materials. Therefore, MMS has concluded that it is less burdensome to the permittee and MMS, and just as effective, to require retention of records for a period of time

to allow MMS the opportunity for inspection and selection as needed.

Comment—Several commenters questioned the absence of provisions for reimbursement for providing data, information, or samples under these rules. They pointed out that reimbursement is provided for under 30 CFR Part 251.

Response—Reimbursement for providing data, information, or samples was intentionally omitted from this rule. Section 280.9 does not require the submission of data, information, or samples to MMS for retention. Under this rule, the permittee must keep the samples, data, and information for a specified period of time. During that time, the Director is authorized to inspect and cut samples or copy data and information. The permittee is not required to submit copies. It is the Government's responsibility to cut the samples or copy the information. It is also the Government's choice to do so itself or pay to have it done either by the permittee or a third party.

Section 280.10

Comment—It was questioned whether the regulations meet the needs and concerns of environmental interests.

Response—The OCS minerals mining program has been designed to provide a framework for comprehensive environmental protection during G&G prospecting and scientific research activities and postlease operations through requirements for site-specific and commodity-specific evaluations and lease stipulations which include appropriate mitigation measures. Protection of the environment will be a high priority at every stage of the process starting with the review of permit applications and plans under this rule through leasing and postlease operations.

Comment—A commenter remarked that the OCSLA does not provide environmental guidelines for marine mining.

Response—Guidelines for protecting the environment come from a wide variety of other laws such as the NEPA, Endangered Species Act, Marine Mammal Protection Act, National Historic Preservation Act, and Clean Water Act, as well as the authorities and guidance found in OCSLA. Although some sections of the OCSLA are oil and gas specific, provisions of other sections are applicable to all minerals in the OCS. These provisions require that activities be conducted in a safe manner to prevent or minimize the likelihood of occurrences which may cause damage to the environment. They also permit cancellation or suspension if there is a threat of serious, irreparable, or immediate harm to the marine, coastal, or human environment. The absence of specific guidelines provides flexibility to develop a framework for environmental protection tailored to the specific commodity and location in the OCS.

Comment—Several commenters questioned MMS's approach in conducting environmental analyses. One commenter stated that the intent to prepare a first lease-sale EIS per commodity is inadequate. The commenters suggested that NEPA needs should be looked at on a case-by-case basis.

Response—The MMS is taking the case-by-case approach. The specific requirements contained in the NEPA and Council on Environmental Quality regulations (40 CFR Parts 1500–1508) dictate that environmental impacts be addressed on a case-by-case basis. An EIS is anticipated for the first lease sale of minerals other than oil, gas, and sulphur (e.g., placers, phosphates, and heavy minerals) in areas where leaseable targets are identified. Additionally, the potential environmental impacts of all actions authorized under the OCSLA will be evaluated during MMS's decisionmaking process pursuant to the requirements of NEPA and other Federal statutes and governing regulations.

Comment—Several commenters stated that the rules were inadequate to protect the environment and mitigate impacts. They were especially concerned that activities should be excluded in high-value habitats.

Response—The MMS does not share that view. It is MMS's responsibility to evaluate OCS development proposals and associated environmental concerns. Through that evaluation process, certain areas of the OCS may be found to be of such exceptional natural resource value that the advantages of maintaining those values outweigh the advantages of leasing the area. In other areas, limited mineral-related activity may be allowed subject to strict stipulations designed to avoid or minimize harm to the environment. In every area, the potential impacts will be evaluated, and mineral-related activities will be authorized only when operations can be safely accomplished without unacceptable environmental effects using the best available and safest technologies as required by section 21(b) of the OCSLA.

Comment—Two commenters recommended that MMS prepare a programmatic EIS and an EIS or EA for the regulations.

Response—The MMS recognizes the potential for environmental impacts of OCS minerals activities. The MMS has prepared a report, "Environmental Effects Overview: Marine Mining in the Outer Continental Shelf" (OCS Report No. 87–0035), to provide the public with an early overview of the likely activities and potential impacts on the environment resulting from OCS mineral activities. Detailed coverage of potential environmental issues is not practicable now since many uncertainties remain at this early stage with respect to the nature, magnitude, location, and rate of future mining. However, sufficient environmental safeguards have been included in this rule to ensure that environmental evaluations will be conducted prior to issuance of a permit.

Comment—One party recommended that environmental baseline data be required for permits on a case-by-case basis.

Response—The environmental data and information needed for a permit application and proposed plan will be required on a case-by-case basis. Much baseline data has been, and continues to be, developed by MMS's ESP. It is expected that OCS mineral activities will be similar in character to onshore mineral activities in the sense that enormous areas will be looked at for each discovery that is made and that not all discovered deposits will be developed for production. Additional environmental studies are expected to be conducted in those areas where data and information are sparse or the potential for adverse impact is great. Nonimpacting activities, such as acoustic subbottom profiling over vast areas, will not be subject to the same environmental evaluation requirements that are required of activities such as dredging tons of seabed material for testing. The review and evaluation of a plan to dredge tons of seabed material will likely include the development of an EA which could reveal the need for additional environmental baseline data. In that situation, the collection of data could be required of the permittee as part of its environmental monitoring plan § 280.6(a)(8).

Comment—A commenter suggested that biological surveys are needed if surface disruption is proposed.

Response—Where prospecting or scientific research is expected to cause significant surface disruption, biological surveys may be required.

Comment—One commenter drew a parallel to the requirements of the DSHMRA, which calls for an EIS for each exploration license and each commercial recovery permit, and recommended that MMS prepare an EIS for each permit.

Response—The DSHMRA does not require an EIS or a permit for activities similar to those conducted pursuant to this rule. Citizens of the United States are free to prospect for manganese nodules beyond the limits of national jurisdiction virtually anywhere in the world without evaluating the impact of their activities on the environment or obtaining a permit or license. When activity begins to concentrate in a specific area, an application for an exploration license is required. The review and approval or disapproval of the application for an exploration license must comply with the requirements of NEPA.

Comment—A commenter suggested that activity should be allowed only where production is imminent and defer activity elsewhere.

Response—A mineral deposit must be discovered and delineated before decision regarding production can be considered. Thus, there must be a way for industry and Government to obtain the data and information on which to determine interest and potential for discovery. Prospecting is one such mechanism. The MMS intends to offer areas for leasing based on indications of industry interest, potential for discovery and ultimate recovery of minerals, and consideration of environmental consequences. Prospecting permits allow industry to do a limited level of work to find areas of promise. Based on data and information obtained through prospecting and other available information, including environmental data, MMS may offer likely areas for lease or withhold environmentally sensitive areas from leasing.

Comment—Another commenter drew a parallel to the requirements of the DSHMRA which calls for NOAA to continue research into the effects of mining deep seabed manganese nodules by recommending that MMS implement a similar program for OCS marine mining.

Response—The NOAA program is directed toward identifying environmental effects associated with the future use of one technology, hydraulic mining, involving one mineral commodity, manganese nodules. Even though DSHMRA covers all deep-sea areas outside the limits of U.S. jurisdiction, NOAA's research has been focused on the environmental characteristics of a single area. The MMS OCS minerals program is much more comprehensive. The OCS Report 87-0035 describes 14 types of mining systems which could be utilized in 10 types of mineral deposits in a variety of marine environmental settings throughout the entire OCS. Combinations of technology, deposit type, and environmental setting could be endless, and some hypothetical combinations may never be encountered. This raises questions whether a meaningful assessment of all potential aspects of OCS minerals mining could be conducted at this time. Efforts to conduct such an assessment would consume resources that should be focused on relevant combinations as they emerge and/or are proposed for use.

Additional independent assessments of expected effects of OCS mining were made available in an analysis by the Office of Technology Assessment (OTA). The OTA 1987 report, "Marine Minerals: Exploring the Nation's New Ocean Frontier," concluded that surface and midwater effects should be minimal if appropriate precautions are taken. Effects on bottom organisms were judged in the OTA report to be the most pronounced. Extinctions, which are the severest form of impact, sublethal effects, and recovery rate were deemed to need continued study. The report indicated that these needs were particularly strong in the deep sea where the environments and identities of the organisms and their life histories are generally unknown.

The NOAA-sponsored research already directed at the deep sea is expected to be at least partially transferable to the deeper portions of the OCS. In addition, the environmental baseline data acquired on much of the OCS under MMS's ESP are applicable to OCS mining activities.

The MMS believes that the efforts of its ESP can be focused on new issues as they are identified during the course of evaluating a discovery, and the mining practices and technology that would be used to bring OCS mineral deposits into production.

Comment—Several commenters disagreed with the statement in the preamble to the proposed rule that offshore mining could be advantageous over onshore mining because of costs arising from strong environmental constraints onshore. These commenters asserted that MMS showed a lack of sensitivity to the environmental vulnerability of offshore areas.

Response—The statement was misinterpreted. The MMS is not insensitive to the vulnerability of offshore environments. The MMS is fully aware of its responsibility to protect the environment and of the special environmental values of marine and near-shore areas. The statement was meant to point out that, under certain circumstances for certain commodities, the specific economic consideration and the costs of mitigation and environmental compliance could balance in favor of the development of an OCS mineral deposit over a similar onshore mineral deposit.

Comment—Several commenters remarked that the regulations should indicate that the National Pollution Discharge Elimination System (NPDES) is applicable to discharges from vessels.

Response—The fact that NPDES permits are applicable to discharges from vessels does not make it necessary or appropriate to include references in this rule to the NPDES permit or other requirements of any Federal Agencies other than MMS which are applicable to OCS activities governed by this rule. It is the permittee's responsibility to be aware of and to obtain all the necessary approvals and permits for operations in the OCS.

Comment—Commenters stated that the rules are not specific enough in only requiring monitoring when the potential for impacts has been identified.

Response—Under this rule, the need for monitoring will be based on the amount of data and information available for the specific area, the sensitivity of the environment to the activities being proposed, and the technology to be used.

Comment—Several commenters disagreed with the listing in proposed § 280.10 as to which activities did or did not have the potential for significant impact. Some commenters suggested that it gave the Secretary too much discretion as to when to do an EA. Numerous commenters questioned the levels of activity used as thresholds for EA's in proposed § 280.10(b).

Response—Under this rule, each proposed activity and its potential for adverse impacts on the environment will be evaluated on a case-by-case basis. Section 280.10 has been rewritten to include activities which normally receive a categorical exclusion review to determine if a more detailed environmental analysis is required.

Comment—Several commenters made specific requests that certain activities trigger the preparation of an EA. Multiple-use conflicts and nonexplosive seismic work during intensive commercial fishing seasons were two of the specifically recommended triggers.

Response—As previously indicated, each proposed activity and its potential for impacting the environment will be evaluated on a case-by-case basis. Potential conflict with other uses of the area is one of the factors that will be considered during the evaluation of environmental impacts.

Comment—Several commenters objected to the inclusion of proposed § 280.10(a)(11) that gave the Secretary the ability to add to the list of activities that pose little or no environmental effect.

Response—The list of activities contained in § 280.10 includes activities which will be subject to a categorical exclusion review. The potential of each activity for adverse effect will be evaluated on a case-by-case basis.

Comment—A number of States suggested that research activities be treated differently from prospecting for purposes of findings of no significant impact under § 280.10.

Response—Section § 280.10 has been rewritten to include a listing of activities which will normally receive a categorical exclusion review to determine if a more detailed environmental analysis is required. The need for any environmental evaluation will depend on the nature of the activities to be conducted and not the purpose for those activities. The impact of a specific activity on the environment is the same no matter who conducts the activity or for what purpose the activity is conducted.

Comment—One commenter requested an explanation of the type of water and biotic sampling envisioned in proposed § 280.10(a)(4).

Response—The types of sampling envisioned in § 280.10(d) (proposed § 280.10(a)(4)) are those typically conducted by oceanographers. Water samples are commonly taken by means of clusters of bottles (e.g., rosettes of 30-liter Niskin bottles) arranged so that each bottle samples the water at a different depth. The water is examined for nutrients, suspended particulate matter, and other constituents. Biotic sampling commonly involves a 0.25 m^2 box-corer which is designed to recover all of the benthic fauna in a small portion of the seafloor for subsequent analysis. Sampling techniques such as these are described in standard oceanographic references.

Section 280.11

Comment—Nine commenters objected, in general, to what they saw as too limited a role for States under the proposed rules. Several commenters traced their objections to inadequacies in the OCSLA.

Response—States are permitted and encouraged to participate fully in this program pursuant to these regulations and the OCSLA. Additional mechanisms have been established for consultation and coordination of activities with adjacent States. Consultation and coordination with States concerning prospecting for OCS minerals other than oil, gas, and sulphur have primarily been accomplished through joint State/Federal task forces established by MMS and the Governors of adjacent States. A cooperative arrangement with Alaska and five such task forces are actively involved in the program at this time. It should be noted that under DSHMRA and legislation presently under consideration by the Congress, States have no role during the prospecting phase. The DSHMRA has no provision for a permit or an evaluation of the environmental impacts of activities governed by this rule and OCSLA. Under DSHMRA, citizens of the United States are free to conduct prospecting activities without evaluating the impact of their activities on the environment or obtaining a permit or license.

Comment—One commenter recommended the need for a more efficient State/Federal consultation process than proposed, including joint management of deposits straddling the State/Federal boundary. Another commenter suggested establishment of a buffer zone to allow work begun by a State in State waters to continue into Federal waters without a permit in order to best understand the deposit being evaluated. Also, a commenter suggested that at a minimum, States should not be required to do an EA unless it is required under their own rules.

Response—To address management of a mineral deposit which straddles the boundary between Federal and State jurisdiction, the DOI expects to develop agreements with the adjacent State when joint management is necessary or desirable. These agreements would assure coordination and cooperation between MMS, agencies of the adjacent State, and State and Federal lessees in order to maximize efficiency, reduce regulatory burden, and obtain the most equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees of adjoining Federal and State leases typically will negotiate an agreement to cover such actions as applying for a mining unit that embraces Federal and State leases. The idea of a buffer zone, where Federal permits or other authorizations and environmental documentation are not required, was not adopted. The location of the jurisdictional boundary with respect to a mining activity will not alter the environmental consequences of that activity. A lessee or permittee of a State may apply for a permit under this rule or ask MMS to offer the lands for lease. States conducting scientific research in the OCS are subject to the same requirements as other researchers and will need to get a permit or self-certify, as appropriate. Activities to be conducted in Federal waters will be subject to the appropriate level of environmental analysis and documentation.

Comment—Seven commenters opined that permits should be subject to consistency concurrence under the CZMA.

Response—The extent to which activities allowed under prospecting permits are subject to consistency review is determined by the CZMA. This rule does not need to address that issue.

Comment—Several comments were received as to the specifics of § 280.11. Numerous commenters objected to the 30-day notification in § 280.11(a) to a Governor of an adjacent State of the application for a permit. All comments received stated that the time was too short for adequate State review. Suggested timeframes ranged from 45 to 90 days.

Response—Under the final rule, MMS will notify the Governor of an adjacent State immediately upon the submission with a copy of an application for approval of a permit and a plan. Section 280.5(e) requires the Director to take action on an application within 30 days following its submission.

The MMS believes that immediate State notification is reasonable. Section 280.11(b) permits the Director to grant a Governor a specified period of time for review and comment in instances where an EA is to be prepared. Under § 280.11(b), MMS will set deadlines on a case-by-case basis, taking into consideration the specific circumstances of the proposed activities.

Comment—One commenter requested that a copy of the plan, as well as the application, be provided to the adjacent State Governor under § 280.11(a).

Response—The Governor of an adjacent State(s) will be provided copies of both the application and plan subject to the requirement for the protection of proprietary data and information.

Comment—One commenter requested that cities and counties adjacent to proposed activities receive notice of permit applications. Another commenter suggested that all interested parties be allowed to comment on permit applications.

Response—The nonproprietary portions of an application for a permit will be placed in the MMS's Public Inquiries room in the Regional Director's office. As previously noted, States are provided copies of the application and plan. The 30-day timeframe for MMS

approval action under § 280.5(e) does not anticipate time for receipt of comments unless an EA is to be prepared. In such instances, States will be provided a specified period of time for review and comment. As subdivisions of a State, cities and counties can comment through the Governor as time and State procedures permit.

Comment—Several States commented that States should have an opportunity for review and comment on all permit applications and not just those requiring the preparation of an EA.

Response—Under this rule, States are notified with copies of all applications and plans. However, provision is not made for review and comment unless an EA is to be prepared. In instances where an EA is to be prepared, the Governor will be given a specific time for review and comment. Most of the prospecting activities that will be described in a plan are activities which will have a de minimus impact upon the environment and no effect within an adjacent States' coastal zone. Under DSHMRA and legislation presently under consideration in Congress, citizens of the United States are or would be free to conduct prospecting activities without evaluating the impact of those activities on the environment or obtaining a permit or license. Adjacent States have no role in that situation. Under this rule, in those instances where MMS's environmental review of the proposed prospecting plan indicates that the impact of those proposed activities needs more extensive evaluation pursuant to the processes and procedures prescribed in NEPA, those procedures would be initiated and participation of the adjacent States invited through the NEPA procedures.

Comment—One commenter recommended that a mechanism be set up to deal with situations when MMS and a State disagree on whether an EA should be prepared.

Response—This recommendation was not adopted. It is the MMS's responsibility to determine the need for environmental analysis and documentation under NEPA. The State/Federal task force system affords an adjacent State a mechanism for input, but in the final analysis, it is MMS's responsibility to determine the need for environmental evaluation and to prepare the appropriate environmental documentation.

Comment—One commenter suggested that Federal Agencies also be allowed to review and comment under § 280.11(b).

Response—Section 280.11(c) provides for MMS notice of all permit applications to Federal Agencies, as appropriate. When another Agency has jurisdiction over some aspect of the proposed prospecting activity, such as EPA's or the U.S. Army Corps of Engineers' responsibility for approval of discharge permits, then its own laws and regulations would apply, regardless of what is provided in these rules.

Section 280.12

Comment—Seven commenters expressed views concerning the protection of proprietary data and information in § 280.12. Some questioned the justification for withholding the release of data and information in the possession of MMS; while others stated that it is unfair to release information which could benefit a competitor in a lease sale. On the side of releasing the information, one example was cited where results of federally funded research had prompted commercial development. The commenters asserted that such information should be available to the public.

In addition to comments on the general concept of protecting data and information, several commenters objected to the specific length of the protection. Several expressed the opinion that 20 years was too long. Others expressed concern that 6 months after a lease sale was too soon to exhaust legal challenges and, also, that releasing data and information after a tract was leased was unfair, because that information would be applicable to adjacent tracts.

Another commenter expressed the concern that releasing proprietary data and information 6 months after a lease sale is unreasonable because it would result in the exposure of exploration and development techniques.

One commenter was against protection of information for 20 years, but suggested that if data and information were to be kept proprietary, then hydrothermal vents should be announced immediately.

Response—The OCSLA enables the Secretary to obtain privileged or proprietary data. Geological and geophysical data and information submitted by a lessee or permittee will only be available to the public subject to the limitations of the Freedom of Information Act and the OCSLA. The final rule establishes a 50-year period of protection for geophysical data and a 25-year period of protection for all other G&G data, information, and samples. These periods of protection are the same as the periods of protection for geophysical data and information provided in § 251.14 as revised February 16, 1988 (53 FR 4390). The proposed provision for the release of data and information 6 months after issuance of a lease has been deleted from the final rule. This action is being taken to permit further consideration of the need to protect data and information relating to minerals other than oil, gas, and sulphur. The period of protection provided in the final rule for geological data and information is 25 years. This is longer than the period of protection provided in 30 CFR 251.14–1(c)(2). It is believed that this longer period of protection for geological data and information is warranted by the nature of minerals other than oil, gas, and sulphur and the relative importance of geological data and information during the early stages of exploration for such minerals.

With regard to the comment concerning data and information from federally funded research, these rules do not prevent the party funding exploration activities from providing for early release of the data and information obtained by these activities. Where the Federal Government funds research, the funding Agency determines the circumstances (such as national security) which permit or prevent release of the data and information developed by the activity.

The MMS has not provided any exception to the protection provided for proprietary data and information to allow for the announcement of a hydrothermal vent. The MMS believes that the development of offshore resources will be best served by protecting this prelease information as proprietary.

Section 280.13

Comment—One commenter suggested that § 280.13 be revised to provide States with a summary of data and information rather than showing them the actual proprietary data and information. The commenter further suggested that language describing the summary could be found in the OCSLA.

Response—The commenter appears to be referring to section 26 of the OCSLA which requires the issuance of oil and gas summary reports. The MMS agrees that nonproprietary summaries would be useful documents. However, issuing a summary of nonproprietary information would be in addition to, not instead of, the sharing of data and information under § 250.13. The MMS can issue such a report under the final rule.

Comment—One commenter noted that some States will not be able to sign the confidentiality agreement required in § 280.13(b) and, as a result, will not be able to view proprietary data and

information. The commenters suggested that nonproprietary summaries of the information be prepared and that these summaries be shared with the States.

Response—The problem noted by the commenter has been recognized. Consultations and other work with the States will be designed to provide coordination based on nonproprietary information in cases where a State has not signed an agreement to protect the confidentiality of data and information.

Comment—One commenter stated that there was no justification for the provision in proposed § 280.13(b)(2) which requires the State and Federal Governments to waive sovereign immunity and the defense that the employee was acting outside the scope of the person's employment.

Response—Section 19(e) of the OCSLA, which concerns coordination and consultation with affected States and local governments, applies to all minerals. This section authorizes the Secretary to share information with States in accordance with specific limitations contained in section 26 of that Act. Section 26(e) specifically requires any State to waive the defense of sovereign immunity and the defense that an employee who releases information was acting outside of the person's employment. This waiver is, therefore, included as a requirement in § 280.13.

Sections 280.14 and 280.15

Proposed § 280.14, Suspension, was separated into two sections in the final rule. Proposed § 280.14(a) became § 280.14 and proposed § 280.14(b) became § 280.15.

Comment—One commenter agreed with the provision concerning suspensions in § 280.14 but suggested that "threat of serious, irreparable, or immediate harm" be defined.

Response—These terms are used in the OCSLA. The concept of a threat of serious, irreparable, or immediate harm is one which is generally understood by MMS and potential permittees. To try to create a more specific definition of the criteria could unnecessarily limit the authority of MMS to respond to a special set of circumstances.

Comment—One commenter suggested that provision for suspensions or cancellations in proposed § 280.14 be mandatory on MMS.

Response—The recommendation was not adopted. It is necessary for the Director to retain discretion to determine on a case-by-case basis whether a suspension, temporary prohibition, permit cancellation, civil penalty, or other action is appropriate. There could be cases where a suspension or a cancellation may not be in the national interest, even though that action may be an option available to the Director. The Director has diverse responsibilities derived from law, Executive Orders, and internal directives. The balanced exercise of these responsibilities will dictate the appropriate action to be taken in a given case.

Comment—Two commenters suggested that criteria be established to govern when a permit could be disapproved under § 280.3 or cancelled under proposed § 280.14 (final § 280.15). One of the commenters noted that the proposed rule required that reasons be given for cancellation but gave no guidance as to criteria.

Response—These comments were not adopted. By not establishing specific criteria, DOI retains the necessary flexibility to manage the resources of the OCS. The MMS believes that from time-to-time there will be reasons why a permit should be cancelled or an application denied. All of these reasons cannot be defined at this time. Permits are obtained without cost and can be terminated by either party pursuant to § 280.15 (proposed § 280.14(b)), although MMS must have a reason for cancellation and must provide that reason to the permittee.

Comment—One commenter suggested that the criteria for issuing a suspension under proposed § 280.14 be expanded to include a threat of serious, irreparable, or immediate harm or damage to important uses of the environment, such as commercial fishing and subsistence hunting and fishing activities.

Response—The final rule provides for suspensions or temporary prohibitions to prevent harm to other uses of the OCS. The criteria concerning harm or damage to life will apply to threats of harm or damage to fish or animals. In addition, § 280.7(a)(7) requires that the permittee's activities not create conditions which will pose an unreasonable risk of interference with, or serious, irreparable, or immediate harm to other uses of the area. Since § 280.14 allows the Director to suspend or temporarily prohibit the conduct of activities when there is a failure to comply with a provision of the Act, other applicable law, the permit, or provisions of these or other applicable regulations, a suspension could be issued when the activities pose an unreasonable risk of interference with, or serious, irreparable harm to, other uses of the area.

Comment—One commenter suggested that a 15-day period be provided prior to a suspension to allow the permittee recourse through a hearing process or other related method. Another commenter suggested that States be allowed to review and comment prior to a suspension.

Response—Section 280.14 provides that a suspension will be issued when there is "* * * a threat of serious, irreparable, or immediate harm or damage * * *." Under these conditions, a delay for a hearing or for a State to review and comment does not appear to be appropriate. Prior to issuing a suspension or directing a temporary prohibition, the Director will review the available information and, if it is considered to be necessary, request additional information from the permittee, the researcher, the State, or other parties, as appropriate. A suspension may be issued while needed information is acquired or developed. In addition, a permittee or researcher can appeal a suspension or temporary prohibition as provided for in § 280.16; however, the suspension would be in effect during the appeal.

Section 280.16

No comments were received concerning § 280.16, Remedies and penalties (proposed § 280.15, Remedies), which has been retitled to better reflect the content.

Section 280.17

Comment—One commenter requested that notices of cancellation pursuant to proposed § 280.14(b) (final § 280.15) be included as appealable under proposed § 280.16, Appeals (final § 280.17).

Response—Notices of cancellation under § 280.15, like all actions of an MMS official, are appealable. However, it is unnecessary to change the language of § 280.17 (proposed § 280.16). Cancellation notices are included in the phrase, "[o]rders or decisions issued under the regulations in this part * * *."

General Comments

Comment—The **Federal Register** Notice of March 26, 1987, invited interested parties to respond to several questions on incentives. A number of commenters stated that incentives should be provided because of the great cost, the technological lead times, and other difficulties involved in developing OCS mineral deposits. They anticipated that even the initial investigations and efforts will be very costly for most minerals. As a result, commenters made suggestions that incentives be provided, such as crediting prospecting and development expenses against bonus, rent, or royalty payments. It was suggested that leases should be free to

the lessee until economic commercial production is demonstrated. Commenters further suggested that incentive programs should vary depending upon the commodity, location, facility, and quantity; environmental difficulties; and other appropriate considerations.

Response—The incentives suggested are more appropriately considered at the leasing stage; therefore, they are not included as part of these regulations.

Comment—Several commenters asked if the States will receive any revenues under these regulations.

Response—These regulations do not provide any revenues; thus, State governments will receive no revenues pursuant to these rules.

Comment—A number of comments were received concerning the need for bonding.

Response—This rule incorporates no bonding requirements. However, permittees who propose to drill deep test holes may be required to meet bonding requirements similar to the bonding requirements contained in 30 CFR 251.6–4.

Comment—A comment was received as to whether MMS will educate the public on offshore mining.

Response—Consideration is being given to the development of a public information program on minerals prospecting and mining in the OCS.

Authors

Andrew Bailey, Charles Ham, John Mirabella, Jane Roberts, and William Wolf of MMS; Ransom Read of BOM; and Ronald Smith and Donal Ziehl of BLM; John Padan of NOAA, Department of Commerce; and Joseph Wilson of the U.S. Army Corps of Engineers.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be approximately $58,000 per year. The cost to the permittees is estimated at just over $19,000 based on nine permits per year. The cost to the Government is estimated at just over $39,000 per year.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources needed to conduct activities under these rules.

The information collection requirements contained in 30 CFR Part 280 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0072.

List of Subjects

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands/mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 280

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mines, Public lands/mineral resources, Reporting and recordkeeping requirements.

Dated: May 20, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out in the preamble, Title 30, Chapter II, Subchapter B of the Code of Federal Regulations (CFR) is amended as set forth below.

PART 251—[AMENDED]

1. The authority for Part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970).

2. Section 251.1 is revised to read as follows:

§ 251.1 Purpose.

(a) The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The primary purpose of the regulations in this part is to prescribe policies, procedures, and requirements for conducting geological and geophysical activities associated with exploration for oil, gas, or sulphur not authorized under a lease in the Outer Continental Shelf (OCS). These activities may take place on unleased lands or on lands under lease to a third party. These activities are limited to geological and geophysical exploration for oil, gas, and sulphur and geological and geophysical research related to oil, gas, or sulphur, which involves the use of solid or liquid explosives or drilling activities. The requirements of the regulations in this part implement the provisions of sections 5, 8(g), 11 (a) and (g), 19, 24, and 26 of the Act. Federal Agencies are exempt from the regulations in this part.

(b) Notwithstanding any other provisions of the regulations in this part, geological and geophysical exploration for OCS minerals other than oil, gas, and sulphur and geological and geophysical research associated with OCS minerals other than oil, gas, and sulphur are governed by the provisions of Part 280 of this title.

3. A new Part 280 is added to Title 30 of the CFR to read as follows:

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Sec.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.*

§ 280.0 Authority for information collection.

The information collection requirements contained in Part 280 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned OMB clearance number 1010–0072. The information is being collected to inform the Minerals Management Service (MMS) of OCS minerals activities. The information will be used to ensure that such activities are conducted in a safe and environmentally responsible manner in compliance with governing laws and regulations. The obligation to respond is mandatory.

§ 280.1 Purpose and applicability.

Section 5(a) of the Act (43 U.S.C. 1334(a)(1)) states that the Secretary "* * * shall prescribe such rules and regulations * * * necessary to carry out * * *." the provisions of the Act. The primary purpose of the regulations in this part is to prescribe policies,

procedures, and requirements for conducting data and information-gathering activities associated with geological and geophysical (G&G) prospecting and scientific research in the OCS for minerals other than oil, gas, and sulphur. The regulations in this part do not apply to activities authorized under a mineral lease. Activities authorized under the regulations in this part do not give rise to any rights or interests in any OCS mineral discovered as a result of approved prospecting or scientific research activities.

§ 280.2 Definitions.

When used in this part, the following terms shall have the meaning given below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.)*

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State(s)—(1) That is used, or is scheduled to be used, as a support base for G&G prospecting or scientific research activities; or (2) in which there is a reasonable probability of significant effect on land or water uses from such activity.

"Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

"Data" means G&G facts and statistics or samples which have not been analyzed, processed, or interpreted.

"Director" means the Director of the MMS of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Geological and geophysical (G&G) scientific research" means any investigation conducted in the OCS for scientific research purposes which involves the gathering and analysis of G&G data and information which are made available to the public for inspection and reproduction at the earliest practicable time. This does not include scientific research related to oil, gas, and sulphur.

"Geological sample" means a collected portion of the seabed, the subseabed, or the overlying waters acquired while conducting prospecting or scientific research activities.

"Governor" means the Governor of a State or the person or entity lawfully designated to exercise the powers granted to a State Governor.

"Information" means G&G data that has been analyzed, processed, or interpreted.

"Lease" means one of the following, whichever is required by the context: Any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, specific minerals or the area covered by that authorization.

"Minerals" has the same meaning as the term is defined in section 2(q) of the Act.

"National Environmental Policy Act (NEPA)" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

"OCS minerals" means any mineral found on or below the surface of the seabed but does not include oil, gas, or sulphur.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Permit" means the contract or agreement, other than a lease, approved pursuant to this part under which a person acquires the right to conduct prospecting or scientific research activities.

"Permittee" means the person authorized by a permit issued pursuant to this part to conduct prospecting or scientific research activities in the OCS.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; and an association of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Prospecting activities" means the gathering of any G&G data and information for the purpose of determining the feasibility of commercial recovery, which has as its objective the establishment and documentation of the nature, shape, concentration, location, and tenor of an OCS mineral resource. Such activities shall include (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals; and (2) the gathering through drilling or other means of geological samples which could be used for the purpose of discovering, characterizing, or evaluating OCS mineral deposits. Prospecting activities do not include G&G scientific research.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

§ 280.3 Activities requiring a permit.

(a) No prospecting activities shall be conducted in the OCS without a permit approved by the Director pursuant to this part, unless such activities are being conducted pursuant to authority contained in a lease issued or maintained under Part 256 or Part 281 of this title or unless such activities are conducted by a Federal Agency.

(b) No person may conduct G&G scientific research activities in the OCS without a permit approved by the Director pursuant to this part if the proposed activities include either: (1) The drilling of a borehole to a depth greater than 300 feet below the seafloor; or (2) the use of solid or liquid explosives.

(c) Any person may conduct G&G scientific research in the OCS without obtaining a permit pursuant to this part if—

(1) The activities will not interfere with or endanger operations under any lease or right-of-way maintained or issued pursuant to the Act;

(2) The activities will not be unduly harmful to aquatic life in the area; result in pollution; create hazardous or unsafe conditions; unreasonably interfere with other uses of the area; or disturb any site, structure, or object of historical or archaeological significance; and

(3) The person conducting the activities or operating the vessel from which the activities are to be conducted has consulted and coordinated the conduct of those activities with any other users of the area.

(d) The Director may orally approve plan revisions or issue emergency permits to accommodate unforeseen or special circumstances. Oral approvals given for a written application shall be followed with a written confirmation by MMS. In the event an oral approval is given in response to an oral request, the applicant shall confirm the oral request in writing within 72 hours of the approval.

§ 280.4 Term of permit.

Permits approved under this part shall be granted for a term not to exceed 3 years. The Director may extend the term of a permit for an additional period(s) of time not to exceed a total of 2 years

when the Director determines that the additional time is appropriate based upon a showing of good cause by the permittee.

§ 280.5 Application for a prospecting or scientific research permit.

(a) An application for a prospecting or scientific research permit shall be submitted to the Director at least 60 days prior to the date proposed as the startup date for activities in the permit area.

(b)(1) An application for a prospecting permit shall be submitted in a form and manner approved by the Director. Three copies of each application shall be submitted and shall include—

(i) The name, address, and nationality of the person(s) submitting the application;

(ii) The name, address, and telephone number of the person(s) directly responsible for conducting the activities proposed;

(iii) A description and a map of the area(s) covered by the application;

(iv) The period of time to be covered by the primary term of the permit not to exceed 3 years;

(v) A narrative description in nonproprietary terms of the activities to be conducted, such as mapping, geophysical surveying, drilling, bottom sampling, and dredging;

(vi) A detailed description and schedule giving the estimated starting and completion dates for the proposed activities that are to be authorized under the permit; and

(vii) A prospecting plan.

(2) An applicant for a prospecting permit shall indicate which data and information included in the application and plan the applicant considers proprietary.

(c) Upon application submitted by a permittee pursuant to this section, the Director may approve the conversion of a permit issued under Part 251 of this title to a permit issued under this part. A permit issued under Part 251, which is converted to a permit issued under this part, shall be subject to all the requirements of this part.

(d) An application for a permit to conduct scientific research activities shall be submitted in a form approved by the Director. The application should be signed by an officer of the organization proposing to carry out the activity and shall state—

(1) The name of the person conducting the proposed research;

(2) The type of research activity and manner in which it will be conducted;

(3) The location designated on a map, plat, or chart where the research activity will be conducted;

(4) A schedule indicating the starting and completion dates for each proposed scientific research activity;

(5) The proposed time and manner in which the information and data resulting from the research will be made available to the public for inspection and reproduction, such time being the earliest practicable time;

(6) An agreement that the information and data resulting from the scientific research activity will not be sold or withheld for exclusive use;

(7) The name, registry number, registered owner, and port of registry of vessels used in the operation; and

(8) A scientific research plan.

(e) Within 30 days following the receipt of an application for a permit and the accompanying plan which does not require preparation of an environmental analysis the Director shall—

(1) Approve the application and plan;

(2) Require the applicant to modify the application and/or plan; or

(3) Disapprove the application and plan. If the Director disapproves an application and plan, the statement of rejection shall give the reasons for the disapproval and shall advise the applicant of the changes needed to obtain approval.

§ 280.6 Prospecting or scientific research plan.

(a) The applicant shall submit a plan with its application for a prospecting or scientific research permit. The plan shall include—

(1) Identification of the mineral(s) or material(s) of primary interest, if appropriate;

(2) A detailed description of the activities to be conducted;

(3) The type(s) of equipment to be used with special attention to safety and pollution prevention and control features and the name, registration, and mobile communication system of vessel(s);

(4) Maps showing location of proposed activities including drill holes, grab or basket samples, anticipated depth of penetration of drill holes, water depth, and location of proposed survey grids for each surveying method which is to be employed;

(5) A schedule indicating the starting and completion dates for each proposed activity;

(6) Anticipated environmental consequences of each proposed activity;

(7) Mitigation measures to be used to avoid or minimize adverse environmental impacts of proposed activities;

(8) For any activities which are to occur in an environmentally sensitive area, a plan for monitoring the effects of the activities on the environment;

(9) Any known archaeological resources in the area of the proposed activities; and

(10) Description of any potential conflicts with other uses or users in the permit area.

(b) If the penetration of one or more proposed drill holes will exceed 300 feet, the Director may require a drilling plan to be included as part of the plan before a permit is issued.

(c) If all needed information is not available at the time the plan is submitted, a plan shall indicate when the needed information will be obtained and submitted. In such a case, depending on the significance of the missing information, the Director may disapprove the plan, approve the plan based on the information submitted, or approve the plan with a specific condition that certain specified activities are not authorized and shall not be conducted until additional information is obtained and submitted for evaluation, and the Director gives specific approval to proceed with those activities.

§ 280.7 Obligations of persons.

(a) Activities authorized under a prospecting or scientific research permit issued under this part or research authorized pursuant to the provisions of § 280.5(c) of this part shall be conducted so as not to create conditions which will pose an unreasonable risk of—

(1) Interference with, or endangerment of, operations under any lease or permit issued or maintained pursuant to the Act;

(2) Serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life) or to the marine, coastal, or human environment;

(3) Serious, irreparable, or immediate harm or damage to property or to any mineral (in areas leased or not leased);

(4) Pollution;

(5) Disturbance of archaeological resources;

(6) Hazardous or unsafe conditions; or

(7) Interference with or serious, irreparable, or immediate harm to other uses of the area.

(b) The permittee or scientific researcher shall allow the Director to be present on any cruise.

(c) The permittee shall notify and obtain the prior approval of the Director before a substantial change from the approved plan is initiated.

§ 280.8 Reporting.

(a) The permittee shall submit a status report to the Director within 30 days of

the close of each calendar quarter or more frequently if requested by the Director. The report shall include a summary of the prospecting or scientific research activities conducted prior to the end of the reporting period and the results obtained. The last quarterly report may be combined with the final report if the final report is submitted within 30 days after the end of the last quarter in which permitted activity occurs. Each permittee shall submit to the Director a final report of activities conducted under the permit within 6 months after expiration of the permit or after the completion of prospecting or scientific research activities, or 60 days prior to a planned lease offering when prospecting or scientific research activities are within the planned leasing area, whichever is sooner, provided that no report shall be required less than 30 days after completion of permitted activities. The report shall include—

(1) A description of the work performed;

(2) Charts, maps, or plats depicting the area and blocks in which any activities were conducted specifically, identifying the lines of geophysical traverses and/or the locations where geological activity was conducted;

(3) The dates on which the actual activities were performed;

(4) A narrative summary of any mineral occurrences encountered including location, environmental features, and the nature and degree of adverse effects, if any, of the permitted activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted;

(5) A report of the results of the environmental monitoring required in § 280.6(a)(8) of this part; and

(6) Such other descriptions of the activities conducted as may be specified by the Director.

(b) All persons shall immediately notify the Director of all serious accidents, any death or serious injury, or fire or explosion connected with any activity conducted pursuant to this part.

§ 280.9 Recordkeeping.

(a) Any permittee who acquires rock and mineral samples under a permit shall keep for 1 year after submittal of the final report a representative split of each geological sample and a quarter longitudinal segment of each core which shall be available for inspection at the convenience of the Director who may cut such core and geological samples for retention by MMS.

(b) Any permittee who acquires G&G data and information under a permit shall keep the data and information available for 3 years after submittal of the final report. The data and information shall be available for inspection and copying at a location within the appropriate OCS Region or at another location approved by the Director. The records shall include environmental data and information; G&G data and information; drill logs; analyses of cores, cuttings, and samples; and maps and navigation tapes showing the location where samples were taken and test drilling conducted.

§ 280.10 Environmental effects.

The potential of proposed prospecting or scientific research activities for adverse impact on the environment will be evaluated by MMS to determine the need for mitigation measures. The MMS anticipates that activities of the type listed below typically will not cause significant environmental impact and, in accordance with 516 DM 6, Appendix 10 to the Departmental Manual, will normally be categorically excluded from additional environmental analysis. The types of activities include—

(a) Gravity and magnetometric observations and measurements;

(b) Bottom and subbottom acoustic profiling or imaging without the use of explosives;

(c) Mineral sampling of a limited nature such as that using either test drillholes or cores to less than 300 feet below the seafloor;

(d) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species or if permitted by the National Marine Fisheries Service or another Federal Agency;

(e) Meteorological observations and measurements, including the setting of instruments;

(f) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(g) Sampling by box core or grab sampler to determine seabed geological or geotechnical properties;

(h) Television and still photographic observation and measurements;

(i) Shipboard mineral assaying and analysis; and

(j) Placement of positioning systems, including bottom transponders and surface and subsurface buoys reported in Notices to Mariners.

§ 280.11 Notification.

(a) The Governor(s) of adjacent State(s) shall be notified by the Director with a copy of the application for a permit with the accompanying plan immediately upon the submission of an application for approval.

(b) In cases where an environmental assessment is to be prepared, the Director will invite the Governor(s) of adjacent States(s) to review and provide comments regarding the proposed activities. The Director's invitation to provide comments shall allow the Governor a specified period of time to comment.

(c) The Director shall notify Federal Agencies, as appropriate, with a copy of the application for a permit with the accompanying plan immediately upon the submission of the application for approval.

§ 280.12 Disclosure of information to the public.

(a) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations.

(b) For geological data, information, and samples and geophysical information submitted under a permit and retained by MMS, the Director shall make such data, information, and samples available to the public 25 years after the date of submission of the data and information or such earlier time as may be agreed to by the permittee who provides the data or information. Geophysical data submitted under a permit and retained by MMS shall be made available to the public by the Director 50 years after the date of submission to MMS unless an earlier date is agreed to by the permittee who submits the data.

(c) The Director reserves the right to disclose any data, information, or samples submitted by a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting the data or information. Such contractor or agent shall be subject to the same limitations on disclosure of data, information, and samples as those applicable to the Director under paragraph (b) of this section.

§ 280.13 Disclosure of data and information to the adjacent States.

(a) Proprietary data, information, and samples submitted to MMS by permittees shall be made available to adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(b) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that—

(1) The confidentiality of the information shall be maintained;

(2) In any action commenced against the Federal Government or the State for the failure to protect the confidentiality of proprietary information, the Federal Government or the State, as the case may be, may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the proprietary information, which is the basis of the suit, was acting outside the scope of the person's employment in revealing the information;

(3) The State agrees to hold the United States harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data and information and samples; and

(4) The materials containing the proprietary data, information, and samples shall remain the property of the United States.

(c) The data, information, and samples available to the State(s) pursuant to an agreement shall be related to leased lands.

(d) The materials containing the proprietary data, information, and samples shall be returned to MMS when they are no longer needed by the State or when requested by the Director.

§ 280.14 Suspension or temporary prohibition of activities.

The Director may suspend or temporarily prohibit the conduct of G&G prospecting or scientific research activities by notifying the person conducting the activity, either orally or in writing, when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment; or there is a failure to comply with a provision of the Act or of any applicable law, the provisions of the permit, or provisions of these and other applicable regulations. Such suspension or temporary prohibition shall be effective immediately upon receipt of the notice. Suspensions or temporary prohibitions issued orally shall be followed by a written notice confirming the action, and all written notices will be sent by certified or registered mail. A suspension or temporary prohibition shall remain in effect until the basis for the suspension or temporary prohibition has been corrected to the satisfaction of the Director.

§ 280.15 Cancellation or relinquishment.

The Director may cancel or a permittee may relinquish, in whole or in part, a permit to conduct prospecting or scientific research activities at any time by sending a notice of cancellation or a notice of relinquishment. Such notices shall state the reason for the cancellation or relinquishment and shall be sent by certified or registered mail to the other party at least 30 days in advance of the date that the cancellation or relinquishment will be effective.

§ 280.16 Remedies and penalties.

Persons conducting activities in the OCS pursuant to this part shall be subject to the remedies and penalties provisions of section 24 of the Act and the applicable civil penalty procedures contained in Part 250 of this title for noncompliance with any provision of the Act, permit, regulation, or order issued under the Act. The remedies or penalties prescribed in this section shall be in addition to any other penalty afforded by any other law or regulation.

§ 280.17 Appeals.

Orders or decisions issued under the regulations in this part may be appealed as provided in Part 290 of this title.

[FR Doc. 88-14828 Filed 7-1-88; 8:45 am]
BILLING CODE 4310-MR-M

federal register

Tuesday
July 5, 1988

Part III

Department of Health and Human Services

Office of Human Development Services

Temporary Child Care for Handicapped Children and Crisis Nurseries; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Temporary Child Care for Handicapped Children and Crisis Nurseries

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of funds and request for applications from States for grants to provide temporary non-medical child care for handicapped children; and crisis nurseries for children who are abused or neglected, at high risk of abuse or neglect, or in families receiving child protective services.

SUMMARY: The Office of Human Development Services announces the implementation of two demonstration programs for grants to States to assist private and public agencies and organizations in providing: (A) In-home or out-of-home temporary non-medical child care for handicapped children and children with chronic or terminal illnesses to alleviate social, emotional and financial stress among families responsible for their care; and (B) crisis nurseries for children at risk of or experiencing abuse or neglect, or in families receiving child protective services.

Funding for these grants to States is authorized under Title II of the Children's Justice and Assistance Act (Pub. L. 99–401).

DATE: The closing date for receipt of applications is September 6, 1988.

ADDRESSES: Application should be sent to: Office of Human Development Services, Grants and Contracts Management Division, HDS/OMS, 200 Independence Avenue, SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White.

FOR FURTHER INFORMATION CONTACT: Stuart Swayze, (202) 755–7730.

SUPPLEMENTARY INFORMATION:

PART I: General Information

A. Background

Title I of the Children's Justice and Assistance Act of 1986 (Pub. L. 99–401) encourages States to enact child protective reforms designed to improve legal and administrative proceedings in the investigation and prosecution of cases of abuse and sexual abuse of children.

Title II of Pub. L. 99–401, the "Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986" (the Act), directs the Department of Health and Human Services to make grants to States to assist private and public agencies in developing two types of services:

- (1) In-home or out-of-home temporary non-medical child care for handicapped children and children with chronic or terminal illnesses; and
- (2) Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services.

The Continuing Resolution for FY 1988 made available $4.787 million to establish two programs of demonstration grants. Section 205(b)(3) of the Act requires that such appropriations be divided equally between section 203 of the Act, "Temporary Child Care for Handicapped and Chronically Ill Children," and section 204, "Crisis Nurseries." Both programs are intended to support the maintenance of the family unit and strengthen the parent-child bond.

B. Section 203 of the Act: Temporary Child Care for Handicapped and Chronically Ill Children

The purpose of establishing a temporary child care program for handicapped or chronically or terminally ill children is to alleviate the social, economic, and financial stress among children and families of such children.

Temporary child care, also known as respite care, is short-term, non-medical child care, provided either in or out of the home, for families with handicapped or chronically-ill children. "Non-medical child care" is defined in section 205(d) of the Act to mean the provision of care to provide temporary relief for the primary caregiver. Such care provides families or primary caregivers periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The Act authorizes temporary child care programs for children who are terminally-ill, chronically-ill or handicapped as defined by section 602(a)(1) of the Education of the Handicapped Act: " * * * mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired children, or children with specific learning disabilities, who by reason thereof, require special education and related services."

In distributing funds made available under section 203, States must give priority consideration to agencies and organizations experienced in working with handicapped and chronically-ill children and their families; and agencies service communities with the greatest need for such services. States awarded grants for temporary child care must assure that all such care funded under section 203 will be provided on a sliding fee scale with hourly and daily rates. The following components may be included in temporary child care or respite care projects:

—24-hour services
—Access to primary medical services
—Referral to counseling/therapy services
—Staff training program including child abuse/neglect reporting responsibilities
—Public awareness program

C. Section 204 of the Act: Crisis Nurseries

A "crisis nursery" is defined in section 205(d) of the Act to mean a center providing temporary emergency services and care for children.

Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or physical abuse in the home are increased. These programs offer parents the option of "time out" as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver non-punitive, non-threatening services as a resource to caregivers of at-risk children; and (3) utilize existing community-based services to further diminish the potential for maltreatment among families in crisis.

Services funded under section 204 of the Act must be provided without fee for a maximum of 30 days in any year. Crisis murseries must also provide referral to support services. The following components may be included in crisis nursery programs:

—24-hour services
—Referral to counseling/therapy services including out-of-home placement (when indicated)
—Access to primary medical services
—Staff training including child abuse/neglect reporting responsibilities
—Public awareness program

Part II: Programmatic Priorities for Funding Projects

OHDS proposes to award approximately 15 to 20 demonstration grants of between $120,000 and $150,000 to States under each section of the Act. Funds will be divided equally between the two types of demonstrations, with consideration given to their equitable geographic distribution. In making grant awards under section 203, OHDS will give a preference to States in which such care is unavailable. Grant awards will be made for a 17-month project period.

The Chief Executive Officer of each State will designate an agency to apply for and administer funds under the Act. The designated agency will retain not more than five percent of these funds for administrative costs and must distribute the remaining funds to an agency(s) or organization(s) in the State to carry out the purposes of the Act. Funds may be distributed by the designated agency as start-up costs or to supplement existing programs or projects.

A. Eligible Applicants

Only States may submit an application under this announcement. The term State refers to the 50 States, the District of Columbia and the four insular areas: Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands. Individuals, agencies (public or private), or organizations are not eligible to apply.

States are invited to apply under either section 203 or section 204, or both. A separate application must be submitted for each section of the Act under which grant support is requested.

B. Available Funds

Total combined funding for grants under section 203 of the Act and section 204 of the Act is $4.787 million appropriated for fiscal year 1988. Funds will be divided equally between the two demonstration programs with consideration given to equitable geographic distribution.

C. Grantee Share of the Project

Under this demonstration grants program, OHDS will not make awards for the entire project cost. Successful applicants must contribute $1, secured from non-Federal sources, for every $3 received in Federal funding. This grantee share amounts to 25 percent of the total project cost.

The non-Federal share of total project costs may be in the form of third party in-kind contributions or cash. The amount of non-Federal share required will be the amount specified in the approved grant. If the required non-Federal share is not met by a grantee, OHDS will disallow any unmatched Federal dollars. Applicants will be required to include in their budget any funds proposed as match.

D. Application Consideration

Applications conforming to the requirements of this program announcement will be grouped by category (section 203 or 204), and reviewed by non-Federal experts in the field or by Federal experts outside of the Administration for Children, Youth and Families (ACYF). The results of their review will be a primary factor in the decision process. Applications will be evaluated on the basis of the criteria set forth in this announcement.

E. Executive Order 12372

These programs are not covered under Executive Order 12372. All assurances relevant to non-discrimination under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Protection of Human Subjects, and assurance of compliance with 45 CFR Part 74 and OMB circulars and such other assurances that are required by Part V of Standard Form 424 are applicable.

Part III: Application Process

A. Application Requirements

Applications from States for grant support under either section 203 or 204 of the Act must be submitted on Standard Form 424 and must include all the information and assurances set forth in this announcement. Each application must be signed by the Chief Executive Officer of the State or the individual authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

The applicant must provide all information requested under the evaluation criteria (Part IV, below). In addition to the information requested by Form 424, the application must include the following information and assurances:

1. *Designated State Agency and Contact Person.* The application must specify the agency, designated by the Chief Executive Officer of the State, to administer programs and activities assisted under the Act, and a contact person and telephone number if different from the head of the designated agency. (Section 205(a)(1)(D)).

2. *Plans for Coordination.* The application must include the designated agency's plans for coordinating interagency support of the program(s). (Section 205(a)(1)(D)).

3. *Description of Program.* The application must describe the proposed State program to assist private and public agencies or organization in providing in-home or out-of-home temporary non-medical care of handicapped children and children with chronic or terminal illnesses and/or crisis nurseries for abused and neglected childern. The application must also include the services to be provided, the agencies and organizations that will provide the services, and the criteria for selection of children and families for participation in projects under the program. (Section 205(a)(1)(A)).

4. *Estimate of Cost.* The application must include an estimate of the cost of developing, implementing and evaluating the State program. (Section 205(a)(1)(B)).

5. *Dissemination.* The application must set forth the plan for dissemination of the results of the programs and projects funded under the Act. (Section 205(a)(1)(C)).

6. *Need for the Project.* Only for applications under section 203, the application must identify those communities with the greatest demonstrated need for such services, including the extent to which these services are unavailable in the State. (Section 205(b)).

7. *Assurances.* The following assurances must be included in the application:

a. That not more than 5 percent of funds made available under each section of the Act will be used for State administrative costs. (Section 205(a)(2)(A)).

b. That projects funded by the State will be of sufficient size, scope and quality to achieve the objectives of the program. (Section 205(a)(2)(B)).

c. That in the distribution of funds under section 203, the State will give priority consideration to agencies and organizations with experience in working with handicapped and chronically ill children and their families and which serve communities with the greatest need for such services. (Section 205(a)(2)(C)).

d. That in the distribution of funds under section 204, the State will give priority consideration to agencies and organizations with experience in working with abused or neglected children and their families and/or with children at high risk of abuse and neglect and their families and which serve communities which demonstrate the greatest need for such services. (Section 205(a)(2)(D)).

e. That Federal funds made available under this title will be so used as to supplement and, to the extent practicable, increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in this title, and in no case supplant such State or local funds. (Section 205(a)(2)(E)).

f. That the State will use the definition of handicapped children found in section 602(a)(1) of the Education of the Handicapped Act in implementing programs under section 203. (See Section 205(d)).

g. That the State will comply with the requirements of 45 CFR Part 74.

h. That all agencies and organizations funded under section 203 will provide temporary child care only on a sliding fee scale with hourly and daily rates.

i. That services provided under section 204 will be provided without fee for a maximum of 30 days in any year.

j. That collaborative efforts have been discussed with other agencies or organizations. (Written assurances of these agreements should be included with the application if available.)

k. That an annual report evaluating the funded programs will be submitted to OHDS. The report must include information concerning costs, the numbers of participants, impact on family stability, and such other information as OHDS may require.

B. Authorship

The author(s) of the application must be clearly identified together with his/her current relationship to the applicant organization and any future project role they may have if the application is funded.

C. Grantee Share of the Project

The non-Federal share must be at least 25 percent of the total cost of each proposed project (e.g., if the total program cost is $160,000, the non-Federal share will be $40,000).

Part IV: Criteria for Review and Evaluation of Application

In considering how the grantee will carry out the responsibilities under Part I of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need for This Assistance (10 Points)

State the specific objectives and needs addressed by the project in terms of its national, regional or State significance, its theoretical importance and its applicability to practices and subordinate objectives of the project. Provide a discussion of the "state-of-the art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. Indicate goals or service objectives of the proposal. Any relevant data based on planning or demonstration studies must be summarized, evaluated and related to the proposed project.

B. Results or Benefits Expected (10 Points)

This section must identify the results and benefits for target groups and human services programs to be derived from implementing the proposed project. The anticipated contribution to policy, practice, theory and/or research should be indicated.

C. Approach (Project Implementation Plan) (40 Points)

Provide major milestones of events, activities and products and a timetable for completion, including the time commitments of all key staff to individual project tasks.

Design and Methodology

This portion of the program narrative must identify the specific problem(s), issue(s), and objectives of the proposal addressed by the applicant (agency) and provide a detailed discussion of how the proposed approach will accomplish these project objectives. Also, the research methodology, demonstration plan, design of training program or other appropriate techniques to be used should be fully described.

Dissemination and Utilization

Describe the steps to be taken to disseminate and promote the utilization of project products and findings using Federal and/or non-Federal resources. The specific audience to whom the products will be addressed must be specified.

Geographic Location

Give a precise location of the project(s) or area(s) to be served. Maps or other graphic aids may be included.

D. Staffing and Management (25 Points)

This section must address:

Staffing Pattern

Describe the staffing pattern for this proposed project, clearly linking operational staff responsibilities to project tasks and specifying the contribution to be made by senior staff.

Competence of Staff

Indicate the qualifications of the project team, the variety of skills to be used, relevant experience, educational background and the demonstrated ability to produce comprehensive and usable results.

Adequacy of Resources

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project.

E. Budget Appropriateness and Reasonableness (15 Points)

This section must address:

Budget

Relate the proposed budget to the level of effort required to attain project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results. Not more than five (5) percent of funds made available under this section is to be used for State administrative costs.

Part V: The Application Process

A. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by writing or telephoning: Stuart Swayze, Child Welfare Training Specialist, Children's Bureau, Program Support Division, Room 2044, Donohoe Building, 400 Sixth Street SW., Washington, DC 20201, Telephone (202) 755-7730.

B. Application Submission

One signed original and two copies of the grant application must be mailed or hand delivered to: Office of Human Development Services, Grants and Contracts Management Division, HDS/OMS, 200 Independence Avenue SW., Room 345-F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White.

In order to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by this announcement. The application must be executed by the Chief Executive Officer for the State, or the individual authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria listed above. The Commissioner, ACYF determines the final action to be taken with respect to each grant application for this program. In addition to the

results of the competitive review, the Commissioner will also consider comments from Central and Regional Office staff in making final decisions.

After the Commissioner has made the final selections, unsuccessful applicants will be notified in writing of this final decision. The successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

D. Closing Date for Receipt of Applications

The closing date for receipt of applications under this program announcement is September 26, 1988.

1. Mailed applications: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the OHDS Grants Office; or

b. Sent on or before the deadline date, and received by the granting agency in time to be considered during the competitive review and evaluation process.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier of the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Applications submitted by other means: Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the OHDS Grants and Contracts Management Division during the normal working hours of 9:00 a.m. to 5:30 p.m. Monday through Friday.

3. Late Applications: Applications which do not meet criteria one or two above are considered late applications and will not be considered.

4. Extension of deadlines: OHDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if OHDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under the Part IV narrative under OMB Control Number 0980–0016.

(Catalog of Federal Domestic Assistance Program Number 13.665 (Temporary Child Care for Handicapped Children and Crisis Nurseries))

Dated: June 20, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: June 21, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

INSTRUCTIONS FOR APPLYING FOR FEDERAL ASSISTANCE FROM HDS PROGRAMS

HHS Application Instructions Rev. 10/85

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Services. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Parts I (SF–424) through Part V Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance, and HHS–641, Rehabilitation Act Assurance. Applicants for additional funding (such as a non-competing continuation or supplemental grant) or amendments to a previously submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to Executive Order 12372, Intergovernmental Review of Federal Programs (see Attachments 1 and 2). These applicants must follow the instructions provided relative to Executive Order 12372 coverage where appropriate, as listed on page 11.

Submission of Applicants

(1) Non-competing Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing continuations should refer to program announcements for information regarding deadline dates for submission of forms.

Instructions for Completion of Part I (SF–424)

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use Section IV. An explanation follows for each item.

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and HDS program instructions. Use of the SF–424 as a Notice of Intent is a State option. HDS does not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date application is signed.

3a. For a program covered by Executive Order 12372, enter the number assigned, if any, by the State Single Point of Contact. Applications submitted to OHDS must contain this identifier, if provided by the State Single Point of Contact. Note: Item 22 of this form must be completed for programs covered by E.O. 12372.

3b. Date identifier is assigned by State.

4a–4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION "PAYEE" THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER AND DHHS ENTITY NUMBER.

If an individual's name and/or title is desired on the payment instrument, the name/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by the Internal Revenue Service. If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number, enter PIN in parentheses ( ) beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) check "multiple" and explain in Section IV, remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate if necessary.

7. Enter title and appropriate description of project. For Notification of Intent, continue in Section IV if necessary to convey proper description. If project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line, e.g., Council of Governments. *Note:* Non-profit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

10. Indentify estimated number of persons *directly* benefiting from project, as described in the program narrative.

11. All applicants for new, competing continuation and non-competing continuation grants should enter the letter "A". And applicants for supplemental grant funding should enter the letter "B". For proposed changes or amendments, enter "E".

12. Enter amount requested or to be contributed during the initial funding/budget period by each contributor. Where allowable the value of in-kind contributions should be included. If the action is a change in dollar amount of existing grant (a revision or augumentation), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from Federal Government; 12b, amount from local government, if applicant is not a local government; 12e, amount from any other sources, explain in Section IV.

13a. Self explanatory. Enter the appropriate Congressional District number(s). If the State has only one Congressional District, enter "at large".

13b. Enter the district(s) where most of the actual work will be accomplished. If city-wide or State-wide covering several districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

A. *New.* A submittal for the first time for a new project or project period (includes competing continuations).

B. *Renewal.* Not applicable to HDS grant programs.

C. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

D. *Continuation.* Support for a non-competing continuation project after the initial funding/budget period and within the approved project period.

E. *Augmentation.* (Referred to elsewhere in these instructions and in other HDS publications as a "supplemental"). An application for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, explain in Part IV.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14C), or augmentations (Supplements) (Item 14E).

18. Date application/preapplication must be submitted to HDS in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Enter existing HDS award number from item 3 of the Notice of Financial Assistance Awarded if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA"

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Section II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b. An explanation follows for each item.

22a. Complete if application is subject to Executive Order 12372 (State review and comment). Note: All written comments submitted by or through the State Contact must be attached, if available. Applicants are advised of the delay of funding near the end of the fiscal year, if a timely notification to the State Contact is not made.

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory. *Note:* The authorized representative signature cannot be signed by designee.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II. SECTION III IS COMPLETED BY FEDERAL AGENCIES.

Instructions for Completion of Part II

Negative answers will not require an explanation unless the responsible HDS program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained. If the application is covered by Executive Order 12372, this item should be completed.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian

reservations are not "Federal Installations").

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source. If this application is for a non-competing continuation, a supplement or a revision, do not refer to the prior or current HDS award.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, HHS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should reflect the need for Federal Assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary

Lines 1–4

Col. (a): For applications pertaining to a single grant program and *not* requiring a functional activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic Assistance Catalog program title (See attached listing). For "Head Start", enter the activities (program accounts) name for which funds are being requested on separate lines.

Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activities (program accounts) number for which funds are being requested on separate lines.

Col. (c)–(g): For *new applications*, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period.

For *non-competing*, or *competing continuation applications*, enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the current budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Column (g) should equal the total of Column (e) and Column (f).)

For *augmentation* (supplements) *and changes to existing grants*, leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Columns (g) should not equal the sum of the amounts in Columns (e) and (f).

Line 5

Enter the totals for all columns completed.

Section B—Budget Categories

Column 1–5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) enter in Columns (1) through (4) enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74 and the HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements.)

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, F.I.C.A., retirement insurance, etc.

Travel—Line 6c: Enter total costs of out-of-town travel (travel requiring per diem) for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" means an article of tangible personal property having a useful life or more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of equipment, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and, (2) contracts agreements with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization; the purpose of the contract; statement (scope) of work; period of performance; and the estimated dollar amount of the award. If the name of contractor, scope of work and estimated total is not available or has not been negotiated, include in Line h, "Other". (Note: Whenever the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost-elements.)

Construction—Line 6g: Enter the costs of alterations or renovation. Provide narrative justification and break-down

of costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. Applicant should enclose a copy of the current negotiated agreement. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, the reimbursement of indirect costs will be limited to the lesser of actual indirect costs of 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. *It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.*

Total—Line 6k: Enter the amounts of Lines 6(i) and 6(j). For all new competing and non-competing continuation applications, the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show the nature and source of income, in the program narrative statement.

Section C—Non-Federal Resources

Line 8–11: Enter amounts of non-Federal resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If in-kind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only), including number of square feet and value assigned per square foot; and

(3) Determination of depreciation or use allowance for grantee-owned space; [include statement specifying whether space was purchased or constructed, totally or in part with federal funds for items (2) and (3)].

(4) Type and value of other in-kind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Projects

Line 16–19—Enter the Column (a) the same program title or activities (program accounts) as in Column (a) Section A. For new or competing continuation or non-competing continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). Do not enter current year budget amount; enter second, third, fourth, and fifth year budget estimate needs. This Section need not be completed for Headstart applicants with indefinite project periods or for revisions or supplements for the current budget period which do not increase the general level of support.

Line 20—Enter the totals of each of the Columns (b) through (e).

Section F—Other Budget Information

Line 21—Use this space to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the HDS program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative.

2. Travel requiring per diem and foreign travel, number of trips traveled, destinations, length of stay, transportation cost, subsistence allowance, purpose of trip.

3. A list of all equipment (See Part III, Section B, Line 6d) and estimated cost of each item to be purchased. Need for equipment must be supported in program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: group and major categories, e.g., consultants, local transportation, space rental, training allowances, staff training, computer equipment, etc. Provide a complete break-down of all costs that make up this category.

Line 22—Enter the type of indirect cost rate (provisional, final, fixed or predetermined) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Also, enter the date HDS approved the rate, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations required or deemed necessary.

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OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER *NOTE: TO BE ASSIGNED BY STATE*
- a. NUMBER
- b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code.
- h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
- a. NUMBER
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other *(Specify)*:
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

18. DATE DUE TO FEDERAL AGENCY ► *Year month day* 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other *(Specify)*:
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► *Year month day* 19

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED ☐ Yes ☐ No

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PART II
PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation? _____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7
Will the assistance requested have an impact or effect on the environment
_____Yes _____ No
See instructions for additional information to be provided

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____Yes _____ No
See instructions for additional information to be provided.

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PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets If Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

Prepare the program narrative section in accordance with the instructions included in Parts III and IV of this Announcement. The program narrative should be clear and concise, and should not exceed 35 single-spaced (or 70 double-spaced) pages plus such necessary attachments as organization charts, resumes, and letters of agreement and support.

BILLING CODE 4130-01-C

Part V.—Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A–102, A–110 and applicable cost principles, (Circulars: A–21, "Educational Institutions"; A–87, "Cost Principles for State and Local Governments"; and A–122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88–352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91–646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on an after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a–1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94–135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93–348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

[FR Doc. 88–14991 Filed 7–1–88; 8:45 am]

BILLING CODE 4130-01-M

federal register

Tuesday
July 5, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 964

Tenant Management in Public Housing

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 964

[Docket No. R-88-1398; FR-2519]

Tenant Management in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would establish a new program of resident management of public housing. Under the program, resident councils that represent public housing residents could approve the formation of a resident management corporation. A qualifying resident management corporation could enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program would give PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

The program would permit resident management corporations to retain any income generated by the corporations that exceeds estimated revenues for the project. Retained amounts could be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

The program contains special provisions for HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain non-statutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project. This rule implements section 122 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437r) and coordinates the resident management provisions of the 1987 Act with HUD's existing rules on PHA tenant participation and management.

DATES: *Comment due date:* August 4, 1988.

ADDRESS: HUD invites interested persons to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business at this address.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Policy Staff, Public and Indian Housing, Department of Housing and Urban Development, Room 4118, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Overview

This proposed rule would implement section 20 of the United States Housing Act of 1937 (the 1937 Act). This provision was contained in section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 20 establishes a new program of resident management of public housing. Under the program, resident councils that represent residents of a public housing project or projects could approve the formation of a resident management corporation. A qualifying resident management corporation could enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program would give PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

The program would permit resident management corporations to retain any income that they generate in excess of estimated revenues for the project. Retained amounts could be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

The program contains special provisions governing HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain non-statutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project.

Note: A number of similar terms are used throughout the proposed rule and this preamble, such as "tenant" and "resident", "tenant management corporation" and "resident management corporation", "tenant management" and "resident management", and "tenant organization" and "resident council".

These terms are *not* intended to denote different meanings, and may be used interchangably. They merely reflect the difference in terminology between the existing provisions of 24 CFR Part 964—with its emphasis on "tenant"—and section 20 of the 1937 Act—which uses the parallel term "resident."

Special Features of Section 20

Section 20 of the 1937 Act would be implemented as a new Subpart D to 24 CFR Part 964. The provision contains a number of special provisions dealing with resident management programs, including the following.

1. Approval of Resident Management Corporation

Section 20 requires the formation of a resident management corporation as a condition to the assumption by tenants of public housing management functions. A resident council must approve the formation of the corporation in all instances. Where no council exists, section 20 requires that a majority of the households of the project approve the establishment of a resident council that can approve the formation of the corporation. Subpart C of Part 964—the existing regulatory authority for public housing tenant management—permits a corporation to be formed, even if there is no tenant organization to approve the corporation's establishment.

The Department believes that the participation of tenant organizations is essential to the success of resident management efforts. The proposed rule would, therefore, apply the requirement for resident council/tenant organization approval of management corporations to both Subparts C and D. This provision would be implemented through the requirements for a management corporation set out in the definition of "tenant management corporation or resident management corporation."

Section 20 references an "elected resident council" of a public housing project as the body that must approve the establishment of a resident management corporation. This rule equates the term "resident council" with "tenant organization"—the term used in HUD's existing rules at Part 964 to refer to the *entire body* of tenants

participating in the affairs of a project. Given this usage of the term, it is not feasible to provide for an "elected" resident council. The rule is, however, faithful to section 20's intent, since it provides, at § 964.7, that the resident council must make provision for the periodic election of its officers, and must have a democratically elected governing board. These requirements, HUD believes, appropriately carry out the statutory specification that there be an "elected" resident council.

2. "Project"

Section 20 permits a "public housing project" for purposes of that section, to include one or more contiguous buildings, or an area of contiguous row houses. This provision is designed to allow a "project"—for resident management purposes—to cover fewer structures than comprise a "project" for purposes of the development of public housing under the 1937 Act. For example, a "project" managed by a resident management corporation may involve only three of five buildings in a development "project."

Subject to a resident council's decision to establish a resident management corporation, the precise scope of the "project" would be defined by the management contract between the PHA and the resident management corporation. Generally, the "project" chosen would be subject only to such factors such as the feasibility of the "project's" configuration to contribute to the successful operation of the resident management functions to be carried out by the corporation.

The Department proposes to adopt section 20's definition of "project" for both Subparts C and D, and to use its discretion to expand upon the definition in one respect: A "project"—for tenant management purposes—could include "scattered site" buildings. The Department believes that requiring contiguity as a condition of a building's participation in Part 964 would unnecessarily constrict the types of resident management arrangements that PHAs and resident management corporations could successfully carry out.

In proposing this elaboration of section 20's authority, however, the Department is concerned that the spatial separation of buildings that are participating in a resident management program, such as scattered site buildings, may in certain circumstances affect the feasibility and ultimate success of the resident management program involved. The Department specifically requests comments on the feasibility of resident management in buildings that may be spatially separate, particularly in the scattered site context, and on any techniques that may serve to make such arrangements more feasible.

The Department wants to provide PHAs and resident management corporations maximum flexibility to determine the nature and extent of their obligations under a management contract, but is concerned that the rights of individual tenants of projects identified for resident management also be protected.

It is clear that unanimity in favor of resident management on the part of tenants of a building is not required in order for a PHA and a resident management corporation to contract under section 20. It would be possible, however, for the Department to prescribe specific rules governing circumstances wherein resident families opposed to tenant management might be permitted to opt out. For example, a scattered site project involving detached dwellings could permit resident management *only* of those dwellings occupied by families supporting the management corporation—since normally it would be feasible for the PHA to continue to manage individual units occupied by families who objected to resident management. Similarly, circumstances may exist in which families situated in other types of living arrangements—e.g., in row houses—who object to resident management might feasibly be permitted to remain under PHA management, while other nearby units are subject to management by the resident management corporation.

The proposed rule would leave these issues for resolution in the contract. Comment is invited, however, concerning steps that might be taken by HUD, the PHA, or the resident management corporation to ensure the feasibility of management arrangements, while permitting families not supportive of these arrangements to remain subject only to PHA management.

3. Rights of Families; Operation of Project

Where the "project" for purposes of section 20 is less than the entire development project, such as where three buildings in a five-building project are participating in the resident management program, section 20 prohibits the program from interfering with the rights of other residents of the project or harming the efficient operation of the project as a whole. The proposed rule would adopt these prohibitions for both Subparts C and D, with a requirement that the PHA be responsible for determining where these conditions exist.

4. Management Specialist

Section 20 requires the resident council of a project, in cooperation with the PHA, to select a qualified public housing management specialist (1) to assist in determining the feasibility of, and to help establish, a resident management corporation; and (2) to provide training and other duties in connection with the daily operations of the project.

The proposed rule (§ 964.40) would require the PHA and the resident council to agree in advance upon: (1) The qualifications that the management specialist must possess; (2) the terms and conditions of the search and selection process; (3) the duties and responsibilities to be performed by the management specialist, including the remuneration to be provided the specialist, a clear specification of the nature and degree of supervision to be provided the specialist, and a clear specification of the title of the person or persons in the organizational structure of the PHA for the resident council (or both) to whom the specialist is to report for supervision and for evaluation of his or her performance; and (4) such other matters with respect to the selection and functions of the management specialist as the PHA and the resident council may determine, consistent with the ACC and applicable law and regulations. The resident council must select the housing management specialist, in accordance with the terms of its agreement with the PHA.

It should be noted that § 964.40 would *require* selection of a public housing management specialist only in circumstances where there was no previously established resident management corporation. An already-established tenant management corporation, if it qualified to become a resident management corporation under Subpart D of this rule, would have discretion to determine whether the services of public housing management specialist were needed. Under the contract between the PHA and a resident management corporation, the corporation typically would be authorized to contract for services under conditions mutually agreeable to the PHA and the corporation.

5. Management Contract

Section 20(b)(4) of the 1937 Act raises a number of interpretational issues with respect to the duty of a PHA to enter into a management contract with a qualifying resident management corporation. The provision states in part:

A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public agency, *shall enter into a contract* with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. (Emphasis supplied.)

This language raises several questions.

(a) Qualification of a Resident Management Corporation To Enter Into a Management Contract

An initial issue is whether the resident management corporation must meet only the literal terms of section 20(b)(4) to trigger the "enter into a management contract" requirement. The Department does not believe that this language was intended to provide the *only* qualifications for a resident management corporation's assumption of resident management responsibilities. Section 20's requirements for a corporation are indeed "bare bones," speaking only to the approval of the corporation by a resident council, the non-profit and corporate structure of the corporation, and its voting structure. If these were the only requirements for a qualifying resident management corporation, the PHA could be forced to "enter into a contract" with a corporation that lacked even basic management skill and capacity to perform the most rudimentary project management tasks.

The Department does not believe that section 20 envisions such a result, and does not view the quoted language as a bar to imposing reasonable additional qualifications on resident management corporations. Thus, the Department would apply the existing requirements for a tenant management corporation under § 964.29 of Subpart C on a resident management corporation under Subpart D. The Department believes that § 964.29's requirements are the minimum necessary to ensure the structure and capacity of a corporation to enter into a successful management relationship with the PHA.

(b) Duty to Contract

A second interpretational issue concerns the "enter into a contract" requirement. One possible construction is that the PHA *must* accept the contract offer of the resident management corporation, on the basis of either the initial terms offered by the corporation or after some negotiation, but in either event, on the corporation's (and not the PHA's) terms. The Department does not believe that the statute intended the PHA to be bound by the contract terms offered by the corporation. Such a construction could cause severe disruption to the PHA's ability and responsibility, not only to manage the project involved in the management program, but also to establish coherent policies for all the PHA's projects.

Another interpretation emphasizes the following language: "A resident management corporation * * * shall enter into a contract with the public agency *establishing* the respective management rights and responsibilities" of the PHA and the resident management corporation. (Emphasis added.) The underscored word, "establishing," could be interpreted as meaning "in order to establish." Under this interpretation, the requirement for a contract would be *for the purpose of establishing*, in binding fashion, the respective rights and responsibilities under the contract: that is, if the PHA and the corporation wish to divide management rights and responsibilities, they must first enter into a contract establishing the terms and conditions of their respective management roles.

The Department believes that this interpretation is far more in accord with the normal view of the discretionary nature of decisions to enter into contracts. Moreover, it does not share the strained, and even "shotgun marriage," view of the contractual process that is implicit in the other possible interpretation, noted above.

Both PHAs and resident management corporations should have discretion to determine whether to enter into resident management arrangements and on what terms. The mandate to "enter into a contract" should be viewed as a *sine qua non* to any establishment of a resident management program, not as a requirement that such a program be established: *i.e.*, if the PHA and the resident management corporation choose to enter into resident management arrangements, they must enter into a contract in order to establish and confirm their relationship.

The rule would, however, impose a number of responsibilities on PHAs that are designed to ensure that they support resident management and seriously negotiate with resident management corporations seeking to enter into a management contract with the PHA. Specifically, the rule would provide that PHAs shall be supportive of resident interest in forming a resident management corporation, and shall work with residents to determine the feasibility of resident management. The rule would also provide that PHAs give full and serious consideration to resident management corporations seeking to enter into a management contract with the PHA. PHAs would be prohibited from arbitrarily or capriciously refusing to negotiate with resident management corporations seeking to contract to provide management services. The PHA would have to document appropriately the reasons for rejecting any management contract offer from the corporation, and would have to make these reasons available to the corporation. (The Department proposes to apply these PHA duties to resident management under both Subparts C and D.)

An informal appeals process to HUD is proposed in § 964.9, under which the Department would seek, through conciliation with the resident management corporation and the PHA, to arrange for resumption of negotiations that have been unsuccessful and to encourage the ultimate adoption of a resident management contract. Where HUD believes that a PHA is not negotiating in good faith, the rule would permit the Department to require negotiations, or their resumption.

The Department has provided no process under which HUD compel the parties to enter into a contract, although HUD recognizes that there is concern among tenant management support groups that some PHAs may resist resident management. The Department does not believe that the statute requires that PHAs enter into contracts under such compulsion, and accordingly the rule approaches the issue on the basis of establishing, instead, a "duty to bargain." Public comment is invited concerning the appropriate HUD role in resolving contract impasses associated with resident management proposals.

6. Responsibilities Relating to Tenant Selection

While the rule proposes to leave as much as possible to PHA and resident management corporation discretion in formulating the nature of their relationship, the Department is proposing revisions to § 964.29 that are intended to set out minimum standards regarding the functions to be assumed under the contract by the resident management corporation—especially as those functions relate to tenant selection concerns.

The rule proposes to permit a resident management corporation to contract with the PHA to conduct tenant eligibility determinations, which includes only determining the number of persons in the household and the amount of family income. (The resident management corporation may also perform income verification.) These

functions are identified in the statute as possible functions of the corporation. However, in accordance with equal opportunity requirements and HUD regulations on tenant selection and preferences for certain classes of applicants, tenant applications must feed into one community-wide waiting list. For this reason, HUD expects that the resident management corporation usually would not be performing these functions for its own potential tenants, but rather would be assisting the PHA with the community-wide list. In addition, the resident management corporation could arrange by contract to screen prospective tenants referred to it by the PHA for residence in the tenant-managed project. The standards for such screening would have to be included in the resident management contract and would have to be consistent with civil rights requirements. The resident management corporation's recommendations as to the suitability of an applicant would be required to be accepted by the PHA, unless the PHA determined that favorable action on a recommendation would be inconsistent with applicable laws. Exercise by the PHA of the final decision on these matters is necessary to assure consistent application of civil rights requirements.

7. Comprehensive Improvement Assistance

Section 20 provides that HUD may enter into a contract with the PHA to provide comprehensive improvement assistance under 24 CFR Part 968 (CIAP) to modernize a project managed by a resident management corporation under this subpart. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the resident management corporation, the PHA would not be permitted to retain, for any administrative or other reason, any portion of the CIAP assistance provided, unless the PHA and the resident management corporation provide otherwise by contract. The resident management corporation and the PHA could, for example, through mutual agreement, provide funds to the PHA for supervision or auditing of the CIAP project.

The proposed rule contains these provisions without substantive change. However, in recognition that PHAs will continue to have responsibility for CIAP application processes, and that CIAP activity may well include resident-managed projects, the proposed rule adds a new paragraph (d) to § 964.33, requiring PHA consultation with the corporation during any assessment of PHA-wide modernization needs. Evidence of this required consultation must be included as part of the CIAP submission to HUD.

8. Operating Subsidy, Preparation of Operating Budget, Operating Reserves and Retention of Excess Revenues

The proposed rule contains instructions for calculating operating subsidy that differ from those contained in Part 990. The Department intends to make any necessary conforming amendments to Part 990 when this proposed rule is made final. The terms of support for the corporation-managed project will be reflected in an amendment to the Annual Contributions Contract (ACC) between HUD and the PHA, so that the statutory directives for the provision of subsidy to these projects can be more easily accomplished.

As noted above, the PHA and the tenant council would have considerable latitude in determining what constitutes a "project" for resident management purposes.

Operating subsidy will be calculated separately for projects managed by a resident management corporation. In order to ensure that tenant-managed projects will receive income sufficient to maintain the level of expenditures supported by operating subsidy and by rents and income from the low-rent housing program that was available in the year preceding management by the resident management corporation, the operating subsidy for the resident management corporation will be calculated as an amount sufficient to cover any gap between such income and total allowable expenses recognized under Part 990. This will be accomplished by setting an Allowable Expense Level based on the actual non-utility expenses for the project in the fiscal year immediately preceding the institution of tenant management under Subpart D. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. The expenses must represent a normal year's expenditures for the project, and documentation of this expense level must be presented with the project budget and approved by HUD. The utility expense level for the resident management corporation project will be computed in accordance with Part 990. Utility expenses are estimated separately under rules that set consumption at the average of a prior three-year period. HUD will reimburse projects for increased costs associated with changes in utility rates, and will share in cost increases and savings attributable to changes in consumption.

(a) Income Estimate

To allow the resident-managed project to retain income generated that exceeds the income estimated, the definition of "income" used in the calculation of operating subsidy will be modified as follows:

(1) dwelling rental income will be estimated based on the rent roll of the project immediately preceding management under Subpart D, increased by the estimate of inflation of tenant income used in calculating PFS subsidy. Any increases above this assumption would be treated as "income generated" by the corporation. Normally, this assumption is six percent per year, resulting in a PFS change factor of 1.03 applies to the rent roll. For projects under management contract, the six percent increase will be applied to the rent roll immediately before assumption of management responsibility by the corporation. In the first year, this rent roll will be multiplied by the PFS change factor of 1.03. This assumes a six percent increase from the rent roll at the beginning of the year to the rent roll at the end of the year—an average increase of three percent. In subsequent years, dwelling rental income will be estimated by multiplying the previous year's estimate by 1.06.

(2) Any increased income directly related to activities by the resident management corporation, or facilities operated by the resident management corporation, will be excluded from the estimate of other income.

(3) Any reduction in the subsidy of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA shall not affect the subsidy calculation for the resident management corporation project.

By establishing a resident management corporation project-level subsidy calculation, this rule establishes a predictable level of funding for the resident management corporation project that is responsive to inflation in utility and non-utility expenses and is independent of circumstances affecting other projects in the PHA. Subsidy will make up the gap between income and allowable expense levels. Any decreases in PHA income due to rent rolls, occupancy rates, or utility consumption levels, or utility rates in other projects, will have absolutely no effect on the income level of the resident management corporation project.

(b) Preparation of Operating Budget

The resident management corporation and the PHA shall submit a separate operating budget for the project managed by the resident management corporation to HUD for approval, including the calculation of operating subsidy eligibility. This budget will reflect all project expenditures, and will identify which expenditures are related to responsibilities of the resident management corporation and which are related to functions which continue to be performed by the PHA. The proposed rule would exclude the provision of technical assistance by the PHA to the resident management corporation from the operating budget developed for the project.

(c) Operating Reserves

If the resident management corporation is responsible for maintenance functions in the project, the PHA and the resident management corporation may provide in the contract for the establishment of a separate operating reserve for the resident management corporation project.

Each project or part of a project which is operating in accordance with an ACC amendment relating to this subpart, may have established a sub-account of the operating reserve of the host PHA. The amount of the reserve made available to projects under the subpart will not exceed the per unit cash amount available in the PHA fiscal year preceding implementation, multiplied by the number of units in the project operated in accordance with the provisions of this subpart.

The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditures of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget which is subject to approval by HUD.

Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV, and such interest as is generated will be included in the calculation of operating subsidy in accordance with 24 CFR Part 990.

(d) Retention of Excess Revenues

Section 20 provides that any income generated by a resident management corporation that exceeds the income estimated for the income category in the management contract under item (a), must be excluded in subsequent years in calculating:

(i) The operating subsidy provided to a PHA under Part 990;

(ii) The funds provided by the PHA to the resident management corporation.

This change in the definition of income used to calculate operating subsidy allows the resident management corporation to retain excess revenues.

(e) Use of Retained Revenues

Section 20 requires that any revenues retained by a resident management corporation under item (d) may only be used for purposes of: (i) Improving the maintenance and operating of the project, (ii) establishing business enterprises that employ residents of public housing, or (iii) acquiring additional dwelling units for lower income families.

Resident management corporations will, under this rule, be receiving grant funds (operating subsidy) through the PHAs and will be managing other project income. Accordingly, they will be subject to OMB financial management controls applicable to entities responsible for the expenditure of Federal funds. The final rule in this proceeding will include provisions setting out the obligation of resident management corporations to comply with OMB financial management requirements—either requirements identical to those applied to PHAs, or the requirements made applicable to nonprofit organizations under OMB Circulars A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations" and A–122, "Cost Principles for Nonprofit Organizations". Public comment is invited concerning the appropriate means of regulating resident management corporation financial management practices.

9. Waiver of HUD Requirements

(a) Waiver Conditions

Section 20 provides that upon the joint request of a resident management corporation and the PHA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the PHA, (1) that the requirement unnecessarily: (i) Increases the costs to the project or (ii) restricts the income of the project and (2) that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Section 964.52 provides that any waiver granted to a resident management corporation under this section will apply as well to the PHA to the extent the waiver affects the PHA's remaining responsibilities relating to the corporation's project.

(b) Notice and Opportunity for Comment

Section 20 permits HUD to grant a waiver only after notice is provided to the residents whom the waiver would affect and the residents are given at least 30 days to comment. The proposed rule would provide that the PHA serve this notice by any or all of the following means, as HUD determines appropriate:

(1) First class mail addressed to each affected resident.

(2) Delivery to the unit of each affected resident.

(3) In the case of high-rise buildings, posting in one or more conspicuous locations in any building in which affected residents live.

(c) Role of PHAs and Resident Management Corporations

The proposed rule would specify the following role for PHAs and resident management corporations in the waiver process: All resident comments would have to be sent to the PHA. The PHA would summarize the comments, prepare (at its option) a recommended response to the comments, and provide the resident management corporation with the opportunity to prepare a recommended response to the comments. The PHA would have to send to HUD all the tenant comments received, along with the recommendations (if any) of the PHA and the resident management corporation.

The PHA would be required to carry out such responsibilities with respect to the determination of whether to grant a waiver as HUD may prescribe in administrative instructions. (These responsibilities will include both the initial and later service of notice on affected tenants.)

(d) Action on Resident Comments

HUD would give careful consideration to all resident comments received within the comment period, and would require the PHA to serve written notice of HUD's final decision on the proposed waiver, including written responses to the resident comments, in the same manner and upon the same resident population as the original notice was served.

(e) Waiver to Permit Employment

Upon the request of a resident management corporation, HUD may, subject to the terms and procedures of applicable collective bargaining agreements, permit residents of the

project to volunteer a portion of their labor.

(f) Exceptions

HUD may not waive any regulatory or other requirement under paragraph (a) of this section with respect to: (1) Income eligibility for purposes of §§ 913.104 and 913.105 of this Chapter, (2) rental payments under § 913.107 of this Chapter, (3) tenant or applicant protections under this Chapter, (4) employee organizing rights, or (5) the rights of employees under collective bargaining agreements.

10. Technical Assistance

Section 20 requires HUD to provide financial assistance to PHAs, within prescribed funding limitations, for the use of resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities. Eligible activities would include the formation of resident management entities; the development of the management capability of newly formed or existing entities; identification of the social support needs of residents of projects, and the securing of this support; preparing feasibility studies of activities to be undertaken by the resident organization; obtaining information from the communities which have existing resident organizations to learn about their experiences; training residents for participation and leadership in the resident organization; obtaining legal assistance in incorporating resident organizations; preparing by-laws and drafting corporate charters; developing performance standards and assessment procedures to measure success of resident participation; assistance in acquiring surety bonding and insurance; designing and implementing financial management systems that include budgeting, accounting, and auditing; developing and implementing a long-range planning system; assessing potential impacts and benefits of resident management and identifying management functions or tasks to be contracted; and advice in developing and negotiating management contracts and related monitoring and management procedures. Technical assistance may not exceed $100,000 with respect to any project, and is subject to limitations on available funding. In determining the size of technical assistance grants, HUD will take into consideration the size of the resident-managed project and the anticipated complexity of the proposed change to resident management.

11. Audit

Section 20 requires that the books and records of a resident management corporation managing a public housing project be audited annually by a certified public accountant, and that a written report of each audit be sent to HUD and the PHA. The proposed rule contains this provision, with language indicating that the books and records of the corporation would also be subject to all applicable Federal statutory and other requirements.

12. Additional Waivers

HUD is required by section 20 to submit to the Congress by August 5, 1988 a report identifying any provisions of Federal law that should be waived to carry out the provisions of this Part. PHAs, tenant organizations, resident management corporations, and other interested parties are encouraged to include in their comments to the Rules Docket Clerk on this proposed rule any statutory or non-statutory provisions that should be considered as candidates for waiver, with an explanation of how the provision conflicts with the optimum execution of section 20.

Relationship Between Section 20 and Existing 24 CFR Part 964

As noted earlier, 24 CFR Part 964 contains the Department's regulations for tenant participation and management in public housing, as they were written before passage of the 1987 Act. Section 20 was written to provide additional rights and responsibilities for resident management corporations seeking to manage public housing projects. Section 20 does not eliminate the other, more generally applicable responsibilities previously set out in Part 964, Subpart C.

Specifically, Subpart C of Part 964 contains the Department's current (pre-1987 Act) policies, procedures, and requirements for tenant management of public housing. The basic program design of Subpart C is similar to that established in section 20: Public housing tenants must form a tenant management corporation that will enter into a management contract with the PHA, establishing the respective management rights and responsibilities in connection with the project that will be carried out by the PHA and the corporation. Subpart C also contains provisions that are not contained in section 20, discussing the scope and contents of the management contract, the continued responsibility of the PHA to HUD after a mangement contract is in place, and permissible PHA financial support for tenant management corporations.

The Department proposes to implement section 20 of the 1937 Act as a new *Subpart D* to Part 964. Existing Subpart B would be retained without substantive change, thereby applying its tenant participation provisions *both* to public housing tenants and tenant organizations under Subpart C *and* public housing residents and resident councils under proposed Subpart D. Subpart B contains basic provisions designed to improve communication between PHAs and their tenants, and to enhance tenant understanding of, and participation in, issues that affect their projects. These features are beneficial to all tenant/PHA relationships, irrespective of whether the tenants are represented by a tenant organization (resident council), or a tenant (resident) management corporation under Subpart C or D.

The tenant participation provisions of Subpart B would apply to resident management activities under Subpart D. Among other things, a resident council that proposes to form a resident management corporation to assume management responsibilities under that Supart D would have to meet the requirements for a tenant organization under Subpart B.

Subpart C would retain its existing substance, except that a number of section 20's provision, as described above, would be added to that Subpart. Under the proposed revisions to Part 964, Subpart C would apply to tenant (resident) management under both Subparts C and D. Subpart D would contain the special features of section 20 of the 1937 Act, and would be available for PHAs and resident management corporations that wish to proceed under section 20.

Section 20 provides only a "bare bones" recitation of the requirements for establishing a resident management corporation: It must be approved by a resident council and be a non-profit corporation whose sole voting members are the tenants of the project or projects it represents. The Department proposes that resident management corporations under Subpart D meet the requirements for tenant management corporations under Subpart C as well. These include such essential provisions as requiring the activities and expenditures of the corporation to be consistent with Federal, State, and local law and the ACC; the corporation to submit annual budgets for PHA approval; and the PHA to conduct annual performance reviews of the corporation.

PHAs and tenant management corporations (resident management corporations) that enter into

management contracts under either Subpart C or D—including tenant management corporations that have entered into such contracts under Subpart C before the effective date of this rule—could elect to switch to the tenant (resident) management provisions of the other subpart. Subject to the resident council's decision to establish a resident management corporation under Subpart D, a corporation so established will alone determine whether to seek to become a resident management corporation under the new option provided by section 20. The responsibilities of the corporation would be subject to terms and conditions negotiated with the PHA, consistent with the ACC and applicable laws and regulations. The PHA and the corporation would be required to enter into a new or amended contract meeting the additional requirements of Subpart D. If the switch is *from* Subpart D, it must be subject to such agreement between the PHA and the corporation as may be necessary to ensure that revenues which have been retained under § 964.49(d) are used for the purposes specified in section 20 of the 1937 Act.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule would add a new resident management option for public housing residents. Although the rule may have some effect on small entities—both PHAs and resident management corporations—its economic effect on them would be slight.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program rule number for this rule program number 14.850.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register.**

List of Subjects in 24 CFR Part 964

Public and Indian housing.

Accordingly, 24 CFR Part 964 would be amended as follows:

PART 964—TENANT PARTICIPATION AND MANAGEMENT IN PUBLIC HOUSING

1. The authority citation for Part 964 would be revised to read as follows:

Authority: Secs. 6, 9, 14, 20, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437g, 1437l, 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 964.3, paragraph (b) would be revised, and new paragraphs (c), (d), and (e) would be added, to read as follows:

§ 964.3 Applicability and scope.

* * * * *

(b) Subpart B of this part contains HUD's policies, procedures, and requirements for the participation of public housing tenants in public housing management. These policies, procedures, and requirements apply to all tenant participation under this part.

(c)(1) Subpart C of this part contains HUD's policies, procedures, and requirements for tenant management of public housing under that subpart. Subpart C also applies to resident management of public housing under Subpart D of this part.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements between a PHA and a tenant organization or tenant management corporation. Current tenant management contracts that do not meet the requirements of Subpart C need not be modified until the first renewal on or after March 2, 1987.

(d)(1) Subpart D of this part contains HUD's policies, procedures, and requirements for resident management of public housing under section 20 of the United States Housing Act of 1937. As provided by paragraph (c)(1) of this section, the policies, procedures, and requirements of Subpart C of this part apply to resident management under Subpart D. Subpart D contains policies, procedures, and requirements, in addition to those specified in Subpart C, that are required under section 20 of that Act.

(2) The provisions of Subpart D of this part apply only to PHAs and resident management corporations that elect, in accordance with HUD's administrative instructions, to adopt them. If this election is made, the resident management involved will be governed by the provisions of Subpart D. In all other cases, the management involved will be governed by the provisions of Subpart C of this part.

(3) PHAs and tenant management corporations or resident management corporations that have entered into management contracts under either Subpart C or D of this part, including tenant management corporations that have entered into such contracts under Subpart C before [*insert effective date of this rule*], may elect to enter into management contracts under the other subpart. This election will be subject to such terms and conditions as the PHA and the corporation may decide, consistent with the ACC and applicable laws and regulations. If this election involves a change from Subpart D to Subpart C, it must be subject to such agreement between the PHA and the corporation as may be necessary to ensure the use of retained revenues under § 964.49(d) for the purposes specified in § 964.49(e).

(4) Subpart D of this part is designed to encourage increased resident management of public housing, as a means of improving existing living conditions in public housing, by providing increased flexibility for public housing resident management by:

(i) Permitting the retention, and use for certain purposes, of any income generated by a resident management

corporation in excess of estimated project income; and

(ii) Providing funding for technical assistance to promote the formation and development of tenant management entitles.

(e) A number of similar terms are used throughout this part, such as "tenant" and "resident," "tenant management corporation" and "resident management corporation," "tenant management" and "resident management," and "tenant organization" and "resident council." These terms are not intended to denote different meanings, and may be used interchangeably. They merely reflect the difference in terminology between the provisions of this part before the addition of Subpart D to this part, and section 20 of the United States Housing Act of 1937, as implemented in Subpart D.

3. Section 964.5 would be revised to read as follows:

§ 964.5 Relation to other requirements.

(a) Subparts B and C of this part are intended to be consistent with the regulations in other parts of this chapter regarding tenant participation in specific aspects of public housing management. To the extent any provision in these subparts conflicts with any regulatory requirement related to tenant participation in any other part in this chapter, the other provision controls. Subparts B and C are generally consistent with previous HUD instructions and guidelines on various aspects of tenant participation in the management of public housing. To the extent that Subparts B and C conflict with previous guidelines or instructions (other than those involving regulatory requirements), the provisions of those subparts control.

(b) Subpart D of this part contains a resident management program that was established by section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). This subpart is independent of regulations in other parts of this chapter, as well as other HUD instructions or guidelines under those regulations, with respect to resident participation in the management of public housing.

4. In § 964.7, the definitions of "Tenant Management", "Tenant Management Corporation", and "Tenant Organization" would be deleted; the definitions of "Annual Contributions Contract (ACC)" and "Management Contract" would be revised; and new definitions of "Project", "Tenant Management or Resident Management", "Tenant Management Corporation or Resident Management Corporation", and "Tenant Organization or Resident Council" would be added in alphabetical order, to read as follows:

§ 964.7 Definitions.

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) under which (a) HUD agrees to provide financial assistance, and the PHA agrees to comply with HUD requirements for the development and operation of the public housing project.

* * * * *

Management contract. A written agreement between (a) a tenant management corporation and a PHA, as provided by § 964.29 of Subpart C of this part, or (b) a resident management corporation and a PHA, as provided by § 964.43 of Subpart D of this part.

Project. Includes any of the following that meet the requirements of this part:

(a) One or more contiguous buildings.

(b) An area of contiguous row houses.

(c) Scattered site buildings.

* * * * *

Tenant management or *resident management.* The performance of one or more management activities for one or more projects by a tenant management corporation or a resident management corporation under a management contract with the PHA.

Tenant management corporation or *resident management corporation.* The entity that proposes to enter into, or enters into, a management contract with a PHA under Subpart C or Subpart D, respectively, of this part. The corporation must have each of the following characteristics:

(a) It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

(b) It may be established by more than one tenant organization or resident council, so long as each such organization or council: (1) Approves the establishment of the corporation and (2) has representation on the Board of Directors of the corporation.

(c) It must have an elected Board of Directors.

(d) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(e) Its voting members must be tenants of the project or projects it manages.

(f) It must be approved by the tenant organization or the resident council. If there is no organization or council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(g) It may serve as both the tenant management corporation (or the resident management corporation) and the tenant organization (or the resident council), so long as the corporation meets the requirements of this part for a tenant organization or resident council.

Tenant organization or *resident council.* An incorporated or unincorporated non-profit organization or association that meets each of the following requirements:

(a) It must be representative of the tenants it purports to represent.

(b) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents.

(c) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(d) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

5. Section 964.9 would be revised to read as follows:

§ 964.9 HUD role in activities under this part.

(a) *General.* Subject to the requirements of this part and other requirements imposed on PHAs by statute or regulation, the form and extent of tenant participation and tenant management or resident management are local decisions to be made by a PHA after consultation with its tenants. HUD will promote tenant participation and tenant and resident management, and provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with resident management under Subpart D of this part, as provided by § 964.58.

(b) *Duty to bargain in good faith.* If a PHA refuses to negotiate with a resident management corporation, or after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD may require the PHA to respond with a report stating the PHAs reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD may require the parties (with or without direct HUD participation) to undertake or to resume

negotiations on a contract providing for resident management.

6. Part 964, Subpart A, would be revised by adding new §§ 964.11 and 964.12, to read as follows:

§ 964.11 HUD policy on tenant participation.

It is HUD's policy to encourage tenant participation in the management of public housing, as may be found appropriate by PHAs after consultation with the tenants. HUD encourages PHAs and tenants to work together to determine the most appropriate ways to foster constructive relationships, particularly through tenant organizations. Tenant organizations are generally the best vehicle for achieving effective tenant participation on a continuing basis.

§ 964.12 HUD policy on tenant management and resident management.

It is HUD's policy to encourage tenant management where it is feasible. HUD encourages PHAs, tenants, and tenant organizations to explore the various functions involved in project management to identify appropriate opportunities for contracting with a tenant management corporation or a resident management corporation. Potential benefits of tenant management of public housing include improved quality of life and resident satisfaction, and other social and economic benefits to tenants, the PHA, and HUD.

§ 964.15 [Removed and Reserved]

7. Section 964.15 would be removed and reserved.

8. In § 964.17, the introductory language would be revised to read as follows:

§ 964.17 Tenant participation requirements.

The following are requirements for implementing HUD's policy on tenant participation, as expressed in § 964.11:

* * * * *

9. In § 964.19, paragraphs (b) and (c) would be revised to read as follows:

§ 964.19 Tenant participation guidelines.

* * * * *

(b) A tenant organization may request that it be recognized as the official organization representing the tenants in meetings with the PHA or with other entities. A PHA should grant formal recognition of the tenant organization, if it meets the requirements for such an organization specified in § 964.7.

(c) At a minimum, the PHA and tenant organization should put in writing their understanding concerning the elements of their relationship. If such an agreement includes contracting for the tenant organization to perform any of the functions for which the PHA is responsible to HUD under the ACC, the provisions of Subpart C or Subpart D (as appropriate) apply.

§§ 964.25 and 964.27 [Removed and Reserved]

10. Section 964.25 would be removed and reserved.

11. Section 964.27 would be removed and reserved.

12. In § 964.29, paragraphs (a) through (d) would be redesignated as paragraphs (b) through (e), respectively; new paragraphs (a), (d)(6), (f), and (g) would be added; and the introductory language, and newly redesignated paragraphs (b), (c) and (d)(1) would be revised, to read as follows:

§ 964.29 Tenant management requirements.

The following requirements apply when a PHA and its tenants are interested in providing for tenant performance of management functions in one or more projects under this subpart.

(a) *PHA responsibilities.* PHAs shall be supportive of tenant interest in forming a tenant management corporation, and shall work with tenants to determine the feasibility of tenant management. PHAs shall give full and serious consideration to tenant management corporations seeking to enter into a management contract with the PHA under this subpart. PHAs shall not arbitrarily or capriciously refuse to negotiate with tenant management corporations seeking to contract to provide management services. PHAs shall appropriately document their reasons for rejecting any management contract offer from a tenant management corporation, and must make the reasons available to the corporation.

(b) *Tenant management corporation.* Tenants interested in contracting with a PHA must establish a tenant management corporation that meets the requirements for such a corporation, as specified in § 964.7.

(c) *Management Contract: scope.* (1) A management contract between the PHA and a tenant management corporation is required for tenant management. The PHA and the corporation may agree to the performance by the corporation of any or all management functions for which the PHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics, and administrative employees, employed in the operation of the project, except that the amount of this compensation must meet applicable labor standard requirements of Federal law; rent collection procedures, tenant income verification; tenant eligibility determinations; tenant eviction; the acquisition of supplies and materials; and such other matters as the PHA and the corporation deem appropriate, and as HUD may specify in administrative instructions.

(3) The management contract may permit a tenant management corporation to conduct tenant eligibility determinations (the number of persons in the household and their income) and tenant income verifications. A tenant management corporation also may participate in the screening of applicants and tenant selection on a PHA-wide basis. In addition, the tenant management corporation may screen tenants referred by the PHA for residence in the tenant-managed project. The tenant management corporation may make a recommendation to the PHA regarding the suitability of each such applicant, in accordance with screening criteria that are consistent with HUD guidelines and incorporated in the management contract. Standards for screening applicants shall be consistent with the requirements of Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Age Discrimination Act; Section 504 of the Rehabilitation Act of 1973; and all other applicable civil rights laws and executive orders. The tenant management corporation's recommendation on a specific applicant shall be accepted by the PHA unless the PHA determines that action in accordance with the recommendation would be inconsistent with applicable laws.

(4) The management contract must be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the PHA is subject.

(5) Before entering into a management contract, the PHA must make a written determination that the corporation has the capability for satisfactory performance of all management functions covered by the contract. The ACC provisions on competitive bidding and prior written HUD approval of contracts do not apply to the decision of a PHA to contract with a corporation.

(d) * * *

(1) Tenant management corporation activities and expenditures must be

consistent with the requirements of applicable Federal, State, and local law and regulations and with the ACC and PHA policies, including requirements pertaining to access to books and records, accounting, and audit.

* * * * *

(6) All activities carried out pursuant to the management contract must be conducted in conformity with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Age Discrimination Act; Section 504 of the Rehabilitation Act of 1975; and all other applicable civil rights laws and executive orders. In addition, the management contract must indicate what records must be kept by the tenant management corporation and made available to the PHA and HUD with respect to activities associated with tenant management.

* * * * *

(f) *Bonding and insurance.* Before assuming any management responsibility under its contract, the tenant management corporation must provide fidelity bonding and insurance, or equivalent protection,

(1) That is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees; and

(2) That meets such other requirements as may be specified by the PHA and in HUD's administrative instructions.

The cost of such risk protection may be included in the management contract, and paid for as part of the operating budget.

(g) *Rights of families; operation of project.* If a tenant management corporation is approved by the tenant organization representing one or more buildings or an area of row houses that are part of a public housing project for purposes of Part 941 of this chapter, the resident management program under this subpart may not, as determined by the PHA,

(1) Interfere with the rights of other residents of such project or

(2) Harm the efficient operation of such project.

13. Section 964.33 would be amended by adding a new paragraph (d), to read as follows:

§ 964.33 PHA financial support for tenant management.

* * * * *

(d) In assessing the modernization needs of its projects for purposes of CIAP application (or other grant mechanisms established by the Housing and Community Development Act of 1987) under 24 CFR Part 968, PHAs must consult with the tenant management corporation with reference to any project managed by the corporation, in order to determine the modernization needs of tenant-managed projects. Evidence of this required consultation must be included with a PHA's initial submission to HUD.

14. Part 964 would be further amended by adding a new Subpart D (§§ 964.37 through 964.58) to read as follows:

Subpart D—Tenant Management Under Section 20 of the United States Housing Act of 1937

Sec.

§ 964.37 Applicability of subpart.

The provisions of Subpart C of this part apply to resident management under this subpart. This subpart contains special provisions, in addition to those specified in Subpart C, to implement the resident management features of section 20 of the United States Housing Act of 1937.

§ 964.40 Management specialist.

(a) *Requirement for a management specialist.* Except under the circumstances described in paragraph (c) of this section, the resident council of a project, in cooperation with the PHA, must select a qualified public housing management specialist

(1) To assist in determing the feasibility of, and to help establish, a resident management corporation; and

(2) To provide training and other duties in connection with the daily operations of the project.

(b) *Agreement between the PHA and the resident council.* In carrying out their responsibilities under paragraph (a) of this section, the PHA and the resident council must agree in advance upon

(1) The qualifications that the management specialist must possess;

(2) The terms and conditions of the search and selection process;

(3) The duties and responsibilities to be performed by the management specialist, including the remuneration to be provided the specialist, a clear specification of the nature and degree of supervision to be provided the specialist, and a clear specification of the title of the person or persons in the organizational structure of the PHA or the resident council (or both) to whom the specialist is to report for supervision and for evaluation of his or her performance; and

(4) Such other matters with respect to the selection and functions of the management specialist as the PHA and the resident council may determine, consistent with the ACC, and applicable law and regulations.

The resident council must select the housing management specialist in accordance with the terms of its agreement with the PHA.

(c) A tenant management corporation that entered into a management contract with a PHA under subpart C of this part before [*insert effective date of this rule*], and thereafter elects to enter into a management contract with the same PHA under this Subpart D, may select a management specialist in accordance with this section but is not required to do so.

§ 964.43 Management responsibilities.

(a) *PHA responsibilities.* PHAs shall be supportive of resident interest in forming a resident management corporation, and shall work with residents to determine the feasibility of resident management. PHAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the PHA under this subpart. PHAs shall not arbitrarily or capriciously refuse to negotiate with resident management corporations seeking to contract to provide management services. PHAs shall appropriately document their reasons for rejecting any management contract offer from a resident management corporation, and make these reasons available to the corporation.

(b) *Management contract.* If a PHA and a resident management corporation that qualifies under this part agree to establish a resident management project, they shall enter into a management contract establishing the respective rights and responsibilities of the PHA and the corporation with respect to management of the project. Where a tenant management corporation already has a management contract with a PHA that meets the requirements of Subpart C, but wishes to meet the additional requirements of this Subpart D, the corporation, subject to the approval of its tenant council, may seek to enter into a new or amended contract with the PHA to accomplish that purpose. A copy of any such contract or amended contract shall

be provided to the HUD field office at the time of its execution.

(c) *Income estimate in contract.* The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under Part 990 of this chapter, interest income, administrative fees, and rents). The income estimates under this paragraph (c) must be calculated on a PHA-wide basis, as well as for each category of income as the PHA and the resident management contract agree, consistent with HUD's administrative instructions.

§ 964.46 Comprehensive improvement assistance.

(a) *Eligibility.* HUD may enter into a contract with the PHA to provide comprehensive improvement assistance under Part 968 of this chapter to modernize a project managed by a resident management corporation under this subpart.

(b) *Administration of activities.* If the entirety of modernization activity referred to in paragraph (a) of this section (including the planning and architectural design of the rehabilitation) is administered by the resident management corporation, the PHA shall not retain, for any administrative or other reason, any portion of the comprehensive improvement assistance provided, unless the PHA and the corporation provide otherwise by contract.

§ 964.49 Operating subsidy total income, preparation of operating budget, operating reserves and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with Part 990, with the following exceptions:

(1) The resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. The expenses must represent a normal year's expenditures for the project, and documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly related to activities by the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget.* (1) Subject to paragraph (c) of this section, the amount of funds provided by a PHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(2) For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the PHA to the resident management corporation will not be included.

(3) The resident management corporation and the PHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the PHA.

(4) Operating reserves.

(i) Each project or part of a project that is operating in accordance with an ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host PHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the PHA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the PHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(ii) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV and interest generated will be included in the calculation of operating subsidy in accordance with 24 CFR Part 990.

(c) *Adjustments to total income.* (1) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this subpart, the contract may specify that income be provided to the project from other sources of income of the PHA.

(2) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(i) Any reduction in the total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA.

(ii) Any change in the total income of a PHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

(d) *Retention of excess revenues.* (1) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved in accordance with § 964.43(c) must be excluded in subsequent years in calculating:

(i) The operating subsidy provided to a PHA under Part 990 of this chapter.

(ii) The funds provided by the PHA to the resident management corporation.

(2) For purposes of determining income generated by a resident management corporation under paragraph (d)(1) of this section, excess

income available to the project because of lower utility costs than initially estimated will be excluded.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of

(1) Improving the maintenence and operation of the project,

(2) Establishing business enterprises that employ residents of public housing, or

(3) Acquiring additional dwelling units for lower income families.

§ 964.52 Waiver of HUD requirements.

(a) *Waiver conditions.* Upon the joint request of a resident management corporation and the PHA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the PHA,

(1) That the requirement unnecessarily

(i) Increases the costs to the project or

(ii) Restricts the income of the project and

(2) That the waiver would be consistent with the management contract and any applicable collective bargaining agreement.

Any waiver granted to a resident management corporation under this section will apply as well to the PHA to the extent the waiver affects the PHA's remaining responsibilities relating to the corporation's project.

(b) *Notice and opportunity for comment.* HUD may grant a waiver under paragraph (a) of this section only after requiring the PHA to provide notice to the residents whom the waiver would affect and giving them at least 30 days to comment on it. Notice under this paragraph (b) may be served by any or all of the following means, as HUD determines appropriate:

(1) First class mail addressed to each affected resident.

(2) Delivery to the unit of each affected resident.

(3) In the case of high-rise buildings, posting in one or more conspicuous locations in any building in which affected residents live.

(c) *Role of PHAs and resident management corporations.* (1) All resident comments must be sent to the PHA. The PHA must summarize the comments, prepare (at its option) a recommended response to the comments, and provide the resident management corporation an opportunity to prepare a recommended response to the comments. The PHA must send to HUD all the tenant comments received, along with the summary of comments prepared by the PHA and the recommendations (if any) of the PHA and the resident management corporation for the disposition of the comments.

(2) The PHA must carry out such responsibilities with respect to the determination of whether to grant a waiver under paragraph (a) of this section as HUD may prescribe in administrative instructions. These responsibilities will include the service of notice on affected tenants under paragraphs (b) and (c) of this section.

(d) *Action on resident comments.* HUD will give careful consideration to all resident comments received within the comment period provided under paragraph (b) of this section. HUD, through the PHA, will provide written notice of its final decision on the proposed waiver, including written responses to the resident comments, served in the same manner and upon the same resident population as the original notice under paragraph (b) of this section was served.

(e) *Waiver to permit employment.* Upon the request of a resident management corporation, HUD may, subject to the terms and procedures of any applicable collective bargaining agreement, permit residents of the project to volunteer a portion of their labor.

(f) *Exceptions.* HUD may not waive any regulatory or other requirement under paragraph (a) of this section with respect to

(1) Income eligibility for purposes of §§ 913.104 and 913.105 of this chapter,

(2) Rental payments under § 913.107 of this chapter,

(3) Tenant or applicant protections under this chapter or other applicable laws,

(4) Employee organizing rights, or

(5) The rights or employees under collective bargaining agreements.

§ 964.55 Audit.

(a) *Annual audit of books and records.* The financial statements of a resident management corporation managing a project under this subpart must be audited annually by a license l certified public accountant, designated by the PHA, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the PHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of resident management corporations under this part.

§ 946.58 Technical assistance.

(a) *Nature of assistance.* HUD will endeavor to provide financial assistance to PHAs for the use of resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capability of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart. In determining the amount of any technical assistance grant, HUD will take into consideration the size of the resident-managed project and the anticipated complexity of the proposed change to resident management.

(b) *Maximum amount of assistance.* The assistance referred to in paragraph (a) of this section may not exceed $100,000 with respect to any project.

Dated: June 9, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-15044 Filed 7-1-88; 8:45 am]

BILLING CODE 4210-33-M

federal register

Tuesday
July 5, 1988

Part V

Department of Education

Grants Availability; School, College, and University Partnerships Program for Fiscal Year 1988; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.204]

Notice Inviting Applications for New Awards Under the School, College, and University Partnerships Program for Fiscal Year 1988

Purpose of Program: To encourage partnerships between institutions of higher education and secondary schools serving low-income students, and to support programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school, and improve their prospects for employment after secondary school.

Deadline for Transmittal of Applications: August 9, 1988.

Deadline for Intergovernmental Review: September 8, 1988.

Available Funds: $1,394,000.

Estimated Range of Awards: No less than $250,000 per year.

Estimated Average Size of Awards: $275,000.

Estimated Number of Awards: 5.

Project Period: Up to 36 months.

Application: Since this is the first year of this program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates. This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary. Applicants are directed to the Appendix of this notice for applications and instructions.

Applicable Regulations: 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).

Eligibility: To be eligible to apply for a grant under this program, an institution of higher education and a local educational agency must enter into a written partnership agreement. The partnership may also include businesses, labor organizations, professional associations, community-based organizations, or other private or public agencies or associations. All partners must sign the agreement which shall include—

(1) A listing of all participants in the partnership;

(2) A description of the responsibilities of each participant in the partnership; and

(3) A listing of the resources to be contributed by each participant in the partnership.

In addition, the partnership must establish a governing body that includes one representative of each participant in the partnership.

The legal applicant may be one member of the partnership designated by the group to apply for the grant. However, the legal applicant must be a local educational agency, an institution of higher education, or, provided that the partnership has been established as a separate legal entity, the partnership.

Activities: Grant funds may be used by the partnership to support programs that—

(a) Use college students to tutor secondary school students and improve their basic academic skills;

(b) Are designed to improve the basic academic skills of secondary school students;

(c) Are designed to increase the understanding of specific subjects of secondary school students;

(d) Are designed to improve the opportunity to continue a program of education after graduation for secondary school students; and

(e) Are designed to increase the prospects for employment after graduation of secondary school students.

Funding requirements: (a) The Secretary will reserve 65 percent of program funds for programs operating during the regular school year and 35 percent to carry out programs during the summer. An applicant may request funds to operate programs during the regular school year, the summer, or both. The budget must clearly separate the amount requested for the regular school year programs and the summer programs.

(b) The partnership must provide at least 30 percent of the cost of the project in the first year, 40 percent in the second year and 50 percent in the third and any subsequent years. (Regulations governing the Federal matching requirements can be found in 34 CFR Part 74, Subpart G.)

(c) A local educational agency receiving funds under this program shall use these funds so as to supplement and not supplant non-Federal funds, and, to the extent practical, increase the resources that would, in the absence of Federal funds received under this program, be made available from non-Federal sources for the education of students participating in a project under this program. A local educational agency receiving funds under this program shall not reduce its combined fiscal effort per student or its aggregate expenditure on education.

Absolute priorities: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary has established the following absolute priorities. Applications submitted under the School, College, and University Partnerships Program for fiscal year 1988 must meet two or more of the following priorities in order to be considered under this competition.

(1) Programs which will serve predominantly low-income communities;

(2) Partnerships which will run programs during the regular school year and the summer; and

(3) Programs which will serve educationally disadvantaged students; potential dropouts; pregnant adolescents, and teen parents; or children of migratory agricultural workers or of migratory fishermen.

Selection criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the School, College, and University Partnerships Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

Note to Applicants: A statement of the purposes of the authorizing statute is found in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to

determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of the section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *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—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 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.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.204, U.S. Department of Education, MS 6355, 400 Maryland Avenue, SW., Washington, DC 20202. In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications: No grant may be awarded unless a complete form has been received.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.204), Washington, DC 20202; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.204), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program.

For Further Information Contact: For specific information concerning the program, contact: Mrs. Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066, ROB–3, Mail Stop 3323, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 732–4804.

Program Authority: 20 U.S.C. 1105a–1105c.

Dated: June 7, 1988.

William J. Bennett,

Secretary of Education.

Appendix—Application Instructions and Forms:

This application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Fact Sheet (Forms SF–424 and instructions).

Part II: Budget Information (form and instructions).

Part III: Application Narrative.

Part IV: Assurances.

In addition, the application must include:

(1) The written partnership agreement signed by all partners; and

(2) A listing of the public and private nonprofit secondary school or schools to be involved in the project.

Instructions for Part I—Federal Assistance Face Sheet (SF–424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A."

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a–h Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED–CRS number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.,

12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)	☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☒ APPLICATION	2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER b. DATE Year month day 19
		3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE	a. NUMBER b. DATE ASSIGNED Year month day 19
		Leave Blank	

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
a. NUMBER 8 4 . 2 0 4
MULTIPLE ☐
b. TITLE School, University, and University Partnerships

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) A

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter A

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s)

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

SECTION III—FEDERAL AGENCY ACTION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)
Mrs. Jowava M. Leggett
(202) 732-4804

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

PART II
BUDGET INFORMATION

Section A - Budget Categories for the 1988-89 Regular School Year Programs

1.	Salary and Wages
2.	Fringe Benefits
3.	Travel
4.	Equipment
5.	Supplies
6.	Contractual Services
7.	Other (itemize)
8.	Total Direct Costs (lines 1 to 7)
9.	Total Indirect Costs
10.	Total Project Costs (lines 8 + 9)

Section B - Cost Sharing

1.	Program Income
2.	Non-Federal Funds (State, local, etc.)
3.	In-Kind Contributions

Section C - Estimate of Funding Needs

		Federal	Non-Federal
1.	First Fiscal Year		
2.	Second Fiscal Year		
3.	Third Fiscal Year		

Section D - Estimate of Unobligated Funds

Not Applicable

Section E - Budget Narrative

See Instructions

PART II
BUDGET INFORMATION

Section A - Budget Categories for the 1989 Summer Programs

1.	Salary and Wages
2.	Fringe Benefits
3.	Travel
4.	Equipment
5.	Supplies
6.	Contractual Services
7.	Other (itemize)
8.	Total Direct Costs (lines 1 to 7)
9.	Total Indirect Costs
10.	Total Project Costs (lines 8 + 9)

Section B - Cost Sharing

1.	Program Income
2.	Non-Federal Funds (State, local, etc.)
3.	In-Kind Contributions

Section C - Estimate of Funding Needs

		Federal	Non-Federal
1.	First Fiscal Year		
2.	Second Fiscal Year		
3.	Third Fiscal Year		

Section D - Estimate of Unobligated Funds

Not Applicable

Section E - Budget Narrative

See Instructions

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Section A—Budget Summary

Enter the total Federal funds requested by budget categories. Use both forms to separate the amounts requested for the regular school year programs and the summer programs, if applicable.

1. Salaries and Wages: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 6.

2. Fringe Benefits: Includes contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. Travel: Indicate the amount requested for travel of employees only.

4. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $300 or more per unit.

5. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $300 per unit with a useful life of less than two years.

6. Contractual Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. Other: Indicate all direct costs not clearly covered by lines 1–6 above.

8. Total Direct Costs: Show totals for lines 1–7.

9. Total Indirect costs: Indicate the amount of indirect costs to be charged to the program or project. Indirect costs may not exceed 8 percent of "Total Direct Costs" (See 34 CFR Part 75.562).

10. Total Project Costs: Total lines 8 and 9.

Section B—Cost Sharing

1. Program Income: Enter the dollar amount of estimated program income that will be generated by Federal funds if authorized by the Department of Education.

2. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g. State governments, local governments, private organizations, etc.

3. In-Kind Contributions: Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

Section D—Estimate of Unobligated Funds

Not Applicable.

Section E—Budget Narrative

Attach a budget narrative that explains the amounts for individual direct cost categories that may appear to be out of the ordinary, including indirect cost rate and base.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully all the information included in this notice, especially the program purpose, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a one-page abstract; that is, a summary of the proposed project;

2. Describe the programs to be developed and operated by the partnership and provide information on how the purposes of the program are to be met;

3. Describe the proposed project in light of each of the selection criteria in the order the criteria are listed in this notice; and

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only).

(Approved under OMB Control Number 1840–0602.)

Part IV—Assurances

INSTRUCTIONS: Applicants are required to provide the following assurances. This assurance form must be signed by authorized representatives of the legal applicant.

ASSURANCES

The applicant hereby assures and certifies that:

—The partnership will establish a governing body that includes one representative of each participant in the partnership.

—Federal funds will provide no more than 70 percent of the cost of the project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third and any subsequent year.

—A local educational agency receiving funds under this program will not reduce its combined fiscal effort per student or its aggregate expenditure on education.

—A local educational agency receiving funds under this program will use the Federal funds so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case will the Federal funds be used to supplant such non-Federal funds.

Date

Authorized Official(s)

Name of Applicant or Recipient

Street

City, State, Zip Code

[FR Doc. 88–15119 Filed 7–1–88; 8:45 am]
BILING CODE 4000–01–M

[CFDA No. 84.204]

Notice Inviting Applications for Community College Pilot Projects Under the School, College, and University Partnerships Program for Fiscal Year 1988

Purpose: To provide assistance to certain designated community colleges to enter into partnerships with secondary schools serving low-income students and at least one local business or industry in order to provide programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school, and improve their prospects for employment after secondary school.

Eligibility: The program statute, section 525 of the Higher Education Act of 1965, as ameded (HEA), restricts eligiblity under this competition to the following institutions:

(1) The Wayne County Community College of Wayne County, Michigan;

(2) The Community College of Vermont;

(3) The Compton Community College of Compton, California; and

(4) The Metropolitan Community College of Kansas City, Missouri.

Deadline for Transmittal of Applications: August 9, 1988.

Deadline for Intergovernmental Review: September 8, 1988.

Applications Available: July 5, 1988.

Available Funds: $1,000,000.

Estimated Range of Awards: No less than $250,000 per year.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 4.

Project Period: Up to 36 months.

Since this is the first year of this program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates.

Applicable Regulations: 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).

Priority: In accordance with section 525(e) of the HEA and the Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.105(c)(2)(ii), the Secretary has chosen to give competitive preference to applications that indicate that the business or industry partner is engaged in technological or aerospace activities. An application that meets the priority may be selected for funding over an application of comparable merit that does not meet the priority.

Selection Criteria: The Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.210(c), authorize the Secretary to distribute an additional 15 points among the criteria described in section 75.210(b) to bring the total to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Extent of need for the project. (§ 75.210(b)(2)) Five (5) additional points will be added for a possible total of 25 points for the criterion.

Evaluation plan. (§ 75.210(b)(6)) Ten (10) additional points will be added for a possible total of 15 points for this criterion.

For Applications or Information Contact: Mrs. Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, U.S. Department of Education, Room 3066, ROB–3, Mail Stop 3323, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 732–4804.

Program Authority: 20 U.S.C. 1105a–1105d.

Dated: June 16, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–15120 Filed 7–1–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
July 5, 1988

Part VI

The President

Proclamation 5837—National Safety Belt Use Week, 1988

Federal Register
Vol. 53, No. 128
Tuesday, July 5, 1988

Presidential Documents

Title 3—

The President

Proclamation 5837 of June 30, 1988

National Safety Belt Use Week, 1988

By the President of the United States of America

A Proclamation

Today, 32 States and the District of Columbia have laws requiring the use of safety belts, and all 50 States and the District of Columbia have child safety seat laws requiring the use of safety seats and belt systems. These laws were enacted because of the widespread recognition of the tremendous benefits provided by the use of these essential protective devices.

Studies of motor vehicle crashes show that front-seat occupants who do not wear safety belts are twice as likely to be killed or seriously injured as occupants who wear their belts. In 1987 alone, safety belts saved the lives of 2,450 front-seat passengers and prevented thousands of serious injuries. "Buckling up" is clearly one of the most valuable acts we can perform for ourselves and our loved ones.

With the increase in publicity about safety belts and the enactment of safety belt use laws, belt use has been steadily increasing. But there is still a long way to go: Less than half of our citizens are using safety belts regularly. A higher percentage of children are restrained by child seats, but many of these seats are incorrectly installed. Each of us can help improve safety by wearing safety belts at all times, by encouraging others to do so, and by making sure that our children ride in safety seats that are properly installed.

In order to encourage the people of the United States to wear safety belts, to have their children use child safety seats, and to encourage safety and law enforcement agencies and other concerned organizations, individuals, and officials to promote greater use of these essential safety devices, the Congress, by H.J. Res. 485, has designated June 26 through July 2, 1988, as "National Safety Belt Use Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 26 through July 2, 1988, as National Safety Belt Use Week. I call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm our commitment to encouraging universal seat belt use.

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

Ronald Reagan

[FR Doc. 88-15203
Filed 7-1-88; 11:19 am]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3927/Pub. L. 100-359

Indian Housing Act01988. (June 29, 1988; 102 Stat. 676; 6 pages) Price: $1.00...

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

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1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.