1-2-87
Vol. 52 No. 1
Pages 1-228

federal register

Friday
January 2, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Portland, OR, Los Angeles, CA, and San Diego, CA, see announcement on the inside cover of this issue.

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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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: January 29; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Mildred Isler 202-523-3517

PORTLAND, OR

WHEN: February 17; at 9 am.

WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Portland	503-221-2222
Seattle	206-442-0570
Tacoma	206-383-5230

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.

WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

RESERVATIONS: Call the Los Angeles Federal Information Center, 213-894-3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.

WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

RESERVATIONS: Call the San Diego Federal Information Center, 619-293-6030

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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Senior Executive Service Performance Awards

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to prescribe requirements necessary to implement the amendments made to the Senior Executive Service (SES) performance award provisions of the Civil Service Reform Act of 1978 by the Civil Service Retirement and Spouse Equity Act of 1984 (CSRSEA). The regulations cover the total amount of award payments that may be made by an agency to career appointees of the SES and the minimum and maximum amounts that may be paid to individuals. They also prescribe the procedures under which awards may be made.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4625.

SUPPLEMENTARY INFORMATION: On September 24, 1985, OPM published interim regulations in the **Federal Register** (50 FR 38634) that revised § 534.403 on SES performance awards in Subpart D of Part 534 of Title 5 of the Code of Federal Regulations. The revisions implemented changes in the law made by CSRSEA (Pub. L. 98-615 of November 8, 1984). The comment period ended on November 25, 1985. Comments were received from six agencies.

Section 534.403(a) of the final regulations has been revised to incorporate from 5 U.S.C. 5384 the requirement that to be eligible for a performance award a career appointee must have a "Fully Successful" or higher rating of record and to cross reference the provisions on SES performance ratings in the new Subpart C of Part 430 (added March 11, 1986, 51 FR 8396). In regard to these provisions, the service to be recognized by an SES performance award should have been performed as an SES career appointee.

No changes were made in § 534.403(b) to the instructions in the interim regulations for calculating the total amount of awards that may be paid in an agency.

Section 534.403(c) on the minimum and maximum amounts for individual awards remain the same as in the interim regulations.

Section 534.403(d) of the interim regulations provided that OPM shall issue guidance concerning the distribution of performance awards within an agency. Two agencies objected to the guidance OPM issued under the interim regulations restricting the total individual awards in an agency to 35 percent of the agency's SES career appointees and providing limits on how many individuals could receive awards at 17 to 20 percent and 12 to 20 percent of base pay. One agency stated that the guidance limited agencies' ability to motivate and reward the executive corps, and the other stated that the guidance should be much more general and advisory in nature.

The authority for OPM to provide distribution guidance is retained in the final regulations to help assure that there is a reasonable distribution of awards within an agency, that award amounts reflect actual executive performance and are not used just as supplements to basic pay, and that larger awards go to the superior performers but not all awards are paid at or near the maximum amounts. We agree with the agency comments, however, that the guidance should not be stated in terms of specific numerical limitations; and OPM will be issuing revised guidance upon publication of the final regulations.

Section 534.403(e) of the interim regulations required that every agency obtain OPM approval before payment of performance awards. All six agencies commenting on the regulations opposed this requirement. They argued that it was unnecessary in view of the parameters established in law and the OPM guidance provided agencies, unduly delayed payment of awards, and was contrary to the spirit of the Civil Service Reform Act of delegating as much authority to agencies as possible. Four of the agencies recommended that the OPM review be done solely on a post-audit basis and that corrective action be applicable only to subsequent award payments. The other two agencies suggested that the prior approval requirement be imposed only on agencies that want to vary from OPM guidance.

The prior approval requirement in the interim regulations was intended to assure that agencies were in full compliance with the statutory procedures for calculating the award pool and the guidance on distribution of awards. All agencies now have had experience in making payment of performance awards under the provisions of Pub. L. 98-615 and the interim regulations for at least one award cycle, and OPM has had the opportunity to advise agencies on any problems it found in previous proposed payments. In view of these circumstances, and taking into account agency comments, OPM has decided that the prior approval requirement is no longer needed; and the requirement has been deleted from the final regulations.

Even though formal prior approval is no longer required, we strongly encourage agencies to check informally with OPM on the computation of their award pool before payment to assure that the pool complies with statutory and regulatory requirements. We also provide in the regulations that information regarding the distribution of awards, the total amount of awards, and the aggregate payroll or average rate of basic pay used to compute the pool must be provided to OPM no later than 14 days after the date the performance awards are approved to allow for timely post-audit. (Until further notice, we are requesting that agencies provide the requested information in the same format as previosuly.) The final regulations have been amended to provide that if as part of its audit responsibility OPM determines that statutory or regulatory requirements have not been met, agencies shall comply with any OPM directed corrective action.

A new § 534.403(f) has been added to explain how to apply the statutory provisions that (1) performance awards are to be paid in a lump sum (5 U.S.C.

5384); and (2) performance awards when added to basic pay, rank stipends, and physicians comparability allowances must not cause aggregate compensation to exceed Executive Level I pay during a fiscal year (5 U.S.C. 5383). If the performance award would cause the executive's aggregate compensation to exceed Executive Level I pay for the fiscal year, the excess amount is to be paid at the beginning of the next fiscal year in accordance with 5 U.S.C. 5383(b), as amended by Pub. L. 98-615.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 534

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for Part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5384, 5385, 5541.

2. The heading for Subpart D is revised and § 534.403 is revised to read as follows:

Subpart D—Pay under the Senior Executive Service

* * * * *

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES). To be eligible for an award, the appointee's most recent performance rating of record under Part 430, Subpart C of this chapter, must have been "Fully Successful" or higher.

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Three percent of the aggregate career SES basic pay as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Fifteen percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period.

(d) OPM shall issue guidance concerning the distribution of performance awards within an agency.

(e) Agencies shall submit their distribution of performance awards, the total amount of awards, and the aggregate payroll or average rate of basic pay as computed under paragraph (b) of this section to OPM no later than 14 days after the date the performance awards are approved by the agency. If OPM determines that an agency's payments do not meet the requirements of law or regulations, the agency shall take any corrective action directed by OPM.

(f) Performance awards shall be paid in a lump sum except in those instances when it is not possible to pay the full amount because of the Executive Level I ceiling on combined basic pay, performance awards, rank stipends, and physicians comparability allowances during a fiscal year. In that case, any amount in excess of the ceiling shall be paid at the beginning of the following fiscal year in accordance with 5 U.S.C. 5383(b).

[FR Doc. 86-29463 Filed 12-31-86; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Federal Employees Health Benefits (FEHB) regulations to set forth the conditions under which OPM may, at its discretion, waive the participation requirements for individuals seeking health benefits coverage as annuitants. These regulations implement section 103 of the Federal Employees Benefits Improvement Act of 1986 (Pub. L. 99-251).

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632-4634.

SUPPLEMENTARY INFORMATION: Under the FEHB law, to have FEHB coverage after retirement, a retiring employee must have been covered under the FEHB Program for the 5 years immediately before retirement (or, if less than 5 years, for all periods of service during which he or she was eligible for coverage).

Public Law 99-251 gave OPM the authority to waive the 5-year participation requirement when, in our sole discretion, we determine that it would be against equity and good conscience not to allow an individual to be enrolled in FEHB as an annuitant. Because the law specifies that a person's failure to satisfy the 5-year requirement must be "due to exceptional circumstances," we anticipate that such waivers will be granted infrequently and only in the rarest and most unusual circumstances.

On August 20, 1986, we published proposed regulations in the **Federal Register** (51 FR 29655) citing the circumstances under which we might, at our discretion, waive the participation requirement for individuals seeking health benefits coverage as annuitants. One organization provided comments. It expressed concern that individuals retiring earlier than they anticipated because of disability or involuntary separation because of reductions in force or layoffs and those individuals who were misinformed or not advised of the continuation requirements by their employing offices should be given positive consideration under OPM's waiver authority. We wish to point out that while waivers of the 5-year participation requirement will not be granted *solely* for the above reasons, we will carefully consider every valid case where "exceptional circumstances" exist. This was the intent of the waiver authority provided in Pub. L. 99-251. Therefore, we are proceeding to implement the regulations as proposed.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. Section 890.108 is added to Subpart A to read as follows:

§ 890.108 Waiver of requirements for continued coverage during retirement.

(a) OPM may waive the eligibility requirements under 5 U.S.C. 8905(b) for health benefits coverage as an annuitant in the case of an individual who fails to satisfy such requirements if OPM, in its sole discretion, determines that, because of exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant in a health benefits plan under this part.

(b) OPM may grant a waiver as described in paragraph (a) of this section to an annuitant in rare and unusual circumstances if the annuitant shows by the preponderance of the evidence that—

(1) There is evidence demonstrating that the individual intended to be covered as an annuitant;

(2) The circumstance(s) that prevented the completion of the requirements of 5 U.S.C. 8905(b) was (were) essentially outside the individual's control; and

(3) The individual exercised due diligence in protecting the right to coverage as an annuitant.

(c) OPM will not grant a waiver solely because—

(1) An individual's retirement is based on disability or an involuntary separation; or

(2) An individual was misadvised (or not advised) by his or her employing office regarding the requirements for continuation of health benefits coverage into retirement.

[FR Doc. 86–29462 Filed 12–31–86; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR 103.7(d)(1) to delegate to the Director, Records Management Branch, the authority to make certification of copies of files, documents, and records in the custody of the Central Office and amends 8 CFR 103.7(d)(4) to delegate to the Chief, Records Operations Section, Central Office to make certification of the non-existence of an official Service record. This delegation provides more efficient management and expedites responses to requester.

DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3048

For Specific Information: William J. Polli, Chief, Records Operations Section, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–2595

SUPPLEMENTARY INFORMATION: In order to provide more efficient management and expeditious responses to the requester, this rule extends the authority to make certification of copies of files, documents, and records in the custody of the Central Office to the Director, Records Management Branch and extends the authority to make certification of the non-existence of an official Service record to the Chief, Records Operations Section, Central Office. Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management. In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Delegation of authority, District directors, Immigration, Powers and duties of Service officers.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: Sec. 103 of the Immigration and Naturalization Act, as amended; 8 U.S.C. 1103, 31 U.S.C. 9701; OMB circular A–25.

2. In § 103.7, paragraphs (d)(1) and (4) are revised to read as follows:

§ 103.7 Fees.

* * * * *

(d) *Authority to certify records.* * * *

(1) The Associate Commissioner, Information Systems, the Assistant Commissioner, Records Systems Division, the Director, Records Management Branch, or their designee, authorized in writing to make certification in their absence—copies of files, documents, and records in the custody of the Central Office.

* * * * *

(4) The Assistant Commissioner, Records Systems Division, the Director, Records Management Branch, or the Chief, Records Operations Section, Central Office, or their designee, authorized in writing to make certification in their absence—the non-existence of an official Service records.

Dated: December 17, 1986.

Elizabeth Chase MacRae,

Associate Commissioner, Information Systems, Immigration and Naturalization Service.

[FR Doc. 86–29408 Filed 12–31–86; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

[Docket No. 86–046F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry inspection

regulations to increase fees charged by FSIS to provide overtime inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services due to the increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

EFFECTIVE DATE: January 4, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the fees provided for in this document are not new but merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

Mandatory inspection by U.S. Government inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it are borne by the U.S. Government. However, costs for these inspection services on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. These costs are recoverable by the Government.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service of Meat and Poultry, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), to assist in the orderly marketing of various animal products and byproducts not covered by the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by the Food Safety and Inspection Service (FSIS) are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, identification, certification, or laboratory services. The fees to be charged for these services are determined by an analysis of data on the current cost of these services coupled with the increase in that cost due to an increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 or any other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1987 pay raise of 3 percent for Federal employees, the initiation of a new retirement system in 1987, and increased health insurance costs, FSIS published a proposed rule in the **Federal Register** on December 9, 1986 (51 FR 44306) to increase the fees relating to such services.

FSIS did not receive any comments in response to the proposed rule. Therefore, the amendments, as proposed, to the Federal meat and poultry inspection regulations are promulgated herein.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat inspection, Reimbursable services, Voluntary inspection, Certification Service.

9 CFR Part 351

Meat inspection, Certification service, Reimbursable services.

9 CFR Part 354

Meat inspection, Reimbursable services.

9 CFR Part 355

Meat inspection, Reimbursable services.

9 CFR Part 362

Poultry products, inspection, Reimbursable services.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

PART 307—[AMENDED]

The amendments to the Federal meat and poultry products inspection regulations are as follows:

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

2. Section 307.5(a) is revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $22.84 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

PART 305—[AMENDED]

3. The authority citation for Part 350 is revised to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

4. Section 350.7(c) is revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $19.04 per hour for base time, $22.84 per hour for overtime including Saturdays, Sundays, and holidays, and $41.36 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate,

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

this time will include but will not be limited to the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

5. The authority citation for Part 351 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1264; 7 CFR 2.15(a), 2.92.

6. Section 351.8 is revised to read as follows:

§351.8 Charges for surveys for plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of $19.04 per hour for base time, $22.84 per hour for overtime, travel and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) is revised to read as follows:

§351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be $19.04 per hour for base time and $22.84 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14, and $41.36 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 354—[AMENDED]

8. The authority citation for Part 354 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

9. Section 354.101 (b) and (c) is revised to read as follows:

§354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $19.04 for base time and $22.84 for overtime or holiday work.

(c) Charges for any laboratory analysis or laboratory examination of rabbits under this part related to inspection service shall be $41.36 per hour.

PART 355—[AMENDED]

10. The authority citation for Part 355 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

11. Section 355.12 is revised to read as follows:

§355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $19.04 per hour for base time, $22.84 per hour for overtime, including Saturdays, Sundays, and holidays, and $41.36 per hour for laboratory services to reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

12. The authority citation for Part 362 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

13. Section 362.5(c) is revised to read as follows:

§362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $19.04 per hour for base time, $22.84 per hour for overtime including Saturdays, Sundays and holidays, and $41.36 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

14. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 447, 448, as amended, 21 U.S.C. 463, 468; 7 CFR 2.15(a), 2.92.

15. Section 381.38(a) is revised to read as follows:

§381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $22.84 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

The Administrator has determined that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register.**

Done at Washington, DC, on: December 24, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-29488 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Part 318

[Docket No. 80-054F-E]

Production of Dry Cured or Country Ham Not Using Prescribed Methods To Destroy Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Partial waiver of final rule—extension.

SUMMARY: On June 18, 1985, the Food Safety and Inspection Service (FSIS) published a notice announcing its intent to permit producers of dry cured or country ham not using the prescribed methods for destroying trichinae in pork to continue to use non-conforming methods until December 31, 1986. This waiver was provided to protect consumers and to permit dry cured or country ham producers to continue production while research concerning the effectiveness of current processing techniques was undertaken. Due to unavoidable delays in conducting the research, FSIS is extending that waiver to December 31, 1987.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Background

Prior to August 6, 1985, § 318.10(c)(3)(iv) of the Federal meat inspection regulations (9 CFR 318.10(c)(3)(iv)) provided two methods of destroying any possible live trichinae while processing dry salt cured hams, one of which may be used to manufacture country hams. These two

methods have been in use for over 50 years. On February 7, 1985 (50 FR 5226), FSIS published a final rule, effective August 6, 1985, prescribing a third method for destroying live trichinae in dry salt cured hams and which could also be used for country hams. With the development and publication of the third method, FSIS believed it had addressed all dry curing methods currently in use. However, FSIS learned that many country ham producers use methods which still do not meet the requirements of any of the three prescribed methods. These producers use ambient temperatures that may not meet the time/temperature requirements; use a curing process that does not include a mid-cure re-exposure of the ham to salt (overhaul); wash the ham before the required curing time is completed; or in some way do not meet the requirements. For several years, the Agency has permitted the use of nonconforming processing methods since they were traditional, decade-old methods believed to be effective in destroying trichinae. In addition, the Department has not received any reports of trichinosis occurring from ingestion of any dry cured or country hams.

Because of the inability of certain producers to meet the August 6, 1985, effective date and since there were no reported cases of trichinosis from products not treated under the three prescribed methods, FSIS published a notice on June 18, 1985 (50 FR 25202), allowing producers of dry cured or country ham not using the prescribed methods to continue to use nonconforming methods until December 31, 1986, under the following conditions:

1. Any dry cured or country hams in processing prior to August 6, 1985, would be controlled under the previous two methods.

2. Dry cured ham producers using processing techniques not covered by the regulations were to submit a description of their processes, by August 6, 1985, containing the following information:

a. The average and maximum ham weight;

b. The cure and the smoking times and temperatures and, if used, heating times and temperatures;

c. The amount of salt used and how applied and, if applicable, how reapplied and/or replenished;

d. If and when hams are washed.

Dry cured and country ham producers were permitted to continued using their current processes until December 31, 1986, unless:

1. Upon initial review of the process, the Administrator determined that the method was not likely to prove effective; or

2. Data became available to substantiate the effectiveness or ineffectiveness of the method.

In the notice, FSIS stated that research would be conducted between that time and December 31, 1986, to find one or more additional effective processing methods. Because of unavoidable delays, research is still underway. In this connection, a considerable amount of time was consumed in developing a fully satisfactory experimental protocol. Secondly, there were problems in assembling the experimental equipment. Thirdly, there were difficulties encountered in conducting the experiment. Fourthly, there have been some difficulties with the interpretation and analysis of the test date.

The Administrator has determined that it will take at least another year for the necessary research and analysis to be completed. However, a preliminary review of the information submitted by the dry cured ham producers, using processing methods other than those specified in the regulations, indicates that their methods are likely to prove effective in destroying trichinae. Additionally, there have been no problems or reports regarding trichinae in hams manufactured by such producers. Therefore, it has been determined to allow dry cured and country ham producers to continue using their existing methods until December 31, 1987, under those conditions discussed above and and prescribed in the June 18, 1985, **Federal Register** notice.

Done at Washington, DC, on December 24, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-29487 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

15 CFR Part 22

[Docket No. 60468-6205]

Salary Offset for Federal Employees Indebted to the United States Under Programs Administered by the Secretary of Commerce

AGENCY: Office of the Secretary, DOC.

ACTION: Final rule.

SUMMARY: The Secretary is issuing regulations for offsetting a debt against the Federal pay of a current Federal employee who is indebted to the United States under a program administered by the Secretary of the Department of Commerce. These regulations implement debt collection procedures provided for under the Debt Collection Act of 1982 (5 U.S.C. 5514).

EFFECTIVE DATE: This regulation is effective February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Mallet, Chief, Financial Management Division, Office of Finance and Federal Assistance, Office of the Secretary, Department of Commerce, Room HCHB 6827, 14th and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-4593.

SUPPLEMENTARY INFORMATION:

Background

Section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514) authorizes the Federal Government to collect debts owed to it by a Federal employee. Like administrative offset, agencies are directed to cooperate with one another when one agency is owed the debt, but the debtor is the employee of another agency.

Under the law, when the head of a Federal agency determines that one of the agency's employees is indebted to the United States, or is notified by the head of another Federal agency that one of the agency's employees is indebted to the United States, the employee's debt may be repaid by offsetting the debt against the employee's pay. The amount of the offset may not exceed 15 percent of the employee's disposable pay. The employee also has certain due process rights which must be afforded before salary offset deductions are begun.

Executive Order 12291

This proposed action has been reviewed and has been determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

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

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or

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

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant

economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, Stat. 1164 (5 U.S.C. 605(b)). The General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule does not, in itself, impose any additional requirements upon small entities. The proposed rules will affect only individual Federal employees. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in this proposed regulation are not subject to the Office of Management and Budget review and approval.

Discussion of Final Rule

These regulations have been reviewed and approved by the Office of Personnel Management and are based on their published guidelines and standards (5 CFR Part 550, Subpart K). The Department published a proposed rule on salary offsets in the **Federal Register** (51 FR 23241) on June 26, 1986. The proposed rule provided for a 30-day comment period. The comment period ended July 28, 1986, and during that time no comments were received from the public. Therefore, the proposed rule—without any substantive changes made to the text—is being published as the Department's final rule pertaining to salary offsets.

List of Subjects in 15 CFR Part 22

Claims, Debt collection, Government employees, Wages.

For the reasons set forth above, Part 22 is added to 15 CFR Subtitle A to read as follows:

PART 22—SALARY OFFSET

Sec.

22.1 Scope.
22.2 Definitions.
22.3 Pay subject to offset.
22.4 Determination of indebtedness.
22.5 Notice requirements before offset.
22.6 Request for hearing—Prehearing submission(s).
22.7 Hearing procedures.
22.8 Written decision following a hearing.
22.9 Standards for determining extreme financial hardship.
22.10 Review of Departmental records related to the debt.
22.11 Coordinating offset with another Federal agency.
22.12 Procedures for salary offset—When deductions may begin.
22.13 Procedures for salary offset—Types of collection.
22.14 Procedures for salary offset—Methods of collection.
22.15 Procedures for salary offset—Imposition of interest, penalties, and administrative costs.
22.16 Non-Waiver of rights.
22.17 Refunds.

Authority: 5 U.S.C. 5514; 5 CFR 550.1104.

§ 22.1 Scope.

(a) These regulations provide Department procedures for collection by salary offset of a Federal employee's pay to satisfy certain debts owed the Government.

(b) These regulations apply to collections by the Secretary from:

(1) Federal employees who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) These regulations do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions where appropriate.

§ 22.2 Definitions.

(a) "Agency" means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, and 104, respectively;

(2) The United States Postal Service;

(3) The Postal Rate Commission;

(4) An agency or court of the judicial branch; and

(5) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Days" means calendar days.

(d) "Debt" means:

(1) An amount of money owed the United States from sources which include loans insured or guaranteed by the United States; from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, fines and forfeitures (except those arising under the Uniform Code of Military Justice);

(2) An amount owed to the United States by an employee for pecuniary losses, including, but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal or unauthorized obligations and expenditures of Government appropriations;

(iv) Authorization of the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Vehicle accidents where the employee is determined to be liable for the repair or replacement of a Government owned or leased vehicle; and

(vi) Erroneous entries on accounting records or reports for actions for which the employee can be held liable.

(e) "Department" or "DOC" means the United States Department of Commerce.

(f) "Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for basic life and health insurance benefits; and such other deductions that are required by law to be withheld.

(g) "Employee" means:

(1) A civilian employee as defined in 5 U.S.C. 2105;

(2) A member of the Armed Forces or Reserves of the United States, or of a uniformed service, including a commissioned officer of the National Oceanic and Atmospheric Administration;

(3) An employee of the United States Postal Service or the Postal Rate Commission;

(4) An employee of an agency or court of the judicial branch; and

(5) An employee of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(h) "FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 *et. seq.*

(i) "Offset" means a deduction from the disposable pay of an employee to

satisfy a debt with or without the employee's consent.

(j) "Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay.

(k) "Paying agency" means the agency employing the individual and authorizing his or her current pay.

(l) "Payroll office" means the Departmental or other office providing payroll services to the employee.

(m) "Secretary" means the Secretary of Commerce, or his/her designee.

§ 22.3 Pay subject to offset.

(a) An offset from an employee's pay may not exceed 15 percent of the employee's disposable pay, unless the employee agrees in writing to a larger offset amount.

(b) An offset from pay shall be made at the officially established pay intervals from the employee's current pay account.

(c) If an employee retires, resigns, or is discharged, or if his or her employment period or period of active duty otherwise ends, an offset may be made from subsequent payment on any amount due to the individual from the Federal Government.

§ 22.4 Determination of indebtedness.

In determining that an employee is indebted, the Secretary will review the debt to make sure that it is valid and past due.

§ 22.5 Notice requirements before offset.

Except as provided in § 22.1, deductions will not be made unless the Secretary provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to offset an employee's salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs unless such payments are excused in accordance with § 22.15;

(e) The employee's right to inspect and to request and receive a copy of Department records relating to the debt;

(f) The right to a hearing conducted by an administrative law judge of the Department or a hearing official, not under the control of the Secretary, on the Secretary's determination of the debt, the amount of the debt, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed by the Secretary;

(g) The method and time period for requesting a hearing;

(h) That the timely filing of a petition for hearing will stay the collection proceedings; (See § 22.6);

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(j) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(k) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. 7501 *et seq.*, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(l) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 22.6 Request for hearing—prehearing submission(s).

(a) An employee must file a petition for a hearing in accordance with the instructions in the Notice of Intent. This petition must be filed by the time stated in the notice described in § 22.5 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) If the employee files his or her required submissions within 5 days after the deadline date established under § 22.5 and the hearing official finds that the employee has shown good cause for failure to comply with the deadline date, the hearing official may find that an employee has not waived his or her right to a hearing.

§ 22.7 Hearing procedures.

(a) The hearing will be presided over by either:

(1) A Department administrative law judge; or

(2) A hearing official not under the control of the Secretary.

(b) The hearing shall conform to § 102.3(c) of the Federal Claims Collection Standards (4 CFR 102.3(c)).

(c)(1) If the Secretary's determination regarding the existence or amount of the debt is contested, the burden is on the employee to demonstrate that the Secretary's determination was erroneous.

(2) If the hearing official finds the Secretary's determination of the amount of the debt was erroneous, the hearing official shall indicate the amount owed by the employee, if any.

(d)(1) If the Secretary's offset schedule is contested, the burden is on the employee to demonstrate that the payments called for under the Secretary's schedule will produce an extreme financial hardship for the employee under § 22.9.

(2) If the hearing official finds that the payments called for under the Secretary's offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time without producing an extreme financial hardship for the employee.

§ 22.8 Written decision following a hearing.

(a) The hearing official shall issue to the Secretary and the employee a written opinion stating his or her decision, with a rationale supporting that decision, as soon as practicable after the hearing, but not later than 60 days after the employee files the petition requesting the hearing as provided in § 22.5(i).

(b) The written decision following a hearing will include:

(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;

(3) The amount and validity of the alleged debt; and

(4) The repayment schedule if applicable.

(c) In determining whether the Secretary's determination of the existence or amount of the employee's debt was erroneous, the hearing official is governed by the relevant Federal

statutes and regulations authorizing and implementing the programs giving rise to the debt, and by State law, if relevant.

§ 22.9 Standards for determining extreme financial hardship.

(a)(1) An offset produces an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his or her spouse and dependents.

(2) Ordinarily, essential subsistence expenses include only costs incurred for food, housing, clothing, transportation, and medical care.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence expenses described in paragraph (a) of this section, the hearing official shall require that the employee submit a detailed financial statement showing assets, liabilities, income and expenses.

§ 22.10 Review of Departmental records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy Departmental records related to the debt must make arrangements in conformance with the instructions in the Notice of Intent.

(b) *Secretary's response.* In response to a timely request submitted by the debtor, as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Departmental records related to the debt.

§ 22.11 Coordinating offset with another Federal agency.

(a) *When Commerce is owed the debt.* When the Department is owed a debt by an employee of another agency, the Department will submit a written request to the paying agency to begin salary offset. This request will include certification as to the debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) *When another agency is owed the debt.* The Department will use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K, have been met.

(c) Requests by another Federal Department or agency for Department cooperation in offsetting the salary of one of its employees must be directed to the Director for Personnel and Civil Rights, Room 5001, U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Ave., NW., Washington, DC 20230.

§ 22.12 Procedures for salary offset—When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a timely petition for hearing, deductions will begin after the hearing official has provided the employee with a hearing, and the final written decision is in favor of the Secretary.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (15 CFR 21).

§ 22.13 Procedures for salary offset—Types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collections unless the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 22.14 Procedures for salary offset—Methods of collection.

(a) *General.* A debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made; unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Department will make deductions from the employee's pay.

§ 22.15 Procedures for salary offset—Imposition of interest, penalties, and administrative costs.

These charges will be made on installment payments in accordance with the Office of Personnel Management regulations (5 CFR 550.1104(n)) and the requirements contained in the FCCS (4 CFR 102.13).

§ 22.16 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514, these implementing regulations, or any other provision of contract or law.

§ 22.17 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

Dated: December 23, 1986.

Sonya G. Stewart,

Director, Office of Finance and Federal Assistance.

[FR Doc. 86-29461 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-FA-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL87-2-000]

Phased Electric Rate Filings; Statement of Policy

Issued December 23, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Statement of policy.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its policy concerning phased rate increases filed by public utilities. The Commission will generally regard the phases as one for purposes of determining how long the rates will be suspended unless special circumstances make it appropriate to treat the phases separately. The new policy is intended to better balance the public's and the

utilities' interests by ensuring that there is an incentive for utilities to file substantially cost-justified rates.

EFFECTIVE DATE: The policy will generally be applied to filings initially received after January 12, 1987.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Federal Energy Regulatory Commission, 825 North Capitol St. NE, Washington, DC 20426, (202) 357-8470.

SUPPLEMENTARY INFORMATION:

[Order No. 460]

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Commission is revising its policy for accepting and suspending phased rate increases requested by public utilities under section 205 of the Federal Power Act (FPA).[1] In general, the Commission will evaluate phased rate filings based on the total increase requested in all of the phases.

II. Background

The Commission's present suspension policy was enunciated in *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982). Prior to *West Texas*, The Commission's policy had been that a rate filing should generally be suspended for the maximum period permitted by statute if the Commission's preliminary analysis led it to believe that the filing was contrary to the statutory standards, unless circumstances indicated that suspension for the maximum period would lead to harsh and inequitable results.[2] In *West Texas*, the Commission restated and clarified its suspension policy to provide that a utility's proposed increased rates would be suspended for only one day, instead of for five months, if the Commission's preliminary analysis indicated that no more than ten percent of the increase appeared to be excessive.[3]

The purpose of the *West Texas* policy was to strike a fair balance between the needs of the public and the needs of utilities. The Commission noted that the public would benefit because of the strong incentive the policy was intended to provide for utilities to file lower, cost-justified rates. Utilities, on the other hand, would benefit by being able to ensure that they would not be deprived of substantially cost-justified revenues that would have been collected in the absence of a maximum five-month suspension period.[4]

III. Discussion

The Commission notes that it has become increasingly commonplace for utilities to seek phased rate increases in which two or more proposed rate levels are filed concurrently in one rate filing. The Commissison believes that allowing phased increases creates a disincentive for a utility to limit its filed rate increase to its best estimate of what is a cost-justified rate, since by splitting its rates into phases, the utility virtually assures itself that the first phase of the increase will be suspended for the nominal period of one day. The utility, aware of our ten percent policy, normally designs the first step increase in order to obtain a one-day suspension for that phase. However, it also often requests subsequent step increases containing rates which may be substantially excessive and contrary to the statutory standards.

As a result of its experience, the Commission believes that its current policy does not appropriately balance the interests of the public and the utilities. The Commission does not believe that a utility is entitled to be assured of quickly receiving a substantially justified rate increase in a first phase, while at the same time being able to propose in subsequent phases rates the utility may believe the Commission will preliminarily regard as excessive—particularly since the utility is able to start charging these rates after a five-month suspension. The fact that the customers will eventually receive refunds if the subsequent phase rates are ultimately found to be unjust and unreasonable is not a complete answer. The Commission's goal it to encourage the filing of cost-justified rates so that appropriate prices are in effect to the maximum extent possible. In appropriate prices, even though they may be subject to refund, may influence the bahavior of market participants in ways that cannot be undone by means of refunds. The Commission believes it is reasonable to require utilities to decide whether they want the benefit of asking for a substantially cost-justified rate increase (and obtaining a one-day suspension) or the benefit of making a larger request.

For these reasons, the Commission will generally decide whether to suspend a rate for one day or for five months by evaluating phased rate filings (which include any subsequent rate increases filed within sixty days of the utility's originally filed increase) based upon the total increase requested in all phases, except as provided below. If the preliminary analysis suggests that no more than ten percent of the total increase requested in all phases is excessive, a nominal suspension will generally be imposed for all phases. In contrast, if the combined increase appears to be excessive, the Commission will generally suspend all phases for the full five-month period.

The Commission recognizes, however, that phased rate filings are appropriate in certain circumstances. In these instances, the phases will not be evaluated based upon the total increase; they will be evaluated separately, as is presently the case. For example, phased increases are desirable where the difference between the first and second phases is designed strictly to reflect the cost effects of new generating and/or transmission resources; that is, where the proposed effective date for the second phase is tied to the in-service date of the new facility. Similarly, phased increases may be desirable to implement a rate moderation plan, to avoid possible price squeeze issues, or to comply with a settlement agreement approved by the Commission.[5] There may also be other circumstances where strict application of the new policy would lead to harsh and inequitable results and where deviation from the policy would therefore be appropriate. The Commission does not need to decide today what circumstances may warrant a departure in a particular case. Rather, the Commission will consider those circumstances as they may be presented in future cases. However, the Commission stresses that, absent the specific circumstances discussed above, utilities will be required to make a convincing showing that application of the revised policy would be harsh and inequitable.

IV. Effective Date and Administrative Findings

The Commission believes that the most equitable way to apply the revised suspension policy is on a prospective basis. Utilities that have pending cases before the Commission have been justified in relying upon the Commission's previous policy. Therefore, the new policy will be

[1] 16 U.S.C. 824d (1982)

[2] *See* 18 FERC ¶ 61,198 at 61,375.

[3] *Id.*

[4] *Id.*

[5] The Commission has allowed phased rate increases for these types of purposes on several occasions. New England Power Company, 37 FERC ¶ 61,078 (1986) (phases concided with in-service date of new plants); Montaup Electric Company, 35 FERC ¶ 63,052 (1986) (same); El Paso Electric Company, 36 FERC ¶ 61,393 (1986) (phases coincided with rate moderation plan).

applied to all filings initially tendered after ten days from publication of this order in the **Federal Register.**

In accordance with section 4(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(1982), the Commission finds that public notice and comment on this order are unnecessary, since the order simply articulates the Commission's general policy and does not have the force and effect of law. However, the Commission expects that the approach to phased rate increases described in this statement of policy will be adopted, where appropriate.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas pipelines, and Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 2, Chapter I, Title 18 of the *Code of Federal Regulations* is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. In part 2, the Authority citation continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C 972–825r (1982); Natural Gas Act, 15 U.S.C 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C 4321–4361 (1978), unless otherwise indicated.

2. A new § 2.18 is added to read as follows:

§ 2.18 Phased electric rate increase filings.

(a) In general, when a public utility files a phased rate increase, the Commission will determine the appropriate suspension period based on the total increase requested in all phases. If a utility files a rate increase within sixty days after filing another rate increase, the Commission will consider the filings together to be a phased rate increase request.

(b) This policy will not be applied if the increase is phased:

(1) To coordinate with new facilities coming on line;

(2) To implement a rate moderation plan;

(3) To avoid price squeeze;

(4) To comply with a settlement approved by the Commission; or

(5) If the utility makes a convincing showing that application of the policy would be harsh and inequitable and that, therefore, good cause has been shown not to apply the policy in the case.

[FR Doc. 86–29471 Filed 12–31–86; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 37

[Docket No. RM86–12–000; Order No. 461]

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

Issued December 24, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) determines that the average cost of common equity for the jurisdictional operation of electric utilities during the year ending June 30, 1986, was 13.05 percent.

The Commission also modifies the quarterly indexing procedure which establishes and updates the benchmark rates of return. The quarterly updates will no longer be subject to a cap on the charges from quarter to quarter. New benchmarks will be established for filings made on or after Febraury 1, 1987.

These benchmark rates of return will remain advisory only. The benchmark rates of return established as a result of this proceeding are intended to guide companies and intervenors in individual rate cases and to serve as a reference point for the Commission in its deliberations. The Commission may take official notice of them in individual rate proceedings.

EFFECTIVE DATE: The final rule is effective February 1, 1987.

FOR FURTHER INFORMATION CONTACT: For technical information: Marvin Rosenberg, Ronald Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8283.

FOR LEGAL INFORMATION: L. Jorn Dakin, Lori J. Tsang, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8472.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

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I. Introduction

In accordance with § 37.4 of its Regulations, the Federal Energy Regulatory Commission (Commission) is

determining in this order: (1) The average cost of common equity for the jurisdictional operations of public utilities [1] for the year ending June 30, 1986 (hereafter the "base year"); and (2) a quarterly indexing procedure to update the cost estimate and establish benchmark rates of return on common equity for use in individual rate cases. This is the third annual proceeding.[2] The benchmark rate of return established in this proceeding was to have been accorded rebuttable presumption status, but, as discussed below, will remain advisory only.

The Commission' intent is to produce more accurate and consistent rate of return decisions, to involve the Commission on an ongoing basis in consideration of the financial and operating circumstances of the industry, and, ultimately, to reduce the resources directed to this issue by applicants, intervenors, and the Commission.[3] The Commission has previously discussed the statutory requirements applicable to electric utility rate filings subject to the Commission's jurisdication and its reasons for attempting to develop a generic or benchmark approach to the measurement of the cost of common equity for individual electric utilities in rate cases.[4]

On July 21, 1986, the Commission issued a Notice of Proposed Rulemaking (Notice or NOPR) in Docket No. RM86-12-000 [5] proposing to determine: (1) the average cost of common equity for the jurisdictional operations of public utilities for the base year and (2) a quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases.

In the NOPR the Commission proposed to use the same Discounted Cash Flow (DCF) approach to determining and updating the generic rate of return on equity that it had previously adopted in Order No. 420 and in Order No. 442-A.[6] The Commission further proposed to adopt the finding of Order No. 442 that there is no appreciable difference in risk between the wholesale and retail operations of electric utilities.[7] The Commission sought comment on a number of issues with regard to the ratemaking rate to return concept. The Commission also proposed a codification of the procedure for determining the generic cost of equity and reduced filing requirements for rate filings that make use of the generic rate of return on equity. Finally, the Commission proposed to make the generic rate of return on equity applicable on a binding basis to rate filings by electric utilities that possessed certain bond rating characteristics. The Commission asked for comment on this proposal, particularly, on how the proposal would work in conjunction with the burden of proof that the Federal Power Act places upon a utility filing a rate increase.[8]

In response to the NOPR, 29 persons submitted comments: 3 regulatory commission staffs, 19 individual utilities or groups of utilities, an electric utility trade association, 5 individual utility customers or groups of utility customers or representatives of utility customers, and 1 individual.[9] Most comments favored primary reliance on the DCF approach to estimate the cost of common equity and several included comprehensive studies estimating the cost during the base year. Most commenters also favored the Commission's proposal to incorporate an estimate of the industry average flotation cost in the benchmark rate of return. There was general support for the use of a dividend yield-based indexing mechanism. Finally, no commenter favored the proposal to make the benchmark applicable on a binding basis. In fact, most commenters actively opposed it.

In response to the comments and after consideration of the issues involved, the Commission has decided to adopt the procedure used in the second annual proceeding, as described in Order No. 442-A, for determining and updating the benchmark rate of return, except that the updates will no longer be subject to a 50 basis point cap.

As detailed below, the Commission estimates that the average cost of common equity for the jurisdictional operation of electric utilities during the base year was 13.05 percent. This is based on a required rate of return of 13.02 percent and a flotation cost adjustment of .03 percent.

The benchmark rate of return will be updated on a quarterly basis for use in individual rate cases. In January 1987, the Commission will announce the first benchmark rate of return, based on the dividend yields for the last two quarters of 1986.

As discussed more specifically below, the benchmark rates of return will remain advisory only. The benchmark rates established as a result of this proceeding are intended to guide companies and intervenors in individual rate cases and to serve as a reference point for the Commission in its deliberations. The Commission may take official notice of them in individual rate proceedings and the Commission will determine the weight to accord the applicable benchmark rates based on the record in each case. In this regard, the Commission urges participants in rate cases to evaluate the reasonableness of the applicable benchmarks in light of any special circumstances of the filing utility.[10]

TABLE 1.—ESTIMATES OF THE AVERAGE COST OF COMMON EQUITY TO ELECTRIC UTILITIES FOR THE YEAR ENDING JUNE 30, 1986

Commenter [1]	Sample size	Model used [2]	Current dividend yield	Quarterly dividend adjustment	Adjusted dividend yield (percent)	Constant growth rate (percent)	Required rate of return (percent)	Flotation cost adjustment (percent)	Cost of common equity (percent)
PEPCO	107	(3)	NR	NR	8.20	6.25	14.45	.30	14.75
	107	(3)	NR	NR	8.20	6.00	14.20	.30	14.50
EEI	99	420	8.35	.23	8.58	5.50	14.08	.02	14.10

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

[2] The annual proceedings were first established by Order No. 389, Generic Determination of Rate or Return on Common Equity for Electric Utilities, 49 FR 29946 (July 25, 1984) (Docket No. RM80-36-000) (Final Rule) (Issued July 18, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21802 (May 29, 1985) (Docket No. RM84-15-000) (Final Rule) (Issued May 20, 1985) and Order No. 420-A, 50 FR 34086 (August 23, 1985) (Docket Nos. RM85-15-001, *et al.*) (Order Denying Rehearing) (Issued August 20, 1985). The second proceeding resulted in Order No. 442, 51 FR 343 (January 6, 1986) (Docket No. RM85-19-000) (Final Rule) (Issued December 26, 1985) and Order No. 442-A, 51 FR 22505 (June 20, 1986) (Docket No. RM85-19-001, *et al.*) (Order Granting in Part and Denying in Part Requests for Rehearing) (Issued June 11, 1986).

[3] Order No. 420, 50 FR 21803.

[4] *Id.*

[5] Generic Determination of Rate of Return on Common Equity for Public Utilities, 51 FR 27050 (July 29, 1986) (Docket No. RM86-12-000) (Notice of Proposed Rulemaking) (Issued July 21, 1986).

[6] 51 FR 27051-52.

[7] 51 FR 27052.

[8] 16 U.S.C. 824d(e) (1982).

[9] These commenters are referred to by acronyms in the text that follows. *See* Appendix B for a list of the acronyms and the parties that they signify. Initial comments are hereinafter referred to as "IC" and reply comments as "RC."

[10] The primary exception to the application of the benchmark rate of return to a utility during a rate case is when the utility is significantly more or less risky than the average utility.

TABLE 1.—ESTIMATES OF THE AVERAGE COST OF COMMON EQUITY TO ELECTRIC UTILITIES FOR THE YEAR ENDING JUNE 30, 1986—Continued

Commenter [1]	Sample size	Model used [2]	Current dividend yield	Quarterly dividend adjustment	Adjusted dividend yield (percent)	Constant growth rate (percent)	Required rate of return (percent)	Flotation cost adjustment (percent)	Cost of common equity (percent)
	99	420	8.35	.20	8.55	4.80	13.35	.02	13.37
NEP	99	420	8.20	.23	8.43	5.50	13.93	NR	NR
	99	420	8.20	.20	8.40	5.00	13.40	NR	NR
AUS	99	420	8.28	.19	8.47	4.61	13.08	.11	13.19
Southern	NR	(4)	NR	NR	NR	4.01	NR	NR	13.13
	NR	420	8.03	NR	NR	4.01	NR	NR	12.63
Commission	99	420	8.25	.17	8.42	4.60	13.02	.03	13.05
FA Staff	99	420	8.18	.19	8.37	4.60	12.97	.03	13.00
Cooperatives	84	420	7.37	.18	7.55	4.76	12.31	NR	NR

NR = Not reported.
[1] See Appendix A for identification of commenters.
[2] "420" refers to the Commission's "420 Model".
[3] "420 Model" with quarterly dividend adjustments factor (1 + .625g).
[4] Effective rate DCF Model.

II Summary and Analysis of Comments

A. Status of the Rule

1. Introduction

In Order No. 389,[11] the Commission adopted a transitional provision, 18 CFR 37.8, which made the first two annual proceedings advisory only. The Commission stated that during this period the benchmark rates of return "are intended to provide guidance to parties and serve as a point of departure for the Commission in setting allowed rates of return [and to] provide a valid test of the potential consequences of moving to a rebuttable presumption standard . . . ." [12] Order No. 389 established a presumption that beginning with the third annual proceeding the allowed rate of return in an individual case would be the benchmark rate of return in effect at the time a rate schedule is filed.

Commenters address three issues regarding the status of the rule. First, commenters address whether the Commission should make the benchmark rate presumptively the rate of return in individual rate cases. Second, commenters address the standard the Commission should adopt for rebutting the presumption if the benchmark rate is changed from an advisory only to a presumptive rate. Third, commenters address whether the rulemaking should be terminated. These issues are addressed in turn.

2. Advisory Only or Presumptive Benchmark Rate

a. *Comment summary.* All commenters that address this question recommend that the benchmark rate remain advisory.[13] Some commenters argue that the Commission has not had sufficient experience with which to judge the rule.[14] Commenters note that the Commission made substantial revisions in the second proceeding. In this regard, one utility states that there are still unresolved issues, *e.g.*, the ratemaking rate of return.[15] Another commenter states that the cost calculations of the commenters still vary significantly due to differences in the methods for measuring the components of the cost.[16]

One commenter questions the need for a rebuttable presumption since rate of return is so seldom the subject of litigation.[17] Another alleges that during the advisory period, the benchmark rates of return have not been used in any significant way. As a result this commenter questions the value in adding another rate of return analysis which would have to be addressed in individual cases.[18]

b. *Analysis and findings.* The Commission agrees that it has not had enough experience with the rule to justify moving to the rebuttable presumption standard at this time. While the Commission made changes in its estimation procedures over the last year, they were not the cause for the lack of experience with the rule. Rather, the Commission has yet to decide a case in which the benchmark was available and rate of return is an issue. With respect to the differences among commenters relative to the proper method for estimating the cost of common equity, the Commission's findings in the last two proceedings have reduced the number of issues and narrowed these differences significantly.

However, questions remain regarding implementation of a rebuttable presumption rule. Therefore, the Commission has decided not to move beyond the advisory only status for the benchmark in this proceeding.[19]

3. Rebuttable Presumption Standard

a. *Introduction.* The Commission proposed a significant risk difference standard. A utility would receive the benchmark rate if it fell within the midrange for the aggregate risk measures established in this proceeding. In particular, the Commission proposed to use bond ratings as the aggregate risk measure and sought comment on alternative measures.

b. *Comment summary.* The consensus among the commenters is that the rule should allow significant flexibility for challenging the presumption. Many commenters viewed the Commission's proposal as setting up an "irrebuttable" presumption.[20] Commenters generally argue that no single measure can adequately distinguish the relative risk of all utilities.[21] One commenter argues that the Commission's proposed significant risk difference standard is similar to the risk categorization scheme that was proposed in Docket No. RM80-36 and rejected in Order No. 389.[22]

Most commenters argue that there is not enough homogeneity of risk in the industry to support the use of a rebuttable presumption standard.[23]

[11] 49 FR 29946.
[12] *Id.* at 29954.
[13] AEP IC at 4; NEP IC at 22-24; CGE IC at 8-9; BEC RC at 15; RP at 14.
[14] PEPCO IC at 3; BEC IC at 2.
[15] CGE IC at 8.
[16] AEP IC at 4.
[17] AEP IC at 4.
[18] SCE RC at 3.
[19] In the Notice, the Commission proposed to amend its regulations to reduce the filing requirements in individual rate cases. Since the benchmark rates of return will not be implemented as rebuttable presumptions in individual rate cases, however, changing the filing requirements would not be appropriate. Thus the Commission is not changing its filing requirements in this proceeding.
[20] *See e.g.*, PEPCO IC at 3; BEC IC at 2.
[21] *See e.g.*, AEP IC at 3 AUS IC at 61; EEI IC at A-9.
[22] *See* BGE IC at 2-3.
[23] *See e.g.*, AUS IC at 63-66; EEI at Attachment A; Cooperatives IC at 35.

They argue that the record supports a finding of risk heterogeneity not homogeneity. Two utilities recommend that the Commission consider dividing the industry into four risk categories.[24]

Commenters also raised concerns with the Commission's proposed use of bond ratings.[25] They argue that there is inadequate support for the assumption of a correlation between bond ratings and common equity risk.[26] Some present empirical evidence to show a weak relationship.[27] Finally, one commenter argues that the bond rating bands within which utilities would be presumed to be of average risk are aribtrary and unsupportable in the context of determining the allowed rate of return.[28]

c. *Analysis and findings.* As discussed above, the Commission has decided to keep the rule advisory only. By keeping the rule advisory only, the Commission will have an opportunity to further evaluate the implementation issues associated with distinguishing individual company risks from industry average risks.

4. Termination of the Rulemaking

a. *Comment summary.* A number of commenters recommend that the Commission terminate or give serious consideration to terminating the rulemaking.[29] One commenter supports the Commission's generic approach and others appear to endorse the concept.[30]

Critics state that the objectives of the rule are not or will not be met. Commenters allege that using the benchmark rate of return during the advisory period would not have produced more accurate and consistent rate of return decisions. According to FA Staff, in only three of the eight cases in which it filed rate of return testimony did the benchmark rate come reasonably close to the Commission Trial Staff's recommendation.[31] Some commenters also claim that, because of the degree of heterogeneity in the industry, the benchmark rate would only reasonably be applicable to a small number of companies.[32]

Commenters argue that the generic rule has not and probably will not save resources.[33] One commenter states that the cost of service for most cases is settled and the advisory benchmark rates have not had any impact on the rate of settlements.[34] In fact, one commenter also alleges that, during the past advisory period, the benchmark has not been used to any significant degree by rate case participants or the Commission.[35]

Finally, commenters allege that the annual generic proceedings have not resulted in more direct and current Commission involvement in the industry's financial and operating circumstances.[36]

b. *Analysis and findings.* While few commenters support the rule, many commenters actively oppose it. The central areas of disagreement in the evaluation of the generic approach to the rate of return on common equity issue are three. The first concerns the extent to which the quality of rate of return decisions (including the accuracy of estimates of the cost of common equity for the utility in question) is enhanced by the case-by-case approach. Second, there is disagreement on the impacts on interested parties. The third area of dispute is in the valuation of the resources devoted to this issue, including the time and cost to all parties and the Commission.

All three of these issues are factual. However, little or no new empirical evidence is presented in this proceeding bearing on the merits of these issues.

With regard to the resource issue, the Commission observes the cost of service portion of a high percentage of rate filings is settled. To date, no rate filing made since the benchmark rate has been in effect has received a final decision on rate of return. However, the potential benefit from generic resolution of recurrent rate issues remains a desirable objective. Therefore, the Commission believes that the benefits of

$$(1) \qquad k = \frac{D_0}{P_0}(1 + .5g) + g$$

where:

k = market required rate of return

$\frac{D_0}{P_0}$ = current dividend yield (current annual dividend rate divided by current market price)

g = annual dividend growth rate

$(1 + .5g)$ = adjustment factor for quarterly dividend payments

This model, first adopted in Order No. 420, will hereinafter be referred to as the "420 Model."

[24] *See* DE IC at 10; APS IC at 2.

[25] *See* AUS IC at 61, WCG IC at 11.

[26] *See* AUS IC at 61, WCG IC at 11.

[27] *See e.g.*, WCG IC at 13.

[28] *See* SCE IC at 8.

[29] Cooperatives IC at 24–34; FA Staff IC at 29 31; AEP RC at 1–2; AUS RC at 36–37; BEC RC at 14–15; EEI RC at 2–4; PEPCO RC at 1–7; PSC RC at 1–3; SCE RC at 2–4; SW RC at 1; VEPCO RC at 1–2; Second Cooperatives RC at 12–14.

[30] NSP IC at 8 MINN IC at 10; WVCD IC at 2–4; AWW RC at 1.

[31] FA Staff IC at 29–31.

[32] Cooperatives IC at 24–34; FA Staff IC at 29–31; Second Cooperatives RC at 12–14; Cooperatives RC at 7–12. Cooperatives repeat the argument they made in the prior proceeding that the industry is too heterogenous for a benchmark to be useful. They contend that the "industry's lack of homogeneity is obvious from the numerous risk groups within the industry that are recognized by investment analysts and investors." *See* Cooperatives IC at 35. The essence of this argument is that the cost of equity is so widely diverse that a single benchmark is not appropriate. Given the Commission's decision to maintain the benchmark rates of return in an advisory only status, there is no presumption that the benchmark is applicable to any segment of the industry. However, an industry-average benchmark is useful as a point of departure, regardless of the distribution of the costs of equity in the industry.

[33] Second Cooperatives RC at 14; Cooperatives IC at 30.

[34] Cooperatives IC at 27–28.

[35] SCE RC at 2.

[36] Cooperatives IC at 30–31.

further analysis of the generic approach outweigh the costs.

In addition, estimates of the industry average cost of common equity can be used by the Commission in its analysis in individual rate cases. The existence of industry average cost estimates also gives parties an indication of the Commission's current view of capital costs. If the Commission places weight on this analysis in individual rate proceedings, it could narrow the differences among parties.

B. Base Year Cost

1. DCF Model Formulation

a. *Introduction.* In the Notice, the Commission expressed its intention to rely on the discounted cash flow (DCF) method for estimating the rate of return on common equity.[37] The particular formulation of the DCF model that the Commission proposed to rely on is the same one used in Order Nos. 420 and 442-A:

The Commission requested comments on this model.

b. *Comment summary and analysis.* CGE argues that, in the dividend yield computation of the DCF Model, "it would be more correct to use the next period dividend (D_1) instead of the 'indicated dividend rate.' " The DCF Model is prospective, and, as such, the future income stream can only be considered by utilizing the next period dividend.[38]

In Order No. 420, the Commission rejected CGE's model because it "assumes that investors receive dividends once a year. Clearly, [it does not] correctly characterize the real world where dividends are generally paid out to investors on a quarterly basis." [39] For the same reasons, we reject CGE's model in this proceeding.

NEP argues for a modification to model (1), where, instead of multiplying the current dividend yield by one plus .5 times the growth rate, it is multiplied by one plus .75 times the growth rate. NEP concludes that model (1) is "inconsistent with the assumption that, on average, annual dividend increases are a half year away." [40] Similarly, PEPCO argues for a .625 factor rather than the .5 factor.[41]

Model (1) was originally adopted in Order No. 420, wherein the Commission stated that it attempted:

to approximate the average expected annual dividends received during the first year. Assuming that some companies will increase their dividend rate within the first quarter, some during the second quarter, etc., [this model] attempts to approximate the average amount of dividends that the average investor (or, equivalently, investors in the average company) would expect to receive during the first year.[42]

The Commission made a similar assumption in deriving its effective rate of return model in Order No. 442.[43]

Assume that a public utility stock is purchased on January 1 and dividends are paid the following March 31, June 30, September 30 and December 31. If the quarterly dividend is $.25 and the dividend growth rate is 5 percent, the four equally likely scenarios are modeled below:

3/31	6/30	9/30	12/31	Total	Dividend payment date
$.25	.25	.25	.26	$1.01	Rate Increased During 4th Quarter.
.25	.25	.26	.26	1.02	Rate Increased During 3rd Quarter.
.25	.26	.26	.26	1.03	Rate Increased During 2nd Quarter.
.26	.26	.26	.26	1.04	Rate Increased During 1st Quarter.
				1.025	Average.

As can be seen, the average yearly dividend received under the four equally likely scenarios is equal to the current annual dividend rate ($.25×4=$1.00) multiplied by one plus one half of the dividend growth rate (1+.025). This demonstrates the reasonableness of the Commission's choice of model (1), which implements its stated goal of approximating "the average expected annual dividends received during the first year."

AUS argues for a DCF model which measures the investors' effective required rate of return: [44]

Therefore, model (2) does not accurately reflect the cost to the utility and is rejected.[47]

Southern argues for the following DCF model: [48]

$$(2)\quad k = \frac{D_0}{4P_0}\left[(1+k)^{.75} + (1+k)^{.5} + (1+g)(1+k)^{.25} + (1+g)\right] + g$$

where the variables are generally defined the same as in model (1).

In Order No. 442, Model (2) was used by the Commission to measure the investors' effective market required rate of return on common equity.[45] The Commission described the formula as reflecting "the benefits to investors of getting the dividends in four quarterly installments rather than in a lump sum at the end of the first year. These benefits are, of course, the additional return investors may obtain by reinvesting the dividends received quarterly in the same or another comparable investment until the end of the year." [46] Because the investor retains the quarterly payments and can reinvest them, the utility's cost should reflect only the nominal amount of the dividends. Model (2) would thus compensate the investor twice—once by the utility and once through the investor's reinvestment of the dividends in some other alternative investment.

$$(3)\quad k = \left[\frac{D_{10}(1+k)^{.75} + D_{20}(1+k)^{.5} + D_{30}(1+k)^{.25} + D_{40}}{P_0\,(1-f)}\right](1+g) + g$$

where:

k = cost of common equity

D_{10}, D_{20}, D_{30}, D_{40} = average dividend for 1st through 4th quarters, respectively

P_0 = stock price

g = growth rate

f = flotation cost rate

[37] 51 FR 27050.

[38] CGE IC at 3.

[39] Order No. 420, 50 FR 21805.

[40] NEP IC at Appendix C.

[41] PEPCO IC at Attachment A, page 2.

[42] Order No. 420, 50 FR 21806.

[43] Order No. 442, 51 FR 348.

[44] AUS IC at 42. *See also* VEPCO IC at 1.

[45] 51 FR 348.

[46] *Id.*

[47] "The utility is only required to provide the quarterly dividends which give the investor the opportunity to earn these additional earnings through reinvestment." Order No. 442, 51 FR 349. "The return that investors expect from the firms does not include the income that they expect to receive from the reinvestment of dividends. Investors have the opportunity to produce this income by their own actions in reinvesting the dividend portion of their return." Order No. 442-A, 51 FR 22508.

[48] Southern IC at 14.

Southern's proposed model is another variation of the investors' effective required rate of return model. It will be rejected for the same reasons the Commission rejects model (2) proposed by AUS.

Southern also makes the following comment in support of its version of the DCF model: "When a utility pays dividends on a quarterly basis rather than an annual basis, the utility is unable to use those funds in the course of the year. This is an opportunity cost resulting from the time value of money. Therefore, it is more expensive for a utility to pay dividends on a quarterly basis than an annual basis." [49]

Southern's argument is flawed. Contrary to Southern's assertion, it is more expensive, in nominal terms, for a utility to pay dividends on an annual basis rather than on a quarterly basis, if a constant dividend payout ratio is to be maintained. To illustrate this, consider two identical utilities, both of which intend to pay all of their earnings in dividends (*i.e.*, have 100 percent dividend payout ratios), but one pays a single annual dividend ("Utility A") and the other pays dividends quarterly ("Utility Q").

When Utility Q pays its dividends out of earnings quarterly, the investor has the opportunity to reinvest these dividends at the required rate of return and earn an effective rate of return which would be equal to that calculated by Order No. 442's "effective rate model." This is similar to compound interest in a savings account. Conversely, since Utility A does not pay dividends during the course of the year, it has the opportunity to reinvest its earnings. At the end of the year, Utility A will pay a single dividend which, since it is paid out of these higher earnings, is higher than the sum of Utility Q's four quarterly dividends. However, Utility A's rate of return, using this higher end-of-year dividend, is identical to that of Utility Q. The value of Utility A's single end-of-year dividend is equal to the sum of Utility Q's four quarterly dividends plus the investors' reinvestment income.[50]

The investor is indifferent to the utility's dividend payment practice. Utilities which pay dividends more often during the year, but at lesser nominal amounts, will tend to have lower nominal earnings per share than utilities which pay dividends less often, but at slightly higher nominal amounts. However, because both the utility and investor have reinvestment opportunities, the yield to the investor will be the same regardless of the dividend payment policy, assuming equal payout ratios. Therefore, Southern's argument fails.

In conclusion, the Commission believes that the model (1), proposed in the Notice, provides the best approximation of the cost of common equity for purposes of this proceeding.

2. Sample

The Commission proposed to use a sample of 99 electric utilities[51] based on the standards adopted in its first two annual proceedings for three reasons. First, the sample is representative of the electric utility industry as a whole. Second, the relevant price and dividend data are generally available for all of these companies. Finally, the data is readily accessible from more than one source. The sample would consist essentially of those publicly traded electric utilities or combination companies that meet explicit standards:

(1) The utility is predominantly electric;[52]

(2) The utility has its stock traded on either the New York or American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission on a case-by-case basis, based on unique circumstances.[53]

The fourth standard would give the Commission the discretion to eliminate companies for which data may be unavailable or inappropriate.

The Commission also proposed to continue using the following screening criteria in each quarterly calculation to ensure that the data for each company is available and that it can reasonably be employed in a mechanical fashion without producing distorted statistics. Companies would be dropped from the sample for the following reasons:

(i) The company's common stock, through merger or other action, no longer is publicly traded;

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case basis that some other occurrence causes the dividend yield for that company to be substantially misleading and bias the resulting quarterly average.

The first screen would ensure data availability. If a company is no longer publicly traded, it will not have a

[49] *Id* at 14.

[50] The "ratemaking rate of return" issue, discussed elsewhere in this order, raises the question of whether these "earnings on earnings" should be accounted for in the revenue requirement analysis.

[51] *See* Order No. 420, 50 FR 21831. As a result of a recent merger between Cleveland Electric Illuminating Company and Toledo Edison Company to form Centerior Energy Corporation, the number of companies in the sample has been reduced to 99 from the 100 company sample previously used.

[52] Operationally, the Commission has selected all companies classified in the industry groupings "Electric Service" or "Electric and Other Services Combined" by Standard and Poor's Compustat Services, Inc. These industry groupings are supposed to conform as nearly as possible to the Office of Management and Budget Standard Industry Classification Codes. The Compustat "Electric Services" industry grouping (Industry Classification Number 4911) is defined as establishments engaged in the generation, transmission and distribution of electric energy for sale where these services constitute 90% or more of revenues. The industry grouping "Electric and Other Services Combined" (Industry Classification Number 4931) is defined as establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part, though less than 90% of revenues. (Standard and Poor's Compustat Services, Inc., Utility Compustat II User Manual (1985)).

[53] In Order No. 442, three companies which meet the first three standards were eliminated from the sample. Southwestern Public Service Company was eliminated because it uses a non-standard fiscal year. This causes its dividend yield to be out of time with the rest of the companies. CP National was deleted because, in spite of its being listed as a predominantly electric company, only 17.7 percent of its revenues in 1985 were derived from electric sales. Finally, UNITIL was eliminated because it is a new utility and insufficient data are available. 51 FR at 351. The same considerations eliminate these three companies from our base year calculation. Moreover, because of the merger of Toledo Edison Company and Cleveland Electric Illuminating Company to form Centerior Energy Corporation, the sample for the base year dividend yield calculation had decreased from 100 companies to 99 companies. However, adequate data on UNITIL is now available which permits us to include this company in the sample used for purposes of the quarterly indexing procedure. With the addition of UNITIL, the sample for the quarterly indexing procedure is increased to 100 companies in this proceeding.

current market price (and yield). The second screen would eliminate companies for which data would probably be inappropriate in a constant growth DCF model. The third screen would give the Commission the discretion to further eliminate atypical companies when necessary.

a. *Comment summary.* Four commenters support the proposed sample procedure.[54] PEPCO uses five screens, which it states are in accord with the proposed criteria, to reduce the sample to 65 companies.[55] Cooperatives state that the sample used to determine the average dividend yield should be the same as that used to determine the growth rate and that only companies which are reviewed quarterly by both Salomon Brothers and Value Line should be included.[56] EEI states that under the proposed screening criteria only the riskiest companies were excluded from the sample; thus, the average is understated.[57]

b. *Analysis and conclusion.* The Cooperatives' arguments as to the same sample being used for the dividend yield and the growth estimate have been raised in previous proceedings, and we reject them for the same reasons that we gave in these previous proceedings.[58]

Concerning EEI's arguments as to the exclusion of only the riskiest companies, given our decision to continue primary reliance on a DCF model, it would be inappropriate to use data for firms that are not currently paying dividends.[59] EEI is correct, however, that the second screening criteria tends to eliminate only the riskiest companies from the sample. Nevertheless, the two other screens adopted by the Commission provide an appropriate balance. The Commission recently used the first screen when two companies on the sample merged. In addition, the third screen provides sufficient flexibility to eliminate individual companies that might bias the quarterly average. Moreover, the reliance on a median dividend yield further mitigates the effect of extremes.

PEPCO uses two sampling criteria in addition to those proposed by the Commission in the Notice. The two additional criteria proposed by PEPCO are: (1) Whether a company paid out more than 100 percent of earnings in any year since 1980; (2) whether a company is viewed as a speculative investment by *Value Line.*[60] The Commission finds that it would not be appropriate for purposes of a forward-looking DCF analysis to exclude utilities on the basis of events as far back as 1980. PEPCO's additional criteria will therefore not be adopted.

The Commission determines that for its base year estimation it will use the 99-company sample, subject to the screening criteria listed above. As noted *supra,* as of the first quarter of 1987, UNITIL meets the criteria for inclusion in the sample used for quarterly indexing. This sample is, therefore, 100 companies. A list of the companies included in the base year sample appears in Appendix B; those included in the quarterly indexing sample appear in Appendix C.

3. Dividend Yield

a. *Introduction.* In the Notice, the Commission proposed to continue the dividend yield policy adopted in Order Nos. 420 and 442. This policy is to use the median dividend yields of the 100 company sample.[61] The Commission stated that the distribution of dividend yields (and, by inference, the distribution of the cost of common equity) for electric utilities is skewed rather than symmetrical.[62] Under these circumstances, the dividend yields for a greater number of utilities are closer to the median than the mean. The Commission also stated its belief that, compared to the mean, the median is less likely to be affected by extreme values in the data.

In computing the dividend yield the Commission proposed to continue its current policy: (1) The dividend rate used would be the "indicated dividend rate," which is the last declared quarterly dividend times four; and (2) the price used would be the simple average of the three monthly high and low prices for the quarter. The computation of the base year dividend yield would use the average of four quarterly median yields. The computation of the dividend yield used in the quarterly indexing procedure would use the average of two quarterly median yields.

b. *Comment summary.* Few commenters directly address the method proposed by the Commission to compute the dividend yield. Most commenters use the method proposed without discussion.

EEI proposes that the Commission change its method of calculating the dividend yield.[63] EEI asserts that using the midpoint of the mean and median dividend yields would further reduce the influence of extremes.

Southern computes dividend yields by weighting each utility's market price and quarterly dividend by its number of common shares outstanding.[64]

Cooperatives suggest that a six-month yield be used in the calculation of the base year dividend yield.[65] Cooperatives argue that the DCF model is a long-run expectations model. They state that it is often necessary to smooth out short-term dividend yields to reduce the effects of variations which do not reflect investors' long-run expectations, but the yields should not be over-smoothed. Cooperatives recommend using a six-month dividend yield for the base year because the six-month yield is consistent with the yield used in the quarterly indexing procedure, and because there have been dramatic changes in interest rates since the end of 1985.

c. *Analysis and findings.* The midpoint of the mean and the median, proposed by EEI, in computing quarterly dividend yields is an "ad hoc" statistic unsupported by statistical theory and rarely, if ever, used in statistical analysis. The mean is not resistant to the influence of extreme data while the median is resistant.[66] Thus, the midpoint of the mean and median would be less resistant to the influence of extreme data than the median. Therefore, the Commission will continue to rely on the median.

Southern's weighting scheme for dividend yields gives proportionately more weight to the larger companies. The Commission addressed the issue of weighted average dividend yields in Order No. 420.[67] It found that such weighting conflicts with its objective of establishing a rate of return that is respresentative of most utilities.

One of the reasons cited by Cooperatives for proposing a six month dividend yield for the base period computation is consistency with the yield used in the quarterly indexing procedure.

The other reason cited by Cooperatives is that there have been dramatic changes in interest rates since the end of 1985. In these generic proceedings, the Commission adopts a

[54] Southern IC at 12–13; MINN IC at 6; NEP IC at 88; FA Staff IC at 12.

[55] PEPCO IC at A–4.

[56] Cooperatives IC at 93–99.

[57] EEI IC at B–1 to B–2; EEI RC at 8–9.

[58] *See* Order No. 442, 51 FR 351–352.

[59] *See* Order No. 442, 51 FR 352.

[60] PEPCO IC at 4–5.

[61] *See* Order No. 420, 50 FR 21,812; Order No. 442, 51 FR 35253.

[62] *Id.*

[63] EEI IC at B–2.

[64] Southern IC at 14–15.

[65] Cooperatives IC at 100–107; Cooperatives RC at 20–21.

[66] *See, e.g.,* Frederick Mosteller and John W. Tukey, *Data Analysis and Regression,* Addison-Wesley, Reading, MA: 1977.

[67] Order No. 420, 50 FR 21814.

"base year" as the time period over which commenters are requested to make estimates of the cost of common equity. The intention is to have all parties focus on and estimate this cost for the same time period. The Commission could have adopted a "base 6 months". It did not. Use of a dividend yield over only half of the base year will not provide a reasonable estimate of the cost of common equity for the entire year since the cost during the first half of the year may be different than that for the second half. Cooperatives' proposal is rejected.

The Commission finds no reason to change its policy concerning the use of the median dividend yield or the time period for computing the dividend yield for the base year. The base year dividend yield using the average of the four quarterly median yields for the year ended June 1986 is 8.25 percent.[68]

4. Growth Rate

a. *Introduction.* The Commission proposed to rely on both a fundamental analysis and a two-stage growth analysis to estimate the constant growth rate in this proceeding. With a fundamental analysis, the underlying components of dividend growth—retained earnings and new stock sales—are evaluated separately.[69] Similarly, in the two-stage growth analysis, near-term and long-term growth expectations are evaluated separately. Both historical and forecast data are relied on for these analyses. The Commission also proposed to consider other data and methods to estimate expected growth as a check on the reasonableness of the above analyses.

b. *Comment summary.* Ten commenters make growth rate recommendations. The range of these growth rate recommendations is from no more than 3.66 percent (WCG) to as much as 6.25 percent (PEPCO). *See* Table 2, below. The lowest recommendation by a utility or utility group is 4.01 percent (Southern). The highest recommendation by a utility customer or customer group is 4.76 percent (Cooperatives). Three of the 10 commenters (AUS, Second Cooperatives, and FA Staff) recommend a growth rate about 4.60 percent.

TABLE 2.—SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate (percent)	Basis for recommendation
Utilities		
1. PEPCO	6–6.25	1. Historical DPS growth rates. 2. Corroborated with analyst forecasts.
2. NEP	5–5.5	1. Historical DPS growth rates. 2. Base year fundamental analysis.
3. EEI	4.8–5.5	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
4. AUS	4.61	1. Hist. EPS and DPS growth rates. 2. Analyst forecasts. 3. Base year fundamental analysis.
5. Southern	4.01	1. Historical EPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts.
Customers		
6. Cooperatives	4.76	1. Projected fundamental analysis. 2. Corroborated with: a. Historical EPS, DPS, and BVPS growth rates. b. Analyst forecasts. c. Two-stage growth analysis.
7. Second Cooperatives	4.60	1. Projected fundamental analysis.
8. WCG	2.6–3.66	1. Multistage DCF growth analysis.
9. GSA	3.50	1. Historical growth in dividends and price appreciation. 2. Analyst forecasts.
Other commenters		
10. FA Staff	4.60	1. Projected fundamental analysis.

DPS=Dividends Per Share.
EPS=Earnings Per Share.
BVPS=Book Value Per Share.

Most commenters support their recommendations with more than one approach. Growth rate recommendations above 5 percent are based primarily on extrapolation of past growth in dividends and earnings. The bottom end of the growth rate recommendations is based on a variety of data and methods.

The highest recommended growth rate is recommended by PEPCO. For a 65 company sample, PEPCO evaluates dividend per share (DPS) growth rates for all 3, 5, 7, and 10 year periods ending in years 1980 through 1985.[70] PEPCO places most weight on the industry's most recent 3 and 5 year experienced growth rates and chooses a range of expected growth rates of 6–6.5 percent. This commenter compares these rates to projections by *Value Line*, Merrill Lynch, and Salomon Brothers and finds them to be higher but consistent. Using data for the end of the base year, PEPCO's study shows that the medians for these projections range from 5.4 to 6.0 percent for the 65 company sample. Based on these statistics and its judgement, PEPCO recommends a growth rate in the range of 6.00–6.25 percent.[71]

[68] The median dividend yields for the third and fourth quarter of 1985 and for the first and second quarter of 1986 are 9.13, 8.92, 7.79, and 7.16 percent, respectively. *See* Appendix B for a listing of the companies included in the sample and the companies excluded in each of the four base year quarters.

[69] The first component of this growth—growth from retained earnings—is a function of the expected rate of return of common equity (r) and the expected retention rate (b). The second component—growth from new common stock sales—is a function of the amount of new stock sales (s) and the price of the new stock sales relative to book value (v). The latter factor (v) is often referred to as the equity accretion factor.

[70] While PEPCO presents the data for all of these periods, it focuses on the periods ending in years 1983 through 1985. The range of rates so determined is from 5.11 to 6.45 percent. Generally, PEPCO's data shows that the rates are higher the shorter and the more current the time period.

[71] PEPCO IC at 10–12, Schedules 5–7. In its comments, PEPCO criticizes the Commission for relying on a fundamental (br + sv) analysis. The criticisms, however, all relate to a type of fundamental analysis that relies exclusively on actual data or extrapolations of historical data. The Commission has clearly emphasized the use of forecast data as well as the evaluation of recent trends in its fundamental analyses. The Commission has explained that the intention is to estimate the expected long term growth rate. Further, the Commission has never specifically proposed using historical data. Other commenters criticize the fundamental approach for other reasons. *See e.g.*, VEPCO IC at 2; MINN IC at 7. The Commission has addressed such criticisms in previous proceedings. 50 FR 21818–820; 51 FR 355–357.

NEP recommends a growth rate in the range of 5.00 to 5.50 percent. This range is based on two types of data. First, NEP looks at median 5 and 10 year historical growth rates in dividends per share for its 89 company sample—5.56 and 5.46 percent, respectively. Second, NEP estimates the median retention growth at the end of the base year—4.59 percent. NEP states it was not necessary to adjust the retention growth rate for accretion from new stock sales because market prices exceeded book values by a small percentage.[72]

NEP also criticizes the use of a two-stage model to evaluate growth rates for this proceeding. According to this commenter, the two-stage model is only useful when two different growth rates are expected and the timing is predictable. NEP believes that accurate predictions in such detail are unlikely for a large group of companies such as the industry as a whole and investors are unlikely to make such refinements in their expectations.

EEI looks at a greater variety of information in its evaluation of the growth rate and recommend a rate between 4.80 and 5.50 percent. For its analyses, EEI relies on a sample of 91 companies. First, EEI looks at 5 and 10 year historical growth rates in earnings and dividends per share. The range of means and medians for this measures 5.31 to 7.84 percent. Second, EEI uses a fundamental analysis of retention and new common stock growth and estimates the actual growth during the base year as 5.1 percent and the forecasted growth as 5.2 percent.[73] Third, the forecasts of analysts from *Value Line*, Merrill Lynch, Salomon Brothers, and I/B/E/S (Institutional Brokers Estimation System)—whose means and medians ranged from 4.0 to 5.3 percent—are taken into consideration. Fourth, EEI uses a two-stage growth DCF model to determine a composite average rate. For the first and second stages of growth, EEI uses the 5.1 percent estimated actual base year growth rate and the average of the analyst forecasts of 4.8 percent, respectively. The result of this study is a composite growth rate of 5.00 percent.[74]

AUS also uses a variety of methods and data. AUS states that historical and analyst forecast growth measures indicate a range of plausible growth rates between 4.00 and 6.50 percent. Median 5 and 10 year historical growth rates in dividends and earnings per share for its sample of companies during the base year ranges from 4.38 to 6.50. Median values for analyst forecasts from *Value Line*, Merrill Lynch, and I/B/E/S range from 4.00 to 4.80 percent. The mean and median of the whole set of 10 historical and forecast estimates are 4.77 and 4.57 percent, respectively. AUS uses these mean and median values in a two stage growth DCF analysis to produce a composite growth rate of 4.63 percent. AUS also determines that actual fundamental growth from retention during the base year is 4.59 percent for the sample.[75] AUS's recommended growth rate of 4.61 percent is the simple average of these latter two rates.[76]

Southern is the final utility commenter to make a growth rate recommendation. Southern recommends 4.01 percent based on the simple average of three growth rate measures: (1) A 5-year historical earnings per share (EPS) growth rate of 4.06 percent, (2) a sustainable (retention) growth rate of 3.65 percent, and (3) an I/B/E/S average of analysts forecasts of 4.33 percent. Each of these growth rates are calculated on a company-by-company basis and then weighted by each company's total assets. Southern argues that this weighted average is a more representative industry growth rate than the simple average growth rate.[77]

Cooperatives recommend a growth rate of 4.76 percent based primarily on a kind of fundamental analysis (referred to as intrinsic") using data for the second half of the base year.[78] For their 84 company sample, Cooperatives look at historical data, analyst forecasts and a two-stage growth analysis for corroboration. Cooperatives' estimates of average 5 and 10 year historical growth rates in earnings, dividends, and book value per share range from 2.71 to 7.43 percent. The means and medians of analyst forecasts from Salomon Brothers, *Value Line*, Merrill Lynch, and Zack's for the end of the base year range from 4.0 to 5.31 percent. Finally, Cooperatives state that the growth rate to use in a constant growth DCF model should be somewhere between their estimated range of near-term growth rates (4.5 to 5.25 percent) and their range of steady-state growth rates (3.8 to 4.2 percent). These latter ranges are based on the averages of the analyst short-

[72] NEP IC at 6–8, Schedules E–6 and E–7.

[73] EEI determines fundamental growth during the base year by calculating 12 month moving retention ratios (b) and rates of return on common equity (r) for its sample companies for each quarter during the base year. Over the four quarters, the means of the retention growth rates (b × r) for its sample of companies range from 4.24 to 4.71 percent and the medians range from 4.50 to 4.90. EEI places greater weight on the median values and chooses 4.80 as the representative growth rate.

To this value, EEI adds a base year growth rate from new stock sales of .31 percent. This is based on an median market-to-book ratio of 1.22 times, which implies an equity accretion factor (v) of .18 (or 1–1/1.22). The base year new stock sales growth rate (s) is estimated as 1.7 percent based on subtracting the 4.8 retention growth rate (b × r) from the estimated aggregate 1985 common equity growth rate (G) of 6.5 percent. Thus, EEI estimates base year new stock sales growth of .31 (s × v=1.7 × .18).

For its determination of projected fundamental growth, EEI relies on the 3–5 year *Value Line* industry composite average projection of a 5.0 percent retention growth (adjusted from end of year measures to average year measures). Projected new stock sales growth (s) is estimated as .75 based on its own projections from another study (1.6 to 1.7 percent) and projections from *Value Line* (according to EEI, .5 percent). The equity accretion factor (v) is based on the implied industry average market-to-book ratio projection by *Value Line* of 1.19 times. Thus, v equals .16 or (1–1/1.19) and sv=.1 (or .75 × .16).

[74] EEI IC at Attachment B, B–6 to B–27, Appendices 4–18.

[75] AUS determines the base year fundamental growth rate by multiplying the median retention ratio (.319) by the median earnings-to-book ratio (14.39 percent) for its sample of companies. AUS makes no attempt to estimate growth attributable to new stock sales. In reply comments, AUS recommends that the Commission reject the sv component in principle. AUS states that when the market-to-book ratio is less than unity, the sv adjustment is negative, which lowers the growth rate. AUS argues that this lowering of the growth rate lowers the market cost of capital estimate at a time when the marketplace indicates a need for greater growth rates. Thus, AUS believes the Commission should reject the sv component. AUS RC at 10.

[76] AUS IC at 25–37, Schedules 3–5.

[77] Southern IC at 15–17.

[78] Cooperatives estimate the mean and median return on common equity (r) for their sample as 14.74 and 14.87 percent, respectively. These values are based on *Value Line* 3–5 year forecasts during the latter half of the base year. The comparable mean and median retention rates (b) based on *Value Line* forecasts of earnings and dividends per share are .298 and .296, respectively. Using these mean and median values produces retention growth rates of 4.39 percent (.298 × 14.74) and 4.40 (.296 × 14.87). The mean and median values for the retention growth rates derived from the distribution of individual company calculations are 4.45 and 4.34 percent, respectively. Cooperatives recommend a retention growth rate of 4.40 percent since it is the mid-point of these four different estimates.

To this 4.40 percent retention growth rate, Cooperatives recommend adding a new stock financing growth rate of .38 percent. This value is based on a new stock growth rate (s) of 1.30 percent and an accretion factor (v) of .280. The mean and median market-to-book ratios for its sample of companies are 1.38 and 1.39 times for the latter half of the base year. From these values, an equity accretion rate (v) of .28 is estimated (1–1/1.38 or 1–1/1.39). The growth rate in new common stock (s) is determined by subtracting the retention growth rate of 4.40 percent, above, from the *Value Line* forecasts of annual growth in total common equity (G). The mean and median values of these G values are 5.75 and 5.68 percent, respectively. Using these values produces new stock growth rates of 1.35 and 1.28 percent. The mean and median of the distribution of the same calculations made for the individual companies in the sample are 1.34 and 0.84 percent, respectively. Based on these four estimates, Cooperatives recommend using a new stock growth rate of 1.30 percent and, thus, a new stock financing growth rate of .38 percent. This rate, added to the retention growth rate of 4.40, results in a 4.76 overall rate.

term and long-term forecasts for selected company groupings.[79]

GSA recommends a growth rate of 3.5 percent. This rate is based on (1) average concomitant growth in dividends and stock prices over 20 and 30 year holding periods of about 3 percent for Moody's Utility Index and between 3 and 4 percent for unregulated companies and (2) an average Merrill Lynch Steady State earnings per share growth forecast of 4 percent for utility companies during the base year.[80]

In Reply Comments, commenters criticize the GSA analysis.[81] NEP argues that GSA misunderstands the theory underlying discounted cash flow analyses when GSA argues that that price growth must be considered along with dividend growth in growth rate analyses. NEP states that the DCF model, as commonly used, incorporates price growth because future prices are assumed to be determined by dividend growth beyond the date of those prices. NEP also argues that the GSA date is biased by its choice of beginning and ending dates and that if 1985 were included in the analysis different conclusions would result. EEI also states that GSA provides little data in the record to support its conclusions. While stating that its recommendation is based on 20 year holding periods, GSA shows statistics relating only to 5 and 10 year holding periods. Further, SCE criticizes GSA for basing its recommendations only on long-term forecasts of growth while advocating the use of multi-stage DCF models.

In Reply Comments, a second group of cooperatives (Second Cooperatives) recommends a growth rate of 4.6 percent. This recommendation comes from a fundamental analysis based on an evaluation of the data and analyses of the Initial Comments of other commenters.[82]

Also in Reply Comments, the WCG customer group states that a growth rate in excess of between 2.6 to 3.66 percent cannot be justified. WCG bases this statement on single and multiple stage growth DCF analyses where growth rates incorporate declines in expected rates of return from the current 14.7 percent rate.[83]

Finally, FA Staff relies solely on a forecasted fundamental analysis to support its recommended growth rate of 4.60 percent.[84]

c. *Analysis and findings.* In the previous generic rate of return proceeding (Docket No. RM85-19), the Commission estimated the expected growth rate during the year ending June 30, 1985 to be 4.5 percent.[85] On review of the record in this proceeding, the Commission finds a 4.6 percent rate estimate appropriate for the year ending June 30, 1986.

In evaluating the growth rate question, the Commission follows the same general approach it used in the previous generic proceeding. In fact, given that few of the underlying facts have changed over the course of the last year, much of that analysis still applies. The Commission reviews and evaluates the recommendations of the commenters. Table 2, above, summarizes these recommendations and describes the bases for them. The Commission also reviews and evaluates the data underlying commenters' recommendations for use in a fundamental analysis and a two-stage growth analysis. Table 3 categorizes this raw data for comparison purposes. The Commission considers both historical and forecast data relevant and useful for these analyses. As the Commission stated in the last proceeding, "all relevant data should be used and any apparent inconsistencies explained to the extent possible." [86]

TABLE 3.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
	Historical DPS Growth Rates	
5.25	5-year median	AUS
5.37/5.52	5-year mean/median	EEI
5.56	5-year median	NEP
5.64	5-year mean	Cooperatives.
4.63	10-year median	AUS
5.58/5.33	10-year mean/median	EEI
5.46	10-year median	NEP
5.30	10-year mean	Cooperatives.
5-11-6.45	range of medians for selected time periods—see text	PEPCO
	Historical EPS Growth Rates	
6.50	5-year median	AUS
7.84/7.18	5-year mean/median	EEI
4.06	5-year average	Southern.
7.43	5-year mean	Cooperatives.
4.38	10-year median	AUS
5.38/5.31	10-year mean/median	EEI
5.15	10-year mean	Cooperatives.
	Base Year Fundamental Growth Rates	
	(b)(r) + (s)(v)	
4.59	(.319)(14.39); no sv term	AUS
5.1	4.80 + (1.7)(.18)	EEI
4.59	br only; no other data given	NEP
3.65	br only; no other data given	Southern.

[79] Cooperatives IC at 109-135, Schedules 12-15.

[80] GSA IC at 8-11, Exhibits II-V.

[81] AUS RC at 28-31; EEI RC at 28-31; NEP RC at 3-5; SCE RC at 6-10.

[82] Second Cooperatives RC at 19-24. Second Cooperatives project a retention ratio (b) of .30, a return on common equity (r) of 14.5 percent, a new stock sales growth rate (s) of 1.3 percent, and an equity accretion rate (v) of .194. The (s) term is based on the *Value Line* projected common equity growth rate (G) of 5.6 percent less the retention growth rate of 4.35 percent (or .30 × 14.5). The equity accretion rate of .194 is based on a market-to-book ratio of 1.24 times, which Second Cooperatives state is the industry median for the year ending June 30, 1986.

[83] WCG RC at 9-16, Appendices A-D.

[84] FA Staff IC at 2-10, 14-22, and Attachments B, D and E. The components of FA Staff's fundamental analysis—b, r, s, and v—are .30, 14.25, 1.3, and .194, respectively. The retention ratio (b) of .30 is based on (1) mean and median payout ratios for July 1986 of .69 and .68, respectively, (2) average payout ratios for the 1981-1985 period of .747 to .721, and (3) *Value Line* projections during the first half of 1986 generally between .696 and .708. FA Staff's projected rate of return on common equity (r) is based on its review and judgement of (1) *Value Line* 3-5 year projections generally between 14.7 and 14.9 percent, (2) a Duff and Phelps prediction of a decline in earned rates of return, (3) an attrition analysis finding that earned rates may be .6 percentage points below the current average allowed rate of 15.2 percent, and (4) a "sustainable rate of return" analysis which produces a rate of 14.83 percent. The new common stock growth rate (s) of 1.3 percent is based on a *Value Line* forecasted common equity growth rate (G) of 5.6 percent less the above-determined retention growth rate of 4.3 percent (or .30 × 14.25). Finally, FA Staff estimates the average market-to-book ratio during the base year is 1.24 times and projects an equity accretion factor (v) of .194 (or 1 − 1/1.24).

[85] 51 FR at 355.

[86] *Id.*

TABLE 3.—RAW GROWTH RATE DATA—Continued

Rate(s)	Type of rate	Commenter
	Projected Fundamental Growth Rates	
	(b)(r) + (s)(v)	
5.2	5.10 + (.75)(.16)	EEI
4.76	(.297)(14.8) + (1.3)(.28)	Cooperatives.
4.60	(.30)(14.5) + (1.3)(.194)	Second Cooperatives.
4.60	(.30)(14.25) + (1.3)(.194) F	A Staff.
	Analyst Near Term Forecasts	
4.45	I/B/E/S median	AUS
4.3/4.0	I/B/E/S mean/median	EEI
4.33	I/B/E/S average	Southern.
4.73/ 4.67.	Zack's mean/median	Cooperatives.
4.50	Value Line DPS median	AUS
4.8/4.9	Value Line DPS mean/median	EEI
6.0	Value Line DPS median	PEPCO
4.94/ 5.00.	Value Line DPS mean/median	Cooperatives.
4.38	Value Line EPS median	AUS
4.2/4.4	Value Line EPS mean/median	EEI
4.80	Merrill Lynch DPS median	AUS
4.9/4.8	Merrill Lynch DPS mean/median	EEI
5.4	Merrill Lynch DPS median	PEPCO
4.71/ 4.90.	Merrill Lynch DPS mean/median	Cooperatives.
4.80	Merrill Lynch EPS median	AUS
4.7/4.8	Merrill Lynch EPS mean/median	EEI
5.3/5.3	Salomon Brothers' Normalized Growth mean/median	EEI
5.5	Salomon Brothers' Normalized Growth median	PEPCO
5.31/ 5.00.	Salomon Brothers' Normalized Growth mean/median	Cooperatives.
	Analyst Long Term Forecasts	
4.00	Merrill Lynch Steady State EPS median	AUS
4.00/ 4.00.	Merrill Lynch Steady State EPS mean/median	Cooperatives.
4.00	Merrill Lynch Steady State EPS average	GSA

DPS = Dividends per share.
EPS = Earnings per share.

The Commission also reiterates the following:

The determination of the growth rate involves substantial judgment on the Commission's part. While the Commission's perspective is different from that of a security analyst or a prospective stock buyer, it has the same data available to it. It must infer from that data the expectation of investors on the future prospects of companies implied by current market prices. Thus, the Commission's analysis is no more precise than any other judgmental exercise. The Commission's analysis therefore determines a range for the growth rate based on the best available data and within the context of each analytical approach used. The Commission must then decide on a specific rate within that range.[87]

At the high end of the range of growth rate recommendations, the Commission finds those the PEPCO and NEP excessive. Those recommendations are based primarily on past trends in dividends per share. However, as in the last proceeding, analyst forecast data, in which the Commission places greater credence, suggests significantly lower growth in both the near term and long term. Obviously, simple extrapolation of past trends is not adequate in current times.

PEPCO corroborates its recommendation with analyst forecast data suggesting a range of 5.4 to 6.0 percent. However, these data are substantially different than the comparable data of other commenters. This suggests that the smaller samples of companies used by PEPCO for its analyses is unrepresentative of the industry as a whole.

NEP presents a base year retention growth rate "br" calculation of 4.59 percent in addition to its historical dividend per share growth rates. This does not support a 5 to 5.5 percent growth rate recommendation.

At the other end of the recommendations are those of GSA and WCG. Notwithstanding the criticisms that could be made as to the specifics (or lack thereof) of the approaches and data these commenters used to support their recommendations,[88] the Commission believes that the preponderance of evidence in this record supports a growth rate in excess of 3.7 percent.

In general, the Commission finds no appreciable changes in the various measures of the growth rate between the last proceeding and the current one. The 4.6 percent rate adopted here is within the range of 4.3 of 4.7 percent found reasonable in the last proceeding, the same range which the Commission believes is reasonable for this proceeding. The Commission's judgment as to which rate to adopt within this range is influenced by the fact that three of the 10 commenters that made growth rate proposals recommended 4.6 percent. The fact that three commenters—AUS, Second Cooperatives and FA Staff—represent different interests in this proceeding lends credence to the reasonableness of the Commission's determination.

In the Commission's fundamental analysis for this proceeding, the expected growth from earnings retention may have fallen slightly, but this reduction appears offset by an increase in the expected growth from new stock sales. With regard to the Commission's two-stage growth analysis, none of the underlying data used to support the analysis of the last proceeeding has changed in any measurable degree. In the last proceeding, historical 5 and 10 year DPS growth rate estimates of commenters ranged from 4.5 to 5.6 percent, with the majority of estimates in the range of 5.2 to 5.6 percent. In this proceeding, the estimates range generally from 4.6 to 5.6 percent with the majority in the 5.2 to 5.6 percent range. Just as the data in the last proceeding indicated a wide range of historical 5 and 10 year EPS growth rate estimates

[87] *Id.*

[88] WCG presents a statistical study which is purported to be a two stage growth analysis. Based on the scant information provided, it looks more like it incorporates annual changes in the growth rate during the first 5 years. Further, the model gives counterintuitive results. For example, WCG's study begins with a retention growth rate (b×r) of 4.41 percent (or .30×14.7) which declines over 5 years to 3.66 percent (or .30×12.2) but, according to WCG, averages 2.6 percent. WCG's study also shows negative growth in dividends and earnings over the first 5 years but a 5-year book value per share growth rate of 4.1 percent and a 5-year "b×r" growth rate of 4.0 percent. Because of the inadequate support for the study and the questions that arise from reviewing it the Commission places little probative value on its results. With respect to the GSA analysis, the Commission generally concurs with the criticisms made by commenters.

(5.3 to 8.9 percent), the data in this proceeding suggests a wide range (4.1 to 7.8 percent). In the last proceeding near-term analyst forecasts ranged from 4.2 to 4.9 percent. In this proceeding, the range is generally from 4.2 to 5.0 percent. Finally, the average long-term analyst forecast (Merrill Lynch's Steady State EPS growth rate) is 4.0 percent in both proceedings.[89]

The Commission's fundamental analysis suggests a long-term expected growth rate of 4.7 percent. The components of this analysis are addressed in turn below.

For the retention ratio (b), the Commission sees no reason to depart from the range of .28 to .32 that it adopted in the last proceeding and the .30 value as its best estimate. No party has explicitly recommended a value outside this range. FA Staff shows average retention ratios for its 86 company sample of .279 to .317 during the period of 1983 to 1985.[90] The mean and median retention ratio forecasts by *Value Line* based on individual company data are .292 and .30.[91]

AUS, which determined an actual base year retention ratio of .319, argues that a *Value Line* projection of higher common equity ratios supports the notion of the retention ratio rising from its current level.[92] However, FA Staff presents contrary *Value Line* data suggesting that, at the end of the base year, *Value Line* reduced its projected retention ratio from .304 to .240.[93] In the Commission's judgement, a .30 retention ratio is a reasonable estimate of the investors' long-term expectations.

The Commission adopts a range of 14.5 to 14.8 percent as its best estimate of the average expected long-term rate of return on common equity. Since the use of any value within this range combined with a .30 retention ratio produces a 4.4 percent retention growth rate (rounded to the nearest tenth of a percent); it is unnecessary to choose any best estimate within that range.[94] These values are supported by recent average earned rates of return and by *Value Line* near-term forecasts of 14.7 to 14.9 percent.[95] It is also supported by the recommendations of Cooperatives and Second Cooperatives, which are based to a large extent on the *Value Line* forecasts.

FA Staff projects an expected return of 14.25 percent but the Commission believes that this rate is not adequately explained or supported by FA Staff's data.[96] Notwithstanding this criticism of FA Staff's low estimate of the expected rate of return—which, if adopted, would only lower the estimated retention growth rate by about 10 basis points—the Commission is sensitive to the effect of lower interest rates and, with a lag, lower allowed rates of return. The record in this proceeding supports the notion that the high allowed rates of return of recent years are not expected to continue indefinitely. The Commission believes that the dramatic fall in interest rates over recent years, reflected in the fall in the Commission's quarterly estimates of the cost of and benchmark rates of return on common equity, are likely to be reflected in lower allowed rates of return and, eventually, in lower earned rates of return.[97] These trends lend some credence to average expected long-term rates of return below 14.5 percent. But the Commission sees little evidence that significant declines in rates of return are actually projected to any great extent in investor expectations during the base year.

With regard to the average expected long-term rate of new stock sales (s), the Commission adopts a rate of 1.3 percent. This rate was proposed by three commenters and was within the range of values used by a fourth.[98] It is also consistent with a projected growth rate in aggregate common equity of 5.5 to 5.8 percent less the above-determined retention growth rate of 4.4 percent.[99]

The last component of the fundamental analysis is the average expected long-term equity accretion rate (v), which is based solely on the average expected market-to-book ratio.[100] The range of recommended values for "v" is .160 to .280 based on a projected range in market-to-book ratios of 1.19 to 1.39 times.[101] The Commission adopts a value of "v" of .160 (rounded to .2) near the bottom end of the range since this estimate is based on projections from *Value Line*.[102] The other recommendations are based on actual market-to-book ratios during the base year.

Putting the above components together produces an estimate of the average expected long term growth rate of 4.7 percent—4.4 percent from retention growth (.3 times 14.5 to 14.8 percent) and .3 percent from sale of new common shares (1.3 times .2).

In evaluating the two-stage growth analysis, the Commission reiterates that there has been little or no change in the measures for the year ending June 1985 to the year ending June 1986.[103] See Table 3, above.[104] As a result, the Commission's analysis in Order No. 442 which used a first stage (5 years) growth rate of 4.8 percent and a second stage growth rate of 4.0 percent remains appropriate. The Commission

[89] *Cf.* 51 FR 358; Table 3, above.

[90] FA Staff IC at 14 and 15. These values are calculated from FA Staff's reported payout ratios since the retention ratio is equal to one minus the payout ratio.

[91] FA Staff IC at 15. (Calculated from the reported payout ratios per previous footnote)

[92] AUS IC at 36; AUS RC at 8.

[93] FA Staff IC at 15.

[94] The Commission believes that the conversion of rates of return on average common equity—the predominant type of return data referred to—to rates of return on beginning-of-year common equity may still be warranted for the DCF model adopted by the Commission. *See* Order No. 442, 51 Fed. Reg. at 357. However, since the magnitude of the adjustment—about 40 basis points for the range of returns considered reasonable—has only a minor impact on the retention growth rate once a retention ratio is adopted, this issue is subsumed in the Commission's consideration of the appropriate expected long-term rate of return on common equity.

[95] FA Staff IC at 16 and 17. FA Staff's data shows average earned rates of return of 14.5 to 14.9 during the last few years. Also, AUS presents a base year earned rate of return of 14.39 percent. AUC IC at 36.

[96] FA Staff seems to have been unduly influenced by the change in *Value Line's* projected industry average rate of return from 14.9 percent (per issue dated 6/6/86) to 13.9 (per issue dated 6/27/86). The appropriate basis for the expected return are the average expectations over the whole of the base year not the expectations during the last few days of the year. The *Value Line* rate of return projections for the base year prior to the last week of June suggest average expected rates above 14.5 for the year. The Commission believes that FA Staff's conclusions from its attrition and sustainable rate of return analyses are also unduly influenced by projected declines in earned rates of return since all of the data indicates rates of return above 14.25 percent.

[97] Duff and Phelps reports that the average allowed return for 29 rate orders issued in the first half of 1986 was 14.5 percent. FA Staff IC at 18.

[98] Cooperatives IC at 119–120; FA Staff IC at 19–21; EEI IC at B–18 to B–22; Second Cooperatives RC at 20–21.

[99] EEI IC at Appendix 12; Cooperatives IC at 120; FA Staff IC at 21; Second Cooperatives RC at 20.

[100] The term "v" is defined as one minus the reciprocal of the market-to-book ratio.

[101] EEI IC at B–21; Cooperatives IC at 119; FA Staff IC at 21; Second Cooperatives RC at 21.

[102] EEI IC at 13–21. *See also* 51 FR 357.

[103] The Commission finds little merit to NEP's criticism of the use of two-stage models. The issue is not one of accuracy, as NEP puts it; but rather one of laying open to the greatest extent possible the implications of the growth rate recommendations. The constant growth rate is an assumption that simplifies the analysis. As such it is a composite of different growth rates into the future. Just as it is a worthwhile endeaver to break down analysts' assumptions as to the factors underlying their expectations of fundamental growth, it is also helpful to break down the assumptions as to near term and long term growth. There clearly must be greater confidence placed in near term growth forecasts but that does not mean that they must be assumed to apply to the long term as well. The object of the exercise is to make explicit that which is implicit in growth rate analyses so that a more reasoned evaluation is possible.

[104] *Cf.* 51 FR 358.

determines a best estimate of 4.3 percent from its two stage growth analysis.[105]

In summary, the Commission finds the same range of growth rates as in the last proceeding—4.3 to 4.7 percent. The latter is based primarily on a fundamental analysis, the former on a two-stage growth analysis. Within this range, the Commission adopts a growth rate of 4.6 percent.

5. Corroborative Evidence

a. *Introduction.* In the Notice, the Commission requested that commenters support their market required rate of return estimates with corroborative evidence. The Commission did not specify any particular types of corroborative evidence. Commenters were requested to provide comprehensive explanations of alternative models they propose along with their assumptions.

Few commenters offered corroborative evidence. Two commenters submitted risk premium analyses and two others submitted earnings-price and earnings-book ratio analyses. These studies are summarized below along with other evidence that the Commission believes corroborates its findings.

b. *Comment summary and analysis*—i. *Risk premium analyses.* Two commenters present risk premium analyses for corroboration.

AUS offers a collection of seven different risk premium studies. For each of these studies, the commenter states that it adjusts the resulting premium to place each on the same basis, a "basis compatible with A-rated public utility bonds." The range of adjusted risk premiums is from 2.6 to 6.1 percent.[106]

NEP submits two risk premium studies, which it refers to as "interest premium" studies. In these studies, average risk premiums over 1976–1985 were estimated for each of 89 electric utilities based on constant growth DCF cost estimates and the yields to maturity for specific bonds of the individual companies. This commenter used two different constant growth DCF models based on different methods for estimating the growth rates. The studies produced average risk premiums of 2.15 and 2.53 percent. NEP adds these premiums to its estimate of the average yield on the individual utility bonds for the base year ended June 30, 1986 of 10.50 percent. The resulting range of investor return requirements is from 12.74 to 13.08 percent.[107]

WCG raises two criticisms about risk premium analyses generally. First, WCG states that the accuracy of the risk premiums are dependent on the accuracy of the cost of common equity estimates used to derive the risk premiums. Second, WCG claims that the premiums are not constant over time and that recent studies have shown that long term debt may at times be more risky than common equity.[108]

In the last generic proceeding, the Commission reviewed risk premium analyses similar to some of those submitted by AUS and NEP. Generally, the Commission questioned the stability of risk premiums for recent years and the historical relationship between debt and equity securities. The Commission concluded that it "is reluctant to place any great weight on risk premium analyses in general other than those based on a simple ranking of securities."[109]

The Commission is concerned with the validity of the specific risk premiums found in the AUS and NEP studies. Some of the same criticisms identified in the last proceeding apply to the studies prepared by AUS and NEP. In addition to those criticisms, the Commission believes that the risk premiums must be consistent with some DCF analysis.[110] As a result, the AUS studies that imply growth rates significantly above the level supported by the Commission's analysis are suspect. The Commission remains concerned with the applicability of historical risk premiums. Therefore, the Commission sees no merit in pursuing the technicalities of the various studies submitted in this proceeding.

While the Commission has concerns with the quantification of specific risk premiums, it continues to believe in the ranking of securities based on relative risk. The higher the risk associated with a security, the higher is the investors' return requirement. Table 4, below, presents selected interest rates and risk premiums for a wide range of securities.[111] A review of these rates in comparison to the industry average required rates of return shows rates that the Commission believes are consistent over time and consistent across securities based on risk differences. The Commission believes these statistics corroborate its finding in this proceeding.

ii. *Earnings-Price (E/P) and Earnings-Book (E/B) Ratios.* FA Staff and Cooperatives submitted E/P ratio analyses identical to those they submitted in the last proceeding.[112] Both commenters provide estimates of the industry average E/P ratio for comparison with their DCF-derived estimates. These analyses are based on the notion that when the price-book (P/B, or market-to-book) ratio is greater than one, the E/P ratio understates the market cost.

TABLE 4.—SELECTED INTEREST RATES AND RISK PREMIUMS

Security	Year ending—		
	6/30/84 (percent)	6/30/85 (percent)	6/30/86 (percent)
*Selected Interest Rates**			
Treasury Bills (New 3 month)	9.24	8.76	6.82
Commercial Paper (New 3 month)	9.65	9.17	7.41

[105] In light of its understanding that the Merrill Lynch Steady State EPS growth rates are generally projected to apply to periods beginning 10–15 years in the future, the Commission analyzed the effect of lengthening the first stage in its analysis. Assuming that the 4.8 percent first stage rate applied, on average, for 10 years instead of only 5 years, the composite average growth rate applicable to a constant growth DCF model is estimated as 4.45 percent. Alternatively, assuming a 4.8 percent average rate for the first 15 years with the 4.0 percent growth rate beyond produces a composite average growth rate of 4.6 percent. The Commission believes this further supports its finding of a 4.6 percent growth rate in this proceeding.

Cooperatives present a similar two-stage growth analysis for comparison with their constant growth analysis. Cooperatives IC at 140–146. These results are generally consistent with the Commission's.

[106] AUS IC at 43–49, Schedule 7.

[107] NEP IC at 9–11, Schedules E–8 through E–10.

[108] WCG RC at 17–20.

[109] 51 FR 359–360.

[110] For example, applying AUS's range of risk premiums on A-rated bonds produces required rate of return estimates from 13.1 to 16.6 percent. Given an average dividend yield of 8.28 percent, the growth rates implied by returns in this range are from 4.7 to about 8.2 percent. As the Commission finds in Section III.B.4. above, there is no reasonable evidence supporting *long run* industry average growth rates much above 5 percent. The average yield on Moody's new A-rated public utility bonds is 10.52 percent for the year ending June 30, 1986. *See* Table 4, below. Adding the range of risk premiums noted earlier—2.6 to 6.1 percent—to this yield produces a range of required returns from 13.1 to 16.6 percent.

[111] *See* Order No. 442 for a discussion of nominal and effective interest rates and for methods of converting the rates to make them consistent. Since the Commission is here mostly concerned with the relative ranking of the securities, it does not make the conversions in this order. 51 FR 360–361.

[112] FA Staff IC at 10–11, 22–24; Cooperatives IC at 147–152. *See also* Order No. 442, 51 FR 361–362.

TABLE 4.—SELECTED INTEREST RATES AND RISK PREMIUMS—Continued

Security	Year ending— 6/30/84 (percent)	6/30/85 (percent)	6/30/86 (percent)
Treasury Bonds:			
10 Year Constant Maturity	12.11	11.75	9.06
20 Year Constant Maturity	12.25	11.89	9.39
Moody's Public Utility A-Rated:			
Preferred Stock	12.82	12.45	10.05
Moody's Public Utility Bonds:			
Aaa	12.84	12.47	10.08
Aa	13.44	13.10	10.45
A	13.80	13.53	10.81
Baa	14.41	13.96	11.31
Composite Average	13.79	13.27	10.66
Yields on Recently Issued Bonds:			
Moody's New A-Rated	12.98	12.37	10.52
Composite Average	13.52	13.11	10.52
Average Market Required Rate of Return on Common Equity for Electric Utilities:			
Nominal Rate (using 420 Model)	15.25	14.73	13.02
Effective Rate (using 442 Model)	15.90	15.32	13.45
*Selected Risk Premiums***	(Rounded values)		
Treasury Bills (New 3 Month)	6.0	6.0	6.2
Treasury Bonds (10 Year Constant)	3.1	3.0	4.0
Moody's Public Utility Preferred	2.4	2.3	3.0
Moody's New A-Rated Bonds	2.3	2.4	2.5

*Rates are average of monthly rates for specified periods.

**Risk premiums are determined by subtracting the average yield for the specified security from Nominal Rate determined from the 420 Model.

SOURCES: Federal Reserve Statistical Release G.13 (various dates). Moody's 1986 Public Utility Manual. FERC Order Nos. 420 and 442.

FA Staff also compares its estimate of the expected E/B ratio (or rate of return on common equity) with its DCF-derived estimate of the cost. This analysis is based on the theory that when the P/B ratio is greater than one, the E/B ratio overstates the market cost.

AUS criticizes FA Staff's E/P analysis primarily for the same reasons reported in the last proceeding.[113]

In Order No. 442, the Commission extensively reviewed the comparable E/P studies. Generally, the Commission agreed with the criticisms made by AUS.[114] Those shortcomings in FA Staff's and Cooperatives' implementation of this corroborative test remain.

The record in this proceeding does not contain an estimate of the actual average E/P ratio for the base year ending June 30, 1986. As a result, the Commission will not evaluate the consistency of E/P ratios with the final determined base year's cost of common equity estimate.

The E/B ratio test was also reviewed by the Commission in the last proceeding.[115] With an average base year P/B ratio about 1.24 times, the E/B ratio should overstate the market required rate of return estimate. Investors expect to earn a greater return on the book value of their investment than on their market value. The Commission estimates the long-term expected rate of return on book to be 14.3–14.8 percent. These values exceed the final required rate of return estimate of 13.03 percent. Thus, the E/B ratio test corroborates the Commission's finding in this proceeding.

6. Flotation Costs

a. *Introduction.* In the Notice, the Commission proposed to use the flotation cost policy adopted in Orders Nos. 420 and 442:

(1) Utilities would be compensated only for issuance costs, such as underwriters' compensation and legal and printing fees;

(2) This cost would be reflected in an industry average adjustment to the market required rate of return; and

(3) Adjustments for flotation costs would be made through the following formula which reflects recovery of the average annual cost incurred:

$$k^* = \frac{fs}{(1 + s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common stock expected to be issued annually to total common equity

[113] AUS RC at 11–13. *See also* Order No. 442, 51 FR 362.

[114] 51 FR at 363.

[115] *Id.*

The Commission asked commenters to submit estimates of the parameters for the above formula.

b. *Comment summary and analysis.* In the previous proceeding commenters addressed three primary issues. These same issues are raised in this proceeding. One, whether the Commission should make any allowance for costs other than issuance costs, such as costs due to "market pressure" or "market break." Two, whether the recovery of flotation costs should be reflected in the allowed rate of return on common equity or through some other method. Three, whether flotation costs should be recovered through a form of current cost recovery or a form of perpetual amortization.

i. *Type of costs to be recovered.* All commenters who address recovery of issuance costs argue for some form of recovery.[116]

A number of commenters state that market pressure[117] occurs and that public utilities should be compensated for these costs.[118] Cooperatives state that market pressure does not exist.[119] One commenter, NSP, requests the Commission to perform its own study of market pressure costs.

In past proceedings the Commission reviewed a number of market pressure studies and found that they did not demonstrate the existence of market pressure costs. No new market pressure studies are submitted in this proceeding. The Commission finds insufficient evidence of market pressure to initiate its own study or to change its policy regarding market pressure costs.

Two commenters raise the issue of market break.[120] NEP states that market break costs exist and that they should be recovered. AUS is the only commenter to submit evidence on market break.[121] AUS claims that the "short-term" market variability of the Dow-Jones Utility Average for the five years ending in 1985 was 3 percent and for the year ending June 30, 1986 was 3.1 percent.[122]

In Order No. 420 the Commission found that the theoretical argument made by WCG of an equal likelihood of a market break "cost" and a market break "profit" was reasonable.[123] The Commission finds that the evidence provided by AUS shows only that utility stock prices vary, not that there is a market break cost. The Commission finds no evidence in the record to support a change in its policy on market break costs.

ii. *Method of recovery.* Five commenters propose case-by-case methods of flotation cost recovery.[124] DE suggests that current issuance costs and amortized amounts of past unrecovered issuance costs be recovered as cost-of-service items. Cooperatives and Second Cooperatives propose that only current issuance costs be recovered as cost-of-service items.

VEPCO proposes that flotation costs be recovered through a rate base adjustment but did not provide an example of how the adjustment would be applied.[125]

GSA opposes a generic approach to flotation cost adjustment, preferring instead that costs be recovered using the Commission's adjustment formula on a case-by-case approach.[126]

The Commission addressed the issue of company specific flotation cost adjustments in Order No. 420.[127] The Commission continues to believe that an industry average adjustment to the market required rate is the best way of dealing with flotation costs: (1) they have a relatively small quantitative impact, (2) any adjustments are subject to forecasting errors, and (3) overrecovery and underrecovery of these costs by individual utilities should be offset over time.

iii. *Form of recovery.* In this proceeding, as well as in the previous proceedings, most commenters who argue for the perpetual amortization method also argue that the resulting flotation cost adjustment be applied to all equity.[128]

In Order No. 442, the same arguments were dealt with in detail.[129] Basically, there are two methods of recovering flotation costs, amortization and current cost recovery. The Commission explained that for new companies the perpetual amortization method and current cost recovery methods lead to the same recovery of costs. Once the perpetual amortization method is adopted, it must be continued and entails recovery each year on all outstanding stock. Similarly, once the current recovery is adopted, it also must be continued. This method recovers costs as they occur and overrecovery would result if costs of past issues were recovered each year.

Once either method is adopted it should be followed. In Order No. 442 the Commission chose to continue using a form of current cost recovery stating:

> When justified, the Commission has allowed flotation costs in the past. However, it is not clear whether past recovery has been the amount that would be permitted by either the current method or the amortization method. With the generic proceedings, the Commission wishes to start with a clean slate. Thus, the Commission adopted a policy of current cost recovery in Order No. 420 and will continue this policy in the current proceeding.[130]

The record in this proceeding does not support a change in this policy.

c. *Flotation cost adjustment.* As explained in Order No. 420, the following formula determines an increment to the cost of common equity which reflects, on average, the annualized amount of flotation cost incurred by the industry:[131]

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[116] AUS IC at 37–40; CGE IC at 3–4; DE IC at 5–7; EEI IC at B–30; NEP IC at 11; NSP IC at 4; PEPCO IC at A–13; Southern IC at 17–19; UPL IC at 3–4; VEPCO IC at 2–3; FA Staff IC at 11–12; Cooperatives IC at 92; GSA IC at 13; AWW IC at 33; Second Cooperatives RC at 27–28.

[117] "Market pressure" cost is the alleged decline in the price of a stock at the time of the news of a new issue of stock.

[118] AUS IC at 38; EEI IC at 8–30; NEP IC at 11; NSP IC at 4–5; PEPCO IC at A–13; Southern IC at 18; AWW IC at 33–34.

[119] Cooperatives RC at 33–34.

[120] AUS IC at 40; NEP IC at 11.

[121] "Market break" cost is the alleged effect of the reduced price received by a utility when it sells stock during a period of short-term market decline.

[122] AUS defines "short-term market variablility" as the ratio of the low price for a given month to the high price of the prior two months.

[123] Order No. 420, 50 FR 21824.

[124] DE IC at 6–7; VEPCO IC at 2–3; Cooperatives IC at 92; GSA IC at 13; Second Cooperatives RC at 27–28.

[125] VEPCO IC at 3.

[126] GSA IC at 11–14.

[127] *See* 50 FR 21826.

[128] AUS IC at 40; CGE IC at 3–4; EEI IC at 32–34; NEP IC at 11; NSP IC at 4; PEPCO IC at A–13; Southern IC at 18–19; UPL IC at 3–4.

[129] 51 FR 364–365.

[130] Order No. 442, 51 FR 365.

[131] Order No. 420, 50 FR 21826.

$$k^* = \frac{fs}{(1 + s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common stock expected to be issued annually to total common equity

$$k^* = \frac{fs}{(1 + s)}$$

where:

k^* = flotation cost adjustment to required rate of return.

f = industry average flotation cost as a percentage of offering price.

s = proportion of new common stock expected to be issued annually to total common equity.

The range of estimates for "f", issuance costs as a percent of gross sales price, are in a narrow range from 2.05 to 2.59 percent.[132] The differences are due to the company samples used in commenters' analyses.

The Commission finds the analyses of EEI and FA staff, which include the same twelve new issues, to be the most complete and adopts their estimate of 2.4 percent.

The expected proportion of new common equity isssued annually, "s," was found in the growth rate section (III.B.4, above) to be 1.3 percent. Applying the 2.4 percent estimate of issuance costs, f, and the 1.3 percent estimate of new equity financing, s, to the above formula, the Commission finds a flotation cost adjustment of 3 basis points.[133]

7. Jurisdictional Risk

Concerning the question of whether there is a difference in risk between the wholesale and retail operations of electric utilities, the Commission proposed to adopt the finding of Order No. 442 that there is no appreciable difference in risk due to this factor.[134]

a. *Comment summary.* AUS and NEP support the proposed finding that there is no difference in jurisdictional risk.[135] APPA argues that there are differences in jurisdictional risk due to differences in rates of return allowed by different regulatory commissions and differences in risks of providing different kinds of service.[136] BEC claims that wholesale service is riskier than retail service because there is more risk due to uncertainty in the level of the customer's load since the customer can serve its load from other sources or from its own generation.[137] WCG argues that the Commission has recognized that its policies with regard to Construction Work in Progress (CWIP) in rate base result in a transfer of risk from investors to ratepayers. WCG argues that to the extent that different jurisdictions have different policies regarding CWIP in rate base, there and differences in jurisdictional risk.[138]

b. *Analysis and conclusion.* 1All of the arguments made by the commenters as to the existence of a difference in overall risk between utility operations subject to this Commissions jurisdiction and the nonjurisdictional operations of utilities have been raised in prior proceedings. No commenter has pointed out any change in circumstances which would change the basis for the Commission's prior finding that there is no significant difference in overall risk between operations of utilities under the Commission's jurisdiction and non-jurisdictional operations. The Commission therefore continues to find that there is no significant difference in jurisdictional risk.[139]

C. Quarterly Indexing Procedure

1. Introduction

In the Notice, the Commission proposed the quarterly indexing procedure established in Order No. 442 as modified on rehearing by Order No. 442-A.[140] In that indexing procedure, quarterly changes in the cost of common equity are tied to changes in utility dividend yields. The average cost of common equity is indexed to the average of the median dividend yields for the two most recent calendar quarters for the company sample. The benchmark rate of return on common equity is set equal to the cost of common equity except where the quarter-to-quarter changes exceed 50 basis points. Thus, the quarter-to-quarter changes in the benchmark rates of return are capped at 50 basis points. The intent of the cap was to smooth out fluctuations in the benchmark rates of return and, by implication, allowed rates of return, over time. The initial benchmark rate established in each annual proceeding is not subject to the 50 basis point cap.

The Commission requested comments on any changes that would improve the proposed indexing procedure.

2. Comment Summary And Analysis

While some commenters supported the current indexing procedure,[141] other commenters suggested four kinds of changes: (1) The use of a period different that two quarters to calculate the dividend yield applied in the indexing, (2) elimination of the 50 basis point cap, (3) the use of the cap as a "trigger" mechanism which, when exceeded, would cause the indexing procedure to

[132] AUS IC at 38; EEI IC at B-30; PEPCO IC at 13; UPL IC at 2 and FA Staff IC at 24. PEPCO performed a study of these costs between 1970 and 1986 and found the average yearly cost to be 4.1 percent. It notes that the costs declined in recent years due to changes in industry financing practices, more intensive competition among underwriters and higher per share stock prices. For the year ending June 30, 1986, PEPCO found a median cost of 2.5 percent.

[133] Flotation Cost Adjustment = 0.024(0.013) ÷ 1.013 = 0.0003.

[134] *See* 51 FR 366.

[135] AUS IC at 60; NEP IC at 19.

[136] APP IC at 15-17.

[137] BEC RC at 12-13.

[138] WCG IC at 6.

[139] *See* Order No. 442, 51 FR 366.

[140] *See* 51 FR 366; 51 FR 22509.

[141] NEP IC at 19; EEI RC at 5; NEP RC at 19; EEI RC at 5; NEP RC at 8; SCE RC at 10.

be suspended, and (4) an adjustment for changes in growth expectations in addition to adjustment for changes in the dividend yield.

a. *The six-month dividend yield and the 50 basis point cap.* Two commenters support the use of a six-month dividend yield for indexing but reject the 50 basis point cap.[142] Three commenters support the proposed use of both a six-month yield and a 50 basis point cap.[143] MINN recommends the use of the average dividend yield over the latest 20 trading days and WVCAD proposes the most recent month's average of daily closing prices.[144] VEPCO proposes a three-month period.[145] The shorter time periods are proposed primarily to make the benchmark rates more current. WVCAD, in proposing a time period shorter than two quarters, argues that the two-quarter option (1) violates fundamental financial principles underlying the DCF method, (2) offers no more rate stability than the "cap" already provides, and (3) results in less accuracy in the rates of return.

Three commenters state that a period longer than two quarters should be used to calculate the dividend yield employed in the indexing procedure.[146] These commenters proposed using a twelve-month period for the yield for the following reasons: (1) It reduces the mismatching of the time-frame used for the dividend yield calculation and the growth calculation, (2) it is more consistent with the use of a twelve-month dividend yield in the annual proceedings, (3) it provides a more stable benchmark, and (4) it minimizes the frequency of the application of the cap.

Four commenters express the view that the 50 basis point cap should be eliminated.[147] CGE argues that the cap prohibits adjustments to the benchmark rate of return to reflect current market conditions. Moreover, CGE argues that since the cap is not applied to the annual proceeding, it should be eliminated from the quarterly adjustment. PEPCO wants to abandon the cap but extend the period for calculating the dividend yield from six months to twelve months. FA Staff argues that the use of the cap is contrary to one of the goals of the generic rate of return, namely, "more accurate" rate of return decisions.

Other commenters state that the cap is beneficial.[148] Cooperatives, however, support the cap only as a "trigger" mechanism which, when exceeded, would cause the indexing procedure to be suspended and a new benchmark rate of return to be established. They argue that "[w]hen large movements in stock prices and dividend yields occur, there is a good reason to suspect that the growth rate in the constant growth model may have also significantly changed."[149]

As the comments demonstrate, the 50 basis point cap has distorted the benchmark rates of return by limiting adjustments that would reflect current market conditions, and current capital costs. During 1986, the cap was applied to the second, third, and fourth quarterly benchmark rates of return under Docket No. RM85-19-000 to the point where it now exceeds the estimated market cost of common equity by .82 percentage points. Although the estimated cost of common equity fell 2.32 percentage points during 1986, the cap limited the reduction in the benchmark to 1.50 percentage points. Similar situations may occur in the future during changing cost conditions.

The Commission believes that reconsideration of the cap is warranted. A presumption behind the use of the cap was that it would not come into play very often. The benchmark was not intended to diverge from the cost of common equity significantly or for very long periods.

The use of a six-month dividend yield should provide the measure of stability that led to the 50 basis point cap, which was originally coupled with a three-month dividend yield. As evidence from three comments, the decision as to the length of the time period over which the dividend yield should be computed is a matter of judgment. The arguments presented in this proceeding are not substantially different from those presented in the previous proceedings and which the Commission has considered and evaluated.[150] The Commission thus reaffirms the use of a six-month dividend yield in the quarterly indexing procedure.

b. *Changes in growth expectations.* Some commenters express the view that the quarterly indexing procedure should reflect changes in investors' growth rate expectations.[151] These commenters point out that, under the proposed procedure, the base year growth rate estimate is used in estimating the cost of common equity for periods up to one and half years after the base period ends. They state that there is an inverse relationship between dividend yield and expected growth. According to AUS, the changes over time in the expected growth rate are so significant that the use of the base year's estimated growth rate, together with a more current dividend yield, results in a "mismatch" that could lead to substantial errors in the estimated cost of common equity. This mismatch is said to prevent the updated return from reflecting current capital market conditions.[152]

It should be noted that, in Order No. 420, the Commission found that the long-run constant growth rate for the base year ending June 1984 was 4.3 percent. In Order 442, for the base year ending June 1985, the long-run constant growth rate was found to be 4.5 percent. In this proceeding, the base year constant growth rate is found to be 4.6 percent. These small differences between the growth rates for the three base years are consistent with the view that the industry's expected growth rate changes slowly.

The Commission continues to believe that investors' growth rate expectations are relatively stable over the length of time at issue. In addition, the specific proposals of commenters to incorporate changes in growth rate expectations into an indexing procedure are inadequate.

No new arguments are presented which would cause the Commission to modify its position not to subject the growth rate to the quarterly indexing procedure.[153]

[142] FA Staff IC 25; Cooperatives IC at 153.

[143] NEP IC at 19; EEI RC at 5; NEP RC at 8; SCE RC at 10. EEI states that it "does not object to updating the benchmark with the industry average dividend yield using the two most recent quarters of market data provided that the use of the 50-basis point cap be continued.

[144] MINN IC at 7; WVCAD IC at 10. In times of "market ambivalence", WVCAD suggests it might propose a longer period, up to the most recent quarter.

[145] VEPCO IC at 3.

[146] AUS IC at 57-59; NSP IC at 5; PEPCO IC at A-15.

[147] CGE IC at 4; PEPCO IC at A-15; and FA Staff IC at 25; Second Cooperatives RC at 31.

[148] AUS IC at 57-59; NEP IC at 19; NSP IC at 5; WVCAD IC at 5; EEI RC at 5; SCE RC at 10; Southern RC at 4. MINN believes that the 50 basis point cap should be used as a limit on upward adjustment but removed as a limit on downward adjustments. MINN IC at 8.

[149] Cooperatives IC at 155; *see also* Southern RC at 4-5; Second Cooperatives RC at 31.

[150] *See* 51 FR 357.

[151] AUS IC at 57-59; NSP IC at 5-6; VEPCO IC at 3; DE IC at 4.

[152] AUS urges the Commission to adopt a method of time-matched (i.e., synchronized) dividend yields and growth rates each with a quarterly cap of 50 basis points variation. Moreover, AUS suggests that the indexing be done quarterly using a twelve-month average. AUS IC at 57-59.

[153] 51 FR 367-368. AUS claims that the Commission has misunderstood its concern about the mismatching of the dividend yield and the growth rate. On the contrary, the Commission has expressed its problems with determining a procedure for updating the growth rate component in the DCF model on a quarterly basis. The Commission has also indicated that, in its judgment, the expected growth rate changes very slowly in

Continued

D. Ratemaking Rate of Return

1. Introduction

The Notice sought comments with regard to a concept that the Commission has previously identified as the "ratemaking rate of return." In Order No. 442 the Commission described the ratemaking rate as the rate of return which, when applied to the particular rate base determined by the regulatory agency, allows the electric utility to provide the investors with their effective required return.[154] The distinction between the investors' expected return from a utility common stock and the ratemaking rate of return is based upon the recognition that the investors' rate of return from an investment in a utility's common stock may be treated as having three different components. The first component is the payment received as return on funds provided by investors for the utility's rate base.

The second component of the investors' expected return is the investors' return from the investors' reinvestment of dividend payments made by the utility during a given year. In the Notice, the Commission proposed to use the Order No. 420 version of the DCF model, which would not include this second component in the benchmark rate. In Order No. 442–A, the Commission recognized that it was unnecessary to include this component of return because "[b]y paying dividends quarterly, the firm makes it possible for the investor to reinvest the dividends during the year"; thus "the firm does not have to pay out the income received from this reinvestment of dividends since investors produce this income by their own actions." [155]

The third component of the ratemaking rate of return concept is that a utility has an opportunity to reinvest intra-year retained earnings, which reduces the rate of return ratepayers must pay to allow the utility an opportunity to pay out the amount required. The Notice cites the Commission's Staff Report which states that "in a fashion analogous to the investors' opportunity for intra-year reinvestment of dividends, the firm can increase income through the intra-year reinvestment of its earnings." [156] The Notice concludes that "if the ratepayers paid in at the estimated 'payout rate' [of return] the firm would have the opportunity to earn more than it is required to pay out." [157]

The Notice sought comments on three questions in connection with the third component of the expected rate of return: (1) Does a utility have an opportunity to earn a higher rate of return than the Commission allows through the utility's ability to reinvest its intra-year retained earnings through an inconsistency in the way rate base is defined or estimated for cost of service purposes or through some other mechanism; (2) if the utility does in fact have such an opportunity, what should the Commission do about it; and (3) if it is determined that the allowed rate of return should be adjusted, how should this adjustment be accomplished? [158] The Commission commented that if "the concept involves the firm's intra-year reinvestment of earnings, this determination entails the empirical questions of how often a company compounds its earnings and at what rate." [159]

In Order No. 442, the Commission initially adjusted the investors' effective rate of return to take account of the imputed return component from intra-year reinvestment of retained earnings. The adjustment was referred to as the ratemaking rate of return adjustment.[160] On rehearing, however, the Commission ultimately decided that "there are a number of unresolved questions with regard to some of the stated purposes of the ratemaking rate of return." [161] The Commission determined then to adopt instead the model that it had previously adopted in Order No. 420 since that model excluded from the allowed rate of return "the income that . . . [investors] . . . expect to receive from the reinvestment of dividends." [162] At the same time, the Order No. 420 model did not involve attempting to exclude from the allowed rate of return the return associated with reinvestment of retained earnings.

2. Comment Summary

In response to the Notice, most of the commenters opposed implementation of the ratemaking rate of return concept beyond the use of the Order No. 420 model. The following are among the major criticisms: (1) The application of the concept requires the assumption that retained earnings are invested periodically in rate base; [163] (2) the concept is incompatible with the DCF method because the DCF method assumes that the market price of a company's stock already reflects the investors' awareness of the fact that reinvestment of dividends is occurring or may occur; [164] and (3) the concept involves the unrealistic assumptions that the cash that accrues temporarily prior to being paid out as dividends is reinvested at the allowed rate of return, and the income from such investments is tax-free.[165] Because the Commission has determined not to implement the ratemaking rate of return concept beyond the Order No. 420 model at this time, the criticisms of the concept will not be dealt with in detail.

Some commenters do urge the Commission to proceed with the full implementation of the concept as set forth in the Staff Report. FLA supports the concept generally but does not address the issues of implementation discussed in the Notice. [166] Although GSA agrees with the concept, it would support adjusting the cash working capital allowance rather than the allowed return.[167] MINN takes a similar position.[168] WVCAD discusses why it supports the concept behind adjusting the generic rate of return to recognize the firm's ability to reinvest intra-year retained earnings, but does not address the issues regarding implementation set forth in the NOPR. [169] WCG asserts that the ratemaking rate of return should be adopted, but does not address the question of how the concept should be implemented other than simply to assert that the Commission should use a daily compounding model because a utility receives a portion of its earnings every day.[170]

3. Conclusion

The comments on the ratemaking rate of return support our conclusion that a number of issues regarding the

comparison with the dividend yield and that it is not unreasonable to assume the base year growth rate is a good estimate for the growth rate applicable to the following year. The Commission believes its judgment has been confirmed by the relatively modest changes in the growth rates it has adopted in the first three annual proceedings.

[154] *See* 51 FR 349.

[155] 51 FR 27052.

[156] *Id.*

[157] *Id.*

[158] A Staff Report by the Commission's Office of Regulatory Analysis suggested that not only is the firm's "pay out" rate of return "less than the investors' effective required [rate of] return [because of the opportunity for the investor to receive income from the reinvestment of dividends], but also that the rate [of return] which ratepayers have to pay in is less than the firm's required 'pay out' rate [of return]." 51 FR 27053.

[159] *Id.*

[160] *See* 51 FR 350.

[161] 51 FR 22500.

[162] 51 FR 22508.

[163] AUS IC at 53; EEI IC at 25.

[164] BEC IC at 9; EEI IC at 24.

[165] NEP IC at 16.

[166] FLA IC at 1–9.

[167] GSA IC at 14.

[168] MINN IC at 9.

[169] WVCAD IC at 32.

[170] WCG IC at 10.

implementation of ratemaking rate of return remain. These include such empirical issues as the assumptions to be made concerning the tax treatment of returns from reinvested retained earnings, how frequently such earnings are to be compounded and at what rate, and whether other aspects of the utility's cost-of-service are affected. Commenters that favorably address this issue have failed to provide adequate evidence for resolution of these issues. These are formidable issues which we believe are not susceptible to resolution at this time. The Commission has therefore determined not to apply the ratemaking rate of return concept to adjust the generic rate of return.

E. The DCF Method/Cost of Capital Standard

1. Introduction

In the Notice, the Commission proposed to adopt the same DCF model as proposed and ultimately adopted in the first two annual generic rate of return proceedings.[171] It also requested comments on whether there are reasons for the Commission to depart from placing primary reliance on the DCF method.[172]

2. Comment Summary

Four commenters question the Commission's use of the DCF method for purposes of determining allowed rates of return. Both APPA and AWW argue that a rate of return based solely on the cost of capital, which is what the DCF method attempts to estimate, is inadequate and unsupportable.[173] APPA argues that the cost of capital is but one factor the Commission may consider in establishing a fair rate of return. That factor may be outweighed by other factors, and in some cases need not be considered.[174] AWW contends that the allowed return on common equity "must enable the utility to: (1) Attract capital on reasonable terms, *and* (2) realize a return on book equity comparable to other enterprises." [175]

APPA also argues, as it has in the past, that it is incorrect to apply a DCF based allowed rate of return to a book value rate base.

APPA's concern is that there is a fundamental difference between an economic rate of return and an accounting rate of return that precludes their use in the manner proposed by the Commission.[176] In APPA's view, there has been substantial research since the 1970's which supports its conclusion.[177]

AWW and AUS take a somewhat different tack in raising questions about the use of the DCF method. According to AWW, the "DCF formula is premised on the assumption that the market price of the utility's stock reflects the stock's underlying value." [178] AWW argues, however, that recent studies show that this assumption is a "myth" and that this "new evidence requires the Commission to reexamine its proposed reliance on the DCF methodology." [179] The studies cited by AWW call into question the validity of the efficient market hypothesis upon which AWW contends DCF theory is founded. AUS also questions the usefulness of the DCF method by arguing that "[w]hen it can be shown that significant uncertainties face the industry in the future, coupled with an equity market characterized by euphoric investor expectations which cannot be sustained, a DCF calculation of the cost rate of common equity capital should be given less weight than under normal circumstances." [180] AUS reviews historical levels of price-earnings ratios and concludes that "the market for equities is substantially influenced by undue investor optimism which has resulted in an over-valued stock market." [181]

AWW also contends that the Commission cannot rely solely on DCF evidence because it "provides no information about what comparable firms are earning on their book equity." [182] As a result, AWW argues that "the Commission needs, at a minimum, comparable earnings data to verify the results of its DCF formula" and proposes a comparable earnings approach that would provide such data.[183] APPA raises a somewhat related issue by contending that "it appears that the Commission does not feel a need to check the results of its methodology against other economic and financial evidence." [184] Notwithstanding its criticism of the DCF method, AWW suggests that it could produce a reasonable result if it were modified "to produce a market-to-book ratio equal to that of unregulated, comparable risk companies." [185]

Finally, APPA interprets "the Commission's proposal to guarantee existing equity holders the current market cost of capital."[186] Its position is based on the fact that "current equity holders in firms in competitive markets are not guaranteed the current market cost of capital on their investments."[187] APPA also claims that the Commission's approach "places primary focus on the wrong group of investors." According to the APPA, the Commission should be concerned with compensating existing stockholders rather than potential stockholders.[188]

3. Analysis and Findings

The Commission believes that there is compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions.[189] Nonetheless, the Commission is prepared to take into account non-cost factors in setting an allowed rate of return in an individual case if circumstances warrant.

Although comparable earnings data has been offered before as corroborative evidence of the cost of capital, the Commission has found fault with its use in this regard for essentially two reasons.[190] First, unlike the relationship between risk and market required rates of return, the relationship between risk and accounting rates of return is not clear. In other words, companies with high risk don't necessarily earn high book returns, and vice versa for companies with low risk. In contrast, investors will expect/require a high market rate of return from companies with high risk and a lower market rate of return from lower risk companies. Second, and more fundamentally, the Commission stated:

> Accounting rates of return are not reliable measures of the current cost of capital, since they do not reflect the current market prices that are determined in competitive capital markets.[191]

[171] 51 FR 27050.

[172] *Id.* at 27051.

[173] APPA IC at 3; AWW IC at 25.

[174] APPA IC at 3.

[175] AWW IC at 26.

[176] APPA IC at 7.

[177] *Id.* at 9.

[178] AWW IC at 10.

[179] *Id.*

[180] AUS IC at 16.

[181] *Id.* at 18. SCE also argues that the stock market is not "properly priced." SCE IC at 2.

[182] AWW IC at viii.

[183] *Id.* at viii, 36–44.

[184] APPA IC at 12–13.

[185] AWW IC at 19.

[186] APPA IC at 10.

[187] *Id.*

[188] *Id.* at 11.

[189] "Since by definition the cost of capital of a regulated firm represents precisely the expected return that investors could anticipate from other investments while bearing no more and no less risk, and since investors will not provide capital unless the investment is expected to yield its opportunity cost of capital, the correspondence of the definition of the cost of capital with the court's definition of legally required earnings appears clear. *Hope* refers to both: commensurate earnings and the attraction of capital. These two approaches are harmonized when the allowed rate of return is set equal to the cost of capital". A.L. Kolbe, and J. Reed, Jr. with G. Hall, *The Cost of Capital: Estimating the Rate of Return for Public Utilities* (1984), at 21.

[190] 50 FR 21823.

[191] *Id.*

With respect to APPA's argument that "economic returns and accounting returns are conceptually and numerically different,"[192] the Commission notes that it has never disputed this particular point. What the Commission said in Order No. 420 is that it has not been adequately demonstrated why this fact makes it inappropriate to apply a DCF-based allowed rate of return to a book value rate base.[193] APPA has not explained why the more recent literature it cites should change the Commission's view of this matter. It appears as if this literature addresses the differences between accounting and economic rates of return and not whether the application of a DCF-based allowed rate of return to a book value rate base in a regulatory environment is inappropriate. In any event, it is clear that mere citations to the literature are not enough to make one's case. As a result, the Commission finds that APPA has not offered any new evidence that would cause the Commission to change its approach to setting allowed rates of return.

AWW offers some new evidence regarding the efficient market theory and its relationship to the DCF method. The efficient market theory is founded upon the proposition that "all relevant information is widely and cheaply available to investors and that all relevant and ascertainable information is already reflected in security prices."[194] Although there have been some studies that have pointed to specific inefficiencies that exist in the stock market, the general proposition still seems to reflect mainstream thinking:

> The concept of an efficient market is astonishingly simple and remarkably well supported by the facts. Less than 20 years ago any suggestion that security investment is a fair game was generally regarded as bizarre. Today it is not only widely accepted in business schools, but it also permeates investment practice and government policy toward the security markets.[195]

AWW cites some recent literature questioning the appropriateness of relying on a DCF formula, specifically the market price that is a primary input in such a formula. The Commission, however, is unable to conclude from so little evidence that the efficient market theory has been so discredited that one cannot rely on the market prices of electric utility common stocks to reasonably reflect the cash flows expected by investors. It may be that further research in this area will convincingly demonstrate that the evidence cited by AWW substantially undercuts the validity of the efficient market hypothesis or the appropriateness of using a DCF analysis to estimate the cost of capital. In the Commission's judgment, it is premature to make that finding now.

AUS's contention that the stock market is overvalued is fundamentally inconsistent with the efficient markets theory. As evidence that the current market has overvalued electric utilities' common stock, AUS calculates a cost rate for utilities' common equity by dividing the recent 14.39% earned rate of return on common equity by the 151.1% market-to-book ratio. AUS compares the 9.5% result with current bond yields, and concludes that the result is too low. The Commission notes, however, that the 9.5% is merely the industry average earnings-price ratio, which is not necessarily equal to the market cost of capital, especially when price-to-book ratios differ from unity. All that can be concluded from AUS's calculation is that the market cost of capital exceeds 9.5%.

With respect to APPA's concern that the Commission check its results in some way, it appears that APPA is concerned more with having the Commission consider evidence on why the cost of capital is not the appropriate standard to use for rate of return decisions and less with having the Commission look to corroborative evidence on whether the DCF-generated estimate of the cost of capital is reasonable. APPA's point seems to be that the use of a cost of capital standard may produce results that are inconsistent with the prevailing economic environment. For example, during a recessionary period when unregulated companies are experiencing earning declines, a cost of a capital standard may support and perhaps increase utility earnings.

While this may be true, it works both ways. During boom times, when unregulated companies are experiencing significant increases in earnings, a cost of capital standard will limit utility earnings. The fact of the matter is that unregulated companies may earn less than their cost of capital during bad times and more than their cost of capital during good times. This is why the Commisson must also reject the modified DCF formula offered by AWW. By trying to force an equivalence between the market-book ratios of unregulated companies and those of public utilities, AWW would have the Commission depart from a cost of capital standard. Moreover, its *ad hoc* adjustment is based on neither financial theory nor empirical research.

As to APPA's concern that the Commission's proposal guarantees existing equity holders the current market cost of capital, the Commission thinks otherwise. Setting an allowed rate of return equal to the current cost of capital does not guarantee that the rate may be above or below that which is allowed and will depend on numerous factors. Among these are whether the Commission finds reason to adjust the estimated cost-of-service for purposes of determining a just and reasonable rate and whether actual sales and costs turn out to be above or below those used in establishing this rate. In short, utility ratemaking does not guarantee that the allowed rate of return will be earned, regardless of what it is based on.

The Commission also disagrees with APPA that the use of a cost of capital standard focuses inappropriately on potential stockholders rather than existing stockholders. In fact, it is somewhat difficult to reconcile this concern with APPA's other concern described above. In any event, the Commission believes that the consistent use of a cost of capital standard over time is fair and equitable to both existing and potential stockholders. Not only has APPA not demonstrated otherwise, but it has not offered a superior substitute.

III. Summary of Changes in Regulatory Text

This rule makes certain changes in the text of the Commission's regulations that deal with the generic rate of return. These changes reflect two decisions by the Commission in this proceeding. The first decision is to continue the advisory status of the generic rate of return for another year. The language of § 37.8 of the regulations is therefore being changed to refer to the first three proceedings rather than the first two proceedings. The second decision is to remove the 50 basis point cap that has previously been part of the quarterly update procedure. The language of § 37.9(a)(3) is therefore being changed to eliminate the references to the cap. Section 37.9(a)(4) is being eliminated because it is the 50 basis point cap provision.

[192] APPA IC at 7.

[193] 49 FR 21829.

[194] *See* Brealey, R. and Myers S., *Principles of Corporate Finance*, McGraw Hill (1984) at 266.

[195] *Id.* at 281.

IV. Regulatory Flexibiltiy Act Certification

The Regulatory Flexibility Act[196] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the role will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not impose any regulatory or administrative burdens on a significant number of small entities and that it would not require an expenditure of resources by such entities.[197] No comments were received on this finding and the modifications adopted in the final rule do not materially affect the earlier conclusion.

Accordingly, the Commission certifies that the rule does not have a significant economic impact on a substantial number of small entities.

V. Timing of Quarterly Updates and Effective Date of Rule

The Commission establishes a procedure which will be used to establish quarterly updates. The benchmark rates of return will be published on or before the fifteenth of the month following the close of a calendar quarter.

The first quarter following the close of an annual proceeding will run from February 1 to April 30. The second quarter will run from May 1 to August 31, etc.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Rate of return.

In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective February 1, 1987.

By the Commission.

Kenneth F. Plumb,

Secretary.

VI. Regulatory Text

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

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

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

2. Section 37.8 is revised to read as follows:

[196] 5 U.S.C. 601–612 (1982)

[197] 51 FR 27055.

§ 37.8 Transitional provision.

The benchmark rates of return resulting from the first three annual proceedings under this Part will be advisory only. During the advisory period, the Commission may take official notice of the benchmark rates of return in individual rate proceedings if they are not otherwise made a part of the record.

3. Section 37.9 is amended by revising paragraph (a)(3) and removing (a)(4) to read as follows:

§ 37.9 Quarterly Indexing Procedure.

(a) * * *

(3) The benchmark rate of return on common equity for subsequent quarters prior to the conclusion of the next annual proceeding will be set equal to the average cost of common equity for the jurisdictional operations of public utilities as determined by the formula of paragraph (a)(1) of this section.

* * * * *

Appendix A—List of Commenters

Note.—Appendix A will not appear in the Code of Federal Regulations.

Commenter	Abbreviation
Companies:	
1. American Electric Power Service Corp.	AEP
2. Arizona Public Service Co.	APS
3. Associated Utility Services, Inc.	AUS
4. Baltimore Gas and Electric Co.	BGE
5. Boston Edison Co., et al.	BEC
6. Cincinnati Gas and Electric.	CGE
7. Detroit Edison	DE
8. Edison Electric Institute.	EEI
9. Florida Power & Light Co.	FPL
10. New England Power Co.	NEP
11. Northern States Power Co.	NSP
12. Ocean State Power	OSP
13. Potomac Electric Power Co.	PEPCO
14. Public Service Company of Colorado.	PSC
15. Southern California Edison.	SCE
16. Southern Company	Southern.
17. Southwestern Public Service Co.	SW
18. Utah Power & Light	UPL
19. Virginia Electric & Power.	VEPCO
Customers:	
20. Alabama Electric Coop, et al.	Cooperatives.
21. Allegheny Electric Coop., et al.	Second Cooperatives.
22. American Public Power Association.	APPA
23. General Services Administration.	GSA
24. Wholesale Customer Group.	WCG
Other:	
25. Financial Analysis Branch Office of Electric Power Regulation Federal Energy Regulatory Commission.	FA Staff.
26. Florida Public Service Commission.	FLA
27. Minnesota Department of Public Service.	MINN
28. West Virginia Public Service Commission (Consumer Advocate Division).	WVCAD
29. Alfred W. Whittaker	AWW

Appendix B—Sample of Companies Used for Base Year Dividend Yield Calculation

Note.—Appendix B will not be shown in the Code of Federal Regulations

1. Allegheny Power System
2. American Electric Power
3. Atlantic City Electric
4. AZP Group Inc
5. Baltimore Gas & Electric
6. Black Hills Corp
7. Boston Edison Co
8. Carolina Power & Light
9. Centerior Energy Corp
10. Central & South West Corp
11. Central Hudson Gas & Elec
12. Central Ill Public Service
13. Central Louisiana Electric
14. Central Maine Power Co
15. Central Vermont Pub Serv
16. Cilcorp Inc
17. Cincinnati Gas & Electric
18. Commonwealth Edison
19. Commonwealth Energy System
20. Consolidated Edison of NY
21. Consumers Power Co
22. Delmarva Power & Light
23. Detroit Edison Co
24. Dominion Resources Inc-Va
25. DPL Inc
26. Duke Power Co
27. Duquesne Light Co
28. Eastern Utilities Assoc
29. Empire District Electric Co
30. Fitchburg Gas & Elec Light
31. Florida Progress Corp
32. FPL Group Inc
33. General Public Utilities
34. Green Mountain Power Corp
35. Gulf States Utilities Co
36. Hawaiian Electric Inds
37. Houston Industries Inc
38. I E Industries, Inc
39. Idaho Power Co
40. Illinois Power Co
41. Interstate Power Co

42. Iowa Resources Inc
43. Iowa-Illinois Gas & Elec
44. Ipalco Enterprises Inc
45. Kansas City Power & Light
46. Kansas Gas & Electric
47. Kansas Power & Light
48. Kentucky Utilities Co
49. Long Island Lighting
50. Louisville Gas & Electric
51. Maine Public Service
52. Middle South Utilities
53. Midwest Energy Co
54. Minnesota Power & Light
55. Montana Power Co
56. Nevada Power Co
57. New England Electric System
58. New York State Elec & Gas
59. Newport Electric Corp
60. Niagara Mohawk Power
61. Northeast Utilities
62. Northern Indiana Public Serv
63. Northern States Power-MN
64. Ohio Edison Co
65. Oklahoma Gas & Electric
66. Orange & Rockland Utilities
67. Pacific Gas & Electric
68. Pacificorp
69. Pennsylvania Power & Light
70. Philadelphia Electric Co
71. Portland General Co
72. Potomac Electric Power
73. Public Service Co of Colo
74. Public Service Co of Ind
75. Public Service Co of NH
76. Public Service Co of N Mex
77. Public Service Enterprises
78. Puget Sound Power & Light
79. Rochester Gas & Electric
80. San Diego Gas & Electric
81. Savannah Elec & Power
82. Scana Corp
83. Sierra Pacific Resources
84. Southern Calif Edison Co
85. Southern Co
86. Southern Indiana Gas & Elec
87. St Joseph Light & Power
88. Teco Energy Inc
89. Texas Utilities Co
90. TNP Enterprises Inc
91. Tucson Electric Power Co
92. Union Electric Co
93. United Illuminating Co
94. Utah Power & Light
95. Utilicorp United Inc
96. Washington Water Power
97. Wisconsin Electric Power
98. Wisconsin Power & Light
99. Wisconsin Public Service

Utilities Exluded From the Sample for the Indicated Quarter Due to Either Zero Dividends or a Cut in Dividends for This Quarter or the Prior Three Quarters

Ticker Symbol	Utility	Reason for exclusion
		Year=85 Quarter=3
CMS	Consumers Power Co	Dividend rate was zero for the quarter ending 09/30/85.
CTP	Central Maine Power Co	Dividend rate reduced in the quarter ending 12/31/84.
FGE	Fitchburg Gas & Elec Light	Dividend rate was zero for the quarter ending 09/30/85.
GPU	General Public Utilities	Dividend rate was zero for the quarter ending 09/30/85.
LIL	Long Island Lighting	Dividend rate was zero for the quarter ending 09/30/85.
MAP	Maine Public Service	Dividend rate was zero for the quarter ending 09/30/85
MSU	Middle South Utilities	Dividend rate was zero for the quarter ending 09/30/85.
MTP	Montana Power Co	Dividend rate reduced in the quarter ending 03/31/85.
PNH	Public Service Co of NH	Dividend rate was zero for the quarter ending 09/30/85.
N=9		
		Year=85 Quarter=4
CMS	Consumers Power Co	Dividend rate was zero for the quarter ending 12/31/85.
FGE	Fitchburg Gas & Elec Light	Dividend rate was zero for the quarter ending 12/31/85.
GPU	General Public Utilities	Dividend rate was zero for the quarter ending 12/31/85.
KGE	Kansas Gas & Electric	Dividend rate reduced in the quarter ending 12/31/85.
LIL	Long Island Lighting	Dividend rate was zero for the quarter ending 12/31/85.
MAP	Maine Public Service	Dividend rate was zero for the quarter ending 12/31/85.
MSU	Middle South Utilities	Dividend rate was zero for the quarter ending 12/31/85.
MTP	Montana Power Co	Dividend rate reduced in the quarter ending 03/31/85.
NI	Northern Indiana Public Serv	Dividend rate was zero for the quarter ending 12/31/85.
PNH	Public Service Co of NH	Dividend rate was zero for the quarter ending 12/31/85.
N=10		
		Year=86 Quarter=1
CMS	Consumers Power Co	Dividend rate was zero for the quarter ending 03/31/86.
FGE	Fitchburg Gas & Elec Light	Dividend rate was zero for the quarter ending 03/31/86.
GPU	General Public Utilities	Dividend rate was zero for the quarter ending 03/31/86.
KGE	Kansas Gas & Electric	Dividend rate reduced in the quarter ending 03/31/86.
LIL	Long Island Lighting	Dividend rate was zero for the quarter ending 03/31/86.
MAP	Maine Public Service	Dividend rate was zero for the quarter ending 03/31/86.
MSU	Middle South Utilities	Dividend rate was zero for the quarter ending 03/31/86.
NI	Northern Indiana Public Serv	Dividend rate was zero for the quarter ending 03/31/86.
PIN	Public Service Co of Ind	Dividend rate was zero for the quarter ending 03/31/86.
PNH	Public Service Co of NH	Dividend rate was zero for the quarter ending 03/31/86.
N=10		
		Year=86 Quarter=2
CMS	Consumers Power Co	Dividend rate was zero for the quarter ending 06/30/86.
DQU	Duquesne Light Co	Dividend rate reduced in the quarter ending 06/30/86.
FGE	Fitchburg Gas & Elec Light	Dividend rate was zero for the quarter ending 06/30/86.
GPU	General Public Utilities	Dividend rate was zero for the quarter ending 06/30/86.
GSU	Gulf States Utilities Co	Dividend rate reduced in the quarter ending 06/30/86.
KGE	Kansas Gas & Electric	Dividend rate reduced in the quarter ending 12/31/85.
KLT	Kansas City Power & Light	Dividend rate reduced in the quarter ending 06/30/86.
LIL	Long Island Lighting	Dividend rate was zero for the quarter ending 06/30/86.
MAP	Maine Public Service	Dividend rate was zero for the quarter ending 06/31/86.
MSU	Middle South Utilities	Dividend rate was zero for the quarter ending 06/30/86.

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

Ticker Symbol	Utility	Reason for exclusion
NI	Northern Indiana Public Serv	Dividend rate was zero for the quarter ending 06/30/86.
PIN	Public Service Co of Ind	Dividend rate was zero for the quarter ending 06/30/86.
PNH	Public Service Co of NH	Dividend rate was zero for the quarter ending 06/30/86.
N=13		

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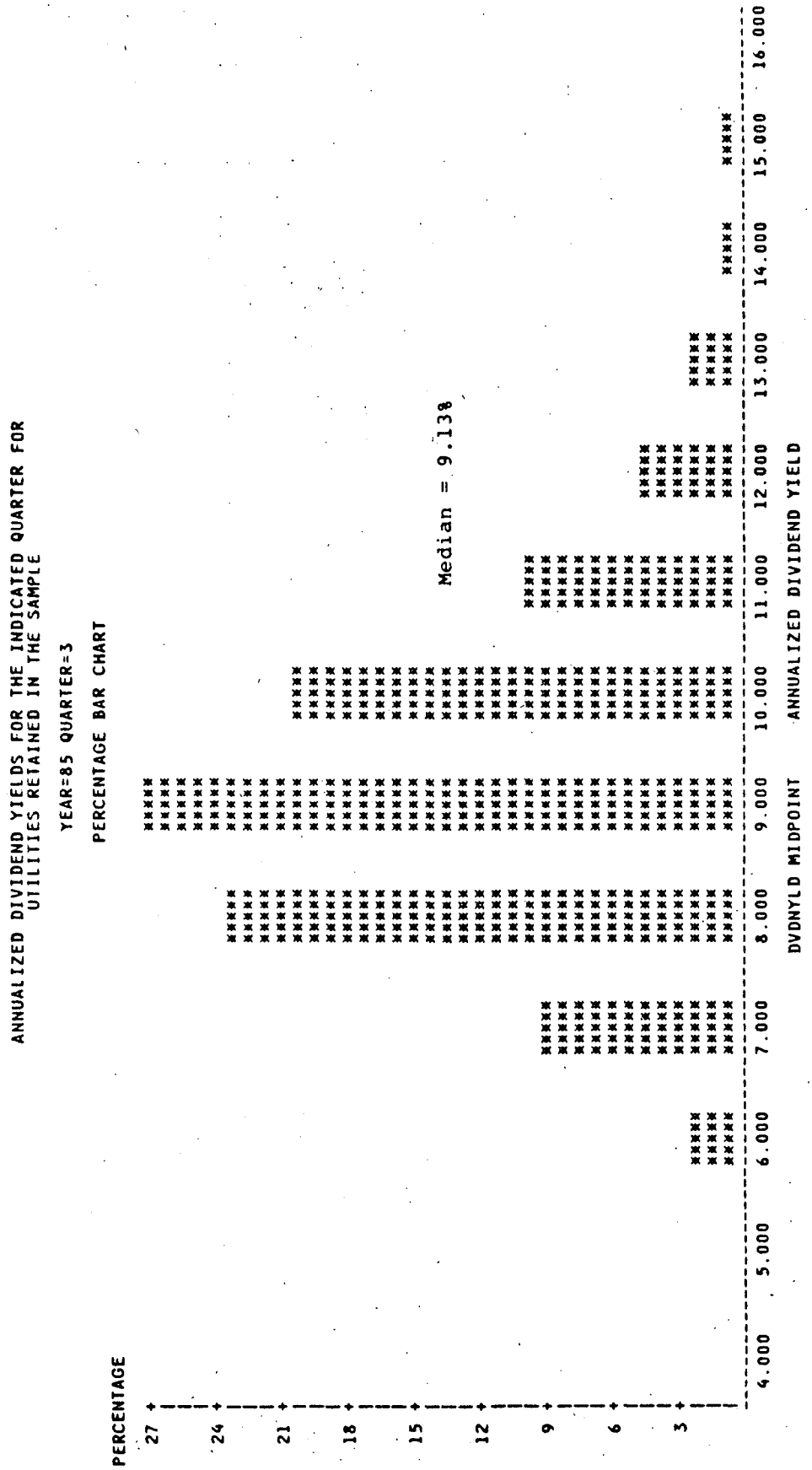
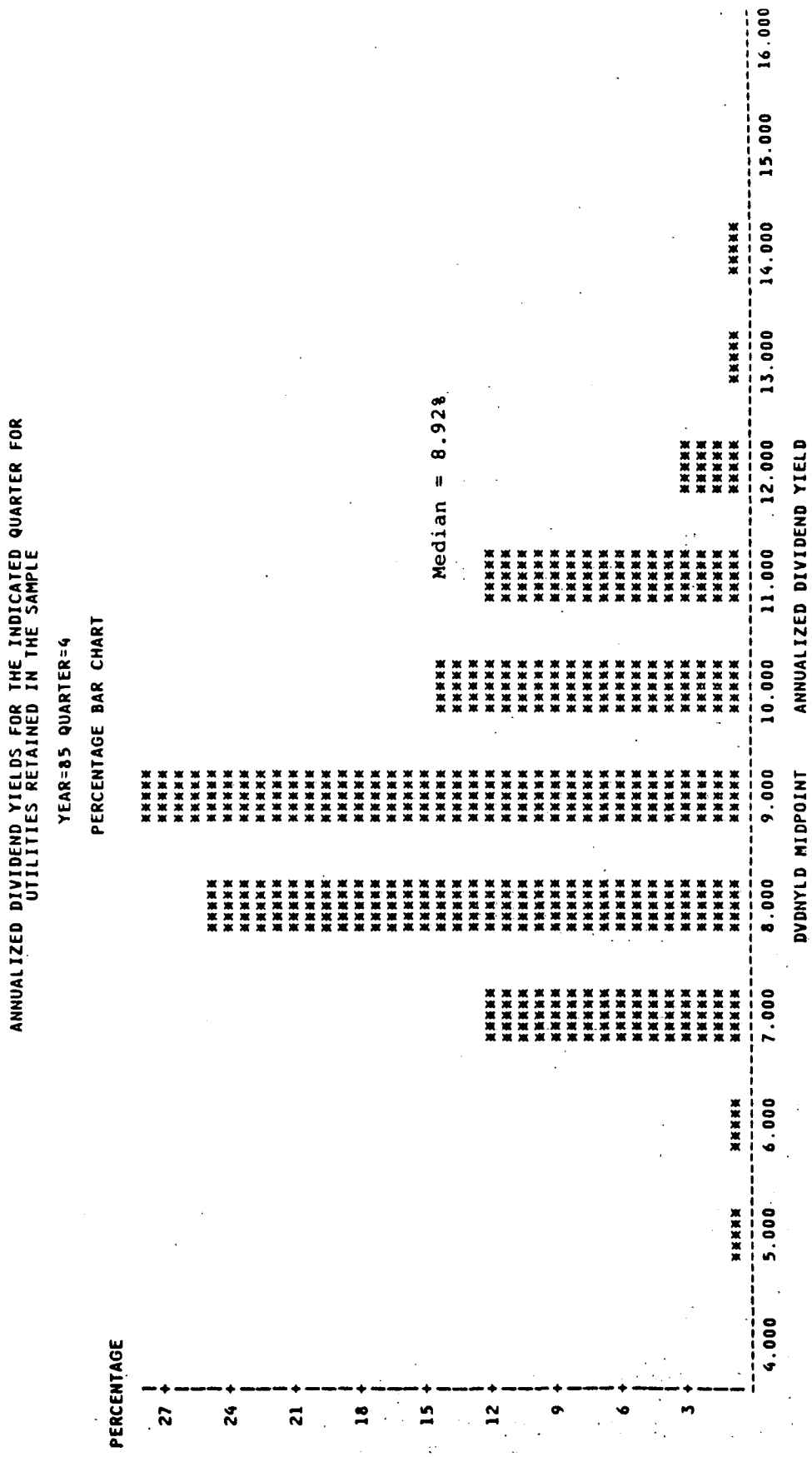
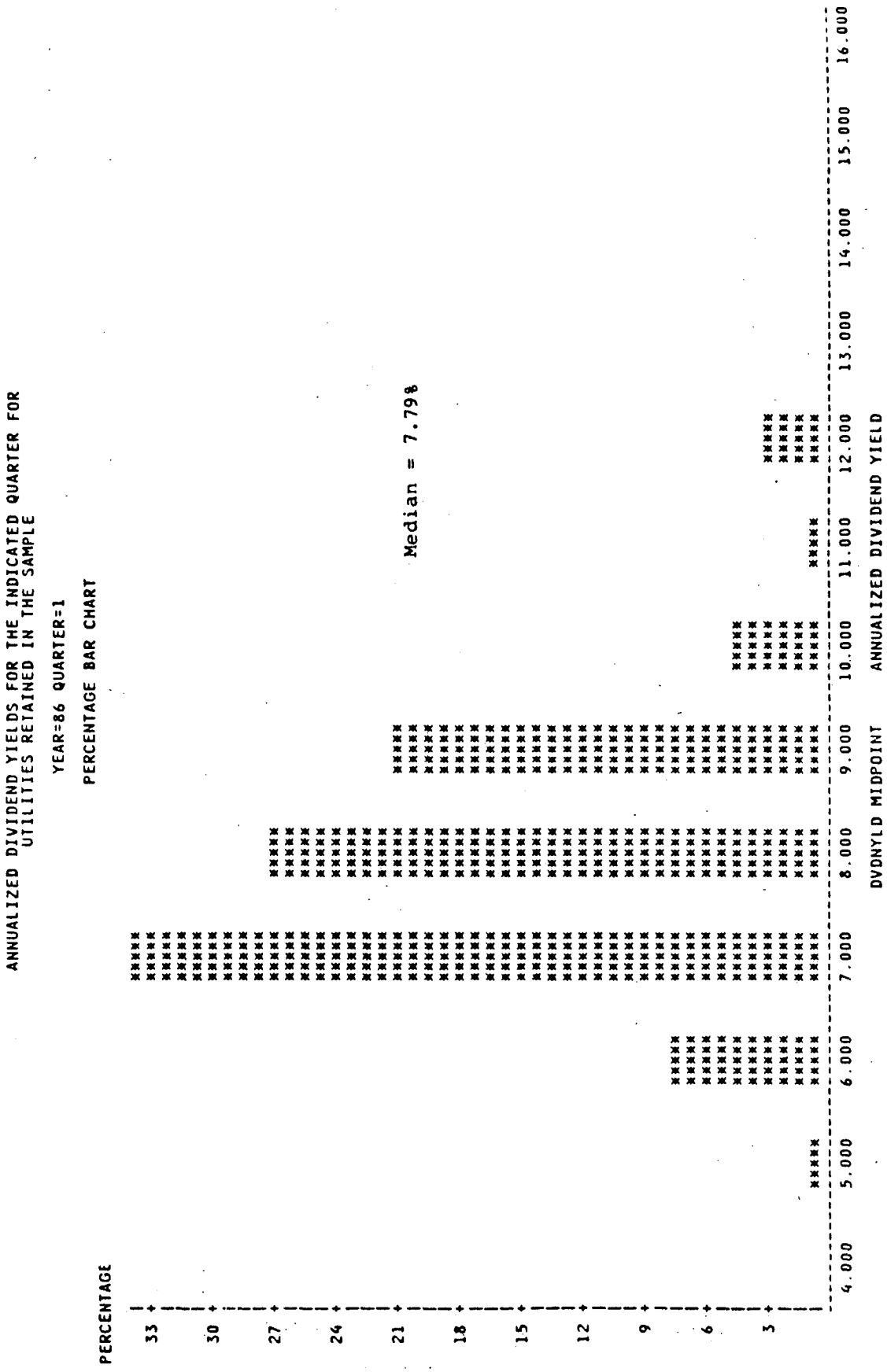
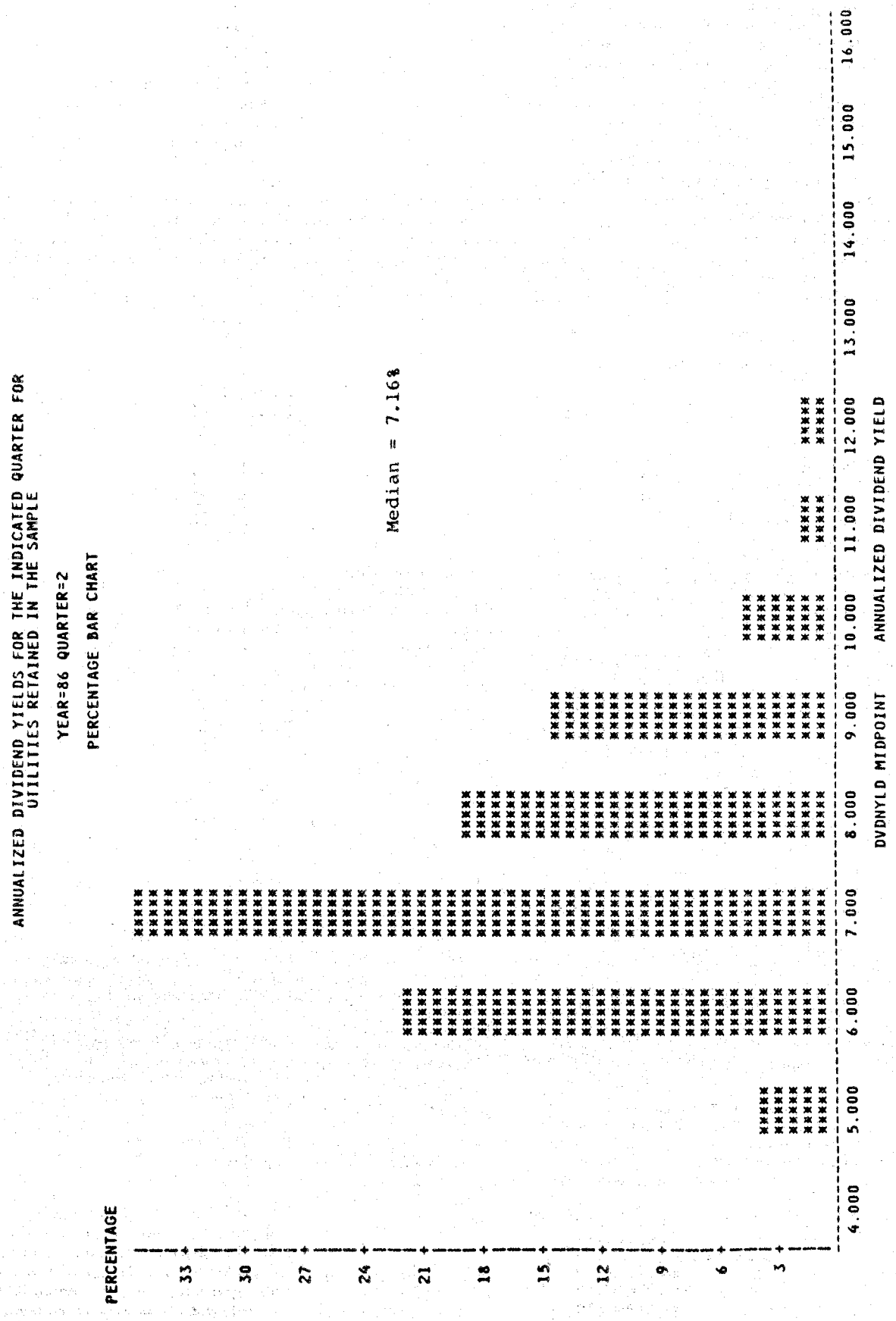

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE
YEAR=85 QUARTER=3
PERCENTAGE BAR CHART
PERCENTAGE
27
24
21
18
15
12
9
6
3
Median = 9.138
4.000
5.000
6.000
7.000
8.000
9.000
10.000
11.000
12.000
13.000
14.000
15.000
16.000
DVDNYLD MIDPOINT
ANNUALIZED DIVIDEND YIELD


ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR
UTILITIES RETAINED IN THE SAMPLE
YEAR=85 QUARTER=4
PERCENTAGE BAR CHART
Median = 8.92%
PERCENTAGE
27
24
21
18
15
12
9
6
3
4.000
5.000
6.000
7.000
8.000
9.000
10.000
11.000
12.000
13.000
14.000
15.000
16.000
DVDNYLD MIDPOINT
ANNUALIZED DIVIDEND YIELD


ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE
YEAR=86 QUARTER=1
PERCENTAGE BAR CHART
Median = 7.79%
PERCENTAGE
33
30
27
24
21
18
15
12
9
6
3
4.000
5.000
6.000
7.000
8.000
9.000
10.000
11.000
12.000
13.000
14.000
15.000
16.000
DVDNYLD MIDPOINT
ANNUALIZED DIVIDEND YIELD



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Appendix C—Sample of Companies for Dividend Yield Updates

Note.—Appendix C will not be shown in the Code of Federal Regulations.

1. Allegheny Power System
2. American Electric Power
3. Atlantic City Electric
4. AZP Group Inc
5. Baltimore Gas & Electric
6. Black Hill Corp
7. Boston Edison Co
8. Carolina Power & Light
9. Centerior Energy Corp
10. Central & South West Corp
11. Central Hudson Gas & Elec
12. Central Ill Public Service
13. Central Louisiana Electric
14. Central Maine Power Co
15. Central Vermont Pub Serv
16. Cilcorp Inc
17. Cincinnati Gas & Electric
18. Commonwealth Edison
19. Commonwealth Energy System
20. Consolidated Edison of NY
21. Consumers Power Co
22. Delmarva Power & Light
23. Detroit Edison Co
24. Dominion Resources Inc-VA
25. DPL Inc
26. Duke Power Co
27. Duquesne Light Co
28. Eastern Utilities Assoc
29. Empire District Electric Co
30. Fitchburg Gas & Elec Light
31. Florida Progress Corp
32. FPL Group Inc
33. General Public Utilities
34. Green Mountain Power Corp
35. Gulf States Utilities Co
36. Hawaiian Electric Inds
37. Houston Industries Inc
38. I E Industries Inc
39. Idaho Power Co
40. Illinois Power Co
41. Interstate Power Co
42. Iowa Resources Inc
43. Iowa-Illinois Gas & Elec
44. Ipalco Enterprises Inc
45. Kansas City Power & Light
46. Kansas Gas & Electric
47. Kansas Power & Light
48. Kentucky Utilities Co
49. Long Island Lighting
50. Louisville Gas & Electric
51. Maine Public Service
52. Middle South Utilities
53. Midwest Energy Co
54. Minnesota Power & Light
55. Montana Power Co
56. Nevada Power Co
57. New England Electric System
58. New York State Elec & Gas
59. Newport Electric Corp
60. Niagara Mohawk Power
61. Northeast Utilities
62. Northern Indiana Public Serv
63. Northern States Power-MN
64. Ohio Edison Co
65. Oklahoma Gas & Electric
66. Orange & Rockland Utilities
67. Pacific Gas & Electric
68. Pacificorp
69. Pennsylvania Power & Light
70. Philadelphia Electric Co
71. Portland General Co
72. Potomac Electric Power
73. Public Service Co of Colo
74. Public Service Co of Ind
75. Public Service Co of NH
76. Public Service Co of N Mex
77. Public Service Enterprises
78. Puget Sound Power & Light
79. Rochester Gas & Electric
80. San Diego Gas & Electric
81. Savannah Elec & Power
82. Scana Corp
83. Sierra Pacific Resources
84. Southern Calif Edison Co
85. Southern Co
86. Southern Indiana Gas & Elec
87. St. Joseph Light & Power
88. Teco Energy Inc
89. Texas Utilities Co
90. TNP Enterprises Inc
91. Tucson Electric Power Co
92. Union Electric Co
93. United Illuminating Co
94. Unitil Corp
95. Utah Power & Light
96. Utilicorp United Inc
97. Washington Water Power
98. Wisconsin Electric Power
99. Wisconsin Power & Light
100. Wisconsin Public Service

[FR Doc. 86-29233 Filed 12-31-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 256 and 272

Information Collection Requirements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau is amending its program regulations by publishing the statements concerning information collection requirements required by the Office of Management and Budget. These technical amendments are being done to conform with 5 CFR Part 1320 by codifying such statements as part of its rules.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Woodrow W. Hopper, Jr., Chief, Division of Management Research and Evaluation, Room 334-South Interior, 1951 Constitution Avenue NW., Washington, DC 20245 (Telephone number (202) 343-1942).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (April 1, 1981) gave the Office of Management and Budget approval authority over agency collections of information from the public. The Office of Management and Budget requires that an agency that has collections of information contained in its regulations must publish approved OMB control numbers for such collections in the **Federal Register** to ensure that this information is available to the public and that it is included in the Code of Federal Regulations.

This technical amendment includes only OMB control numbers for information collection requirements in 25 CFR Parts 256 and 272.

These rules are procedural in nature and therefore not subject to notice and comment requirements as provided by 5 U.S.C. 553(b).

List of Subjects

25 CFR Part 256

Grant programs—Housing and community development, Grant programs—Indians, Housing, Indians.

25 CFR Part 272

Grant programs—Indians, Indians—self determination.

Accordingly, Parts 256 and 272 of Title 25 of the Code of Federal Regulations are amended as set forth below:

PART 256—HOUSING IMPROVEMENT PROGRAM

1. The authority citation for Part 256 continues to read as follows:

Authority: 42 Stat. 208 (25 U.S.C. 13).

2. A new § 256.11 is added to read as follows:

§ 256.11 Information collection.

The information collection requirements contained in § 256.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0084. Information necessary for an application may be obtained from Indian Tribes in accordance with 25 CFR 256.5. The information will be used by the Indian tribes to determine eligibility to participate in the Housing Improvement Program (HIP). Individuals who wish to participate in HIP must contact their tribes. Tribes determine eligibility based upon the criteria listed in § 256.5. Response is required to obtain a benefit.

PART 272—GRANTS UNDER INDIAN SELF-DETERMINATION ACT

3. The authority citation for Part 272 continues to read as follows:

Authority: Sec. 104, Pub. L. 93-638, 88 Stat. 2207 (25 U.S.C. 450h).

4. A new § 272.28 is added to subpart B as follows:

§ 272.28 Information collection.

The information collection requirements contained in 25 CFR Part

272 are those necessary to comply with the application requirements of the Office of Management and Budget (OMB) Circular No. A-102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned approval number 0348-0006. Section 272.14 describes the types of information that satisfy the application requirements of Circular A-102 for the self determination grant/program. Information necessary for an application for Federal assistance will be submitted on Standard Form 424 which may be obtained with application materials in accordance with 25 CFR Part 272. This information is collected for the purpose of making application for Federal assistance. The information is needed for proper administration of the grant program and is required to obtain a benefit.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-29394 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8120]

Income Tax; Taxable Years Beginning After December 31, 1983; Mortality and Morbidity Tables

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to mortality and morbidity tables for insurance products for which there are no applicable commissioners' standard tables. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.** Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect insurance companies engaged in the business of issuing life insurance, annuity or noncancellable accident and health insurance contracts, and provide them with guidance needed to determine the amount of the life insurance reserve with respect to such contracts.

EFFECTIVE DATE: The regulations are effective on January 1, 1984, and apply to taxable years beginning after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202) 566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 807(d) of the Internal Revenue Code of 1954. Section 807(d), relating to the method of computing life insurance reserves, was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 726).

Explanation of Provisions

Section 807(d)(2) provides in part that the amount of the life insurance reserve for any contract must be determined using the prevailing commissioners' standard tables for mortality and morbidity. If there are no commissioners' standard tables applicable to a contract when it is issued, section 807(d)(5)(C) provides that the mortality and morbidity tables to be used to compute the reserve will be determined under regulations. These regulations, therefore, specify mortality and morbidity tables for insurance contracts for which there are no commissioners' standard tables applicable when the contract is issued.

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised herein or because certain questions and not others are included. The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register.**

Executive Order 12291; Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.801-1 through 1.832-6

Income taxes, insurance companies.

Amendments to the regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 of the Code of Federal Regulations is amended as set forth below.

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.807-1T also issued under 26 U.S.C. 807 (d)(5)(C). * * *

Par. 2. The following new section is added immediately after § 1.807-1.

§ 1.807-1T Mortality and morbidity tables (temporary).

Q-1. What mortality and morbidity tables must be used to compute reserves under section 807 (d)(2) for insurance contracts for which no commissioners' standard tables are applicable when the contract is issued?

A-1. The following tables must be used:

Type of Contract	Table
1. Group term life insurance (active life reserves).	1960 Commissioners' Standard Group Mortality Table.
2. Group life insurance (active life reserves); accidental death benefits.	1959 Accidental Death Benefits Table.
3. Permanent and paid-up group live insurance (active life reserves).	Same table as are applicable to males for ordinary life insurance.
4. Group life insurance (active life reserves); disability income benefits.	The tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries.
5. Group life insurance; survivor income benefits insurance.	Same tables as are applicable to group annuities.
6. Group life insurance; extended death benefits for disabled lives.	1970 Intercompany Group life Disability Valuation Table.
7. Credit life insurance.	1958 Commissioners' Extended Term Table.
8. Supplementary contracts involving life contingencies.	Same tables as are applicable to individual immediate annuities.
9. Noncancellable accident and health insurance (active life reserves); benefits issued before 1984.	Tables used for NAIC annual statement reserves as of December 31, 1983.
10. Noncancellable accident and health insurance (active life reserves); disability benefits issued after 1983.	1964 Commissioners' Disability Tables.

Type of Contract	Table
11. Noncancellable accident and health insurance (active life reserves); accidental death benefits issued after 1983.	1959 Accidental Death Benefits Tables.
12. Noncancellable accident and health insurance (active life reserves); all benefits issued after 1983 other than disability and accidental death.	Tables used for NAIC annual statement reserves.
13. Noncancellable accident and health insurance (claim reserves); disability benefits for all years of issue.	1964 Commissioners' Disability Tables.
14. Noncancellable accident and health insurance (claim reserves); all benefits other than disability for all years of issue.	Tables used for annual statement reserves.

Q-2. May the tables specified in A-1 of this section be adjusted to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

A-2. Yes. Appropriate adjustment may be made for such risks.

Q-3. For what taxable years must the tables in A-1 be used?

A-3. The tables in A-1 must be used for taxable years beginning after December 31, 1983.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 16, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-29506 Filed 12-31-86; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8119]

Income Tax; Taxable Years Beginning After December 31, 1953; Information Returns Relating to Sales or Exchanges of Certain Partnership Interests; OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and withdrawal of temporary regulations.

SUMMARY: This document withdraws temporary regulations and provides final regulations relating to information returns, statements, and notifications required where there is a sale or exchange of certain partnership interests. The final regulations reflect changes to the applicable tax law made by section 149 of the Tax Reform Act of 1984 and provide guidance on the manner of filing and contents of required information returns, statements, and notifications under section 6050K of the Internal Revenue Code of 1986.

DATES: The regulations contained in this document are effective with respect to sales or exchanges of partnership interests made after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T LR-236-84). Telephone 202-566-3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1985, the **Federal Register** published temporary regulations and a cross-referencing notice of proposed rulemaking containing proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6050K of the Internal Revenue Code of 1986 (50 FR 52313, 52332). These amendments were proposed to conform the regulations to section 149 of the Tax Reform Act of 1984 (98 Stat. 494). A public hearing was held on June 12, 1986. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision and the temporary regulations are withdrawn.

Comments

Many comments related to various difficulties encountered in complying with the reporting requirements of temporary regulation § 1.6050K-1T in the case of sales or exchanges of interests in publicly traded partnerships. The final regulations add new paragraphs (a)(2) and (d)(2) to § 1.6050K-1 which exclude from the reporting requirements under section 6050K sales or exchanges of partnership interests with respect to which a return is required to be filed by a broker under section 6045 (currently, Form 1099-B). The information currently required to be furnished on Form 1099-B is similar to the information required to be furnished on Form 8308. If in the future more extensive information is required to be reported pursuant to section 6050K, this exception to the filing requirements may be reconsidered.

Two commenters stated that Congress intended that notification from the transferor partner would be a prerequisite to any reporting responsibility by the partnership under section 6050K and therefore § 1.6050K-1T(e)(2), which extends the partnership's reporting responsibility to include transfers within the partnership's knowledge, imposes a burden beyond that intended by Congress. The final regulations retain paragraph (e)(2) as proposed, which is consistent with the language of section 6050K(c)(2) of the Code. The goal of section 6050K is to increase transferor compliance with section 751(a) of the Code. To limit the reporting requirement under section 6050K to those situations in which the transferor formally notifies the partnership could result in transferors defeating that goal simply by inaction.

Several commenters suggested that partnerships should be permitted to include information with respect to record interest holders on the partnership's return on Form 8308 if the identity of beneficial interest holders is unknown. The final regulations adopt this suggestion. Section 1.6050K-1(a)(4)(iii) provides that, for purposes of section 6050K and § 1.6050K-1, the transferor is the beneficial owner of a partnership interest immediately before the transfer of that interest and the transferee is the beneficial owner of a partnership interest immediately after the transfer of that interest. It also provides that where a partnership does not know the identity of the beneficial owner of an interest in the partnership, the record holder of such interest is treated as the transferor or transferee (as the case may be). However, the final regulations do not relieve a beneficial owner of the requirement of § 1.6050K-1(d) that a transferor notify the partnership of the transfer.

Two commenters suggested that the statutory requirement that statements to transferor and transferee partners be furnished on or before January 31 of the calendar year following the year in which the transfer occurred should be modified by regulation to permit partnerships to furnish those statements closer to the time Schedules K-1 are furnished to partners. The final regulations do not adopt this suggested deviation from the statutory requirement. In rare cases it may not be possible for a partnership to furnish statements by the January 31 deadline. Relief is available in such cases under section 6678(a) of the Code, which provides an exception to the imposition of a penalty for failure to timely file a

statement under section 6050K(b) where such failure is due to reasonable cause and not to willful neglect.

Several commenters suggested that the final regulations should not require partnerships to amend their Form 1065 in order to attach Form 8308 where a partnership has been notified of a section 751(a) exchange after the partnership has filed Form 1065. Section 1.6050K-1(f) has been revised to provide that where a partnership is notified of an exchange after the partnership has filed its Form 1065 for the taxable year with respect to which the exchange should have been reported Form 8308 is to be filed separately within 30 days of such notification.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although a notice of proposed rulemaking soliciting public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

PART 1—[AMENDED]

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

Paragraph 1. The authority for Part 1 is amended by removing the following citation:

Authority: * * * Section 1.6050K-1 also issued under 26 U.S.C. 6050K.

§ 1.6050K-1T [Removed]

Par. 2. Section 1.6050K-1 is removed.

Par. 3. The authority for Part 1 is amended by adding the following citation:

Authority: * * * Section 1.6050K-1 also issued under 26 U.S.C. 6050K.

Par. 4. A new § 1.6050K-1 is added immediately after § 1.6050J-1T to read as follows:

§ 1.6050K-1 Returns relating to sales or exchanges of certain partnership interests.

(a) *Partnership return required*—(1) *In general.* Except as otherwise provided in this paragraph (a), a partnership shall make a separate return on Form 8308 with respect to each section 751(a) exchange (as defined in paragraph (a)(4)(i) of this section) of an interest in such partnership which occurs after December 31, 1984. A partnership that is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751(a) exchange may file Form 8308 in order to avoid the risk of incurring a penalty under section 6721. The penalty under section 6721 will generally apply, however, to partnerships that do not file Form 8308 where in fact a section 751(a) exchange occurred, except as provided in paragraphs (a)(2) and (e) of this section.

(2) *Return required under section 6045.* No return shall be required under section 6050K(a) and paragraph (a)(1) of this section with respect to the sale or exchange of a partnership interest if a return is required to be filed under section 6045 with respect to such sale or exchange.

(3) *Single or composite documents.* The Commissioner may authorize the use, at the option of the partnership, of a single document which includes all of the partnership's returns for a calendar year in the case of partnerships required under paragraph (a)(1) of this section to make 25 or more returns on Form 8308 for any calendar year. In addition, the Commissioner may authorize the use for this purpose, also at the option of such a partnership, of a composite document. These authorizations shall be subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite document shall consist of a form prescribed by the Commissioner and an attachment or attachments of magnetic tape or other approved media. To the extent that the use of a single or composite document has been authorized by the Commissioner, references in this section to Form 8303 shall be deemed to refer also to returns included in a single or composite document under this paragraph (a)(3). Any single or composite document so authorized shall include the information required to be provided on Form 8308 under paragraph (b) of this section with respect to each section 751(a) exchange.

(4) *Definitions.* For purposes of section 6050K of the Code and this section—

(i) *Section 751(a) exchange.* The term "section 751(a) exchange" means any sale or exchange of a partnership interest (or portion thereof) in which any portion of any money or other property received by a transferor partner in exchange for all or a part of his or her interest in the partnership is attributable to section 751 property. The term does not include a distribution which is treated as a sale or exchange between the distributee and the partnership under section 751(b) of the Code.

(ii) *Section 751 property.* The term "section 751 property" means unrealized receivables, as defined in section 751(c) of the Code, and inventory items which have appreciated substantially in value ("substantially appreciated inventory items"), as defined in section 751(d) of the Code.

(iii) *Transferor and transferee.* The term "transferor" means the beneficial owner of a partnership interest immediately before the transfer of that interest. The term "transferee" means the beneficial owner of a partnership interest immediately after the transfer of that interest. However, if a partnership does not know the identity of the beneficial owner of an interest in the partnership, the record holder of such interest shall be treated as the transferor or transferee (as the case may be) for purposes of paragraphs (b) and (c) of this section.

(b) *Contents of return.* The return on Form 8308 shall include the following information:

(1) The names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership filing the return;

(2) The date of the exchange; and

(3) Such other information as may be required by Form 8308 or its instructions.

(c) *Statement to be furnished to transferor and transferee.* Every partnership required to file a return under paragraph (a) of this section must furnish to each person whose name is required to be set forth in such return a

written statement on or before January 31 of the calendar year following the calendar year in which the section 751 (a) exchange occurred to which the return under paragraph (a) relates (or, if later, 30 days after the partnership is notified of the exchange as defined in paragraph (e) of this section). The partnership shall use a copy of the completed Form 8308 as a statement, unless the Form 8308 contains information with respect to more than one section 751 (a) exchange (see paragraph (a) (3) of this section). If the partnership does not use a copy of Form 8308 as a statement, the statement shall include the information required to be shown on Form 8308 with respect to the section 751 (a) exchange to which the person to whom the statement is furnished is a party. In addition, it shall state that—

(1) The information shown on the statement has been supplied to the Internal Revenue Service,

(2) A transferor of a partnership interest in a sale or exchange described in section 751 (a) of the Internal Revenue Code is required to treat a portion of any gain or loss resulting from the sale or exchange as ordinary income or loss, and

(3) The transferor in a section 751 (a) sale or exchange is required under paragraph (a) (3) of § 1.751–1 to attach a statement relating to the sale or exchange to his or her income tax return for the taxable year in which the sale or exchange occurred.

(d) *Requirement that transferor notify partnership.*—(1) *In general.* The transferor of any partnership interest in a section 751 (a) exchange shall notify the partnership of such exchange in writing within 30 days of the exchange (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor shall include the following information:

(i) The names and addresses of the transferor and transferee in the section 751 (a) exchange;

(ii) The taxpayer identification numbers of the transferor and, if known, of the transferee; and

(iii) The date of the exchange. Any transferor who notified a partnership under section 6050K (c) (1) prior to January 22, 1986 by a notification that does not meet the requirements of this paragraph (d) shall furnish such partnership with the written notification described in this paragraph (d) on or before February 21, 1986.

(2) *Return required under section 6045.* No transferor shall be required to notify a partnership of the sale or exchange of a partnership interest under section 6050K (c) (1) or paragraph (d) (1) of this section if a return is required to be filed under section 6045 with respect to such sale or exchange.

(e) *Partnership not required to make a return or furnish statements under this section until it has notice of the exchange.* A partnership shall not be required to make a return or furnish statements under section 6050K and this section with respect to any section 751 (a) exchange until it has been notified of the exchange. For purposes of section 6050K (c) (2) and this section, a partnership is notified of a section 751 (a) exchange when either:

(1) The partnership receives the written notification from the transferor required under paragraph (d) of this section; or

(2) The partnership has knowledge that there has been a transfer of a partnership interest or any portion thereof, and, at the time of the transfer, the partnership had any section 751 property. However, no return or statement are required under section 6050K if the transfer was not a section 751 (a) exchange (*e.g.*, a transfer which in its entirety constitutes a gift for federal income tax purposes). For purposes of this paragraph (e) (2), the partnership may rely on a written statement from the transferor that the transfer was not a section 751 (a) exchange in the absence of knowledge to the contrary. For rules applicable where the partnership is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751 (a) exchange, see paragraph (a) (1) of this section.

(f) *Partnership return is to be attached to Form 1065*—(1) *In general.* Any partnership return on Form 8308 required under this section shall be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751 (a) exchange occurred ends and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing of the partnership's Form 1065 for that taxable year (see paragraph (e) of § 1.6031–1 for the time and place for filing Form 1065).

(2) *Notification after Form 1065 is filed.* If a partnership is notified of an exchange (as defined in paragraph (e) of this section) after the partnership has filed Form 1065 for the taxable year with respect to which the exchange should have been reported, Form 8308 shall be filed with the service center or other Internal Revenue office with which the partnership's Form 1065 was filed, on or before the thirtieth day after the partnership is notified of the exchange.

(g) *Penalties.* For penalties for failure of:

(1) Transferors to furnish the notification required by paragraph (d) of this section see section 6722 (b);

(2) Partnerships to furnish any statement required under paragraph (c) of this section see section 6722 (a); and

(3) Partnerships to file the return on Form 8308 as required by paragraph (a) of this section see section 6721.

PART 602—[AMENDED]

Control Number Under The Paperwork Reduction Act; 26 CFR Part 602

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101 (c) is amended by removing from the appropriate places in the table "1.6050K–1T . . . 1545–0941."

Par. 7. Section 602.101 (c) is amended by inserting in the appropriate places in the table "1.6050K–1 . . . 1545–0941."

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 19, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–29505 Filed 12–31–86; 8:45 am]

BILLING CODE 4830–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Designations; Florida and New Mexico

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the Broward County (FL) Human Relations Commission; the Clearwater (FL) Office of Community Relations; the New Mexico Human Rights Commission; and the St. Petersburg (FL) Human Relations Department as certified 706 agencies.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mike Torres, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual

Compliance Programs, 2401 E Street NW., Washington, DC 20507, telephone number (202) 634-6922.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Broward County (FL) Human Relations Commission; the Clearwater (FL) Office of Community Relations; the New Mexico Human Rights Commission; and the St. Petersburg (FL) Human Relations Department meet the eligibility criteria for certification of designated 706 Agencies as established in 29 CFR 1601.75(b). In accordance with 29 CFR 1601.75(c) the Commission hereby amends the list of certified designated 706 agencies to include: Broward County (FL) Human Relations Commission, Clearwater (FL) Office of Community Relations, New Mexico Human Rights Commission and St. Petersburg (FL) Human Relations Department.

Publication of this amendment to 1601.80 effectuates the designation of the following agencies as certified 706 agencies: Broward County (FL) Human Relations Commission, Clearwater (FL) Office of Community Relations, New Mexico Human Rights Commission and St. Petersburg (FL) Human Relations Department.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment Opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: Title VII of the Civil Rights Act of 1964, as amended, Pub. L. 88-352, 78 Stat. 253; Pub. L. 89-554, 80 Stat. 662; Pub. L. 92-261, 86 Stat. 103, Pub. L. 95-555, 92 Stat. 2076; Pub. L. 95-598, 92 Stat. 269 (42 U.S.C. 2000e to 2000e-17).

§ 1601.80 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.80 by adding the Broward County (Fla.) Human Relations Commission; the Clearwater (Fla.) Office of Community Relations; the New Mexico Human Rights Commission; and the St. Petersburg (Fla.) Human Relations Department, in alphabetical order.

Signed at Washington, DC this 15th day of December, 1986.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 86-28964 Filed 12-31-86; 8:45am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE TREASURY

31 CFR Part 5

Claims Collection; Debt Collection Act of 1982; Salary Offset

AGENCY: Department of the Treasury.

ACTION: Temporary rule.

SUMMARY: The Department of the Treasury is issuing temporary regulations to govern the collection of debts owed to the United States by Federal employees. These regulations implement the debt collection procedures provided under section 5 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), codified in 5 U.S.C. 5514. The Act authorizes the Federal Government to collect debts by means of offset from the salaries of Federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights.

EFFECTIVE DATE: These regulations are effective January 2, 1987. Comments must be submitted in duplicate on or before February 2, 1987.

ADDRESS: Send comments in duplicate to: Lorna R. Glassman, Office of the General Counsel (Administrative and General Law), Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Lorna R. Glassman, Office of the General Counsel (Administrative and General Law), Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), codified at 5 U.S.C. 5514, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, when the head of an agency determines that an employee of the agency is indebted to the United States, or is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her pay. The amount of the offset may not exceed 15 percent of the employee's disposable pay.

The employee must be afforded certain due process rights before salary offset deductions can begin. Under the Act, an employee-debtor must be provided with notice of a debt and the opportunity to review the record and enter into a written repayment agreement before the Government may collect the debt by offset. The employee must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations.

The Act requires agencies to issue regulations for salary offset consistent with the offset regulations issued by the Office of Personnel Management (OPM). OPM issued final rules on July 3, 1984 (49 FR 27470), codified in Subpart K of part 550 of title 5 of the Code of Federal Regulations. This temporary rule is consistent with OPM's regulations, and it establishes the procedures the Department will follow in making a salary offset.

Administrative Procedure Act

The Department of the Treasury has concluded that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Office of Personnel Management. Accordingly, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(a)(2). Moreover, for these reasons a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2). The Department will, however, consider any public comments before issuing a final rule.

Executive Order 12291

Because this temporary rule relates to agency management and personnel, the requirements of Executive Order 12291 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collection, Government employees, Pay administration, Salary offset, Wages.

For the reasons set out in the preamble, Part 5 of title 31 of the Code of Federal Regulations is amended as set forth below.

PART 5—CLAIMS COLLECTION

1. Sections 5.1 through 5.4 are redesignated as Subpart A—Administrative Collection, Compromise, Termination and Referral of Claims and the authority citation for Subpart A is revised to read as follows:

Authority: 31 U.S.C. 3711.

2. Subpart B is added to read as follows:

Subpart B—Salary Offset

Sec.
5.5 Purpose.
5.6 Scope.
5.7 Designation.
5.8 Definitions.
5.9 Applicability of regulations.
5.10 Waiver requests and claims to the General Accounting Office.
5.11 Notice requirements before offset.
5.12 Hearing.
5.13 Certification.
5.14 Voluntary repayment agreements as alternative to salary offset.
5.15 Special review.
5.16 Notice of salary offset.
5.17 Procedures for salary offset.
5.18 Coordinating salary offset with other agencies.
5.19 Interest, penalties and administrative costs.
5.20 Refunds.
5.21 Request for the services of a hearing official from the creditor agency.
5.22 Non-waiver of rights by payments.

Subpart B—Salary Offset

Authority: 5 U.S.C. 5514; 5 CFR Part 550 Subpart K.

§ 5.5 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97-365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984, codified in Subpart K of part 550 of title 5 of the Code of Federal Regulations.

§ 5.6 Scope.

(a) These regulations provide Departmental procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed the Government.

(b) These regulations apply to collections by the Secretary of the Treasury from:

(1) Federal employees who owe debts to the Department; and

(2) Employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) These regulations do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101-105, 38 CFR 1.1900 *et seq.*)

§ 5.7 Designation.

The heads of bureaus and offices and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing act and Office of Personnel Management Regulations: *Provided, however,* that no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the General Counsel, the Chief Counsel of the bureau or office concerned, or the designee of either. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is $300 or less.

§ 5.8 Definitions.

As used in this part (except where the context clearly indicates, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) "Agency" means:

(1) An Executive Agency as defined by section 105 of Title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined by section 102 of Title 5, United States Code;

(3) An agency or court of the judicial branch including a court as defined in section 610 of Title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) "Bureau Salary Offset Coordination Officer" means an official designated by the head of each bureau who is responsible for coordinating debt collection activities for the bureau. The Secretary shall designate a bureau salary offset coordinator for the Departmental offices.

(c) "Certification" means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

(d) "Creditor agency" means an agency of the Federal Government to which the debt is owed.

(e) "Debt" or "claim" means money owed by an employee of the Federal Government to an agency of the Federal Government from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

(f) "Department" or "Treasury Department" means the Departmental Offices of the Department of the Treasury and each bureau of the Department.

(g) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Department shall allow the following deductions in determining disposable pay subject to salary offset:

(1) Federal employment taxes;

(2) Amounts deducted for the U.S. Soldiers' and Airmen's Home;

(3) Fines and forfeiture ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(5) Health insurance premiums;

(6) Normal retirement contributions (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and

(7) Normal life insurance premiums, exclusive of optional life insurance premiums (e.g., Serviceman's Group Life Insurance and "basic" Federal Employee's Group Life Insurance premiums).

(h) "Employee" means a current employee of the Treasury Department or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(i) Federal Claims Collection Standards, "FCCS," jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 *et seq.*

(j) "Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. Except in the case of an administrative law judge, a hearing official may not be under the supervision or control of the Secretary of the Department of the Treasury when Treasury is the creditor agency.

(k) "Paying agency" means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, the Department may be both the creditor and the paying agency.

(l) "Notice of intent to offset" or "notice of intent" means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and apprising the employee of certain administrative rights.

(m) "Notice of salary offset" means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(n) "Payroll office" means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to the Department of the Treasury means the payroll offices of each bureau and the Office of the Assistant Secretary of the Treasury for Management for the Departmental Offices.

(o) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

(p) "Secretary" means the Secretary of the Treasury or his or her designee.

(q) "Waiver" means the cancellation, remission, forgiveness, or non-recovery, of a debt allegedly owed by an employee to the Department or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 5.9 Applicability of regulations.

These regulations are to be followed in instances where:

(a) The Department is owed a debt by an individual currently employed by another agency;

(b) Where the Department is owed a debt by an individual who is a current employee of the Department; or

(c) Where the Department currently employs an individual who owes a debt to another Federal Agency. Upon receipt of proper certification from the creditor agency, the Department will offset the debtor-employee's salary in accordance with these regulations.

§ 5.10 Waiver requests and claims to the General Accounting Office.

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 5.11 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal Government, a minimum of 30 calendar days before salary offset is initiated. When Treasury is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available to the Department and will state:

(1) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the Department's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards, 4 CFR 101.1 et sec.;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Secretary) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in 5.12;

(7) If not previously provided, the opportunity (under terms agreeable to the Department) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency (4 CFR 102.2(e));

(8) The name, address and phone number of an officer or employee of the Department who may be contacted concerning procedures for requesting a hearing;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for hearing within 15 calendar days after receipt of such notice of intent will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition should be sent;

(12) That the Department will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than thirty (30) days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty (60) days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of Title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee (5 U.S.C. 5514); and

(17) Proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Department is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

§ 5.12 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent. *See* § 5.11(a)(8). The request (or petition) for hearing must be received by the designated office not later than fifteen (15) calendar days after the date of the notice. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to Timely Submit.* (1) If the employee files a petition for a hearing after the expiration of the fifteen (15) calendar day period provided for in paragraph (a) of this section, the Department may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Department's offset schedule, if the employee:

(i) Fails to file a request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines failure to appear was due to circumstances beyond the employee's control (5 U.S.C. 5514).

(c) *Representation at the Hearing.* The Creditor Agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of Departmental Records Related to the Debt.* (1) In accordance with § 5.11(a)(5), an employee who intends to inspect or copy creditor agency records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within fifteen (15) calendar days after receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to send copies of such records to the employee.

(e) *Hearing Official.* Unless the Department appoints an administrative law judge to conduct the hearing, the Department must obtain a hearing official who is not under the supervision or control of the Secretary of the Treasury.

(f) *Obtaining the Services of a Hearing Official when the Department is the Creditor Agency.* (1) When the debtor is not a Department employee, and in the event that the Department cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the Department may contact an agent of the paying agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations or as otherwise designated by the agency, and request a hearing official.

(2) When the debtor is a Department employee, the Department may contact any agent of another agency designated in Appendix A to Part 581 of Title 5, Code of Federal Regulations or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.* (1) After the employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence alone (e.g. when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official or administrative law judge, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official or administrative law judge determines that an oral hearing is not necessary, he or she will make the determination based upon a review of

the available written record (5 U.S.C. 5514).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this Subpart. *See,* 4 CFR 102.3. Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of Decision.* The hearing official or administrative law judge shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the sixty (60) day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of Decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to Appear.* In the absence of good cause shown (*e.g.,* excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this Subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date upon the request of the agency representative. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 5.13 Certification.

(a) The bureau salary offset coordination officer shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) The employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) The Department's regulations have been approved by OPM pursuant to 5 CFR Part 550, Subpart K;

(5) The amount and date of the lump sum payment;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(7) The dates the action(s) was taken and that it was taken pursuant to 5 U.S.C. 5514.

§ 5.14 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to an employee may propose to repay the debt as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt and set forth a proposed repayment schedule. Any proposal under this paragraph must be received by the official designated in that notice within fifteen (15) calendar days after receipt of the notice of intent.

(b) When the Department is the creditor agency and in response to a timely proposal by the debtor, the Secretary will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Secretary's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the Secretary decides that the proposed repayment agreement is unacceptable, the employee will have fifteen (15) days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Secretary decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and the Secretary.

§ 5.15 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the creditor agency of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the bureau salary offset coordination officer shall provide a new certification to the paying agency.

§ 5.16 Notice of salary offset.

(a) Upon receipt of proper certification of the Creditor Agency, the bureau payroll office will send the employee a written notice of salary offset. Such notice shall, at a minimum:

(1) Contain a copy of the certification received from the creditor agency; and

(2) Advise the employee. that salary offset will be initiated at the next officially established pay interval.

(b) The bureau payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 5.17 Procedures for salary offset.

(a) The Secretary shall coordinate salary deductions under this subpart.

(b) The appropriate bureau payroll office shall determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions shall begin within three official pay periods following receipt by the payroll office of certification.

(d) *Types of Collection*—(1) *Lump-Sum Payment.* If the amount of the debt is equal to or less than 15 percent of disposable pay, such debt generally will be collected in one lump-sum payment.

(2) *Installment Deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment

deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-Sum Deductions from Final Check.* A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-Sum Deductions from Other Sources.* Whenever an employee subject to salary offset is separated from the Department, and the balance of the debt cannot be liquidated by offset of the final salary check, the Department, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind against the balance of the debt.

(e) *Multiple Debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the bureau payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of Debts Owed to Treasury.* For Treasury employees, debts owed to the Department generally take precedence over debts owed to other agencies. In the event that a debt to the Department is certified while an employee is subject to a salary offset to repay another agency, the bureau payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Department can be collected in one pay period, the bureau payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Department's debt. When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in the determination by the payroll office of the order of the debt collection.

§ 5.18 Coordinating salary offset with other agencies.

(a) *Responsibility of the Department as the creditor agency.*

(1) The Secretary shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a Federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The head of each bureau shall designate a salary offset coordination officer who will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of 5.11;

(ii) Ensuring that each certification of debt sent to a paying agency is consistent with the requirements of 5.13;

(iii) Obtaining hearing officials from other agencies pursuant to § 5.12(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) *Requesting recovery from current paying agency.* Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Department must:

(i) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Department's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the actions(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iii) Except as otherwise provided in this paragraph, submit a debt claim containing the information specified in paragraphs (a)(3) (i) and (ii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(iv) If the employee is in the process of separating, the Department must submit its debt claim to the employee's paying agency for collection as provided in § 5.12. The paying agency must certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (b)(4) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Department must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(v) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Department may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund (5 CFR 831.1801 *et. seq.*) or other similar funds, be administratively offset to collect the debt (*See* 31 U.S.C. 3716 and the FCCS).

(4) When an employee transfers to another paying agency, the Department shall not repeat the due process procedures described in 5 U.S.C. 5514 and this Subpart to resume the collection. The Department must review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the paying agency.

(b) *Responsibility of the Department as the paying agency*—(1) *Complete claim.* When the Department receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The employee must receive written notice that the Department has received a certified debt claim from the creditor agency (including the amount) and written notice of the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim.* When the Department receives an incomplete certification of debt from a creditor agency, the Department must return the debt claim with notice that procedures under 5 U.S.C. 5514 and this Subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Department is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Department, the employee transfers to a different agency before the debt is collected in full, the Department must certify the total amount collected on the debt. One copy of the certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 5.19 Interest, penalties and administrative costs.

The Department shall assess interest, penalties and administrative costs on

debts owed pursuant to 31 U.S.C. 3717 and 4 CFR 101.1 *et seq.*

§ 5.20 Refunds.

(a) In instances where the Department is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owing the United States; or

(2) An administrative or judicial order directs the Department to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subsection shall not bear interest.

§ 5.21 Request for the services of a hearing official from the creditor agency.

(a) The Department will provide a hearing official upon request of the creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement.

(b) The Department will provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(c) The bureau salary offset coordination officer will appoint qualified personnel to serve as hearing officials.

(d) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended*, 31 U.S.C. 1535.

§ 5.22 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this Subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Dated: December 22, 1986.

John F.W. Rogers,

Assistant Secretary of the Treasury for Management.

[FR Doc. 86-29433 Filed 12-31-86; 8:45 am]

BILLING CODE 4810-25-M

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31 CFR Part 5

Debt Collection; Tax Refund Offset

AGENCY: Department of the Treasury.

ACTION: Temporary rule and request for comments.

SUMMARY: The Department of the Treasury is issuing these regulations to establish a procedure by which delinquent debts owed to the United States will be referred to the Internal Revenue Service for collection by offset against Federal income tax refunds. These regulations implement 31 U.S.C. 3720A, which authorizes Federal agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. These regulations affect any taxpayer who has made an overpayment of taxes and who owes a past-due legally enforceable debt to a bureau of the Department of the Treasury.

These regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1986, and before January 1, 1988, and are effective upon publication. The Bureau of the Public Debt and the United States Mint have been identified as eligible to enter into an agreement with the IRS with respect to participation in the pilot tax refund program for 1987.

EFFECTIVE DATES: These regulations are effective January 2, 1987. Comments must be submitted in duplicate on or before February 2, 1987.

ADDRESS: Send comments in duplicate to: Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 566-2327.

FOR FURTHER INFORMATION CONTACT: Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has established procedures each bureau will follow to implement the authority of the Department to refer debts to the Internal Revenue Service ("IRS" or "Service") for collection by offset against tax refunds owed to named persons. Section 3720A of Title 31, United States Code allows the IRS to reduce a refund of a taxpayer's overpayment of tax by the amount of any legally enforceable debt which is owed to a Federal agency and is at least three months overdue. Section 3720A also requires the agency to give taxpayer-debtors sixty (60) days notice of the agency's intention to use the provisions of this section. Under this authority, designated bureaus of the Department may refer to the IRS for collection by tax refund offset, from refunds otherwise payable in calendar year 1987, past-due legally enforceable debts owed to the bureau if: (i) The debts are eligible for offset pursuant to 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code ("Code"), Temporary Treasury Regulation 301.6402-6T and the Memorandum of Understanding ("MOU" or "agreement") between the bureau and the IRS, and (ii) each bureau provides the information called for in the MOU for each debt. The temporary rule and MOU between the IRS and the bureau set forth terms under which the bureau is identified by the Commissioner of Internal Revenue ("Commissioner") as eligible to participate in the tax refund offset program for 1987. The MOU further describes the respective responsibilities of the bureau and the IRS for implementing and administering section 2653 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 1153) with respect to collection by refund offset of certain past-due legally enforceable debts owed to the bureau and provides for reimbursement to the IRS for the costs in making such collections.

Administrative Procedure Act

This is an interpretative rule because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Internal Revenue Service. Accordingly, it is not subject to the notice and public comments requirement of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(A). As a matter of policy, however, the Department will consider any public comments before issuing a final rule.

In order to participate in the Internal Revenue Service's Tax Refund Offset Program in calendar year 1987, the Department must promulgate regulations that are effective immediately. Therefore, pursuant to 5 U.S.C. 553(d)(3), good cause is found for making this rule effective immediately.

Executive Order 12291

This temporary rule is not a "major rule" under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant adverse effect 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. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collections, Government employees, Pay administration, Salary Offset, Tax Refund Offset, Wages.

For the reasons set forth in the preamble, Part 5 of Title 31 of the Code of Federal Regulations is amended as set forth below.

PART 5—CLAIMS COLLECTION

Subpart C is added to read as follows:

Subpart C—Tax Refund Offset

Sec.
5.23 Applicability and scope.
5.24 Designation.
5.25 Definitions.
5.26 Preconditions for department participation.
5.27 Procedures.
5.28 Referrals of debts for offset.
5.29 Notice requirements before offset.

Subpart C—Tax Refund Offset

Authority: 31 U.S.C. 3720A; 26 CFR 301.6402-6T.

§ 5.23 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514;

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(4) With respect to which the bureau has given the taxpayer at least sixty (60) days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(5) Which, in the case of a debt to be referred to the Service after June 30, 1986, has been disclosed by the bureau to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(6) With respect to which the Department has notified or has made a reasonable attempt to notify the taxpayer that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax; and

(7) Is at least $25.

§ 5.24 Designation.

The heads of bureaus and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing statutes and IRS Regulations: *Provided, however,* that no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the bureau Chief Counsel or his or her designee. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is $300 or less.

§ 5.25 Definitions.

For purposes of this subpart:

"Commissioner" means the Commissioner of the Internal Revenue Service.

"Debt" means money owed by an individual from sources which include loans insured or guaranteed by the United States and all other amounts due the U.S. from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines, forfeitures (except those arising under the Uniform Code of Military Justice), administrative costs and all other similar sources.

"Memorandum of Understanding" (MOU or agreement) means the agreement between the IRS and the individual bureaus which prescribes the specific conditions the bureaus must meet before the IRS will accept referrals for tax refund offsets.

§ 5.26 Preconditions for department participation.

(a) The Department, through the individual bureaus, will provide information to the Service within the time frame prescribed by the Commissioner of the IRS to enable the Commissioner to make a final determination as to the each bureau's participation in the tax refund offset program. Such information shall include a description of:

(1) The size and age of the bureau's inventory of delinquent debts;

(2) The prior collection efforts that the inventory reflects; and

(3) The quality controls the bureau maintains to assure that any debt the bureau may submit for tax refund offset will be valid and enforceable.

(b) In accordance with the timetable specified by the Commissioner, the bureau will submit test magnetic media to the IRS, in such form and containing such data as the IRS shall specify.

(c) The bureau shall establish a toll free telephone number that the IRS will furnish to individuals whose refunds have been offset to obtain information from the bureau concerning the offset.

(d) The bureau shall enter into a separate agreement with the IRS to provide for reimbursement of the Service's cost of administering the pilot tax refund offset program in 1987.

§ 5.27 Procedures.

(a) The bureau head or his or her designee shall be the point of contact with the IRS for administrative matters regarding the offset program.

(b) The bureaus shall ensure that:

(1) Only those past-due legally enforceable debts described in § 5.23(b) are forwarded to the IRS for offset; and

(2) The procedures prescribed in the MOU between the bureau and the IRS are followed in developing past-due debt information and submitting the debts to the IRS.

(c) The bureau shall submit a notification of a taxpayer's liability for past-due legally enforceable debt to the IRS on magnetic media as prescribed by the IRS. Such notification shall contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code) of the individual who is responsible for the debt;

(2) The dollar amount of such past-due and legally enforceable debt;

(3) The date on which the original debt became past-due;

(4) The designation of the referring bureau submitting the notification of liability and identification of the

referring agency program under which the debt was incurred;

(5) A statement accompanying each magnetic tape by the referring bureau certifying that, with respect to each debt reported on the tape, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 5.23(b).

(d) A bureau shall promptly notify the IRS to correct Treasury data submitted when the bureau:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on such debt; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the IRS for offset, the bureau shall also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 5.28 Referral of debts for offset.

(a) A bureau shall refer to the Service for collection by tax refund offset, from refunds otherwise payable in calendar year 1987, only such past-due legally enforceable debts owed to the Department:

(1) That are eligible for offset under the terms of 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402–6T, and the MOU; and

(2) That information will be provided for each such debt as is required by the terms of the MOU.

(b) Such referrals shall be made by submitting to the Service a magnetic tape pursuant to § 5.27(c), together with an accompanying written certification to the Service by the bureau that the conditions or requirements specified in 26 CFR 301.6402–6T and the MOU have been satisfied with respect to each debt included in the referral on such tape. The bureaus certification shall be in the form specified in the MOU.

§ 5.29 Notice requirements before offset.

(a) The bureau must notify, or make a reasonable attempt to notify, the individual that:

(1) The debt is past due, and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the Service for offset against any refund of overpayment of tax;

(b) The bureau shall provide a toll free telephone number for use in obtaining information from the bureau concerning the offset.

(c) The bureau shall give the individual debtor at least sixty (60) days from the date of the notification to present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. The bureau shall consider the evidence presented by the individual and shall make a determination whether an amount of such debt is past-due and legally enforceable. For purposes of this subsection, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual shall bar referral of the debt to the Service.

(d) Notification given to a debtor pursuant to paragraphs (a), (b) and (c) of this section shall advise the debtor of how he or she may present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c). Unless such evidence is directly considered by an official or employee of the bureau, and the determination required under paragraph (c) of this section has been made by an official or employee of the bureau, any unresolved dispute with the debtor as to whether all or part of the debt is past-due or legally enforceable must be referred to the bureau for ultimate administrative disposition, and the bureau must directly notify the debtor of its determination.

Dated: December 22, 1986.

John F.W. Rogers,

Assistant Secretary of the Treasury for Management.

[FR Doc. 86–29434 Filed 12–31–86; 8:45 am]

BILLING CODE 4810-25-M

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31 CFR Part 5

Claims Collection; Debt Collection Act of 1982; Administrative Offset

AGENCY: Department of the Treasury.

ACTION: Temporary rule and request for comments.

SUMMARY: The Department of the Treasury is issuing temporary regulations to govern the collection of debts owed to the United States which arose from transactions involving the Department or any of its components. These regulations implement debt collection procedures provided under section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97–365), which is codified in 31 U.S.C. 3716. The Act authorizes the Federal Government to use administrative offset to collect debts. If the debtor is properly notified and given the opportunity to exercise certain due process rights, and the debtor is owed monies by the United States as a result of other transactions, then the debt can be administratively offset from monies owed by the United States without the debtor's consent.

EFFECTIVE DATE: These regulations are effective January 2, 1987. Comments in duplicate must be received by February 2, 1987.

ADDRESS: Send comments to Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Lorna R. Glassman, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1409, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220. Telephone (202) 566–2327.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97–365) makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect debts.

Under the Act, administrative offset may be initiated when the head of an agency determines that a debtor is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States as a result of transactions with a Federal agency. The debt may then be collected by administratively offsetting the debt against the amount due.

The debtor will be afforded certain due process rights before administrative offset deductions are initiated. Before the debt can be collected by administrative offset, a debtor must be provided with (1) notice that a debt is owed, (2) the opportunity to review the record, and (3) the option to enter into a written repayment agreement. The debtor must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations.

The agency may initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made

does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of the due process procedures.

The Act requires agencies to issue regulations for administrative offset. The Department of Justice and the General Accounting Office jointly issued Federal Claims Collection Standards on administrative offset in 4 CFR Part 102. These regulations are consistent with Department of Justice and General Accounting Office regulations and they establish the procedures the Department of the Treasury will follow in making an administrative offset.

Administrative Procedure Act

This is an interpretive rule because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice and the General Accounting Office. Accordingly, no notice of proposed rulemaking is required pursuant to 5 U.S.C. 553(b)(A). As a matter of policy, however, the Department will consider any public comments before issuing a final rule. Pursuant to 5 U.S.C. 553(b)(3), good cause is found for making this rule effective immediately.

Executive Order 12291

This temporary rule is not a "major rule" under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collections, Administrative offset, Government employees, Pay administration, Salary offset, Wages.

For the reasons set out in the preamble, Part 5 of Title 31, Code of Federal Regulations is amended as set forth below.

PART 5—CLAIMS COLLECTION

Subpart D is added to read as follows:

Subpart D—Administrative Offset

Sec.
5.30 Scope of regulations.
5.31 Designation.
5.32 Definitions.
5.33 General.
5.34 Notification procedures.
5.35 Agency review.
5.36 Written agreement for payment.
5.37 Administrative offset.
5.38 Jeopardy procedure.

Subpart D—Administrative Offset

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

§ 5.30 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with the Department. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as added by the Debt Collection Act of 1982 (31 U.S.C. 3716). These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

§ 5.31 Designation.

The heads of bureaus and offices and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing statutes: *Provided, however,* that no compromise of a claim shall be effected or collection action terminated except upon recommendation of the General Counsel or the appropriate bureau counsel or the designee of either. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is $300 or less.

§ 5.32 Definitions.

(a) "Administrative offset," as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) "Person" includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 5.33 General.

(a) The Secretary or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interests of the United States to collect the debt by administrative offset because of the decreased costs of collection and the acceleration in the payment of the debt;

(b) The Secretary, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Secretary, or his or her designee, may request another agency that holds funds payable to a Treasury debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed by other agencies of the United States or by any State or local government.

§ 5.34 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is

available to the Department. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of the Department to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Department with respect to the debt;

(c) An opportunity for review within the Department of the determination of the Department with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 5.35 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Treasury official who provided notification within 30 calendar days of the receipt of the written notice described in § 5.34.

(b) If the debtor requests an opportunity to inspect or copy the Department's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Department may be temporarily suspended. Depending on the type of transaction the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 5.36 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Department's request for the statement. At the Department's option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR Part 103 and 31 CFR 5.3.

§ 5.37 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 5.35 or if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) *Requests for offset to other Federal agencies.* The Secretary or his or her designee may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Department by that debtor. In requesting administrative offset, the Department, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the agency has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR Part 102 with respect to providing the debtor with due process.

(c) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Department be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Department shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR Part 102, including providing any required hearing or review.

(2) A determination by the Department that collection by offset against funds payable by the Department would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law

§ 5.38 Jeopardy procedure.

The Department may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§ 5.34 and 5.34 of this Part if failure to take the offset would substantially jeopardize the Department's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Department shall be promptly refunded.

Dated: December 22, 1986.

John F.W. Rogers,

Assistant Secretary of the Treasury for Management.

[FR Doc. 86-29435 Filed 12-31-86; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-3124-7]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Part D of the Clean Air Act, as amended in 1977, required states to adopt and submit plans to attain one or more of the National Ambient Air Quality Standards (NAAQS) for areas which had recorded violations of the NAAQS. On March 5, 1978 (45 FR 8964), EPA designated portions of the state of Kansas nonattainment with respect to the ozone standard. The Kansas Department of Health and Environment (KDHE) prepared and submitted to EPA an implementation plan to attain the ozone standard in Johnson and Wyandotte County, Kansas. Included in this plan are regulations to control volatile organic compound (VOC) emissions from major sources in these counties. These regulations were approved by EPA on July 7, 1981 (46 FR 35089). As written, these regulations would apply only in nonattainment areas. Thus, if an area were to be redesignated from nonattainment to attainment, the regulations would no longer be applicable. The result would

be a State Implementation Plan (SIP) relaxation. In order to correct this situation, the state revised the applicability portion of the VOC rules EPA approved on July 7, 1981.

Today's action approved the revisions in K.A.R. 28-19-63, Automobile and light-duty truck surface coating; K.A.R. 28-19-64, Bulk gasoline terminals; K.A.R. 28-19-67, Petroleum refineries; and K.A.R. 28-19-68, Leaks from petroleum refinery equipment. On July 11, 1986 (51 FR 25200), EPA approved a similar revision to K.A.R. 28-19-69, Cutback asphalt.

DATES: This action will be effective March 3, 1987, unless notice is received by February 2, 1987 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the state submission are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; and the Office of the **Federal Register**, 1100 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: The criteria for approval of 1979 SIP revisions were established in the General Preamble for Part D SIPs published on April 4, 1979. Plans were to be directed toward reducing peak ozone concentrations within major urbanized areas. Plans were to provide for the necessary legally-enforceable procedures for the control of large VOC sources (more than 100 tons per year potential emissions) for which EPA has issued control techniques guidelines. Regulations applicable to Johnson and Wyandotte County, Kansas, included K.A.R. 28-19-63, Automobile and light-duty truck surface coating; K.A.R. 28-19-64, Bulk gasoline terminals; K.A.R. 28-19-67, Petroleum refineries; and K.A.R. 28-19-68, Leaks from petroleum refinery equipment. EPA approved these regulations on July 7, 1981 (46 FR 35089).

The applicability section of each of the above rules limited the rule's applicability to ozone nonattainment areas. The result was that so long as an area remained nonattainment under section 107(d) of the Act, rules remained in effect. If, however, an area should be redesignated from nonattainment to attainment, the rule would no longer apply. The result would be a SIP relaxation which could prevent maintenance of the ozone standard after it had been attained. This would be contrary to the requirements of section 110(a)(2)(B) of the Act which requires that a SIP provide for maintenance as well as attainment of air quality standards.

In order to correct this situation, the KDHE, after a notice and public hearing, revised the applicability sections of those affected regulations so they will remain effective when a nonattainment area is redesignated attainment for ozone. Other minor wording changes were made by the state for the purpose of clarity and style. None of these changes affect the rule's stringency.

Action

EPA approves the revisions to K.A.R. 28-19-63, Automobile and light-duty truck surface coating; K.A.R. 28-19-64, Bulk gasoline terminals; K.A.R. 28-19-67, Petroleum refineries; and K.A.R. 28-19-68, Leaks from petroleum refinery equipment.

EPA believes there is good cause to approve the state's request to approve these revisions without prior proposal. These regulations were originally approved by EPA on July 7, 1981 (46 FR 35089). These rule revisions merely continue their applicability after an area is redesignated attainment for ozone. The revisions in the rules are minor and EPA believes noncontroversial.

The public should be advised that this action will be effective March 31, 1987. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

EPA has examined this action and finds that it will have no substantive effect on the stringency of the Kansas SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Excutive Order 12291.

Under section 307(b)(1) of the Clean Air Act as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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.)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and record-keeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the state of Kansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 28, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.870 is amended by adding paragraph (c)(18) as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(18) Revised regulations K.A.R. 28-19-63 applicable to automobile and light-duty truck surface coating; K.A.R. 28-19-64 applicable to bulk gasoline terminals; K.A.R. 28-19-67 applicable to petroleum refineries; and K.A.R. 28-19-68 applicable to leaks at petroleum refineries, were submitted by the Secretary of the Kansas Department of Health and Environment on February 21, 1986.

(i) *Incorporation by reference.* (A) Revised regulations K.A.R. 28-19-63, K.A.R. 28-19-64, K.A.R. 28-19-67, and K.A.R. 28-19-68 as approved by the Kansas Attorney General on October 30, 1985.

[FR Doc. 86-29490 Filed 12-31-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[A-10-FRL-3133-9]

Approval and Promulgation of State Implementation Plan and Designation of Areas for Air Quality Planning Purposes; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this notice, EPA is approving the redesignation of the Seattle-Tacoma, Washington, "nonattainment" areas from

"nonattainment" to "attainment" for the primary ozone (O_3) standard. The redesignation request was based upon supporting documentation prepared by the Puget Sound Air Pollution Control Agency (PSAPCA) and was submitted to EPA by the Washington Department of Ecology (WDOE) pursuant to section 107(d) of the Clean Air Act. Air quality data and emission reductions achieved through implementation of the approved control strategy measures support this redesignation.

EPA is also approving revisions to the violatile organic compounds (VOC) regulations as a State Implementation Plan (SIP) revision, which, when incorporated into the O_3 SIP, will serve as the means to maintain the standard. EPA will act, separately, on a request to approve compliance date extensions for two VOC sources in the attainment area.

EFFECTIVE DATE: March 3, 1987.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information, Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch (10A-85-3), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Washington, Department of Ecology, 4224 Sixth Avenue SW., Rowe Six, Building #4, Lacey, Washington 98504.

Copy of the State's submittal may be examined at: The Office of the Federal Register, 1110 L Street NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4232, FTS: 399-4232.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1982 (48 FR 8273), EPA approved the Seattle-Tacoma, Washington, O_3 attainment plan.

On December 13, 1984, PSAPCA and WDOE held a joint public hearing to obtain public comment on revisions to PSAPCA Regulation II (VOC controls, requiring reasonably available control technology) which would provide for maintenance of the National Ambient Air Quality Standards for O_3 by making the current VOC controls apply to all of King, Kitsap, Pierce, and Snohomish counties. The original nonattainment area included only parts of King, Pierce, and Snohomish counties, and none of Kitsap county. WDOE submitted the adopted revisions to EPA on February 21, 1985. This submittal included a demonstration that there had been no exceedances of the O_3 ambient standard for a three-year period from 1982 through 1984. The submittal also documented the fact that O_3 levels will be maintained below the ambient standard as a result of the approved strategy and expanded geographic coverage of the VOC controls applicable to stationary sources. The O_3 ambient data submitted to EPA by WDOE for calendar year 1985 also showed continued attainment of the O_3 standard.

The February 21, 1985, submittal also contained a request for EPA to act on variances for three VOC sources, which had been previously submitted to EPA on May 7, 1984. EPA will take separate action on the compliance date extensions included in the variances for two of the sources in accordance with recently issued guidance dealing with allowable compliance date extensions for certain VOC sources. The third source has permanently ceased operations; no action on the compliance date extension for that source is necessary.

For further information regarding the attainment and maintenance demonstrations, refer to the proposed rulemaking published on June 30, 1986 (51 FR 23561).

II. Comments

In the June 30, 1986, **Federal Register** (51 FR 2356), EPA proposed a 30-day public comment period on today's approval action. No comments were received.

III. Summary of Rulemaking Action

EPA is today, approving (1) the redesignation of Seattle-Tacoma, Washington, O_3 nonattainment area to attainment for the primary O_3 standard; (2) and revisions to Regulation II and "Monitoring and Reporting Procedures for VOC Sources" as adopted in PSAPCA Resolution 568.

In addition, EPA is revising 40 CFR Part 52, § 52.2478, to reflect previous rulemaking actions where extensions to CO and O_3 nonattainment dated in the Seattle-Tacoma nonattainment area were approved as described in § 52.2472—Extensions.

IV. Procedural Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 1987. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air Pollution Control Agency, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Note.—Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: December 18, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 in Title 40 of the Code of Federal Regulations is amended as follows:

Subpart WW—Washington

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2470 is amended by adding paragraph (c)(35) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(35) On February 21, 1985 the State of Washington Department of Ecology submitted revisions to Regulation II, specifically, §§ 1.02, 2.13, 3.11 and 4.02, and "Monitoring and Reporting Procedures for VOC Sources" as adopted in Puget Sound Air Pollution Control Agency Resolution 568.

(i) Incorporation by Reference:

(A) Letter dated February 21, 1985 from the Washington Department of Ecology to EPA Region 10.

(B) Resolution 568—Revisions to Regulation II and "Monitoring and Reporting Procedures for VOC Sources" as adopted by the Puget Sound Air

Pollution Control Agency on December 13, 1984.

3. Section 52.2478 is amended by revising the table to read as follows:

§ 52.2478 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	1st [1]	2nd [2]	1st [1]	2nd [2]			
Eastern WA-Northern Idaho Interstate AQCR (WA portion):							
1. Spokane area	c	h	b	b	b	c	b
2. Clarkston area	c	h	b	b	b	b	b
3. Remainder of AQCR	b	b	b	b	b	b	b
Olympic-Northwest Intrastate:							
1. Port Angeles area	a	c	b	b	b	b	b
2. Remainder of AQCR	b	b	b	b	b	b	b
Portland, Oregon-Vancouver, WA Intrastate AQCR (WA portion):							
1. Vancouver area	c	h	b	b	b	b	g
2. Longview area	a	h	b	b	b	b	b
3. Remainder of AQCR	b	b	b	b	b	b	b
Puget Sound Intrastate AQCR:							
1. Seattle area							
Duwamish area	c	h	b	b	b	b	d
Central Business District	b	b	b	b	b	f	d
University District	b	b	b	b	b	e	d
Dearborn Street & Rainier Ave. Corridor.	b	b	b	b	b	f	d
Remainder of Seattle Area	b	b	b	b	b	b	d
2. Bellevue CBD	b	b	b	b	b	j	d
3. Kent area	a	h	b	b	b	b	d
4. Renton area	a	h	b	b	b	b	d
5. Tacoma area	c	h	b	b	b	i	d
6. Seattle-Tacoma O_3 area							d
7. Remainder of AQCR	b	b	b	b	b	b	b
South Central Washington Intrastate AQCR:							
1. Yakima area	b	b	b	b	b	c	b
2. Remainder of AQCR	b	b	b	b	b	b	b

[1] 1st—Primary.
[2] 2nd—Secondary.
[a] Air quality levels presently below primary standards.
[b] Air quality levels below secondary standards or area is unclassifiable.
[c] December 31, 1982.
[d] September 30, 1984.
[e] June 30, 1986.
[f] April 30, 1986.
[g] December 31, 1987.
[h] Attainment date not established.
[i] February 28, 1987.
[j] September 30, 1986.

4. Section 52.2479 is amended by revising the table to read as follows:

§ 52.2479 Rules and regulations.

TABLE 52.2479—WASHINGTON SIP REGULATIONS

Citation	Title	Applicable sections	Date of sections	Date of EPA approval	Federal Register citation
WAC 173-400	General Regulations for Air Pollution Sources.	−010	Apr. 26, 1979	June 5, 1980	45 FR 37835
		−160	Apr. 26, 1979	Aug. 14, 1981	46 FR 41054
		−020; −030; −040 (except (13)); −050; −060; −070; −090; −100; −120.	Aug. 20, 1980	Sept. 14, 1981	46 FR 45609
		−110	Dec. 17, 1980	Sept. 14, 1981	46 FR 45609
WAC 173-402	Civil Sanctions under Washington Clean Air Act.	All	June 24, 1980	Sept. 14, 1981	46 FR 45609
WAC 173-405	Kraft Pulping Mills	−012; −021; −040(1), (2), (3), (4), (5), (6), (17); −072(1), (4), (5); −077; −086; −101.	Aug. 20, 1980	Sept. 14, 1981	46 FR 45609
WAC 173-410	Sulfite Pulping Mills	−012; −021; −040(1), (2), (3), (5), (16); −062(1), (2), (3); −067; −086; −090; −091.	Aug. 20, 1980	Sept. 14, 1981	46 FR 45609
WAC 173-415	Primary Aluminum Plants	−010; −020; −030(2)(b), (4), (5), (7), (11); −050; −060(1)(c), (2); −070; −090.	Aug. 14, 1980	Sept. 14, 1981	46 FR 45609
WAC 173-420	State Jurisdiction over Motor Vehicles	All	Mar. 29, 1977	June 5, 1980	45 FR 37835

TABLE 52.2479—WASHINGTON SIP REGULATIONS—Continued

Citation	Title	Applicable sections	Date of sections	Date of EPA approval	Federal Register citation
WAC 173-422	Motor Vehicle Emission Inspection	All	Dec. 31, 1981	Feb. 28, 1983	48 FR 8274
WAC 173-425	Open Burning	All	Oct. 24, 1977	June 5, 1980	45 FR 37835
WAC 173-490	Emission Standards and Controls for Sources Emitting Volatile Organic Compounds.	-090; -120; -130; -135; -140	Apr. 26, 1979	June 5, 1980	45 FR 37835
		-010; -030; -070; -071	Aug. 20, 1980	Sept. 14, 1981	46 FR 45607
		-200; -201; -202; -207	Aug. 20, 1980	Apr. 14, 1982	47 FR 16019
		-020; 025; -040; -080;			
		-203; -204; -205; -208	June 29, 1982	Dec. 17, 1982	47 FR 56498
WAC 463-39	General Regulations for Air Pollution Sources.	-010; -020; -030 (except (4), (7), (10), (24), (25), (30), (35), (36)); -040 (except introductory paragraph); -050; -060; -080; -100; -110 (except (1), first two sentences of (3)(b), (3)(c), (3)(d), (3)(e)); -120; -130; -135; -150; -170.	July 23, 1979	Feb. 23, 1982	47 FR 7840
WAC 18-04	General Regulations for Air Pollution Sources.	-080; -130; -140	Jan. 22, 1973	May 22, 1975	40 FR 22254
WAC 18-08	Emergency Episode Plan	All	Undated	May 31, 1972	37 FR 10900
WAC 18-16	Grass Seed Field Burning	All	Undated	May 31, 1972	37 FR 10900
Puget Sound Air Pollution Control Agency Regulation I		Article 9.07(c)	Aug. 12, 1970	May 31, 1972	37 FR 10900
		Article 9.02A	Oct. 10, 1973	Oct. 29, 1975	40 FR 50266
		Articles 1 (except 1.07(s), 1.07(rr), and 1.07(xx)); Article 3; and Article 6 (except 6.07(b)(7) and 6.08).	December 1974	June 5, 1980	45 FR 37835
		Articles 9.02, 9.03, 9.04, 9.05, 9.06, 9.07(d), 9.07(e), 9.09.	January 1977	June 5, 1980	45 FR 37835
		Articles 1.07(s), 1.07(rr), 1.07(xx), 6.07(b)(7), and 6.08.	Oct. 11, 1983	April 22, 1985	50 FR 15746
Puget Sound Air Pollution Control Agency Regulation II		Article 1 (except 1.02), Article 2 (except 2.13), Article 3 (except 3.11), and Article 4 (except 4.02).	Apr. 8, 1982	Feb. 28, 1983	48 FR 82741
Regulation II		Article 1, Section 1.02, Article 2, Section 2.13 Article 3, Section 3.11 and Article 4, Section, 4.02.	Dec. 13, 1984	Mar. 3, 1987	51 FR
Northwest Air Pollution Authority Regulations		455.11	Aug. 9, 1978	June 5, 1980	45 FR 37835
Spokane County Air Pollution Control Authority Regulation II		Article IV, Section 4.01	Apr. 26, 1979	June 5, 1980	45 FR 37835

PART 81—[AMENDED]

Title 40, Part 81 of the Code of Federal Regulations is revised as follows:

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 81.348 is amended by revising the table for ozone (O_3) to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE (O_3)

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Greater Seattle-Tacoma Area—in general, from Puget Sound at the west to North Bend at the east, from Puyallup at the south to Edmonds at the north		X
Portland-Vancouver AQMA (Washington portion)	[1] X	
Spokane		[1] X
Remainder of State		X

[1] EPA designation replaced State designation.

* * * * *

[FR Doc. 86-28894 Filed 12-31-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-107; RM-5007, RM-5438]

Radio Broadcasting Services; Saint Marys, West Virginia and Marietta, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230B1 for Channel 269A at Saint Marys, West Virginia and modifies the license for Station WRRR-FM to specify operation on the new channel, at the request of Seven Ranges Radio Company. In order to accomplish this substitution we have substituted Channel 271A for Channel 232A at Marietta, Ohio and modified the license of Station WEYQ-FM to specify operation on Channel 271A, at the request of Employee Owned Broadcasting Corp. This action could provide Saint Marys with its first wide coverage FM station. A site restriction of 10.3 kilometers (6.4 miles) north of Marietta is required. Both substitutions have been concurred by the Canadian government.

EFFECTIVE DATE: February 2, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-107, adopted December 3, 1986 and released December 17, 1986. 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 allotments is amended under West Virginia, by revising Channel 269A to read 230B1 for Saint Marys and under Ohio, and by revising Channel 232A to read 271A for Marietta.

Ralph A. Haller,

Acting Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86-29421 Filed 12-31-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-239; RM-5330]

Radio Broadcasting Services; Faith, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 246 to Faith, South Dakota, as the community's first local FM service, at the request of the South Dakota State Board of Directors for Educational Television. Channel 246 can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective February 2, 1987; The window period for filing applications will open on February 3, 1987, and close on March 4, 1987.

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. 86-239, adopted November 20, 1987 and released December 17, 1986. 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 for South Dakota is amended by adding Faith, Channel 246.

Ralph A. Haller,

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

[FR Doc. 86-29420 Filed 12-31-86; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[Acquisition Circular AC-86-8]

Threshold for Application of Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular provides the new dollar threshold required for the applicability of the Trade Agreements Act of 1979 as authorized by the U.S. Trade Representative under E.O. 12260. The intended effect is to provide guidance to GSA contracting activities pending a revision to the General Services Administration Acquisition Regulation.

DATES:

Effective date: January 1, 1987.

Expiration date: This Acquisition Circular will expire 6 months after issuance unless canceled earlier or extended.

Comment date: February 2, 1987.

ADDRESS: Comments may be submitted to Ms. Marjorie Ashby, 18th & F Sts. NW., Room 4026, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The January 1, 1987, effective date for the change in the dollar threshold under the Trade Agreements Act of 1979 creates an urgent and compelling circumstance which makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule implements the U.S. Trade Representative's decision to increase the dollar threshold for applicability of the Trade Agreements Act. Accordingly, no regulatory flexibility analysis has been prepared. This Circular does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

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

In 48 CFR Chapter 5, the following Acquisition Circular is added to read as follows:

General Services Administration Acquisition Regulation

Acquisition Circular No. AC-86-8

To: All GSA contracting activities.

Subject: Threshold for application of Trade Agreements Act.

1. *Purpose.* This Acquisition Circular is issued to implement a change in the dollar threshold for applicability of the Trade Agreements Act, pending a formal revision to the General Services Administration Acquisition Regulation (GSAR).

2. *Background.* The United States Trade Representative (TR) is authorized under Executive Order 12260 to determine the appropriate dollar threshold required for the applicability of the Trade Agreements Act of 1979. By letter dated December 10, 1986, the Trade Representative notified GSA that the threshold was being changed from $149,000 to $171,000 effective January 1, 1987.

3. *Effective date.* All solicitations issued on or after January 1, 1987, that are subject to the Trade Agreements Act, shall cite the new dollar threshold of $171,000.

4. *Expiration date.* This Acquisition Circular expires 6 months after issuance unless canceled earlier or extended.

5. *Reference to regulation.* Section 525.402(a) of the General Services Administration Acquisition Regulation.

6. *Instructions/Procedures.*

a. Section 525.402 is amended to revise paragraph (a) to read as follows:

525.402 Policy.

(a) Pursuant to FAR 25.402(a), contracting officers shall evaluate offers of $171,000 or more for an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The $171,000 threshold shall be inserted in paragraph (b) of the FAR clause at 52.225-9 (see Article 30 of the GSA Form 3507, Supply Contract Clauses).

* * * * *

b. When using the GSA Form 3507, Supply Contract Clauses, contracting officers shall modify the form pending its revision to notify bidders/offerors of the change to the FAR clause by including a notice which reads

substantially as follows in solicitations and contracts subject to the Trade Agreements Act:

Trade Agreements Act—Applicability (Dec. 1986)

Article 30 (FAR 52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program (APR 1984)) of GSA Form 3507 is amended by changing the dollar value specified in paragraph (b) from $161,000 to $171,000.

Dated: December 19, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-29474 Filed 12-31-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86-01; Notice 2]

Motor Vehicle Theft Prevention; Insurer Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule is issued pursuant to section 612 of the Motor Vehicle Information and Cost Savings Act, which requires each subject insurer to furnish an annual report, regarding comprehensive insurance for motor vehicles and thefts and recoveries of motor vehicles, to NHTSA beginning October 25, 1986. The reports are intended to aid the agency in implementing the motor vehicle antitheft provisions of the Cost Savings Act, including the requirement in section 612 that the agency periodically compile and publish the insurance information in a form that will be helpful to the public, the law enforcement community, and Congress. The information will also aid the agency in implementing section 614, which requires the agency to submit one report to Congress not later than October 1987 and another not later than October 1990. The October 1990 report is required to include an evaluation of the effectiveness of the Federal motor vehicle theft prevention standard (49 CFR Part 541) and both the 1987 and 1990 reports are required to include an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

This rule requires certain insurers to report annually on the thefts and recoveries of motor vehicles that they insure, their rating rules and plans and supporting data for establishing the premiums they charge for comprehensive insurance coverage and for the premium penalties for vehicles considered more likely to be stolen, their actions to reduce the premiums they charge for comprehensive insurance coverage because of a reduction in motor vehicle thefts, and their actions to assist in deterring and reducing motor vehicle thefts. Information in each of these areas is expressly required to be included in the insurer reports by section 612. Additionally, this rule requires insurers to report information about vehicles equipped with antitheft devices, to aid the agency in carrying out its responsibilities under the Cost Savings Act.

NHTSA has minimized the number of insurance companies subject to this reporting requirement, by exempting every insurer that qualified for an exemption under section 612. As a result, only the 31 insurance companies listed in this rule are subject to this reporting requirement. The agency tried to obtain the information needed to allow it to create a similar exemption for small rental and leasing companies. However, those companies did not provide the agency with that information. Accordingly, all companies with fleets of 20 or more vehicles that are used primarily for rental or lease (other than a governmental entity) and which are not covered by theft insurance issued by insurers of passenger motor vehicles remain subject to a statutory duty to file annual reports.

NHTSA remains concerned that a requirement that annual reports be filed by the smaller rental and leasing companies will impose an unnecessary burden on those companies. The agency believes that the information in the reports of the larger rental and leasing companies would be sufficient to provide a representative sample of the theft experience of all rental and leasing companies, just as the information from the larger insurance companies will give NHTSA a representative sample of the experience of insurance companies. Therefore, NHTSA believes that reports from the smaller rental and leasing companies are not necessary to allow the agency to fulfill its statutory duties and would impose an unnecessary burden on these smaller companies. Notwithstanding this belief, section 612 requires all rental and leasing companies to file these reports unless NHTSA can make two determinations. The rental and leasing companies have not provided NHTSA with the information it needs to determine whether exemptions for smaller rental and leasing companies can be justified under section 612. Accordingly, all rental and leasing companies will be subject to these reporting requirements, unless NHTSA obtains information before January 31, 1987, that would allow the agency to determine whether exemptions for smaller rental and leasing companies can be justified.

EFFECTIVE DATE: This rule is effective on January 2, 1987.

Any petitions for reconsideration of this rule must be received by NHTSA not later than February 2, 1987.

Section 612 of the Cost Savings Act requires these reports to be filed annually not later than October 25, beginning in 1986. However, after considering the burdens associated with these first insurer reports, the short time to gather significant amounts of data, and a good faith effort by most insurers to comply with these statutory requirements, NHTSA will not take any enforcement actions against insurers that file the 1986 insurer reports after October 25, 1986, but not later than January 31, 1987. This is a one-time exception, based on the unique circumstances for 1986. All subsequent reports must be filed not later than October 25 of the year in which the reports are due.

ADDRESS: Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4808).

SUPPLEMENTARY INFORMATION:

The Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (the Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act). Pursuant to Title VI, NHTSA promulgated a vehicle theft prevention standard mandating the marking of the major parts of frequently stolen vehicles. (50 FR 43166; October 24, 1985).

Section 612 of the Cost Savings Act requires the submission of annual reports by insurers to this agency, beginning in 1986, and specifies minimum content requirements for those reports. Section 612(b) requires NHTSA

to periodically compile and publish the information set forth in the insurer reports, in a form that will be helpful to the public, including Federal, State, and local police and the Congress. These insurer reports are also intended to aid the agency in implementing Title VI, including the requirements in section 614 that the agency submit a report to Congress not later than October 1987 and another report not later than October 1990. Section 614 specifies that the October 1990 report must include a detailed evaluation of the effectiveness of the Federal motor vehicle theft prevention standard (49 CFR Part 541) and an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

The required contents of the insurer reports are set forth in section 612(a)(2) of the Cost Savings Act. That section provides that insurer reports must include the following information:

(1) The thefts and recoveries (in whole or in part) of motor vehicles;

(2) The number of vehicles which have been recovered intact;

(3) The rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen;

(4) The actions taken by insurers to reduce such premiums, including changes in rate levels for automobile comprehensive coverages, due to a reduction in thefts of motor vehicles;

(5) The actions taken by insurers to assist in deterring or reducing thefts of motor vehicles; and

(6) Such other information as the [NHTSA] may require to administer Title VI and to make the reports and findings required by Title VI.

The Notice of Proposed Rulemaking

In response to this statutory mandate, NHTSA published a notice of proposed rulemaking (NPRN) at 51 FR 23095; June 25, 1986. The NPRM proposed to exempt all but 31 insurance companies from the reporting requirements, because NHTSA tentatively concluded that all other insurance companies met the statutory requirements for being exempted as small insurers. This determination did not apply to rental and leasing companies, because there are different statutory requirements for exempting such companies from these reporting requirements. However, the NPRM sought information that would allow the agency to include a general exemption for small rental and leasing companies in this final rule.

The NPRM proposed to require insurers to subdivide their insured motor vehicle population into passenger cars, light and heavy trucks, multipurpose passenger vehicles, and motorcycles, and provide separate information for each of these types of vehicles. It also proposed that insurers report information separately for each State in which they do business, so that the agency would be able to perform a State-by-State analysis of the information in these reports. Both these elements are required by section 612 of the Cost Savings Act (15 U.S.C. 2032). The insurers would provide the following information:

1. Total thefts and recoveries of insured vehicles during the reporting period, broken down into make, model, and line for each vehicle type, and the use made by the insurer of this information;

2. The rating rules and plans used by the insurer to establish comprehensive insurance premiums and premium penalties for motor vehicles considered by the insurer as more likely to be stolen, broken down into the risk groupings the insurer uses for its own purposes;

3. The actions taken by the insurer to reduce comprehensive insurance premiums because of a reduction in vehicle thefts;

4. Information about any discounts the insurer offers for vehicles equipped with antitheft devices, including the number of such discounts and thefts and recoveries of vehicles that received such discounts; and

5. The insurer's actions to assist in deterring and reducing vehicle thefts.

The NPRM explained that this information was the minimum that could be required in the insurer reports, consistent with the provisions of the Cost Savings Act. Items 1, 2, 3, and 5 listed above are expressly required to be included in the insurer reports by section 612(a). Only item 4 listed above was not expressly required by section 612(a). It was proposed to assist the agency in satisfying its statutory mandate under section 605 to make determinations of whether antitheft devices are as effective as parts marking in deterring and reducing vehicle thefts. The information in the insurer reports would be both more current and more reliable than the information currently available to the agency for making such determinations. This requirement was proposed to be included in the insurer reports under the authority of section 612(a)(2)(F), which grants NHTSA authority to require insurers to report "such other information as the [NHTSA] may require to administer this title and to make the reports and findings required by this title."

The agency received 25 comments on the NPRM, representing the opinions of insurance companies and trade associations of insurance companies, car rental companies, motor vehicle manufacturers, car dealers, and the National Automobile Theft Bureau. Each of these comments has been considered and the most significant points are addressed below.

The NPRM contained a detailed background discussion of the provisions of section 612 and explained in detail the agency's rationale for proposing each of the requirements. This preamble follows the same organizational format used in the NPRM, so that readers can easily compare the two documents.

The Legislative Intent Underlying Section 612

The agency proposed to consciously tailor the insurer reporting requirements so that they:

(1) Require insurers to report only information that is essential to the purposes of Title VI and do not require information that is not related to the agency's tasks under the title;

(2) Impose the smallest burdens both in terms of time and money on the reporting insurers that is consistent with the agency's informational needs under Title VI; and

(3) Require insurers to report only data already gathered for their own purposes to the maximum extent possible, and only require generation of new data when these new data must be reported to satisfy the explicit requirements of section 612.

This approach was proposed after carefully considering the language of section 612 and the following passage from the House Report:

> The Committee anticipates that much of the information required by this provision is already provided by the insurance industry to States and that *generation of new data in new formats will not be necessary where this is the case*. Of course, DOT will have to examine the matter to ensure that these requirements are fully met. The Committee urges the [NHTSA] to devise a reporting system for insurance information with an eye toward imposing requirements which will be low cost and of minimal burden to the industry, but which provide *all* of the data required by this section. (emphasis added) H.R. Rep No. 1087, 98th Cong., 2d Sess., at 21 (1984).

NHTSA observed that the corollary to the first quoted sentence is the possibility that some of the information required by section 612 is not already

provided by insurers to the States. In those cases, Congress anticipated that generation of new data or providing existing data in new format would be necessary to satisfy the requirements of section 612. The last quoted sentence makes clear that NHTSA has no discretion regarding the collection of all of the information specified in section 612.

In response to these statements in the NPRM, the Alliance of American Insurers (the Alliance), the American Insurance Association (AIA), and the National Association of Independent Insurers (NAII) all questioned NHTSA's authority to require any alteration in existing statistical practices. These comments were based on the following statement by Senator Danforth during the final Senate consideration of the Theft Act: "Specifically, no alteration in existing statistical or data collection practices is being sought by this reporting provision." 130 Cong. Rec. S13585 (daily ed. October 4, 1984). These commenters stated that the information proposed to be required by the NPRM would require alterations in both existing statistical and data collection practices, and was, therefore, inconsistent with the provisions of the Theft Act.

NHTSA considered this statement when drafting the NPRM. It was a basis for the agency's decision to avoid requiring insurers to alter existing statistical and data collection practices except when necessary to satisfy an explicit requirement of section 612 of the Cost Savings Act. However, to the extent that this statement conflicts with the express requirements of section 612, the agency does not believe that floor statements can be given effect to override the clear and unabiguous requirements set forth in the statute. *Railroad Commission of Wisconsin v. Chicago, B & O Railroad Co.*, 257 U.S. 563, 589 (1922); *American Smelting & Refining Co. v. Occupational Safety & Health Review Commission*, 501 F.2d 504 (8th Cir. 1974). Further, to the extent that this statement conflicts with the statements in the House Commerce Committee Report quoted above, NHTSA notes that statements in committee reports have been held to carry greater weight than statements of legislators in the course of debates. *Crown Central Petroleum Corp. v. Federal Energy Administration*, 542 F.2d 69 (Temporary Emergency Court of Appeals 1976). Accordingly, NHTSA concludes that it is statutorily compelled to require alterations in existing practices when such alterations are necessary to satisfy the express provisions of Title VI of the Cost Savings Act.

Who Must Report; Who may be Exempted

Section 612 defines the term "insurer" very broadly, and requires all insurers to file annual reports with the agency unless NHTSA exempts them from the reporting requirements. There are two broad groups of entities that fall within the meaning of an insurer for the purposes of section 612. First, every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer under section 2(12) of the Cost Savings Act (15 U.S.C. 1901(12)), regardless of the size of the business. Second, section 612(a)(3) specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer.

A. Issuers of Motor Vehicle Insurance Policies

Small companies in the first group of insurers, i.e., issuers of motor vehicle insurance policies, must be exempted from section 612 of the Cost Savings Act, if the agency finds that such exemption will not significantly affect the validity or usefulness of the information collected in the insurer reports. Section 612(a)(5) defines a "small insurer" as one whose premiums accounts for less than one percent of the total premium for all forms of motor vehicle insurance issued by insurers within the United States.

The agency can exempt small insurers only if it "finds that such exemption will not significantly affect the validity or usefulness of the information collected and compiled under [section 612], nationally or State-by-State." Further, some insurers that satisfy the definition of a small insurer are nevertheless ineligible for any exemption under section 612(a)(5) and others are eligible for only a partial exemption. Section 612(a)(5)(B) provides that NHTSA *cannot* exempt as a small insurer any person considered an insurer solely because it has a fleet of 20 or more vehicles used primarily for rental or lease and not covered by theft insurance. In other words, rental and leasing companies do not qualify for a small insurer exemption regardles of their size—the small insurer exemption is available only for insurance companies. Additionally, section 612 provides that if an insurance company satisfies the section's definition of small insurer, but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implemenmt these statutory criteria for exempting small insurers, NHTSA proposed to use data voluntarily supplied by insurance companies to A.M. Best to determine insurers' market shares nationally and in each State. The commenters supported this proposal. The agency has concluded that the A.M. Best data are both accurate and timely, and that the use of A.M. Best data does not impose any burdens on any party. Accordingly, this final rule adopts the proposed approach.

Using the A.M. Best data, NHTSA identified 20 insurance groups that did not qualify as small insurers because their premiums accounted for one percent or more of the total motor vehicle insurance premium paid nationally. Again using the A.M. Best data, NHTSA identified 11 other insurance groups whose premium accounted for 10 percent or more of the total motor vehicle insurance premiums within any one State. These 31 insurance groups received more than 57 percent of the total premiums paid for all forms of motor vehicle insurance issued by insurers within the United States in 1984, the most recent year for which the A.M. Best data are available. Additionally, these 31 companies received at least 30 percent of the total premiums paid for motor vehicle insurance in each of the 50 States, ranging from a low of 30 percent in North Dakota to a high of 73 percent in Hawaii.

Because these reports would represent such a significant percentage of the national and individual State premiums paid for motor vehicle insurance, the NPRM tentatively concluded that the filing of reports by these 31 insurance companies would provide the agency with representative data, both nationally and on a State-by-State basis, and that these data would be sufficient for the agency to carry out its activities and responsibilities under Title VI. Accordingly, the NPRM concluded that exemptions for all insurance companies that qualify as small insurers would not affect the validity or usefulness of the information collected in these reports either nationally or on a State-by-State basis, and proposed to exempt all insurance companies that qualify as small insurers from these reporting requirements.

The commenters all supported the proposed exemptions, although the Hartford commented that NHTSA may be missing productive sources of information by not getting reports from small specialty carriers that deal in high-risk cars and the assigned risk carriers in the individual States. NHTSA agrees that it is not getting information from all insurance companies. However, the agency concludes that exempting all insurance companies except the 31 insurers that do not qualify as small insurers will not significantly affect the validity or usefulness of the information collected and compiled under section 612, either nationally or State-by-State. For this reason, and since the agency is attempting to impose the smallest burden on insurers consistent with the language of section 612, this comment was not adopted. This final rule exempts all insurance companies that qualify as small insurers under section 612(a)(5)(C) from the reporting requirements.

To implement this determination, Part 544 includes Appendices A and B listing all insurance companies subject to these requirements. Appendix A lists those companies whose premiums for motor vehicle insurance accounted for one percent or more of all premiums paid for motor vehicle insurance issued by insurers within the United States. The companies listed in Appendix A are subject to the reporting requirements for each State in which they do business. Appendix B lists those companies whose premiums accounted for 10 percent or more of the premiums paid for all forms of motor vehicle insurance issued by insurers in any one of the 50 States. The companies listed in Appendix B are subject to the reporting requirements only for the State or States listed in parentheses after the company's name.

Proposed Appendix B listed a Southern F & B Group as subject to the reporting requirements in Arkansas. Southern Farm Bureau commented that it believed the reference was to it, since it was unaware of any group named Southern F & B. Southern Farm Bureau was correct and its proper name appears in final Appendix B. Additionally, the National Automobile Theft Bureau (NATB) commented that the 1984 A.M. Best data on which the agency was relying showed Southern Farm Bureau with ten percent or more of the premiums in both Arkansas and Mississippi. NATB is correct, and Appendix B is corrected to show that Southern Farm Bureau is subject to the reporting requirements in both these States.

The agency will update these appendixes annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies. An insurer not formerly subject to these reporting requirements whose name is added to one of these appendices will have to file a report in the year following the year in which its name is added to the appendices. For example, if an insurer's name is added to the appendices in November 1986, it would be required to file a report under this part in October 1987. AIA commented that NHTSA should notify by mail those insurers that become subject to these reporting requirements, because smaller insurers may not be aware of notices published in the **Federal Register.** No such provision is incorporated in this final rule. The government traditionally communicates its regulatory decisions by publishing those decisions in the **Federal Register.** Further, publication in the **Federal Register** is sufficient legal notice to all affected parties, pursuant to the Federal Register Act (44 U.S.C. 1507). NHTSA encourages AIA and other insurance trade associations to help publicize these requirements, so that subject insurers will know of their legal obligations.

B. Rental and Leasing Companies

Small companies in the second group of insurers, i.e., rental and leasing companies, may be exempted from these reporting requirements under section 612(a)(4) of the Cost Savings Act. That section provides that NHTSA shall exempt from these reporting requirements any insurer, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, *and*

(2) The insurer's report will not significantly contribute to carrying out the purposes of Title VI.

Although exemptions under this section are statutorily available to all insurers, NHTSA stated that it was unlikely that it could use this authority to exempt an insurance company listed in Appendix A or B. This is because the agency's determination to exempt all small insurers from this rule was predicated on the conclusion that reports by *all* of the insurers listed in Appendix A or B would provide the agency with data that are representative both nationally and State-by-State. Accordingly, NHTSA believes that exemptions under section 612(a)(4) will be granted primarily to rental and leasing companies.

The NPRM sought information that would allow the agency to make *both* of the statutory determinations it must make if it is to structure a blanket exemption for small rental and leasing companies, similar to the blanket exemption provided for small insurance companies.

In response to this request, Chrysler commented that it had fewer than 50 vehicles out of 15,000 in its leased fleet stolen over the past year. Further, it stated that its fleet is atypical and information on the fleet could bias the agency study. Therefore, Chrysler recommended that it should not be subject to the insurer reports.

General Motors (GM) stated that the sample of the 31 large insurers is representative in itself, and there is no need to get reports from any rental and leasing companies. If rental and leasing companies are to be subject to the reporting requirements, GM commented that the agency should structure exemptions according to the one percent national or ten percent of any State criteria used for small insurers, and that the one percent or ten percent should be with reference to the total number of registered vehicles. GM also stated that they were subject to these reporting requirements for their 5000 vehicle leased fleet, they would have to implement a new recordkeeping system.

The National Automobile Dealers Association (NADA) stated that most dealers engage in rental or leasing operations and that 44 percent have 20 or more vehicles in their rental or leasing fleets. NADA further stated that it was not aware of any fleet of 20 or more vehicles that is not covered by theft insurance. If there are some fleets of 20 or more vehicles not covered by theft insurance, they would not differ significantly from those fleets covered by theft insurance. Accordingly, NADA urged NHTSA to conclude that all car dealers should be exempted from these reporting requirements, because the information in their reports would not significantly contribute to carrying out the purposes of the Theft Act. NADA acknowledged that this argument might not respond to the first statutory criteria (costs of reporting excessive in relation to the size of the business), but stated that if NHTSA needed cost information, it should conduct its own survey.

The American Car Rental Association (ACRA) commented that rental cars are "prime targets" for thieves. They suggested that NHTSA require reports under Part 544 only from rental car companies that operate a fleet in excess of 20,000 vehicles. If adopted, this suggestion would require reports by the

12 largest car rental companies. ACRA stated that this approach would:

a. Give a statistically valid sample;

b. Ensure that fleets covered by theft insurance were excluded from the requirements, since most fleets with fewer than 20,000 vehicles are franchise operations; and

c. Avoid the practical problems of collecting data from several thousand car rental operations.

None of these commenters responded to the NPRM's request for information on the probable costs of preparing reports under Part 544. Without this information, the agency is unable to structure a blanket exemption for small rental and leasing companies. This is because NHTSA has no basis for making the first required determination under section 612(a)(4); i.e., that the cost of preparing and furnishing these reports is excessive in relation to the size of the insurer's business. Accordingly, *all* rental and leasing companies with fleets of 20 or more vehicles that are not covered by theft insurance policies issued by insurers of motor vehicles are required to file reports under Part 544.

However, NHTSA has no desire to impose an unnecessary burden on the smaller rental and leasing companies. Just as the agency believes that it will obtain a representative sample of insurance companies by requiring reports only from large insurance companies, the agency believes that it would obtain a representative sample of rental and leasing companies by requiring reports only from the large rental and leasing companies. The agency has tried to obtain the necessary information to allow it to exempt these companies twice, before publishing the NPRM and in the NPRM itself. In neither instance has the agency been successful.

Absent this information, this final rule must apply to all rental and leasing companies with 20 or more vehicles in their fleet. However, the agency will again try to obtain from the rental and leasing companies and their trade associations the information needed to exempt the smaller rental and leasing companies from this regulation before January 31, 1987. If NHTSA is successful in this effort and the information allows NHTSA to make the determinations required under section 612 to exempt rental and leasing companies, the agency will publish a rule exempting the small rental and leasing companies from this reporting requirement before January 31, 1987. Otherwise, all rental and leasing companies with fleets of 20 or more vehicles will be required to file their reports by January 31, 1987.

Even if NHTSA does not get the information needed to allow it to structure a blanket exemption from these reporting requirements for the smaller rental and leasing companies, NHTSA will entertain individual requests for exemption from those companies as long as the requests include all necessary information. To qualify for an exemption from the reporting requirements, rental or leasing companies that self-insure their fleets must provide the following information, as specified in the NPRM:

1. Estimates of the probable cost of preparing and filing the reports required by this rule, and the methodology used for estimating those probable costs;

2. Information about the size of the company's business. For the purposes of these insurer reports, NHTSA concludes that the most important and most easily provided information in response to this statutory requirement is the size of the rental or leasing fleet. This is because larger fleets would be expected to have more thefts and recoveries of vehicles; and

3. The reasons that the rental or leasing company believes its report will not significantly contribute to carrying out the purposes of Title VI.

NHTSA would then evaluate the information submitted by the rental or leasing company to see whether the information was sufficient to allow the agency to make the determinations required by section 612(a)(2)(4). If NHTSA makes those determinations, it would initiate rulemaking to exempt the rental or leasing company.

Any rental or leasing company that believes it satisfies the criteria for an exemption from these reporting requirements should send a letter to the NHTSA Administrator at the address shown in § 544.5(8) for submitting insurer reports. This letter should include the information on the three points outlined above. NHTSA wishes to emphasize that it can exercise its authority to grant such exemptions *only* if it makes both determinations required by section 612(a)(4). Thus far, neither the comments on the NPRM nor letters requesting exemptions submitted by California taxicab fleets have provided information that would allow NHTSA to make the first required determination, i.e., that the cost of preparing and submitting the reports is excessive in relation to the size of the rental or leasing company's business. Absent information on this point, NHTSA cannot exempt any rental or leasing companies from these reporting requirements. The agency would also like to emphasize that rental or leasing companies submitting letters requesting exemptions remain subject to these reporting requirements until such time as the NHTSA Administrator sends a letter authorizing such exemption. In other words, simply submitting a letter asking for an exemption does *not* relieve a rental or leasing company of its statutory obligation to file these reports.

The agency noted in the NPRM that rental and leasing fleets that have a contractual requirement for the renter or lessee to obtain comprehensive insurance coverage for some or all of the vehicles in the fleet need not count those vehicles in determining how many vehicles in their fleet are not covered by theft insurance. There were two reasons supporting this position. First, requiring both the rental or leasing company and the insurance company to report the theft and any recovery of the vehicle would result in double counting. Second, the intent of section 612(a)(3) was to get information on self-insured vehicles, not vehicles covered by theft insurance.

The NATB commented that the double counting problem noted by the agency in the preamble would arise *only* if the insurer providing theft insurance for the vehicle in the rental or leasing fleet were one of the 31 companies listed in the appendices. If any other insurance company provided theft insurance for the vehicle, it would only be counted once.

The commenter is correct, but NHTSA concludes that it would still be inconsistent with the intent underlying section 612 to gather information on such vehicles. Section 612 is structured to ensure that NHTSA will get information on a representative sampling of the fleet population covered by insurance policies written by an insurance company. However, a sizeable number of large rental and leasing fleets self-insure their vehicles. No information on these vehicles would be included in the reports filed by insurance companies. Moreover, as noted in ACRA's comment, rental car fleets may experience much higher theft rates than the general fleet population. To ensure that the agency would receive information about these self-insured fleets, section 612 includes in the definition of the term "insurer" those self-insured rental and leasing fleets of 20 or more vehicles. In keeping with this purpose, the section does *not* require rental and leasing companies to report separately their theft experience if their fleets are covered by theft insurance policies written by an insurance company. Even though the rental or leasing companies covered by theft insurance may experience a higher than average theft rate, a representative sampling of that experience will be included in the reports filed by the large

insurance companies. To adhere to this statutory scheme, NHTSA will not count rental or lease vehicles subject to a contractual requirement for the renter or lessee to obtain comprehensive insurance coverage for the subject vehicle when determining whether a rental or leasing company has a fleet of 20 or more vehicles not covered by theft insurance policies.

Time Period To Be Covered in Annual Reports

The NPRM proposed that the reports due annually in October provide the information for the preceding calendar year. For example, the reports due in October 1987 would include the information for calendar year 1986. This time period was proposed for two reasons. First, it would allow insurers 10 months to gather the needed data, arrange it into the appropriate format, and report it to the agency. This is the longest period that could be allowed under the statute and would be consistent with the legislative intent that these reports impose the least possible burden on the insurers consistent with the statutory requirements. Second, Title VI of the Cost Savings Act requires theft data to be computed on a calendar year basis and calculations of median theft rates to be based on the calendar year data. If the insurer reports were based on an annual period other than the calendar year, the agency could not make comparative evaluations of the information in the insurer reports with the calendar year theft data provided to the agency by the National Crime Information Center (NCIC).

In response to this proposal, State Farm commented that the calendar year was acceptable for itself, but might present a problem for other insurers. State Farm suggested that Part 544 should allow the use of an "accident year" (data on all thefts that occurred during the calendar year), "policy year" (data on all thefts that occurred on policies issued or renewed during the calendar year), "report year" (data on all thefts reported to the insurer during the calendar year), or "fiscal year" (which could be any of the above 3 "years", but for a 12 month period other than the calendar year).

If this comment were adopted, NHTSA could not make comparative evaluations and aggregations of the reported data, which would significantly lessen the value of the data. State Farm conceded this point in its comment, but stated that imposing a uniform calendar year requirement would force "many reporting companies to undertake costly and time consuming system and program changes." Although State Farm identified this potential burden in its comments, those comments also stated that a calendar year basis would be acceptable for State Farm. AIA supported the calendar year proposal stating that they "agree with NHTSA's assessment that this type of uniformity would assist the agency in making evaluations of the data *while at the same time imposing little burden upon insurers.*" (Emphasis added). Since no commenter, including State Farm, asserted that it would be burdened by the calendar year requirement, the agency sees no reason to sacrifice uniformity of the data. Accordingly, the calendar year basis for reporting is adopted in this final rule.

The NATB commented that thefts and recoveries should be reported on a fiscal year basis, using July 1 to June 30. NATB explained that this would give the agency more recent theft and recovery information, and would give the agency additional information for its October 1987 report to Congress. NHTSA agrees that this would result in the agency having more information for the 1987 report to Congress, but has not adopted this comment. The agency has thus far been reluctant to use partial year theft and recovery data for any purposes under the Theft Act, because partial year data are not always indicative of full trends. NHTSA does not want to now offer partial year data for the first time in a report to Congress.

Additionally, it would be unnecessarily complex and potentially burdensome to require that theft and recovery data be reported on a fiscal year basis, while all other information required under Part 544 be reported on a calendar year basis. NHTSA notes that not all the insurance companies listed in Appendices A or B are members of the NATB, and none of the rental or leasing companies are members. A requirement for fiscal year reporting of thefts and recoveries might well impose a significant burden on those insurers that are not members of the NATB, because of the relatively short time period for submitting the data and the different format. Finally, NHTSA does not believe there will be instances other than the 1987 report where the 10 month delay in reporting will present potential timing problems for the agency. Therefore, this rule does not adopt the NATB suggestion. However, NHTSA would certainly consider such data if it were voluntarily submitted by NATB on behalf of those reporting insurers that are members of that organization.

Southern Farm Bureau asked in its comments how the calendar year reporting should be implemented. Specifically, that insurer asked how they should report a vehicle stolen in 1985 and recovered with the claim settled in 1986. Under calendar year reporting, all events that occur in the calendar year should be reported. In Southern Farm Bureau's example, a theft would be reported in 1985 and a recovery would be reported in 1986.

General Requirements for Reports

The NPRM proposed basic format requirements for each report filed under Part 544. The NATB commented that these requirements should specify the exact statutory deadline of October 25 for filing these reports, instead of the proposed requirement that the reports be filed in October of each year. The proposed requirement was intended to offer the insurers slightly more flexibility in satisfying their statutory responsibilities. However, NHTSA has no objection to specifying that the reports are due not later than October 25 of each year, and the final rule has been changed to reflect this.

State Farm commented that the proposed general requirements should be changed to include specific language authorizing the use of a designated agent for these reports, as permitted by section 612(a)(1) of the Cost Savings Act. Many other commenting insurers stated that NATB was their designated agent for reporting thefts and recoveries. The agency agress with State Farm's comment, and has added language to the final rule to make clear that insurers may use designated agents in connection with filing these reports. In all other respects, the proposed general requirements for these reports have been incorporated in this final rule.

Contents of Reports

A. Types of Vehicles on Which Information Must Be Reported

Section 614 of the Cost Savings Act requires NHTSA's 1987 and 1990 reports to Congress to include the agency's recommendation as to whether the requirements of the theft prevention standard should be extended to trucks, multipurpose passenger vehicles, and motorcycles. To ensure that the insurer reports provide information that aids the agency in making that assessment, section 612(f) specifies that, for purposes of the insurer reports, the term "motor vehicle" includes trucks, multipurpose passenger vehicles, and motorcycles. The NPRM proposed that insurers provide the required information separately for the following vehicle types: Passenger cars, light trucks,

heavy trucks, multipurpose passenger vehicles, and motorcycles.

Thus, the broad category of "trucks" would be subdivided into light trucks and heavy trucks. As explained in the NPRM, the reason for proposing this subdivision was the agency's belief, based on informal statements by law enforcement groups, that there are significant differences in the characteristics of light and heavy trucks, which differences result in light trucks being stolen more frequently. If this should prove to be true, the agency would like to have separate data, instead of making a recommendation on the entire category of "trucks".

In response to this proposal, AAA Michigan questioned the need to divide trucks into light and heavy trucks. This commenter stated that the subdivision would not present a burden for them, but would result in more work for the agency. NHTSA believes the preamble to the NPRM explained why it was proposing this subdivision, and the agency is willing to undertake any additional work that results from receiving information broken down into light and heavy trucks.

AIA, the Alliance, and NAII all objected to the separate reporting provisions for light and heavy trucks. According to these comments, a truck is more likely to be stolen for the cargo it carries, instead of for the vehicle itself. These commenters stated that the purpose of the reporting requirements is to "assist the agency in evaluating the impact of the component marking requirement on motor vehicle thefts." Since trucks are not subject to the marking requirements, these commenters urged the agency not to require information to be reported on any type of truck.

These comments reflect a fundamental misreading of sections 612 and 614 of the Cost Savings Act. As noted above, NHTSA is specifically required by section 614(a)(2)(E) to include in its 1987 report to Congress an assessment of whether requiring marking of parts on trucks, multipurpose passenger vehicles, and motorcycles would be likely to reduce thefts of those types of vehicles. Section 614(b)(2)(I) requires NHTSA to include the same assessment in its 1990 report to Congress. To ensure that the insurer reports provide information to assist the agency in making these assessments, section 612(f) specifies that the term "motor vehicle" includes trucks, multipurpose passenger vehicles, and motorcycles. Thus, it is statutorily required that the agency be provided with information on trucks in these insurer reports. Since none of these commenters indicated that it would be more burdensome for insurers to separate information on light and heavy trucks in their reports, the proposed subdivision of trucks into light trucks and heavy trucks is adopted in this final rule.

B. Format for Reports

1. Subdivisions of Vehicle Types

The NPRM proposed to require theft and recovery data in these insurer reports to be broken down by model, make, and line. This proposal was based on the explicit language of section 614(a)(2)(A) and 614(b)(2)(B), which both require NHTSA to provide Congress with data on the number of motor vehicles stolen and recovered annually subdivided according to the "model, make, and line" of the vehicle.

In response to this proposal, Southern Farm Bureau asked exactly what the agency meant by "model, make, and line." As noted above, these are the terms used in Title VI of the Cost Savings Act. "Make" refers to the general name used by the vehicle manufacturer. For example, Dodge, Ford, and Pontiac are makes of vehicles. "Line" refers to the nameplate assigned by the manufacturer to a group of vehicle models of the same make. For example, Dodge Charger, Ford Thunderbird, and Pontiac 6000 are lines of vehicles. "Model" refers to a specific grouping of similar vehicles within a line. For example, the Dodge Charger 2.2 2-door, Ford Thunderbird Turbo Coupe, and Pontiac 6000 LE 4-door are models.

AIA, the Alliance, NAII and the Insurance Services Office (ISO) all commented that, if the reports were to require information on trucks, that information should not be broken down into model, make, and line. Instead, these commenters urged that truck theft and recovery data be broken down by truck size, use, and the radius of the truck's operation. According to these commenters, such a requirement would conform to the data collection breakouts currently used by insurers. The ISO also commented that passenger cars used commercially are not currently broken down into make, model, and line by the insurers. The Hartford agreed with ISO's comment. NHTSA believes it would be simpler for insurers if they could just provide the thefts and recoveries according to the breakdown they currently use for their own purposes. However, section 614 of the Cost Savings Act explicitly requires NHTSA to provide Congress with theft and recovery data broken down into model, make, and line. If the agency is to provide the data to Congress in this format, it must be provided in this format in these insurer reports. Additionally, the use of a consistent format by all reporting insurers makes the data more readily comparable and more useful to this agency. Accordingly, this final rule adopts the proposed requirement for insurers to report thefts and recoveries of vehicles broken down into model, make, and line, for each of the five vehicle types on which information is to be reported.

The agency proposed to also require the theft and recovery data to be broken down according to the model year of the stolen or recovered vehicle. This breakdown was proposed so that the agency could evaluate the effectiveness of the theft prevention standard for passenger cars and assess the desirability of extending that standard to trucks, multipurpose passenger vehicles, and motorcycles. The example given in the NPRM was a situation where passenger car thefts remain constant in 1988, but thefts of new cars marked in accordance with the theft prevention standard decrease. Such data would be very significant, but the agency would not learn of it unless these insurer reports break out the model year of stolen and recovered vehicles. Similarly, if most thefts of other types of vehicles are of newer models, this would be very significant data for the agency's assessment of whether to extend the theft prevention standard to those vehicle types. The NPRM stated NHTSA's belief that this proposed requirement would not impose a significant burden, because the data gathered by NATB already show the model year of a stolen or recovered vehicle.

Hence, Southern Farm Bureau's question of whether they should "lump together" all thefts and recoveries was addressed at some length in this portion of the preamble. The answer is no; the proposed rule required thefts and recoveries to be broken out according to the vehicle's model year, as explained above.

Nationwide suggested limiting the model year breakout to the model year that coincided with the calendar year covered in the report and the four model years preceding that model year. However, Nationwide offered no explanation of why the model year breakout should be so limited or why the agency would receive enough information with this limitation to conduct the statutorily-required evaluations.

GM commented that the base line for determining the median theft rate for paassenger cars was the 1983 and 1984

model years' combined theft data. GM also stated that the agency will be trying to determine the effectiveness of the theft prevention standard by comparing the theft rates of unmarked passenger cars with those of passenger cars marked according to the theft prevention standard. Accordingly, GM recommended that insurers be required to report only on 1983 and subsequent model year thefts and recoveries.

NATB asked that theft and recovery data be limited to 1981 and subsequent model year vehicles. NATB stated that before the 1981 model year, the vehicle identification numbers (VIN's) were not standardized for foreign made passenger cars or for any trucks, multipurpose passenger vehicles, or motorcycles. The theft and recovery data collected by NATB is computerized, but the computer cannot accurately identify these non-standardized VIN's. Accordingly, the only way for the NATB to accurately identify the model year of the vehicle would be to have people manually compare the recorded VIN's of stolen vehicles against listings of the assigned VIN's for each model year. According to NATB, this would be very burdensome for it, while giving NHTSA data with a significant number of errors in identifying the stolen or recovered vehicles.

The NATB statements about non-standardized VIN's before the 1981 model year are correct. Similarly, GM's comment that Congress itself chose to limit the baseline for measuring passenger car thefts to 1983 and subsequent model years is correct. Since Congress chose the 1983 model year as the baseline for measuring the theft experience of passenger cars, the agency does not believe that it needs vehicles older than those manufactured in the 1983 model years to evaluate the theft experience of motor vehicles other than passenger cars. Although sections 612 and 614 do not expressly limit the model years of vehicles on which theft and recovery information is to be reported, neither do they expressly require information on all model years thefts and recoveries to be included in these reports, regardless of the burden imposed. Given the statement in the House Committee Report that NHTSA should "devise a reporting system for insurance information with an eye toward imposing requirements which will be of low cost and of minimal burden to the industry, but which will provide all of the data required by this section", the agency concludes that the question of whether the model years on which thefts and recoveries must be reported should be limited depends on two points.

First, will limiting the data to 1983 and subsequent model years still provide all of the data required by section 612 and needed by the agency to carry out its responsibilities under Title VI of the Cost Savings Act? NHTSA concludes that the answer to this question is yes. Theft and recovery data for older vehicles might be useful for a long term evaluation of trends in vehicle theft. However, such data may not be essential for the agency to evaluate the effectiveness of parts marking for passenger cars, for the reasons set forth in GM's comment. Similarly, such data are not essential for assessing whether the theft prevention standard should be extended to other vehicle types. NHTSA believes that the theft and recovery experience of 1983 and later model year vehicles will give the agency a comprehensive basis for making all statutorily-required reports and assessments.

Second, will limiting the data to 1983 and subsequent model years avoid imposing a substantial burden on reporting insurers? NHTSA believes the answer to this question is also yes. Since insurers would not be able to rely on their computer files to break out thefts and recoveries of pre-1981 model year vehicles, they would have to hand sort this information and compare it to VIN lists assigned by each manufacturer. This process would have to be repeated for every year an insurer reported a theft or recovery of a pre-1981 model year vehicle. Information on thefts and recoveries of 1981 and 1982 model year vehicles could be retrieved by computer, but it would require an expenditure of time and money to provide this information.

Since NHTSA believes that limiting the theft and recovery data to 1983 and subsequent model year vehicles will avoid imposing a substantial burden on insurers while still offering NHTSA all the information it needs to carry out its responsibilities under Title VI of the Cost Savings Act, the agency concludes that this limitation is consistent with the language and intent of section 612. Therefore, this final rule requires a listing of all thefts and recoveries of 1983 and subsequent model year vehicles, broken down into model, make, and line. Thefts and recoveries of vehicles manufactured in model years before the 1983 model year are *not* required to be included in these insurer reports.

NHTSA emphasized in the NPRM that section 612 does *not* require the data in the insurer reports other than theft and recovery data to be broken down according to model, make, and line. Similarly, NHTSA does not need the other data broken down by model year in order to perform a meaningful evaluation of the data. Thus, the NPRM noted that all required data other than theft and recovery data can be subdivided into whatever risk categories the reporting insurer uses for its own purposes. Judging by some of the comments, this provision was not clearly understood. For example, State Farm said that this rule should require the lost data only to be separated into the five vehicle types, because of different capabilities and data availability among the different insurers. However, the proposed rule acknowledged the different data availability and capabilities of the insurers by simply proposing that insurers provide the agency with the information, subdivided into the categories the insurer uses for its own purposes. This approach imposes the least burden on the insurers, because they do not have to arrange their data into a new format. Similarly, the Hartford commented that passenger cars used commercially are not subdivided into make and model for rating purposes. Again, Part 544 does not require a breakdown by make and model for the rating information. If an insurer uses a blanket category for all passenger cars used commercially, it should report information for that broad category in responding to the required rating information. This proposed approach is adopted in this final rule.

2. Geographic Subdivisions

The NPRM proposed that insurers report the information divided by States. An insurer listed in Appendix A or a rental or leasing company that did business in all 50 States would be required to provide information separately for each State in which it did business. This proposed requirement was based on the statutory language in section 612(a)(5)(A). That section specifies that the agency shall exempt small insurers from these reporting requirements if it finds that "such exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, *nationally or State-by-State.*" (emphasis added) NHTSA concluded that this language was an indication that Congress expects the agency to compile and analyze the data set forth in the insurer reports on both a national and a State-by-State basis. This conclusion is reinforced by the requirement in section 612(a)(5)(C)(ii)

that an insurer that otherwise qualifies as a small insurer must nevertheless report information for any State in which its total premiums are 10 percent or more of the total premiums paid for motor vehicle insurance within the State. There would be no reason for Congress to require that such insurers report on their activities within States in which their market share is 10 percent or more, if the agency were not going to compile and evaluate information a State-by-State basis. Finally, the requirement in section 612(b) that NHTSA periodically compile and publish the information in the insurer reports *in a form that will be helpful to the public* virtually requires the information to be reported on a State-by-State basis. The information in these reports, especially the theft and recovery information, would not be in a form that is helpful to the public if it were not broken down on a State-by-State basis.

Further, the law enforcement practices and prosecutorial efforts directed towards professional vehicle thieves differ in the different States. The vehicle theft problem itself is concentrated more in some States than others. One would anticipate that the costs of vehicle theft and the benefits associated with any reduction in such thefts would be concentrated in those States. NHTSA is required to include a detailed evaluation of these benefits in its 1990 report to Congress by section 614(b)(2)(E) of the Cost Savings Act. Having the information in these reports broken down on a State-by-State basis will enable NHTSA to comply with this statutory mandate and give Congress a complete assessment of the impacts of the theft prevention standard.

Moreover, NHTSA's understanding is that State insurance regulations already require insurers to keep separate records for each State. These records are examined in connection with proposed rate increases and like actions. Accordingly, the proposed requirement for State-by-State reporting would not appear to impose any additional burden on the insurers.

AAA Michigan commented that it did not believe State-by-State reporting should be required if an insurer had aggregate data. However, this commenter did not explain why it believed this. Nationwide commented that a breakdown by States would be "somewhat burdensome", without explaining why they believed this was so. AIA commented that it had no objection to the proposed State-by-State reporting, but believed it should be limited to only those States with higher than average theft rates. AIA did not assert that it would be difficult to provide the information for all States. Moreover, if the agency adopted AIA's comment, it could not perform a State-by-State analysis. Finally, some insurers are required by section 612(a)(5)(C)(ii) to provide information on States where the insurer has a 10 percent or greater market share, even in low theft States. There was no reason for Congress to include such a requirement if the agency would not have any other data for that State.

NATB suggested that NHTSA require State-by-State reporting for all information except thefts and recoveries, and permit thefts and recoveries to be reported nationally. The theft and recovery information is some of the most significant data to be included in these reports, and is required to be included in both the 1987 and 1990 reports to Congress. All indications in sections 612 or 614 and the relevant legislative history are that Congress intended for the agency to compile and evaluate *all* of the information in these insurer reports both nationally and State-by-State. NATB did not claim that this requirement would impose a serious burden on it. Accordingly, the final rule requires State-by-State reporting of all information in these insurer reports.

The NATB asked how the agency wanted the following information reported under the State-by-State reporting requirement: a vehicle is stolen in State A, recovered in State B, and the claim is filed in State C. This should be reported as a theft in State A and a recovery in State B.

Finally, the NATB asked if NHTSA wanted theft and recovery information for the District of Columbia. Similarly, ISO asked if information from the District of Columbia and Puerto Rico should be included in the insurer reports. Section 2 of the Cost Savings Act (15 U.S.C. 1901) sets forth definitions that apply to all titles of the Cost Savings Act, including Title VI, unless otherwise provided. Section 2(16) reads as follows: "The term 'State' includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa." Based on this statutory definition of "State", the insurers are required to provide information on both the District of Columbia and Puerto Rico in their reports.

3. Identical Responses

The NPRM proposed that insurers could avoid repetitive answers by simply indicating that an answer applied to several or all divisions of vehicle types, for several or all vehicle types, and to several or all States in which the insurer did business. No comments were received on this proposal and it is adopted in this final rule.

The NPRM also proposed that insurers be allowed to incorporate by reference responses given in documents previously filed with the agency or any State agency within the last four calendar years, provided that the insurer clearly indicates on the first page of the document in response to which regulatory requirement the document is being submitted. Several insurers asked that this language be amended to allow them to incorporate by reference previous and future documents filed with the agency or any State agency. Incorporation by reference as a concept generally refers to a complete report referencing previously filed materials for a portion of the report. In the case of documents to be filed after the report, the report would *not* be complete until those documents were filed. NHTSA believes that these commenters were referring to documents to be filed by a designated agent to complete the report. As explained above, such filings are permitted under this rule, but they would not be incorporated by reference. Accordingly, the proposed provisions for incorporating previously filed documents by reference are adopted in this rule.

C. Theft and Recovery Data

Section 612(a)(2)(A) requires these insurer reports to include the number of vehicle thefts. In response to this statutory requirement, the agency proposed to define a vehicle theft as an actual physical removal of a motor vehicle without the permission of its owner, but would not include the removal of component parts, accessories, or personal belongings from a vehicle which is not moved.

ISO stated that this proposed definition of theft was not the same as that used in insurance contracts. According to this commenter, theft for the purposes of insurance contracts includes the removal of bumpers, radios, wheels, and so forth from a stationary vehicle. ISO suggested that the proposed definition of a vehicle theft be expanded to include the removal of major parts from a stationary vehicle. This comment has not been adopted in this final rule. The proposed definition of a vehicle theft is the definition that has been used by the FBI for many years, and has been used by this agency in all of its previous rulemaking actions under Title VI of the

Cost Savings Act. Furthermore, this definition of a vehicle theft has been endorsed by the joint insurance industry-auto industry task force. NHTSA does not believe it would be consistent with the purposes of Title VI to adopt a different definition of a vehicle theft just for these insurer reports.

ACRA commented that conversion is a form of vehicle theft unique to rental car companies. A conversion occurs when a person renting a car does not return the car to the rental car company on the date specified in the rental contract. ACRA stated that rental car companies would count these as thefts in their reports filed under Part 544. NHTSA considers a conversion to be a physical removal of a vehicle *without the permission of its owner.* However, the agency does not believe that Congress intended that each and every late return of a rental car be reported as a vehicle theft for the purposes of these reports. For instance, a family using a rental car for their vacation that returns the car one day later than specified in the contract had not stolen that car. Indeed, counting these late returns as thefts could significantly overstate the number of thefts in any year.

To address this problem, State police have implemented a waiting period after the contract due date before the police will accept a stolen vehicle report from a rental car company. This waiting period is generally either 48 or 72 hours after the due date specified in the rental contract. Such a waiting period enables the State police to differentiate between late returns of rental vehicles and actual thefts of those vehicles. This final rule incorporates the waiting period specified by the State police in which the vehicle was to be returned for rental car companies reporting vehicle thefts. That is, any rental vehicle that was or could have been reported as stolen to the State police in the State where the vehicle was to have been returned should be counted as a theft and reported under these requirements. Any late return of a rental vehicle that could not have been reported to the State police as a vehicle theft is not a theft for the purposes of these reports, and should not be included therein. NHTSA believes that this limitation ensures that it will get accurate theft and recovery information from rental car companies in these reports without imposing any additional burden on the reporting rental car companies.

After proposing to require the listing of the total number of vehicle thefts experienced by the insurer during the reporting period, the NPRM proposed that the insurer list the total number of recoveries. Recoveries are expressly required to be included in these reports by section 612(a)(2)(A). The proposed definition of a recovery was regaining physical possession of a motor vehicle or a major portion of the superstructure of a motor vehicle with one or more major parts still attached to the superstructure, *after that vehicle has been reported to the insurer as stolen.* (Emphasis added)

Allstate, NATB, and Aetna all commented that this last condition would result in many actual recoveries not being reported to NHTSA. These recoveries are generally called "simultaneous recoveries", and occur when a vehicle is recovered by the police after it has been stolen, but *before* the theft has been reported to the insurer. Such recoveries would not be covered by the proposed definition of recovery, since they would not occur *after* the theft has been reported to the insurer. NATB stated that, "There does not appear to be any practical reason to specify the reporting of *all* thefts without, at the same time, specifying the reporting of all recoveries." (Emphasis in original). NHTSA is persuaded by these comments, because information on all recoveries is as important as information on all thefts. Accordingly, the definition of recovery in this final rule has been changed to refer to regaining physical possession after a vehicle has been stolen.

Sections 612(a)(2) (A) and (B) of the Cost Savings Act require the total number of recoveries to be subdivided into recoveries intact, recoveries-in-whole, and recoveries-in-part. No comments were received concerning the proposed definitions for these subdivisions of "recovery" and they are adopted as proposed. Each of these subdivisions of recovery, and the definition of recovery itself, depend on the listing of major parts, to allow the reporting insurers to determine whether a vehicle really is "recovered" and, if so, what type of recovery it is. The theft prevention standard at § 541.5(a) already defines the major parts for passenger automobiles. However, the theft prevention standard does not define the major parts of motor vehicles other than passenger cars. Therefore, proposed § 544.4(b)(5) set forth a listing of the major parts for such vehicles.

In response to this proposed listing, NATB commented that the following parts should be added as major parts: the transfer case, for light trucks, the cargo bed, for heavy trucks and multipurpose passenger vehicles, and the crankcase, for motorcycles. NHTSA contacted the FBI to learn their opinion of these suggested additions to the list of major parts for these vehicles. The FBI stated that they concurred with NATB's comment. The agency believes it is appropriate to recognize the expertise of the FBI and NATB in dealing with vehicle thefts, and has amended the final rule to include these parts as major parts for the other types of motor vehicles.

This section of the NPRM further proposed that insurers be required to explain how the theft and recovery data were obtained by the insurer, the steps taken by the insurer to ensure that these data are accurate and timely, and the use the insurer made of the theft and recovery information, including the extent to which such information is reported to national, public, and private entities. Such information is expressly required to be included in the insurer reports by section 612(a)(2). No comments were received on these proposed requirements, and they are adopted as proposed.

D. Rating Rules and Plans Used by Insurers to Establish Comprehensive Insurance Premiums and Premium Penalties for Motor Vehicles Considered by the Insurer as More Likely to be Stolen

Section 612(a)(2)(C) of the Cost Savings Act expressly requires that insurer reports include "the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish comprehensive insurance premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen." This statutory language means that these reports must include complete information about the following subjects:

1. The loss data used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen;
2. The rating characteristics used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen;
3. Any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen; and
4. The basis for the insurer's comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen.

AIA and State Farm commented that section 612 of the Cost Savings Act requires the reports to include information *used* by insurers in establishing their comprehensive insurance rates. To the extent that the proposed requirements obligated insurers to provide information not *used* by insurers in establishing their rates, these commenters contended that the NPRM was inconsistent with section 612. As explained above, the NPRM proposed only that insurers satisfy the explicit requirements of section 612(a)(2)(C) and provide the information required by that section.

The agency believes that the point these commenters were making is that an insurer's vehicle theft loss data is not currently broken out from other types of comprehensive loss data when establishing the comprehensive insurance premiums. The commenters were not claiming that theft loss data are not used by insurers in conjunction with other loss data when establishing comprehensive insurance premiums, because such a statement would be palpably incorrect. Rather, the point was that the theft loss data are not used *separately* from other types of loss data. Accordingly, these commenters were contending that since these loss data are not separated for purposes of establishing comprehensive insurance premiums, they need not be separated for purposes of the insurer reports.

NHTSA does not believe that the requirements imposed on the agency for its reports to Congress will permit the agency to find these comments persuasive. Section 614(b)(2)(G) requires the agency to include in its report information on the extent to which insurers have foregone premium increases or reduced premiums as a result of Title VI, as well as providing information on increased premiums for vehicles that the insurer considers more likely to be stolen. This provision reflects the Congressional expectation that Title VI would have a beneficial impact on auto insurance premiums. *See, e.g.,* S. Rep. No. 478, 98th Cong., 2d Sess., at 4 (1984) ("Experts project that a program which effectively reduces auto theft will result in substantial consumer savings. For example, the National Association of Independent Insurers estimated in 1980 a $200 million premium savings to the American consumer resulting from parts numbering, assuming a 10-percent drop in auto theft. The American Insurance Association estimated in 1983 that insurance premium reductions eventually would more than compensate for the amount the parts marking would add to the cost of a car.") This expectation was based on testimony offered by representatives of the insurance industry during Congressional hearings on the bill which ultimately became Title VI of the Cost Savings Act. *See, e.g., Motor Vehicle Theft Law Enforcement Act of 1983: Hearing on S. 1400 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science, and Transportation,* 98th Cong., 1st Sess., at 84–96 (1983) (statements of Thomas G. Bowman, Insurance Director, Automobile Club of Michigan; Penelope Farthing, Senior Counsel, American Insurance Association; and Donald D. Messmer, on behalf of the National Association of Independent Insurers). The only potential source for this information will be these insurer reports.

Additionally, section 614(b)(2)(E) requires the agency to identify the benefits of the theft prevention standard, and quantify the monetary value of those benefits. Obviously, potential reductions in theft losses paid by insurers and potential insurance savings for consumers would be noteworthy benefits of the theft prevention standard. The only way for NHTSA to get the necessary information to evaluate these subjects is in these insurer reports. To make both these determinations, NHTSA must know what percentage of overall comprehensive insurance losses are theft-related. Only those theft-related losses are relevant when addressing the above topics in the reports to Congress. Accordingly, NHTSA concludes that Title VI directs the agency to require insurers to break out theft losses from other losses in the insurer reports, and concludes that such a break out is compelled by the statute.

Allstate commented that Congress intended NHTSA to get insurer's rating rules as needed to administer Title VI and to make the necessary reports to Congress. The agency agrees with this assertion. Allstate then asserted that the proposed requirements went far beyond these purposes, without explaining how or why it believed this was true. As explained above, NHTSA has carefully tailored these requirements so that insurers must only report the minimum necessary to satisfy the requirements of Title VI.

NAII and the Alliance stated that section 612(a)(2)(C) of the Cost Savings Act requires insurers to report information including the rating rules and plans, such as loss data and rating characteristics, used to establish comprehensive insurance premiums. The commenters then said, "If insurers did fully comply with this requirement, NHTSA would be receiving a tremendous volume of information, such as relativity factors, codes, tables, etc." The commenters stated their belief that NHTSA did not wish to obtain and analyze this massive amount of information.

The agency has no discretion regarding this requirement. Insurers *must* fully comply with the requirement and NHTSA *must* obtain and analyze this massive amount of information, because Federal law *requires* such actions. Congress has weighed the burdens and benefits of requiring insurers to provide the agency with this large amount of information, and determined that the benefits outweigh the burden. This statutory determination forecloses the agency from reexamining the question and reaching a contrary conclusion.

However, this agency is not interested in imposing requirements for insurers to report information that the agency cannot use or does not need. Therefore, NHTSA will carefully examine to what extent and how it uses all of the information furnished in these insurer reports. If the commenters are correct and the agency cannot use all of the information in these reports, because of limited resources or for some other reasons, NHTSA will consider whether legislative changes to Title VI should be suggested, so that insurers are not required to report information that is not used by the agency in its evaluations and reports. At this time, however, this final rule represents the least burden that can be imposed consistent with the requirements of Title VI.

NHTSA would also consider amending the rule to reduce the amount of information required to be included in these reports if some defined subset of the broad term "rating rules and plans" would be sufficient to satisfy the Congressional intent underlying section 612. However, none of the commenters suggested such a subset. NHTSA itself is unable to define such a subset at this time.

NAII and the Alliance, together with many other insurers, commented that NHTSA should simply adopt the form proposed to the agency by NAII. This form was not adopted because it fails to satisfy the statutory requirements. The NAII form consisted of six questions, one of which was the insurer's name and address. It sought information only from the insurer's State of domicile. Thus, it would not allow NHTSA to perform a State-by-State evaluation of these reports, as required by section 612.

The insurers would be asked to "describe the nature" of rating plans used by insurers to vary the physical damage premiums by make or model of the vehicle based on the loss characteristics. Then the insurers would indicate the basis for premium adjustments. The examples given in the proposed form for indicating the basis for premium adjustments were "own experience, HLDI data, ISO data, etc." The insurers were then asked "Are adjustments made for the theft experience separately from that for the other physical damage perils?" Based on the comments received on the NPRM, the response to this question would be "No". The insurers would then indicate the maximum premium adjustments made (in percentages) under this plan, and to give the average nationwide comprehensive rate increase during the past year.

NHTSA agrees that such a requirement would be simpler for the reporting insurers, but it would not comply with the requirements of section 612 (a)(2)(C) of the Cost Savings Act. It would not *provide* the loss data used by the insurers to establish comprehensive insurance premiums, as expressly required by that section. It would not provide any information on premium penalties charged for motor vehicles considered more likely to be stolen, as expressly required by that section. It provides rating information for "physical damage premiums" which, according to many commenters, would include both comprehensive and collision premiums. To the extent that this information would be intermingled, the proposed NAII form would not satisfy the express statutory requirement that insurers provide the rating characteristics used to establish *comprehensive* insurance premiums. NHTSA neither needs nor sought information on collision insurance premiums either individually or combined with comprehensive insurance premiums. Moreover, the statutory requirement that insurers provide the basis for comprehensive insurance premiums and premium penalties charged for vehicles considered more likely to be stolen would not be satisfied by two word responses, such as "ISO data" or "own experience". For all these reasons, the proposed NAII form cannot be adopted in this rule, because it would fail to satisfy the explicit requirements of section 612(a)(2)(C).

The Hartford and AAA Michigan both stated that comprehensive insurance includes many hazards in addition to theft, and that it is difficult to isolate the effects of theft alone. The Alliance, ISO, and NAII all commented that, because of the many factors that go into determining comprehensive insurance premiums, it would be "very difficult" to determine the impact a decrease in vehicle thefts would have on comprehensive insurance premiums. Difficult though the task may be, that is exactly the information section 614(b)(2)(G) requires NHTSA to include in its 1990 report to Congress and exactly why such information is required to be included in these insurer reports.

To turn to the specific requirements of the proposal, the NPRM set forth what the agency believes is the least burdensome way for insurers to meet their statutory obligations to provide information on the four areas required to be addressed in these reports.

1. The rating characteristics used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen.

The NPRM proposed that insurers could provide the rating characteristics used to establish the premiums for comprehensive insurance coverage and the premium penalties for motor vehicles considered more likely to be stolen simply by furnishing pertinent sections of the insurer's rate manual(s). NHTSA believed that this requirement would offer by far the least burdensome means of satisfying this statutory requirement. No commenter addressed this proposed requirement, and it is adopted as proposed.

2. The loss data used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers more likely to be stolen.

To satisfy this statutory requirement, NHTSA proposed that insurers submit the following:

a. The total number of comprehensive claims paid by the insurer during the reporting period;

b. The total number of those comprehensive claims paid during the reporting period because of vehicle theft;

c. The total amount (in dollars) paid out by the insurer during the reporting period in response to all comprehensive claims filed by its policyholders;

d. The total amount (in dollars) paid out by the insurer in comprehensive claims during the reporting period because of vehicle theft;

e. The total amount (in dollars) of salvage value realized from the sale of recovered vehicles and recovered major parts not attached to a vehicle, after payment has been made to the insured for a vehicle theft claim;

f. An identification of the motor vehicles for which the insurer charges comprehensive insurance premium penalties, because it considers those vehicles as more likely to be stolen;

g. The relevant loss data for each vehicle risk grouping identified under paragraph f; and

h. The maximum premium adjustments (as a percentage of the basic premium) made for comprehensive insurance premiums for each vehicle risk grouping identified in pargraph f, as a result of the insurer's belief that vehicles in this risk grouping are more likely to be stolen.

AIA commented that the information specified in paragraphs a and c would be readily available, but that the information specified in paragraphs b and d would not be. The reason that the information required by paragraphs b and d would not be available was, according to the AIA, that claims data do not generally distinguish between vehicle theft and component theft, such as stolen radios, tires, bumpers, etc. The NATB also commented that comprehensive claims data would lump together claims involving vehicle thefts and thefts of parts from vehicles that were not stolen.

NHTSA has reconsidered its proposed requirement in response to these comments. As noted at the outset of this preamble, NHTSA intended to structure this rule to require insurers to report only data that they already gather for their own purposes to the maximum extent that such pre-existing data can be used to satisfy the explicit requirements of Title VI. According to AIA's comment, NHTSA could require insurers to report only pre-existing data in these reports if the proposed requirements were changed to require insurers to report their comprehensive insurance losses from theft, consisting of both vehicle and component theft. The agency would prefer this result, so the only question is whether the reporting of such data is consistent with Title VI.

The purpose of requiring loss data specifically for vehicle thefts was to allow the agency to accurately calculate the benefits that are associated with a reduction in vehicle thefts. However, the agency has concluded that it can prepare a reasonably accurate calculation of those benefits without requiring insurers to generate new data for the purposes of these reports. This final rule requires subject insurers to report their theft losses, consisting of both vehicle theft and component theft, paid out under comprehensive

insurance. The insurers would then be required to provide their best estimate of the percentage of total theft losses attributable to vehicle theft, and explain the basis for that estimate. These estimates might be based on past experience, samples of some theft claims, etc. Such a procedure would give the agency the same information available to the insurers, without requiring the insurers to generate new data for these reports. Accordingly, this final rule requires insurers to report theft losses paid under comprehensive insurance, which theft losses include both vehicle thefts and component thefts from vehicles that are not stolen.

Several commenters addressed the proposed requirement to provide the amount recovered from salvage sales. NHTSA proposed to require this information so that the agency could accurately calculate the societal costs of vehicle theft and measure changes in these costs as the theft prevention standard becomes effective. Without information on the salvage value of recovered vehicles and parts, the loss data provided in response to paragraphs a–d would be incomplete and potentially misleading.

Farmers Insurance stated that amounts recovered in salvage sales do not separate recoveries on vehicle thefts from recoveries on component thefts. Because of this, Farmers Insurance urged the agency to delete the proposed requirement for salvage information from this final rule. NHTSA believes the information on salvage sales is very important, as explained above. However, the agency also believes that it would satisfy the requirements of Title VI if insurers report the total amount recovered in salvage sales for paid theft claims, for the reasons explained above in the discussion of total theft losses. Again in this section, the rule requires the insurers to provide their best estimate of the percentage of those salvage recoveries attributable to paid vehicle theft claims, and provide the basis for that estimate. This change should alleviate the concern expressed by Farmers Insurance in its comment.

NATB commented that salvage sales could be handled on a regional basis for several States or salvage sales could always be conducted in the State where the vehicle or part was recovered. In these instances, NATB stated that amounts recovered in salvage might not be related to coverage issued in a single State or to thefts occurring in that State. Any insurer that follows the policies described by NATB should simply note that in its report. The agency will take account of these policies when using the salvage data in its reports and evaluations.

Allstate commented that it could provide the *net*, but not the *gross* amount recovered in salvage sales. According to Allstate, it does not maintain its systems reports and files to isolate salvage and subrogation dollars apart from paid comprehensive insurance claims. It concluded by stating that its salvage data are buried deep in its claim detail files, and any effort to systematically compile the information in a reportable way would not be cost efficient. As explained above, section 612(a)(2)(C) requires insurers to report their loss data for comprehensive insurance and NHTSA has concluded that loss data alone without salvage recovery information would be very misleading. Accordingly, this salvage recovery information must be reported on a gross, not net, basis to satisfy the applicable statutory requirements. NHTSA has made every effort to minimize the burden imposed on insurers by the statute, but it cannot alter or ignore those requirements. Thus, Allstate will have to devise the most efficient method it can to allow it to report the required salvage information.

The information proposed in paragraphs f through h were included in the NPRM to satisfy the statutory requirement that insurers provide "the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish . . . premium penalties for motor vehicles considered by such insurers as more likely to be stolen." Additionally, NHTSA is required to provide information on these premium penalties to Congress in both its 1987 report [section 614(a)(2)(D)] and its 1990 report [section 614(b)(2)(G)].

To satisfy these statutory requirements, the agency proposed certain basic requirements. First, the insurers would be required to identify the motor vehicles for which it charges comprehensive insurance premium penalties, because the insurer considers such vehicles as more likely to be stolen, broken down into the risk groupings the insurer uses for its own purposes. Thus, if the insurer charges a comprehensive premium penalty for all Pontiacs, the insurer would not have to break that information down further for the purposes of these reports. On the other hand, if the insurer calculates its premium penalties broken down by make, model, and line, it should provide that information in these insurer reports. Second, the proposal would require insurers to provide the relevant loss data for each risk grouping identified above. This was limited to the number of comprehensive claims filed for this risk grouping and the dollars paid out in response to these comprehensive claims. Third, the proposal required insurers to state the maximum premium adjustments (as a percentage of the basic premium) made for comprehensive insurance premiums for vehicles in this risk grouping as a result of the insurer's belief that vehicles in this risk grouping are more likely to be stolen. This third proposed requirement was derived from a question in NAII's proposed form. NHTSA concluded that this was the absolute minimum amount of information that could be included in the insurer reports in compliance with Title VI.

In response to this proposal, Allstate commented that it does not set its comprehensive rates based on the likelihood of a vehicle's theft *potential*. Instead, its comprehensive premimums are based on a review of the actual loss experience for the vehicle. Accordingly, Allstate suggested that some of section 612(a)(2)(C) does not apply to it, because it does not charge premium penalties for motor vehicles it *considers* more likely to be stolen, NHTSA believes this comment tries to read too much into the the statutory language. Allstate and every other insurance company review past losses for groups of vehicles, use these past losses as a predictor of future losses, and set their rates accordingly. If Allstate meant to assert that it charges premium penalties only for vehicles it *knows* are more likely to be stolen. NHTSA disagrees with its assertion. No matter how much data one has about past losses, one can only use that data as an indication of *likely* future losses. The most one could say is that the vehicles it *considers* as more likely to be stolen are strongly supported by data. However strongly supported, section 612(a)(2)(C) explicitly requires the insurers to report information about those premium penalties.

The agency notes that it would appear not very burdensome for Allstate to comply with the reporting requirements. Allstate can simply list the vehicle risk groupings for which it charges premium penalties because it has identified such vehicles as more likely to be stolen, submit the loss experience that it states are analyzed for these risk groupings, and indicate the maximum premium adjustment it made for vehicles in the risk grouping.

State Farm commented that it does not develop comprehensive insurance premiums by make and model. The NPRM did not propose to require the submission of this information broken down by make and model. Instead, it

proposed to require insurers to provide the information broken down by whatever risk groupings they use for their own purposes. State Farm explained that new vehicles are assigned to a physical damage "symbol group" based on the manufacturer's suggested retail price for the vehicle. Loss experience is then compiled for each symbol group and analyzed to determine the relationships between the symbol groups and age groupings. With respect to passenger cars and light trucks, State Farm reviews the *combined* comprehensive and collision loss experience by make and model. Adjustments are made in the originally assigned symbol group, depending on whether the aggregate loss data are better or worse than average for the group.

NHTSA does not believe that State Farm will face a burdensome task in responding to this section of the reporting rule. It can identify those make/models those premiums are adjusted up, provide the loss data that formed the basis for the adjustment, and indicate what difference this adjustment made in the comprehensive premiums charged (as a percentage of what the comprehensive premium would have been absent such adjustment). It will have to separate the combined comprehensive and collision loss data, and provide the loss data for comprehensive insurance separately. This will impose more of a burden than State Farm would face absent these reporting requirements. However, reporting of the comprehensive insurance loss data that forms the basis for the comprehensive insurance premium penalties is expressly required by section 612(a)(2)(C), so State Farm must assume this burden.

The Hartford commented that many factors besides theft are considered in assessing premium penalties for comprehensive insurance. According to this commenter, it would not be possible to break out theft-related data without totally revamping its internal processing and rating of comprehensive insurance. The agency does not believe that the Hartford meant that it cannot identify the vehicles for which it charges premium penalties or the amount of premium penalty charged because it considers a vehicle as more likely to be stolen. Thus, NHTSA assumes this comment was directed toward the proposed requirement for insurers to provide the relevant loss data for each vehicle risk grouping for which comprehensive insurance premium penalties are charged. However, this proposed requirement did *not* specify that the insurer had to provide just theft-related data for these vehicles. Rather, it proposed that insurers state the total number of comprehensive insurance claims paid for vehicles in this risk grouping and the total amount in dollars represented by those claims. NHTSA must then evaluate these loss data and provide the information to Congress in both the 1987 and 1990 reports. Since the NPRM did not seek to have reporting insurers provide only theft-related data for these vehicles, NHTSA concludes that the problem alleged by the Hartford in its comment was based on a misreading of the proposal.

The AIA commented that the proposed information to be reported on vehicles that are charged comprehensive insurance premium penalties is not currently recorded in insurer's files. This seems to conflict with the comments filed by State Farm, whose comments reflected that all the proposed data was already used in assessing premium penalties, unless AIA was also referring to the mixed comprehensive and collision loss data. If that is what AIA meant, NHTSA's response is the same as was made for State Farm. Even if State Farm's records are atypical of those for most insurers, NHTSA cannot alter the statutory requirement that this information be provided. Because the agency believes the information about comprehensive premium penalties is the least that could be adopted in response to section 612(a)(2)(C) and because the agency believes these requirements do not impose an excessive burden on the reporting insurers, such reporting requirements are adopted as proposed.

3. Any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for vehicles it considers more likely to be stolen.

The proposed requirements were to list any other rating rules and plans used by the insurer, and explain how such rating rules and plans are used to establish the premiums and premium penalties. This information, to the extent it has not already been provided, is statutorily required. No comments addressed this proposed requirement, and it is adopted as proposed.

4. The basis for the insurer's comprehensive insurance premiums and premium penalties it charges for vehicles it considers as more likely to be stolen.

The NPRM proposed that insurers satisfy this statutory requirement by providing the pertinent sections of materials filed with State insurance regulatory officials and clearly indicating which information in those materials is submitted in response to this requirement. NHTSA tentatively concluded that these materials would adequately explain the basis for these premiums and the premium penalties.

ISO commented that it is a rating service, which prepares model year/vehicle series rating for comprehensive and collision insurance in 45 jurisdictions. It further stated that it furnishes an antitheft device rating for providing discounts to comprehensive insurance premiums in 48 jurisdictions. ISO stated that it would like to file these ratings as a reference document for its members, and asked if the proposed § 544.7 would allow all insurers that are members of ISO to incorporate by reference these ratings. Such information can most certainly be filed and incorporated by reference, and is, in fact, the precise sort of information NHTSA is required to obtain.

ISO went on to state that a literal interpretation of the proposal would require insurers to submit to NHTSA the same information that is filed with State insurance departments in the form of rate filings or loss cost information to support changes in the rates, rules, and policy forms for comprehensive insurance premiums. Since such rate filings are made separately in each State, this filing of loss cost information would have to be provided to NHTSA annually, according to ISO. Further, those member insurers that deviate from ISO ratings would have to submit their deviations, and those insurers that are not members of ISO would have to submit their complete filings.

NHTSA acknowledges that this will be a large volume of information for it to analyze and evaluate. However, the proposed language for this section was extracted verbatim from section 612(a)(2)(C). Thus, the law requires NHTSA to gather and analyze this voluminous information. The agency emphasizes that section 612 does not require the agency to receive any information on collision insurance premiums. If ISO culls out those sections of its ratings that pertain to comprehensive insurance rates and files those sections, such filing may then be incorporated by reference by the member insurers that used that rating. Assuming this procedure is followed, NHTSA will not receive any extraneous materials.

ISO concluded by stating its opinion that its rating information and any deviations by member companies will not aid the agency in evaluating the effectiveness of the theft prevention standard. This commenter explained that its filings do not contain specific

detail related to auto theft, but deal with comprehensive premiums in aggregate. However, the basis for the insurers' comprehensive premiums, together with other information about comprehensive premiums, must be included in those reports pursuant to section 614(a)(2)(D) and 614(b)(2)(G). Thus, such information is mandated by Congress to be included in these reports, even if it cannot be used directly to measure the effectiveness of the theft prevention standard applicable to certain passenger cars.

E. Actions Taken by Insurers to Reduce Comprehensive Insurance Premiums Because of a Reduction in Motor Vehicle Thefts

Section 612(a)(2)(D) explicitly requires these insurer reports to include a listing of the actions insurers have taken to reduce comprehensive insurance premiums because of a reduction in motor vehicle thefts. The NPRM proposed that insurers simply list the reductions they have made in comprehensive premiums because of a reduction in vehicle thefts. For each listed reduction, the insurer would:

1. State the conditions, if any, that must be met to receive the reduction;
2. State the number of policyholders that received the reduction; and
3. State the difference in average comprehensive insurance premiums for those policyholders that received this reduction versus those policyholders that did not receive the reduction.

NHTSA stated that it believed this was the least burdensome way for insurers to satisfy this statutory requirement. If there had been no reduction in motor vehicle thefts or if the insurer had not made any reductions in its comprehensive premiums in response to such a decrease in theft, the insurer could simply note these facts in its report. Only Liberty Mutual commented on this proposed requirement, stating that it does not have this information in its claims files.

All insurers are statutorily required to provide this information in each of their reports filed under section 612. If insurers do not currently track this information in their data files, they will have to institute some method for tracking this information. The agency proposed what it believes is the least burdensome way for insurers to comply with this requirement. Since no commenter suggested a less burdensome way for insurers to comply, NHTSA has adopted this requirement as proposed.

F. Discounts for Antitheft Devices

As noted in the preamble to the NPRM, this was the only information proposed to be required in these insurer reports not expressly required by section 612. However, NHTSA believes these data are implicitly required by section 605. That section requires the agency to consider the effectiveness of antitheft devices when evaluating petitions by automobile manufacturers for exemption from the parts-marking requirements of Part 541. Section 602(e) explicitly limits the agency's authority to impose reporting or recordkeeping requirements to four specific sections of Title VI. Thus, if the information on antitheft devices is not included in these insurer reports, NHTSA will *not* be able to get industry-wide information on the effectiveness of these devices.

NHTSA proposed that insurers provide this information *only* if the insurer offers a reduction in comprehensive insurance premiums for vehicles equipped with these devices. The insurer would be required to list the specific criteria it used to determine whether a vehicle is eligible for a reduction in comprehensive premiums because of an antitheft device, and list the total number of vehicle thefts and recoveries for vehicles that received reductions under each criteria. As explained in detail in the NPRM, this information in the insurer reports would provide the *only* industry-wide data available to the agency when considering the effectiveness of standard equipment antitheft devices in connection with petitions filed under section 605 of the Cost Savings Act (15 U.S.C. 2025).

In its comments, the Hartford asked the agency to define the term "antitheft device". The Hartford noted that there are a wide variety of these devices available in the marketplace with wide ranging degrees of effectivensss. NHTSA is seeking information about *any* antitheft device for which the insurer offers a reduction in comprehensive premiums. Thus, the reporting insurer itself defines the term for the purposes of these reports. If the insurer offers a reduction in comprehensive insurance premiums for vehicles equipped with any particular device, such device is an antitheft device for the purposes of these reports. Conversely, if the insurer does not offer a reduction in comprehensive insurance premiums for vehicles equipped with a particular device, no information about vehicles equipped with the device is required to be included in these reports. Therefore, no further definition would be useful or necessary.

State Farm commented that the proposed regulation was unclear if it was intended to apply only to insurers that *voluntarily* offer discounts for vehicles equipped with antitheft devices. State Farm stated that it does not voluntarily offer discounts for vehicles equipped with antitheft devices, but does so in the three States that currently mandate reductions in comprehensive premiums for vehicles equipped with certain devices. Allstate indicated that it does not offer discounts except in the five States that mandate a discount. This rule requires the information if the insurer offered discounts to comprehensive premiums, regardless of whether the insurer chose to offer this discount or did so in response to a legal requirement. The information about vehicles that received reductions because of an antitheft device is extremely significant for the agency in meeting its responsibilities under Title VI of the Theft Act, regardless of the insurer's desire to offer such reductions.

A number of commenters objected to the proposal to give the total number of thefts and recoveries for vehicles that received a comprehensive premium reduction because of specific antitheft devices. State Farm and NAII commented that the loss data collected by insurers are tailored to meeting obligations to the States that mandate reductions. Accordingly, these commenters stated that insurers do not currently collect recovery information for such vehicles. Allstate commented that "it is neither feasible, nor practical, nor of any substantial value to maintain detailed statistics on thefts and recoveries for vehicles equipped with antitheft devices." Liberty Mutual stated that this information is not currently collected in its claims files. Farmers Insurance stated that thefts and recoveries of these vehicles are not currently captured in its loss records and that to do so would impose significant costs. Therefore, it urged that this information not be required. NATB commented that instead of mandating "universal reporting" of data that is difficult and sometimes impossible to develop, NHTSA should require a sample approach. Under this proposal, NATB would require insurers to submit a representative sample of the VIN's of vehicles equipped with antitheft devices. NATB stated that this would allow NHTSA to check those VIN's against the theft and recovery statistics it has.

NHTSA repeats that it is not mandating "universal reporting" of these data. It is only requiring the information for States where the insurer offers a reduction in comprehensive premiums for vehicles equipped with antitheft devices. Contrary to these comments,

NHTSA does not believe that the information sought in the proposal would be overly burdensome for the insurers to provide. It is a relatively simple task for insurers to compile the VIN's of the vehicles given a reduction in comprehensive premiums because of an antitheft device. The insurers are required to report theft and recovery data for all vehicles they insure under § 544.6(c) of this rule. The reporting insurer can then use a computer to compare the VIN's of vehicles receiving antitheft device comprehensive premium reductions with the VIN's of stolen and recovered vehicles, and report the matches under this section. This may involve some additional burden beyond what is done at present, but it does not appear to be a significant or undue burden. To ensure that reporting insurers can perform this task on a computer, the proposed requirement has been changed to specify that the thefts and recoveries are only required for 1983 and later model year vehicles. This change parallels the change made for thefts and recoveries in response to the AIA and NATB comments in the section of this preamble addressing theft and recovery data, and is made for the same reasons explained therein for all theft and recovery data.

Under section 605 of the Cost Savings Act (15 U.S.C. 2025), NHTSA is required to determine whether standard equipment antitheft devices are likely to be as effective in reducing and deterring motor vehicle thefts as compliance with the theft prevention standard (49 CFR Part 541). Thus far, the agency has had to rely on relatively old or limited data for determining the effectiveness of antitheft devices. The data available to NHTSA for making these determinations will be significantly enhanced by the data in these insurer reports. The insurer's data will, for the first time, show NHTSA how effective the various antitheft devices have been while actually used by the public.

The language of this rule has been slightly changed to make clear NHTSA's intention that reporting insurers separately list each category of antitheft device for which the insurer offers a discount to the comprehensive premium, and then separately list the total thefts and recoveries for vehicles in each category. For example, the State of New York requires insurers to offer discounts for three categories of antitheft devices. These are an alarm that can be heard from 300 feet for three or more minutes, an active disabling device requiring a separate manual step to arm the device when the driver leaves the car, and a passive disabling device requiring no additional action by the driver. If a vehicle antitheft device falls into more than one of these categories, only the single highest discount is required to be given by the insurer. In response to this rule, reporting insurers would identify these three categories for the State of New York and then list the total theft and recoveries for vehicles in each of these three categories.

This clarification has been made because it would not serve any useful purpose for the theft and recovery data for *all* antitheft devices to be reported as a whole. NHTSA believes that some antitheft devices will be much more effective than others in reducing thefts. If the information about these antitheft devices were lumped together with information on the less effective devices, the agency would only get an indication of the effectiveness of all antitheft devices for which the insurer offers a reduction in comprehensive insurance premiums. This composite information would have little value for the agency in making the required determination under section 605.

If, on the other hand, insurers provide theft and recovery infomation for each type of antitheft device for which they offer comprehensive premium reductions, NHTSA will have accurate effectiveness information for several types of antitheft devices. When an automobile manufacturer submits a petition under section 605 of the Cost Savings Act, the agency can determine what type of antitheft device listed in the insurer reports the antitheft device in the manufacturer's petition most closely resembles. The measured effectiveness of that sort of antitheft device will significantly enhance the agency's basis for determining if a device that is the subject of a petition under section 605 is likely to be as effective as parts marking in deterring and reducing vehicle theft. This rule requires the information to be broken out in this manner to ensure that it will be useful to the agency.

NATB's suggestion to require representative samples of VIN's is not adopted for several reasons. First, with the newly-added provision in this rule that limits the theft and recovery information to 1983 and later model year vehicles, NHTSA does not believe that this information will be "difficult or impossible" to develop, as explained above. Second, the agency does not know how it could define what constituted a "representative sample" for the purposes of these reports. Third, information on all vehicles that received a reduction because of an antitheft device will be more comprehensive and more useful for the agency than would information on a representative sample.

G. Insurers' Actions To Assist in Deterring and Reducing Vehicle Thefts

Information about these actions are expressly required to be included in these insurer reports by section 612(a)(2)(E) of the Cost Savings Act. The NPRM proposed that insurers identify each action they took to assist in deterring and reducing vehicle thefts. For each action so identified, the insurer would describe it and explain why the insurer believed it would be effective in deterring and reducing vehicle thefts. Additionally, since the demand for used parts is a part of the reason why illegal chop shop operations have been so profitable, the NPRM would require the insurer to state its policy regarding the use of used parts to effect repairs on vehicles it insures, and indicate the precautions taken by or on behalf of the insurer to identify the origin of those used parts.

In response to this proposal, Allstate described its policy regarding used parts in its comments. This is the sort of information NHTSA proposed to require in the insurer reports. Since Allstate has already described its policy in its comments, NHTSA assumes this proposal presents no burden to Allstate. No other insurer commented on any burden it believed would be associated with this proposed section of the reports. Accordingly, this section is adopted as proposed.

Southern Farm Bureau asked whether insurers would be "penalized" by this agency if they reported that they had not reduced comprehensive premiums because of a reduction in vehicle thefts or that they required used parts to be used in repairs of their insured vehicles without taking any precautions to identify the origin of those used parts. Title VI of the Cost Savings Act does not give NHTSA any authority to penalize an insurance company for failing to provide certain discounts or failing to take precautions to determine the origin of used parts. Hence, an insurer that files its required report has fully satisfied its statutory obligations under Title VI of the Cost Savings Act. The information set forth in the reports will be analyzed and evaluated by the agency, and will be used as a primary source in preparing the reports to Congress.

Special Provisions for Reports To Be Filed in 1986

The NPRM sought comments on the availability of recovery data, divided into the three statutorily-specified

subcategories of recovery, for the 1986 insurer reports. 51 FR 23099. Although section 612 requires recoveries to be grouped into these three subcategories, the agency noted that insurers had no means of knowing exactly what definitions would be proposed for these subcategories before the NPRM was issued on June 20, 1986. The insurers could not collect such data for the 1985 calendar year, which is the time period about which information is to be provided in the 1986 reports. All commenters stated that these data would not be available for the 1986 reports.

NHTSA concurs with the commenters that, absent definitions for the three subcategories of recovery, it was impossible for them to collect recovery data divided into the three subcategories during the 1985 calendar year. There is also no means by which the insurer could now after-the-fact accurately divide recoveries into those subcategories. In accordance with this conclusion, this final rule specifies that insurer reports are required to divide recoveries into the three subcategories beginning with the report due by October 25, 1987. The reports due in 1986 are only required to list the total number of recoveries, without subdividing the recoveries. This change has been made in the section requiring insurers to report recovery data for all vehicles and in the section requiring insurers to report recovery information for vehicles equipped with an antitheft device that received a reduction in comprehensive insurance premiums.

Many commenters stated that it would be very burdensome or difficult to provide much of the other data required in the insurer reports in their 1986 reports. The agency appreciates that some of these reporting requirements impose a burden on the reporting insurers. However, Congress has determined that these reporting requirements should be implemented, and evidently considered the difficulty or burden of compliance with these requirements. To repeat, the agency has consciously structured this reporting requirement to satisfy all statutory obligations while imposing the least burden on reporting insurers. This final rule has also been changed from what was proposed to permit insurers to use their existing computer data base to provide all theft and recovery data. With one exception, the remaining burdens imposed on insurers are those that are explicitly required by section 612 of the Cost Savings Act.

Farmers Insurance commented that it could provide the rating rules and plans information specified in § 544.6(d)(2), but could not do so by October 25. This commenter asked the agency to allow it an additional six months to provide this information. NHTSA is expressly required to include information on rating rules and plans for motor vehicles other than passenger cars in its October 1987 report to Congress by section 614(a)(2)(D) of the Cost Savings Act. Thus, NHTSA needs this information from the reporting insurers early enough to allow the agency to analyze and evaluate such information. Nevertheless, NHTSA recognizes that these reporting requirements are imposing a burden on insurers to which they were not previously subject. The agency also believes the commenters' assertions that it will be getting significant amounts of information on this subject. In its assessment of the cost impacts of this rule, NHTSA has concluded that the first reports will be the most burdensome for the insurers, because they will have to implement some new formats and procedures for data they currently collect.

After considering these burdens, the short time remaining before the first insurer reports are due, and a good faith effort by Farmers Insurance to gather and report the statutorily-required data, NHTSA hereby announces that it will not take any enforcement actions against insurers that provide the reports required by section 612 of the Cost Savings Act after October 25, 1986, but not later than January 31, 1987. Because of the express statutory requirement, NHTSA cannot grant the six month extension of time requested by the commenter. NHTSA recognizes that this three month extension may force insurers to make intensive efforts if they are to gather and report the necessary data by January 31, 1987. However, allowing even this three month extension will force the agency to make intensive efforts of its own to analyze and evaluate this information quickly, so that the conclusions will be available in time for the 1987 report to Congress.

NHTSA would like to make clear that this extension of time applies *only* for the reports due in 1986. NHTSA would also like to make clear that it will not consider any further requests for extensions of the period in which to file the insurer reports for the 1986 or any later reports. This decision to allow the reports to be filed after the statutory due date is a recognition of the particular circumstances associated with these first reports. NHTSA cannot foresee any other circumstances in which it would allow insurers to file all or parts of these reports after October 25.

Both ACRA and Southern Farm Bureau asked in their comments if the agency was going to provide forms for these reports. NHTSA has no plans to do so, because it concludes there is no need for any forms. Part 544 clearly explains what information must be included in these reports and the format and order in which the information should be reported. The insurers should simply present the information in that format and order.

Sections of Report Not Applicable to Rental and Leasing Companies

ACRA noted in its comments that section 612 requires all insurers to provide information in their reports concerning rating rules and plans for comprehensive insurance premiums, information on premium reductions, and the like. Section 612 also specifies that rental and leasing companies are insurers for the purposes of these reports. However, rental and leasing companies do not have comprehensive insurance premiums for the vehicles in their fleets, because they insure those vehicles themselves. Accordingly, ACRA stated that its members did not plan to respond to those sections relating to premiums.

NHTSA is persuaded by this observation. No purpose is served by requiring rental and leasing companies to indicate "not applicable" to much of the information required to be included in these reports. Therefore, NHTSA has drafted this final rule to provide that persons who are insurers by virtue of having a fleet of 20 or more self-insured vehicles used primarily for rental or lease need only provide the following information in their reports:

1. The total thefts and recoveries of vehicles in their fleet, and how the theft and recovery data were obtained, the steps taken to ensure these data are accurate and timely, and the use made of such theft and recovery information [§ 544.6(c)];

2. The net total amount (in dollars) of losses to the rental or leasing company as a result of vehicle theft [§ 544.6(d)(2)(iv)]; and

3. The actions taken by rental or leasing company to assist in deterring or reducing thefts or motor vehicles [§ 544.6(g)].

Effective Date

NHTSA finds for good cause that this rule should be effective immediately upon publication in the Federal Register, instead of 30 days thereafter. As noted throughout this preamble, section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers to

provide specified information in annual reports to NHTSA, and requires the first report to be submitted not later than October 25, 1986. This statutory deadline makes it imperative that this regulation, specifying the information that must be included in these reports, become effective as far as possible in advance of that deadline. The early effective date will ensure that all reporting insurers know precisely what information must be included in these reports.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency estimates that these reporting requirements will impose costs of less than $9 million to prepare the reports due in October 1986, and lesser costs in succeeding years. The agency also concludes that it will be better able to conduct the evaluations and prepare the reports required by section 614 of the Cost Savings Act (15 U.S.C. 2034) after receiving and analyzing the information in these insurer reports. NHTSA is unable to provide a quantified estimate of these benefits. A regulatory evaluation, analyzing in detail the anticipated impacts of this rule, has been prepared and placed in Docket No. T86-01, Notice 2. Any interested person may obtain a copy of this regulatory evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

2. Small Business Impacts

The agency has also considered the effects of this rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. All of the insurance companies that would qualify as small insurers under section 612 of the Cost Savings Act have been exempted from complying with these reporting requirements. Those insurance companies that are subject to these reporting requirements do not qualify as small entities. Some of the rental and leasing companies subject to these reporting requirements may qualify as small entities. However, any of those small entities that can demonstrate that the costs of preparing these reports is excessive in relation to the size of its business, and that its report will not significantly contribute to carrying out the purposes of Title VI, will be exempted from these reporting requirements after the agency initiates rulemaking procedures. Any small entity that cannot make these showings would not experience a significant economic impact from this rule.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has also considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The requirements in this rule for insurers to file annual reports with this agency are information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The information collection requirements in this rule have been submitted to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through March 31, 1988 (OMB approval number 2127-0457).

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 544, reading as follows:

PART 544—INSURER REPORTING REQUIREMENTS

Sec.
544.1 Scope.
544.2 Purpose.
544.3 Application.
544.4 Definitions.
544.5 General requirements for reports.
544.6 Contents of insurer reports.
544.7 Incorporating previously filed documents.
Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business
Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

§ 544.1 Scope.

This part sets forth requirements for insurers to report to the National Highway Traffic Safety Administration information about motor vehicle thefts and recoveries, the effects of the Federal motor vehicle theft prevention standard on those thefts and recoveries, and related insurance practices.

§ 544.2 Purpose.

The purpose of these reporting requirements is to aid in implementing and evaluating the provisions of the Motor Vehicle Theft Law Enforcement Act to prevent or discourage the theft of motor vehicles, to prevent or discourage the sale or distribution in interstate commerce of used parts removed from stolen motor vehicles, and to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

§ 544.3 Application.

This part applies to the issuers of motor vehicle insurance policies listed in Appendices A or B, and to any person which has a fleet of 20 or more motor vehicles (other than a governmental entity) which are used primarily for rental or lease and are not covered by theft insurance policies issued by insurers of motor vehicles.

§ 544.4 Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.* (1) "Comprehensive insurance coverage" means the indemnification of motor vehicle owners by an insurer against losses due to fire, theft, robbery, pilferage, malicious mischief and vandalism, and damage resulting from floods, water, tornadoes, cyclones, or windstorms.

(2) "Gross vehicle weight rating" is used as defined at § 571.3 of this chapter.

(3) "Heavy truck" means a truck with a gross vehicle weight rating of more than 10,000 pounds.

(4) "Light truck" means a truck with a gross vehicle weight rating of 10,000 pounds or less.

(5) "Major part" means—

(i) In the case of passenger motor vehicles, any part listed in § 541.5(a) (1) through (14) of this chapter;

(ii) In the case of light trucks, any part listed in § 541.4(a) (1) through (14) of this chapter, or the cargo bed or transfer case;

(iii) In the case of heavy trucks, any part listed in § 541.5(a) (1) through (14) of this chapter, or the cargo bed, drive axle assembly, fifth wheel, sleeper, or the transfer case;

(iv) In the case of multipurpose passenger vehicles, any part listed in § 541.5(a) (1) through (14) of this chapter, or the cargo bed or transfer case; and

(v) In the case of motorcycles, the crankcase, engine, frame, front fork, or transmission.

(6) "Motorcycle" is used as defined at § 571.3 of this chapter.

(7) "Motorcycle vehicle" means a passenger motor vehicle, multipurpose passenger vehicle, truck, or motorcycle.

(8) "Multipurpose passenger vehicle" is used as defined at § 571.3 of this chapter.

(9) "Recovery" means regaining physical possession of a motor vehicle or a major portion of the superstructure of a motor vehicle with one or more major parts still attached to the superstructure, after that vehicle has been stolen.

(10) "Recovery-in-part" means a recovery in which one or more of the recovered vehicle's major parts is missing at the time of recovery.

(11) "Recovery intact" means a recovery with none of the recovered vehicle's major parts missing at the time of recovery, and with no apparent damage to any part of the motor vehicle other than those parts damaged in order to enter, start, and operate the vehicle, but with additional mileage and ordinary wear and tear.

(12) "Recovery-in-whole" means a recovery with none of the recovered vehicle's major parts missing at the time of recovery, but with apparent damage to some part or parts of the vehicle in addition to those parts damaged in order to enter, start, and operate the vehicle.

(13) "Reporting period" means the calendar year covered by a report submitted under this part.

(14) "Truck" is used as defined at §571.3 of this chapter.

(15) (i) In the case of insurers that issue motor vehicle insurance policies, "vehicle theft" means an actual physical removal of a motor vehicle without the permission of its owner, but does not include the removal of component parts, accessories, or personal belongings from a motor vehicle which is not moved.

(ii) In the case of an insurer which has a fleet of 20 or more vehicles (other than a governmental entity) used primarily for rental or lease and not covered by theft insurance policies issued by insurers of motor vehicles, "vehicle theft" means an actual physical removal of a motor vehicle without the the permission of its owner, or keeping possession of the motor vehicle without permission of its owner for a sufficient period of time so that the vehicle could have been reported as stolen to the State police in the State in which the vehicle was to have been returned. However, vehicle theft does not include the removal of component parts, accessories, or personal belongings from a motor vehicle which is not moved.

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. The report shall contain the information required by § 544.6 of this part for the calendar year preceding the year in which the report is filed (e.g., the report due by October 25, 1988 shall contain the required information for the 1987 calendar year).

(b) Each report required by this part must:

(1) Have a heading preceding its text that includes the words "Insurer Report";

(2) Identify the insurer, including all subsidiary companies, on whose behalf the report is submitted, and the designated agent, if any, submitting the report or that will submit further documents to complete the report;

(3) Identify the State or States in which the insurer did business during the reporting period;

(4) State the full name and title of the official responsible for preparing the report, and the address of the insurer;

(5) Identify the reporting period covered by the report;

(6) Be written in the English language;

(7) Include a glossary defining all acronyms and terms of art used in the report, unless those acronyms and terms of art are defined immediately after they first appear in the report;

(8) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; and

(9) If the insurer wishes to submit certain information under a claim of confidentiality, be submitted in accordance with Part 512 of this chapter.

§ 544.6 Contents of insurer reports.

(a)(1) In the case of insurers that issue motor vehicle insurance policies, provide the information specified in paragraphs (b) through (g) of this section for each State in which the insurer, including any subsidiary, did business during the reporting period if the insurer is listed in Appendix A, or for each State listed after the insurer's name if the insurer is listed in Appendix B.

(2) In the case of insurers that have a fleet of 20 or more motor vehicles (other than a governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the insurer, including any subsidiary, did business during the reporting period.

(b) For each of the following vehicle types, provide the information specified in paragraphs (c) through (g) of this section for all vehicles of that type insured by the insurer during the reporting period—

(1) Passenger cars.

(2) Multipurpose passenger vehicles.

(3) Light trucks.

(4) Heavy trucks.

(5) Motorcycles.

(c)(1) List the total number of vehicle thefts for vehicles manufactured in the 1983 or subsequent model years, subdivided into model year, model, make, and line, for this type of motor vehicle.

(2) List the total number of recoveries for vehicles manufactured in the 1983 or subsequent model years, subdivided into model year, model, make, and line, for this type of motor vehicle. Beginning with the report due not later than October 25, 1987, for each of these subdivided number of recoveries, indicate how many were:

(i) Recoveries intact;

(ii) Recoveries-in-whole; and

(iii) Recoveries-in-part.

(3) Explain how the theft and recovery data set forth in response to paragraphs (c) (1) and (2) of this section were obtained by the insurer, and the steps taken by the insurer to ensure that these data are accurate and timely.

(4) Explain the use made by the insurer of the information set forth in response to paragraphs (c) (1) and (2) of this section, including the extent to which such information is reported to national, public, and private entities (e.g., the Federal Bureau of Investigation and State and local police). If such reports are made, state the frequency and timing of the reporting.

(d) (1) Provide the rating characteristics used by the insurer to establish the premiums it charges for comprehensive insurance coverage for this type of motor vehicle and the premium penalties for vehicles of this type considered by the insurer as more likely to be stolen. This requirement may be satisfied by furnishing the pertinent sections of the insurer's rate manual(s).

(2) Provide the loss data used by the insurer to establish the premiums it charges for comprehensive insurance coverage for this type of motor vehicle and the premium penalties it charges for

vehicles of this type it considers as more likely to be stolen. This requirement may be satisfied by providing the following:

(i) The total number of comprehensive insurance claims paid by the insurer during the reporting period;

(ii) (A) The total number of claims listed in (d)(2)(i) of this section that arose from a theft;

(B) The insurer's best estimate of the percentage of the number listed in paragraph (d)(2)(ii)(A) of this section that arose from vehicle thefts, and an explanation of the basis for the estimate;

(iii) The total amount (in dollars) paid out by the insurer during the reporting period in response to all the comprehensive claims filed by its policyholders;

(iv) (A) In the case of insurers listed in Appendix A or B, provide—

(1) The total amount (in dollars) listed under paragraph (d)(2)(iii) of this section paid out by the insurer as a result of theft; and

(2) The insurer's best estimate of the percentage of the dollar total listed in paragraph (d)(2)(iv)(A)(1) of this section that arose from vehicle thefts, and an explanation of the basis for the estimate;

(B) In the case of other insurers subject to this part, the net losses suffered by the insurer (in dollars) as a result of vehicle theft;

(v) (A) The total amount (in dollars) recovered by the insurer from the sale of recovered vehicles, major parts recovered not attached to the vehicle superstructure, or other recovered parts, after the insurer had made a payment listed under paragraph (d)(2)(iv) of this section.

(B) The insurer's best estimate of the percentage of the dollar total listed in paragraph (d)(2)(v)(A) of this section that arose from vehicle thefts, and an explanation of the basis for the estimate;

(vi) An identification of the vehicles for which the insurer charges comprehensive insurance premium penalties, because the insurer considers such vehicles as more likely to be stolen;

(vii) The total number of comprehensive insurance claims paid by the insurer for each vehicle risk grouping identified in paragraph (d)(2)(vi) of this section during the reporting period, and the total amount (in dollars) paid out by the insurer in response to each of the listed claims totals; and

(viii) The maximum premium adjustments (as a percentage of the basic comprehensive insurance premium) made for each vehicle risk grouping identified in paragraph (d)(2)(vi) of this section during the reporting period, as a result of the insurer's determination that such vehicles are more likely to be stolen.

(3) Identify any other rating rules and plans used by the insurer to establish its comprehensive insurance premiums and premium penalties for motor vehicles it considers as more likely to be stolen, and explain how such rating rules and plans are used to establish the premiums and premium penalties.

(4) Explain the basis for the insurer's comprehensive insurance premiums and the premium penalties charged for motor vehicles it considers as more likely to be stolen. This requirement may be satisfied by providing the pertinent sections of materials filed with State insurance regulatory officials and clearly indicating which information in those sections is being submitted in compliance with this paragraph.

(e) List each action taken by the insurer to reduce the premiums it charges for comprehensive insurance coverage because of a reduction in thefts of this type of motor vehicle. For each action:

(1) State the conditions that must be satisfied to receive such a reduction (e.g., installation of antitheft device, marking of vehicle in accordance with theft prevention standard, etc.);

(2) State the number of the insurer's policyholders and the total number of vehicles insured by the insurer that received this reduction; and

(3) State the difference in average comprehensive insurance premiums for those policyholders that received this reduction versus those policyholders that did not receive the reduction.

(f) In the case of an insurer that offered a reduction in its comprehensive insurance premiums for vehicles equipped with antitheft devices, provide:

(1) The specific criteria used by the insurer to determine whether a vehicle is eligible for the reduction (original equipment antitheft device, passive antitheft device, etc.);

(2) The total number of vehicle thefts for vehicles manufactured in the 1983 or subsequent model years that received a reduction under each listed criterion; and

(3) The total number of recoveries of vehicles manufactured in the 1983 or subsequent model years that received a reduction under each listed criterion. Beginning with the report due not later than October 25, 1987, indicate how many of the total number of recoveries were—

(i) Recoveries intact;

(ii) Recoveries-in-whole; and

(iii) Recoveries-in-part.

(g) (1) List each action taken by the insurer to assist in deterring or reducing thefts of motor vehicles. For each action, describe the action and explain why the insurer believed it would be effective in deterring or reducing motor vehicle thefts.

(2) (i) State the insurer's policy regarding the use of used parts to effect repairs paid for by the insurer on vehicles it insures. Indicate whether the insurer required, promoted, allowed, or forbade the use of used parts in those repairs.

(ii) In the case of insurers requiring, promoting, or allowing the use of used parts to make repairs paid for by the insurer on vehicles it insures, indicate the precautions taken by or on behalf of the insurer to identify the origin of those used parts.

§ 544.7 Incorporating previously filed documents.

(a) In any report required by this part, an insurer may incorporate by reference any document or portion thereof previously filed with any Federal or State agency or department within the past four years.

(b) An insurer that incorporates by reference a document not previously submitted to the National Highway Traffic Safety Administration shall append that document or the pertinent sections of that document to its report, and clearly indicate on the cover or first page of the document or pertinent section the regulatory requirement in response to which the document is being submitted.

(c) An insurer that incorporates by reference a document shall clearly identify the document and the specific portions thereof sought to be incorporated, and, in the case of a document previously submitted to the National Highway Traffic Safety Administration, indicate the date on which the document was submitted to the agency and the person whose signature appeared on the document.

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Travelers Insurance Group
Liberty Mutual Group
USAA Group
CIGNA Group
United States F & G Group
Geico Corporation Group
Continental Group

Hartford Insurance Group
Fireman's Fund Group
Sentry Insurance Group
Interinsurance Exchange Auto Club of Southern California
California State Auto Association
Commercial Union Assurance Companies
American Financial Group
American Family Group

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Southern Farm Bureau Group (Arkansas and Mississippi)
Shelter Insurance Companies (Arkansas)
Island Insurance Group (Hawaii)
United Farm Bureau Mutual (Indiana)
Kentucky Farm Bureau Group (Kentucky)
American General Group (Maine)
Auto Club of Michigan Group (Michigan)
Amica Mutual Insurance Company (Rhode Island)
Tennessee Farmers (Tennessee)
American International Group (Vermont)

Issued on December 29, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-29437 Filed 12-29-86; 2:01 pm]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 52, No. 1
Friday, January 2, 1987

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.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 86-1291]

Regulation of Direct Investment by Insured Institutions

Dated: December 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Extension of Comment Period and Notice of Public Hearing on Proposed Extension of Direct Investment Regulation.

SUMMARY: This notice extends the comment period and announces a public hearing on a proposed amendment to § 563.9-8 (Regulation of Direct Investment By Insured Institutions) to defer the expiration date of the regulation to January 1, 1989. Board Res. No. 86-962, 51 FR 32925 (September 17, 1986). In order to preserve the status quo pending the outcome of the hearing, the Board, on December 18, 1986, adopted an interim rule to defer the expiration date of the direct investment regulation to March 15, 1987. Board Res. No. 86-1260, (published in the **Federal Register** December 30, 1986).

DATES: Comments must be received on or before February 6, 1987; public hearing will be held Thursday and Friday, January 29 and January 30, 1987, 9:30 a.m.-5:00 p.m.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Written requests to participate in the public hearing must be mailed to Jeff Sconyers, Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, and received no later than 5:00 p.m. Wednesday, January 21, 1987.

Hearing Location: The Federal Home Loan Bank Board's Meeting Room, 6th Floor, 1700 G Street, NW., Washington, DC 20552.

Copies of the Notice of Proposed Rulemaking, the Interim Rule, and any comments and Board staff studies relating to this rulemaking, including those studies prepared since issuance of the proposal and any further studies which may be completed on or before February 6, 1987, are or promptly will be made available in the Federal Home Loan Bank Board's public reading room at the above address.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Staff Attorney, (202) 377-6649 or Karen Knopp O'Konski, Deputy Director, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board at the above address.

SUPPLEMENTARY INFORMATION: On September 11, 1986, the Federal Home Loan Bank Board, ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), adopted a proposed amendment to its regulation governing investments by institutions the accounts of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, and operating subsidiaries ("direct investments"). The proposal, which was published for a 30-day comment period ending on October 17, 1986, would have deferred the expiration date of the regulation from January 1, 1987 to January 1, 1989.

On December 18, 1986, the Board held a meeting on the September proposal. In order to provide sufficient time for two recently appointed Board members to thoroughly evaluate the proposal and to preserve the status quo in this matter while they do so, the Board adpoted an interim rule to defer the expiration date of the direct investment regulation to March 15, 1987, and voted to reopen the comment period on the September proposal through February 6, 1987. The Board also voted to hold a two-day public hearing at which it would receive oral comments on the September proposal.

Commenters and participants in the hearing are invited to address all aspects of the September 11, 1986 proposal to defer the expiration date of the direct investment rule for two years. In addition, the Board specifically invites oral comments, as well as supplementary or independent written submissions, studies, and analyses with regard to the following issues:

1. The degree to which the current paragraph (g) waiver provision of the rule and its implementation thus far provides adequate flexibility for institutions to obtain the benefits of direct investment opportunities. Commenters are especially invited to apprise the Board of actual examples known to them of instances where the 30-day review delay has hampered an institution in making direct investments.

2. To what extent it is feasible or desirable to amend the rule to require in the future that institutions provide notice to the PSAs of all direct investments on a transactional basis.

3. To what extent it is appropriate or desirable to amend the supervisory review threshold to provide that insured institutions, having regulatory capital equal to the higher of 6 percent of liabilities or their fully phased-in regulatory capital requirement may invest without limitation in direct investments at a higher level than 10 percent of assets without obtaining prior PSA approval, but subject to the notice requirement referred to in number 2 above and to the capital regulation applicable to direct investments discussed in number 5 below.

4. Alternatively, to what extent it is desirable or feasible to amend or delete the threshold requirement of the current rule, possibly in conjunction with establishing a different measure of capital to support different levels of direct investment. For example, a new capital measure for unlimited or increased direct investment without prior supervisory review could be a percentage of "tangible capital" (capital that excludes intangible assets such as goodwill).

5. To what extent the Board's new capital requirements, effective January 1, 1987, will reduce the need for prior supervisory review at the asset levels established in the current regulation. The Board encourages commenters to address this question in the context of both (1) the incremental capital requirements for direct investment and (2) the fact that the new rule, which targets a ratio requiring maintenance of 6 percent of capital to total liabilities, is unlikely to take full effect for a period of 6-12 years.

6. In view of recent studies and proposals by the Federal Reserve Board ("FRB")[1] and the Federal Deposit Insurance Corporation ("FDIC"),[2] the Board specifically solicits comment on whether the current supervisory review threshold should be reduced to a lower level of assets, or a level reflecting a percentage of capital rather than a percentage of assets. Similarly, in view of 12 U.S.C. 1464(c)(4)(B), limiting investment by Federal associations in service corporations to 3 percent of assets, whether the rule should be amended to establish a 3 percent of assets supervisory review threshold for all insured institutions.

7. The experience of insured institutions with paragraph (f), the grandfathering provision of the rule, and whether this provision requires clarification or modification.

The Board notes that comments already submitted in response to the proposal need not be resubmitted during the extension of the comment period. The Board will consider all comments submitted in reaching a final decision.

Persons wishing to participate in the hearings should send a written request to participate to Jeff Sconyers, Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, to be received no later than the close of business Wednesday, January 21, 1987. This requirement is necessary so that alternative arrangements for the hearings may be made if more persons are expected to attend than the Board Meeting Room will accommodate. It also will provide sufficient time to acknowledge receipt of the notices and inform participants of the schedule for the hearings. Requests may be hand delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

All requests will be time- and date-stamped upon receipt and oral presentation will be scheduled in the order in which requests are received. Depending on the number of requests received, participants may be limited to a ten minute oral presentation and will be advised in writing of the time scheduled for their presentation. Participants are encouraged to provide a written submission of their presentation to the Board on or before January 21, 1987. The Board reserves the right to limit the number of participants and to select in its discretion those persons who may make oral presentations, if it receives more requests for participation than can be accommodated in the time available. Additionally, the Board also reserves the right to establish panels of participants for the presentations.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86-29390 Filed 12-31-86; 8:45 am]

BILLING CODE 6720-01-M

[1] On November 20, 1986, the FRB adopted a proposal which would authorize bank holding companies to invest in limited real estate activities, with an investment "cap" of 5 percent of the bank holding company's consolidated primary control.

[2] *See* 50 FR 23964 (June 7, 1985).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ACE-07]

Proposed Alteration of Transition Area Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Beatrice, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Beatrice, Nebraska, Municipal Airport utilizing the Beatrice VOR and Shaw Nondirectional Radio Beacon (NDB) as navigational aids.

DATES: Comments must be received on or before February 1, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by altering the 700-foot transition area at Beatrice, Nebraska. To enhance airport usage, an additional instrument approach procedure is being developed for the Beatrice, Nebraska, Municipal Airport, utilizing the Beatrice VOR and Shaw NDB as navigational aids. The establishment of this new instrument approach procedure, based on these navigational aids, entails alteration of the transition area at Beatrice, Nebraska, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

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

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

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. By amending Section 71.181 as follows:

Beatrice, Nebraska

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Beatrice Municipal Airport (Lat. 40°18'01" N., Long. 96°45'16" W.) and within 5 miles each side of the Beatrice VOR 323° radial extending from the 6.5 mile radius to 14 miles northwest of the VOR and within 2.25 miles either side of the 175° radial of the Beatrice VOR extending from the 6.5 mile radius to 8.0 miles south of the VOR, and within 3.25 miles either side of the 185° bearing from the Shaw (HWB) NDB (Lat. 40°15'56" N., Long. 96°45'24" W.) extending from the 6.5 mile radius to 8.0 miles south of the Beatrice Airport.

Issued in Kansas City, Missouri, on December 18, 1986.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 86–29374 Filed 12–31–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Revisions to the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges

Issued December 23, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice requesting supplemental comments.

SUMMARY: On December 30, 1985, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) in this docket. The Commission proposed to amend Part 11 of its regulations to revise the billing procedures for annual charges for administering Part I of the Federal Power Act. The Commission also proposed to revise the methodology for assessing Federal land use charges. This supplemental notice seeks comments on several issues that were not specifically raised in the Commission's original NOPR.

DATE: Written comments must be filed with the Commission by February 2, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8519.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 30, 1985, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR)[1] proposing to revise billing procedures for annual charges [2] for administering Part I of the Federal Power Act (FPA).[3] The Commission also proposed to revise the methodology for determining Federal land use charges in Part 11.

The Commission is interested in considering several issues that were not specifically raised in the original NOPR. This notice provides interested persons an opportunity to comment on these issues.

[1] 51 F.R. 211 (Jan. 3, 1986), IV FERC Stats. & Regs. ¶ 32,423 (1986).

[2] 18 CFR Part 11 (1986).

[3] 16 U.S.C. 791a–825r (1982).

II. Background

As noted in the NOPR, the Commission is required by section 10(e) of the FPA to collect annual charges for, among other things, the cost of administering Part I of the FPA, and for use of Federal land.[4]

The Commission's NOPR suggests amendments to current §§ 11.01 [5] and 11.02 [6] of the Commission's regulations.[7] Under the rule proposed in the NOPR, hydroelectric licensees submitting generation data [8] for annual charges under § 11.01, would be required to compute this data on a fiscal-year basis, instead of on a calendar-year basis, and to file generation data reports by November 1, instead of February 1.

Several new alternative methodologies are also proposed in the NOPR for computing Federal land use charges under § 11.02. Specifically, the Commission now multiplies a project's acres by a per-acre land value, and by the average discount or interest rate established for U.S. market securities. The NOPR suggests alternatives including using one of several published governmental indices of land values; assessing Federal land use charges as a percentage of gross income; or assessing a flat rate per kilowatt hour.

III. Discussion

Since issuing the NOPR, the Commission has decided to seek comment on several issues not specifically raised in its overall NOPR. In particular, the Commission is interested in comments on the Department of Energy (DOE) Inspector General's recommendation that the Commission bill in advance for Federal land use charges generated pursuant to

[4] Section 10(e), 16 U.S.C. 803(e) (1982), provides in pertinent part: "that the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; . . . and any such charges may be adjusted by the Commission as conditions may require."

[5] When the final rule was issued for Headwater Benefits on June 24, 1986, the sections in Part 11 of the Commission's regulations were renumbered. Section 11.01 in this notice was formerly § 11.20. *See* Payments for Benefits From Headwater Benefits, 51 FR 24308 (July 3, 1986); 51 FR 25362 (July 14, 1986).

[6] Formerly § 11.21. *See* note 5.

[7] 18 CFR 11.01 and 11.02 (1986).

[8] Generation data includes the gross amount of power generated by a hydroelectric project, as well as the amount of energy used for pumped storage pumping by the project and the amount of energy provided free of charge to the government. This generation data is used to determine the various types of annual charges assessed in Part 11 of the Commission's regulations.

§ 11.02 of its regulations.[9] DOE's Inspector General gave several reasons in the report for recommending advance billing for Federal land use charges.

The Inspector General's report pointed out that the Federal Land Policy and Management Act of 1976 is applicable to all Federal agencies and requires advanced billing. Also, advance billing would permit the government to invest the money a year earlier and would generate increased income to the government of approximately $270,000 from the time value of the money.

Licensees are required to file the generation data used to determine the various annual charges in Part 11 of the Commission's regulations on February 1, of each year.[10] These data are based on the preceding calendar year. If the Commission adopts the procedures proposed in the NOPR, licensees would be required to make at least two separate filings of generation data which would be used to determine annual charges under Part 11. Additionally, these data, depending on the annual charge, would be based on either a calendar year or a fiscal year. To avoid this complication, the Commission requests comments on whether to require licensees to file the generation data used to determine all of the annual charges in Part 11 once a year and to base this data on the licensee's fiscal year. In particular, the Commission would determine annual charges for use of government dams, new § 11.03; and annual charges for pump storage projects using government dams, new § 11.04, using data based on the licensee's fiscal year.

The Commission also seeks comment on whether to base bills for Federal land use charges under § 11.02 on a fiscal-year basis. This proposal would provide consistency in administration of hydroelectric annual charges under Part 11 of the Commission's regulations. However, the Commission notes that the U.S. Forest Service's (USFS) recently published methodology [11] for determining land values is based on calendar-year data. Since the NOPR proposed using USFS's methodology as an alternative for determining annual charges for Federal land use, the Commission is seeking comment on whether it should bill for Federal land use charges on a calendar-year basis to be consistent with the USFS's methodology or on a fiscal-year basis to be consistent with the other filing requirements in Part 11.

Finally, the Commission seeks comment on whether it should apply USFS's methodology to assess the Commission's annual charges for use of Federal lands. Specifically, the USFS in conjunction with the Bureau of Land Management (BLM) has recently published its final methodology for determination of rental fees for linear rights-of-way.[12] The Commission noted in its NOPR [13] that this methodology might be a possible basis for determining annual charges for use of Federal lands. Use of this methodology might better measure land values at hydroelectric sites and would make land rentals more consistent throughout the government. However, the public did not have an opportunity to provide specific comments on this question since a methodology had not been published prior to the close of the comment period in this docket.

In light of the above discussion, the Commission is requesting comments on the following proposals:

(1) The Commission proposes to bill Federal land use charges under § 11.02 in advance, beginning with 1988 charges. To implement this change, the initial bill would charge for two years at one time, 1987 retroactively and 1988 prospectively. Thereafter, the bills would be for one year only, prospectively.

(2) Since the initial NOPR proposes to require generation reports on a fiscal-year basis for § 11.01 administration costs, the Commission proposes to amend §§ 11.03 and 11.04 of its regulations to require the billing of government dam use charges and the billing for pumped storage projects using government dams to be done on a fiscal-year basis.

(3) The Commission also proposes to change the date for the filing requirements under §§ 11.03 and 11.04 from February 1 to November 1.

(4) If the Commission adopts the proposal in (2), it might also change the billing procedures for the use of federal lands contained in § 11.02 of its regulations from a calendar-year basis to a fiscal-year basis to provide consistency in filing requirements for all annual charges in Part 11 of its regulations.

(5) The Commission proposes to use the per-acre fees for electric transmission lines rights-of-way as published by the USFS both for the Commission's charges for transmission lines rights-of-way and for its charges for Federal lands use for other than transmission lines.

IV. Comment Procedure

Interested persons are invited to submit written comments only on the proposals listed above. Additional comments on the proposals raised in the NOPR should only be made if necessary to comment on the issues raised in this notice. An original and 14 copies of these comments must be filed with the Commission no later than February 2, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM86-2-000 (Supplemental Notice).

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29472 Filed 12-31-86; 8:45 am]

BILLING CODE 6717-01-M

[9] *See* Report No. DOE/IG-0224, Report on Accounts Receivable, Billings and Collections of the Federal Energy Regulatory Commission published by the Department of Energy Office of Inspector General (February 3, 1986). This report was not in response to the NOPR, but was issued to review the Commission's accounts receivable and cash management procedures.

[10] *See, e.g.*, 18 CFR 11.01(a)(4) (1986).

[11] Linear Rights-of-Way Fees, 51 FR 44014 (December 5, 1986).

[12] *Id.*

[13] IV FERC Stats. & Regs. ¶ 32,423 at 33,281 (1986).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-71-86]

Mortality and Morbidity Tables

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to mortality and morbidity tables for insurance products for which there are no applicable commissioners' standard tables. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 3, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-71-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations to provide rules under section 807(d) of the Internal Revenue Code of 1954, as added by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 726). This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. (T.D. 8120) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.801-1 through 1.832.6

Income taxes, Insurance companies.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 86-29507 Filed 12-31-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

Proposed Revisions to Certain Regulations Regarding Annual Reporting and Disclosure Requirements

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMAMRY: This document contains proposed amendments to Department of Labor (Department) regulations relating to the annual reporting requirements under Part 1 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). In part, the amendments contained in this document are necessary to conform to proposed revisions to the annual return/report forms (Form 5500 Series) filed by administrators of employee pension and welfare benefit plans under Part 1 of Title I of ERISA. These amendments, in conjunction with the proposed revisions to the Form 5500 Series, are intended to both reduce the annual reporting burdens on impacted plans and conform the information required to be reported to that information necessary for the Department to efficiently and effectively carry out its administrative and enforcement responsibilities under ERISA.

Other amendments contained in this document are technical revisions updating the regulations to reflect changes in the annual reporting requirements, simplifying the regulations by deleting certain portions thereof which are duplicative of the instructions to the Form 5500 Series and incorporating address corrections to be used in submitting certain documents required to be filed with the Department.

If adopted, the amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under part 1 of Title I of ERISA.

DATES: Written comments on the proposed amendments must be received by the Department on or before February 2, 1987. If adopted, the proposed amendments will be effective for reporting for plan years beginning on or after January 1, 1987.

ADDRESSES: Written comments on the proposed amendments (preferably three copies) should be submitted to: Office of Regulations and Interpretations, Room N-5646, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, ATTENTION: Proposed Annual Reporting Amendments. Comments may also be directed to the OMB reviewer, Robert Neal, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC., (202) 523-8515 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 19, 1986, the Department, in conjunction with the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) (collectively, the Agencies), published in the **Federal Register** (51 FR 33500) notice of proposed revisions to the Form 5500 Series filed by administrators of employee pension and welfare benefit plans under part 1 of Title I of ERISA, Title IV of ERISA and the Internal Revenue Code, as amended. In that notice, the Department indicated that amendments to the annual reporting regulations would be necessary in order to implement certain proposed changes to the Form 5500 Series. The Department further indicated that, at the time such amendments are proposed, it would address the findings required under

sections 104(a)(3) and 110 of ERISA for the utilization of the proposed annual report (Form 5500) as a limited exemption and alternative method of compliance pursuant to 29 CFR 2520.103-1(b). These amendments and findings are discussed below. Also discussed below are a number of technical amendments the Department proposes to adopt in order to update certain of its reporting and disclosure regulations, as well as to eliminate duplication of information which also appears in the instructions to the Form 5500 Series.

Discussion of the Proposal

Sections 2520.103-1 and 2520.103-2

Section 2520.103-1 describes the content of the Form 5500. The Department is proposing the following amendments to § 2520.103-1. (1) Amend paragraph (a)(2) to delete the reference to § 2520.104b-11, which prescribed the summary annual report requirements for plans which constitute a group insurance arrangement. § 2520.104b-11 was superseded by § 2520.104b-10 pursuant to notice in the **Federal Register** (44 FR 19403) on April 3, 1979. (2) Amend paragraph (b) to delete references to specific line items on the Form 5500 Series in order to avoid future regulation amendments solely to accommodate minor item changes to the forms. (3) Amend paragraphs (b) and (c) to add a reference to Schedule C, the proposed schedule for reporting service provider and trustee information (*see* proposed revisions to the Form 5500 Series, 51 FR 33500). And, (4) amend paragraphs (c), (d), and (e) to eliminate references to the Form 5500-K, which was eliminated as a reporting form for plan years beginning after December 31, 1983 (*see* Internal Revenue Service Release 84-71, June 18, 1984).[1]

Section 2520.103-2 describes the contents of the Form 5500 for plans which constitute a group insurance arrangement, as defined in § 2520.104-43. Paragraph (b) of § 2520.103-2 would, under the amendments proposed herein, be amended to eliminate the references to specific line items on the Form 5500, consistent with the changes proposed for § 2520.103-1.

Section 2520.103-6

Section 2520.103-6 sets forth the definition of reportable transactions for the Form 5500. The Department is proposing to amend paragraph (b)(1)(ii) to delete the reference to a specific line item on the Form 5500 Series.

Under paragraph (c) of § 2520.103-6, a reportable transaction is defined as any transaction or series of transactions involving an amount in excess of 3 percent of the current value of a plan's assets.[2] As discussed in the preamble to the proposed revisions to the Form 5500 Series (*see* 51 FR 33500), the Department is proposing for plan years beginning on or after January 1, 1987, to raise the threshold for reportable transactions from 3 percent to 5 percent in order to reduce the burdens and costs attributable to compliance with this annual reporting requirement. To effectuate this proposed change in the information required to be reported and disclosed on the Form 5500, the Department is proposing to amend paragraph (c) of § 2520.103-6 by adding a new subparagraph (c)(4) which raises the threshold for reportable transactions from 3 percent to 5 percent for plan years beginning on or after January 1, 1987.

The Department also proposes to modify the examples set forth in paragraph (e) of § 2520.103-6 to reflect the proposed change from 3 percent to 5 percent.

This amendment is being proposed in accordance with the authority granted the Secretary under sections 104(a)(3) and 110, pursuant to which utilization of the Form 5500 under § 2520.103-1 constitutes a limited exemption for welfare plans and an alternative method of compliance for pension plans. The findings required under section 104(a)(3) and section 110 with respect to the use of the proposed Form 5500 as a limited exemption and alternative method of compliance are discussed below.

Section 2520.103-10

Section 2520.103-10 describes the format and content of the financial schedules included as part of the Form 5500. The Department is proposing to amend § 2520.103-10 as follows: (1) Delete the references to specific line items (e.g., item 22) in order to avoid the necessity of future amendments to the regulations to accommodate minor changes in the forms; (2) add a reference to the Form 5500-C to accommodate the proposed changes to the Form 5500-C requiring plans with 26 to 99 participants to file a schedule of loans and leases in default (*see* proposed revisions to the Form 5500 Series, 51 FR 33500); and (3) in an effort to eliminate duplication, delete the schedule formats and other general explanatory information appearing in the regulation which also appears in the instructions to the forms.[3]

Section 2520.104-41

Section 2520.104-41 provides a simplified method of annual reporting for plans with fewer than 100 participants. Paragraph (c)(2) of that section requires administrators of Keogh plans to file the Form 5500-K. Because the Form 5500-K has been eliminated as an annual reporting form, the amendments proposed herein would delete paragraph (c)(2) in its entirety.

Section 2520.104-46

Section 2520.104-46 provides a waiver of the examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants. This section would be amended to delete the reference to Form 5500-K appearing in paragraph (d).

Section 2520.104b-10

Section 2520.104b-10 sets forth the requirements for the summary annual report and prescribes the formats for such reports. Included as an appendix to the regulation is a cross-reference guide which corresponds the line items of the summary annual report formats to the line items on the Form 5500 and 5500-C to facilitate completion. Although no specific amendment is included, upon adoption of final Form 5500 Series, the Department will update the summary annual report cross-reference guide.

Limited Exemption and Alternative Method of Compliance

For purposes of part 1 of Title I of ERISA, the filing of a completed Form 5500 (including the report of an independent qualified public accountant and any required statements and schedules) by plans with 100 or more participants constitutes compliance with the limited exemption and alternative method of compliance prescribed in paragraph (b) of § 2520.103-1, promulgated in accordance with the authority granted the Secretary of Labor

[1] Form 5500-K was the Return/Report of Employee Benefit Plan for Sole Proprietorships and Partnerships. The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 324 (1982)) repealed most of the special limitations and restrictions on the design and operation of these Keogh plans, resulting in these plans having the same contribution, deduction, and vesting requirements, and similar coverage requirements, as other plans. These plans are now required to file either Form 5500-C or Form 5500-R.

[2] *See* section 103(b)(3)(H) of ERISA.

[3] For clarification purposes, the proposed regulations continues to specify certain transactions with a party in interest that are not required to be reported on that schedule. In this respect, it should be noted that, although the form does not require the reporting of publicly traded securities transactions involving a party in interest, such transactions are not in all cases exempt from the prohibited transaction provisions of section 406 of ERISA.

(the Secretary) under sections 104(a)(3) and 110 of ERISA.

Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are found to be inappropriate. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements, if the Secretary finds: (1) that the use of the alternative is consistent with the purposes of ERISA and that it provides adequate disclosure to plan participants and beneficiaries and to the Secretary; (2) that application of the statutory reporting and disclosure requirements would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) that the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

As reflected in the proposed revisions to the Form 5500 Series (*see* 51 FR 33500), and the amendment of § 2520.103–6, proposed herein, raising the threshold of reportable transactions from 3 percent to 5 percent, a number of changes are being proposed which affect the information required to be reported and disclosed on the Form 5500. In view of these changes, the Department proposes to make the following findings under sections 110 and 104(a)(3) with regard to the utilization of the revised Form 5500 (and revised statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103–1(b):

1. The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that information delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I of ERISA is required to be included on or as part of the Form 5500, as revised. With regard to the proposed revision to the definition of "reportable transaction" for purposes of the Form 5500 to include only transactions involving amounts in excess of 5 percent of the plan's assets, the Department believes such a change will assure the reporting of significant transactions which may reveal fiduciary misconduct which is the purpose underlying the 3 percent statutory requirement in section 103. The Department, on the basis of its experience with enforcement cases over the past ten years of ERISA, has concluded that disclosure of 5 percent transactions will enable it to identify transactions that are sufficiently large to suggest that fiduciary misconduct may be involved.[4] For the same reason, the Department believes the 5 percent threshold will provide adequate disclosure to plan participants and beneficiaries.

2. The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

With regard to the change from 3 percent to 5 percent threshold for reportable transactions, the Department's experience has been that a 3 percent threshold has resulted in the reporting of information which is not necessary for the effective administration of ERISA. Therefore, reporting information regarding transactions involving more than 3 percent, but less than 5 percent of a plan's assets, has resulted in additional costs and unreasonable administrative burdens to plans.

3. Finally, taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements with out the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner; thereby, facilitating the disclosure of such information to plan participants.

With regard to the 5 percent reportable transaction threshold, the Department's experience has been that the 3 percent threshold tended not to reveal abusive cases that would not otherwise have been revealed at a 5 percent threshold. The additional disclosure of information regarding transactions involving more than 3 percent, but less than 5 percent, therefore only provides participants and beneficiaries with information of negligible value and this information is often voluminous, especially in the case of larger plans. The Department believes that the revised 5 percent threshold should provide for clearer and more concise reporting of those transactions which because of their size require closer scrutiny.

Further, the Department has determined under section 104(a)(3) that application of the statutory reporting requirements to the extent that the revisions to Form 5500 modify them would be inappropriate in the context of welfare plans for the reasons discussed above.

Address Corrections to Reporting Regulations

Since the publication of many of the reporting regulations, the Office of Pension and Welfare Benefit Programs has changed its name to the Pension and Welfare Benefits Administration, pursuant to Secretary of Labor's Order No. 1–86. In addition, the agency has changed the room for receipt of documents required to be filed under Title I of ERISA with the Department. In order to facilitate the filing and receipt of documents, the Department is amending the following sections to provide an updated address: Sections 2520.104–22(c); 2520.104–23(c); 2520.104a–3(d), and 2520.104a–4(c).

Regulatory Flexibility Act

The Department has determined that this regulatory action would not have any significant adverse economic effect on small entities.

For purposes of determining the burdens on small entities for this proposed regulatory action, small entities were defined as employee benefit plans covering fewer than 100 participatns. Although some large employers may have small plans, in general, most small plans are maintained by small businesses. Thus, assessing the impact on small plans is an appropriate substitute for evaluating the effects on small entities.

[4] In the interest of efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible, with generally accepted accounting principles. Recommendations of the Employee Benefit Plans and ERISA Special Committee of the American Institute of Certified Public Accountants in concert with the Financial Accounting Standards Board's Statement No. 35 indicate that, under generally accepted accounting principles, investments representing 5 percent or more of net assets are treated as "significant", and therefore, must be reported on financial statements.

Based on available information, there are approximately 800,000 small employee pension and welfare benefit plans required to file annual reports each year. It is estimated that compliance with the current annual reporting requirements under Title I of ERISA results in an aggregate burden for small plans of 762,300 hours. At a cost of $20 to $25 per hour, the cost of compliance with these requirements ranges from approximately $15.2 million to $19.1 million annually.

As indicated, the Department, in conjunction with the IRS and PBGC, is considering a number of changes to the annual report forms in an effort to reduce paperwork burdens and costs and enhance the utility of the annual report forms generally. The amendments proposed herein do not directly affect the number of small plans required to comply with the annual reporting requirements or the burdens and costs attributable to compliance by such plans. Rather, the amendments are necessary in order to implement the proposed revisions to the forms generally.

Implementation of the revised forms, however, will reduce the overall burdens attributable to the Department's reporting requirements for small plans to approximately 451,200 hours, or by 41 percent, and reduce costs by at least $6.2 million annually.

Under the proposed revisions to the forms the burden placed on any individual small plan would also be reduced.

Under current reporting requirements, the time required for a small plan with the most burdensome filing requirements is estimated to be 3.0 hours for the information required to be reported for Department of Labor use. If the Agencies' proposed forms are adopted as proposed, the time required for the most burdensome filing of Title I information for a small plan is estimated to be one hour and forty minutes.

Executive Order 12291

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in the Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export matters.

The Department estimates that, in the aggregate, approximately 715,000 hours will be required each year to compile and report those items it requires. At an average cost of $25 per hour for professional and clerical staff time, the annual cost of filling out the Department of Labor portions of the forms would be approximately $18 million. An average mailing cost of $1 per filing for 900,000 filings would increase the cost to almost $19 million.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting provisions that are included in this proposed regulatory action have been submitted to the Office of Management and Budget for its review and approval.

Written Comments

The Department invites interested persons to submit written comments regarding the amendments proposed herein. All written comments must be received by the Department of Labor on or before February 2, 1987. All written comments should clearly reference the relevant amendment. All submissions will be open to public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N-5507, 200 Constitution Avenue, NW., Washington, DC.

List of Subjects in 29 CFR Part 2520

Accountants, Actuaries, Disclosure requirements, Employee benefit plans, Employee retirement income security act, Health insurance, Life insurance, Pensions, Pension and welfare benefits administration, Reporting and recordkeeping requirements.

Proposed Regulation

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 is revised to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93-406, 88 Stat. 840-52 and 894 (29 U.S.C. 1021-25, 1029-31, and 1135); Secretary of Labor's Order No. 27-74, 13-76, 1-86, and Labor Management Services Administration Order No. 2-6.

2. In § 2520.103-1, paragraphs (b) (1) and (c) are revised to read as follows:

§ 2520.103-1 Contents of the annual report.

* * * * *

(b) * * *

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information", Schedule B "Actuarial Information", Schedule C "Service Provider/Trustee Information", and the financial schedules described in § 2520.103-10. *See* the instructions ("What to File" and "Specific Instructions") for this form.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104-43 and 2520.104a-6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall be a completed Form 5500-C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)", or a completed Form 5500-R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)", and any statements or schedules which are required to be attached to these forms, including Schedule A "Insurance Information", Schedule B "Actuarial Information", Schedule C "Service Provider/Trustee Information", and certain of the financial schedules described in § 2520.103-10. *See* the instructions ("What to File" and "Specific Instructions") for these forms.

* * * * *

3. § 2520.103-1 is further amended as follows:

a. In paragraph (a)(2), in the second sentence, remove the words "or § 2520.104b-11".

b. In paragraph (b)(2)(i), in the second sentence, remove the words "listed in columns a and b of item 13 of" and insert in their place "required to be reported on the".

c. In paragraph (b)(2)(ii), remove the words "shown in item 14 of" and insert in their place "required to be reported on the".

d. In paragraph (b)(3), remove the words "information contained in items 13 and 14 of" and insert in their place "assets, liabilities, income, expenses and changes in net assets as required to be reported on the".

e. In paragraph (d), remove the words "Forms 5500-C, K, or R" and insert in their place "Forms 5500-C, or R".

f. In paragraph (e), in the first sentence, remove the reference to "5500-K".

4. Section 2520.103-2 is amended by revising paragraph (b)(1) to read as follows:

§ 2520.103-2 Contents of the annual report for a group insurance arrangement.

* * * * *

(b) * * *

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information", Schedule B "Actuarial Information", Schedule C "Service Provider/Trustee Information", and the financial schedules described in § 2520.103-10. *See* the instructions ("What to File" and "Specific Instructions") for this form.

* * * * *

5. Section 2520.103-2 is further amended as follows:

a. In paragraph (b)(2)(i), in the second sentence, remove the words "listed in columns a and b of item 13 of" and insert in their place "required to be reported on the".

b. In paragraph (b)(2)(ii), remove the words "shown in item 14 of" and insert in their place "required to be reported on the".

c. In paragraph (b)(3), remove the words "information contained in items 13 and 14 of" and insert in their place "assets, liabilities, income, expenses and changes in net assets as required to be reported on the".

6. Section 2520.103-6 is amended by revising paragraph (c)(1), introductory text, adding paragraph (c)(4), and revising paragraph (e) to read as follows:

§ 2520.103-6 Definition of reportable transaction for annual return/report.

* * * * *

(c) *Application.* (1) Except as provided in subparagraph (4), this provision applies to—

* * * * *

(4) For plan years beginning on or after January 1, 1987, 5 percent shall be substituted for 3 percent in paragraphs (c) (1) and (2) of this section for purposes of determining whether a transaction or series of transactions constitutes a reportable transaction under this section.

* * * * *

(e) *Examples.* These examples are effective for reporting for plan years beginning on or after January 1, 1987. (1) At the beginning of the plan year, XYZ plan has 10 percent of the current value of its plan assets invested in ABC common stock. Halfway through the plan year, XYZ purchases ABC common stock in a single transaction in an amount equal to 6 percent of the current value of plan assets. At about this time, XYZ plan also purchases a commercial development property in an amount equal to 8 percent of the current value of plan assets. Under paragraph (c)(1)(i) of this section, the 6 percent stock transaction is a reportable transaction for the plan year because it exceeds 5 percent of the current value of plan assets. The 8 percent land transaction is also reportable under paragraph (c)(1)(i) of this section because it exceeds 5 percent of current value of plan assets.

(2) During the plan year, AAA plan purchases a commercial lot from ZZZ corporation at a cost equal to 2 percent of the current value of the plan assets. Two months later, AAA plan loans ZZZ corporation an amount of money equal to 3.5 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, the plan has engaged in a reportable series of transactions with or in conjunction with the same person, ZZZ corporation, which when aggregated involves 5.5 percent of plan assets.

(3) During the plan year NMN plan sells to OPO corporation a commercial property that represents 3.5 percent of the current value of plan assets. OPO simultaneously executes a note and mortgage on the purchased property to NMN which represents 3 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, NMN has engaged in a reportable series of transactions with or in conjunction with the same person, OPO corporation, consisting of a simultaneous sale of property and a loan, which, when aggregated, involves 6.5 percent of the current value of plan assets.

(4) At the beginning of the plan year, ABC plan has 10 percent of the current value of plan assets invested equally in a combination of XYZ Corporation common stock and XYZ preferred stock. One month into the plan year, ABC sells some of its XYZ common stock in an amount equal to 2 percent of the current value of plan assets.

(i) Six weeks later the plan sells XYZ preferred stock in an amount equal to 4 percent of the current value of plan assets. A reportable series of transactions has not occurred because only transactions involving securities of the same issue are to be aggregated under paragraph (c)(1)(iii) of this section.

(ii) Two weeks later when the ABC plan purchases XYZ common stock in an amount equal to 3.5 percent of the current value of plan assets, a reportable series of transactions under paragraph (c)(1)(iii) of this section has occurred. The sale of XYZ common stock worth 2 percent of plan assets and the purchase of XYZ common stock worth 3.5 percent of plan assets aggregate to exceed 5 percent of the total value of plan assets.

(5) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries in an amount equal to 6 percent of plan assets. The common stock of Able Industries is not listed on any national securities exchange or quoted on NASDAQ. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases short term debt obligations of Charley Company through broker-dealer Y in the amount of 0.2 percent of plan assets. This purchase is also a reportable transaction under the provisions of paragraph (c)(1)(iv) of this section.

(6) At the beginning of the plan year, Plan X purchases from Bank B certificates of deposit having a 180 day maturity in an amount equal to 6 percent of plan assets. Bank B is a national bank regulated by the Comptroller of the Currency. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through Bank B 91-day Treasury bills in the amount of 0.2 percent of plan assets. This purchase is not reportable transaction under paragraph (c)(1)(iv) of this section because the purchase of the Treasury bills as well as the purchase of the certificates of deposit are not considered to involve a security under the definition of "securities" in paragraph (b)(2)(ii) of this section.

(7) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries, a New York Stock Exchange listed security, in an amount equal to 6 percent of plan assets. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through broker-dealer Y, acting as agent, common stock of Baker Corporation, also a New York Stock Exchange listed security, in an amount equal to 0.2 percent of plan assets. This latter purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because it is not a transaction "with or in conjunction" with a person" pursuant to paragraph (b)(3)(ii) of this section.

7. Section 2520.103-6 is further amended in paragraph (b)(1)(ii), by removing the words "on line 13(h) of

Form 5500 Annual Return/Report" and inserting in their place "as total assets on Form 5500 Annual Return/Report."

8. Section 2520.103-10 is revised to read as follows:

§ 2520.103-10 Annual Report Financial Schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to 29 CFR 2520.103-1(a)(2) or 29 CFR 2520.103-1(c), shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" or the Form 5500-C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)", include as part of the annual report the separate financial schedules described in paragraph (b) of this section.

(b) *Schedules—(1) Assets held for investment.* A schedule of all assets held for investment purposes at the end of the plan year (see 29 CFR 2520.103-11).

(2) *Assets acquired and disposed within the plan year.* A schedule of all assets acquired and disposed of within the plan year. (See 29 CFR 2520.103-11.)

(3) *Party in interest transactions.* (i) Except as provided paragraph (b)(3)(ii), a schedule of each transaction involving a person known to be a party in interest.

(ii) Do not include—

(A) A transaction to which a statutory exemption under part 4 of Title I applies;

(B) A transaction to which an administrative exemption under section 408(a) of the Act applies;

(C) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code of 1954, as amended, applies;

(D) A transaction disclosed in the notes to the financial statements which accompany the account's opinion prescribed by section 103(a)(3)(A) of the Act; or

(E) A transaction involving a publicly traded security.

(4) *Obligations in default.* A schedule of all loans or fixed income obligations which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) *Reportable transactions.* A schedule of all reportable transactions as defined in § 2520.103-6.

9. Section 2520.104-22 is amended by revising paragraph (c) to read as follows:

§ 2520.104-22 Exemption from reporting and disclosure requirements for apprenticeship and training plans.

* * * * *

(c) *Filing Notice.* The notice referred to in paragraph (a) of this section shall be filed with the Secretary of Labor by mailing it to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

10. Section 2520.104-23 is amended by revising paragraph (c) to read as follows:

§ 2520.104-23 Alternative method of compliance for pension plans for certain selected employees.

* * * * *

(c) *Filing Notice.* The notice referred to in paragraph (a) of this section shall be filed with the Secretary of Labor by mailing it to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

* * * * *

11. Section 2520.104-41 is amended by revising paragraph (c) to read as follows:

§ 2520.104-41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants shall file a Form 5500-C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)," or, as appropriate, a Form 5500-R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," in the manner prescribed in § 2520.104a-5.

12. Section 2520.104-46 is amended by revising paragraph (d) to read as follows:

§ 2520.104-46 Waiver of examination and report of a qualified public accountant for employee plans with fewer than 100 participants.

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of a plan described in paragraph (b)(1) or (2) of this section to file a Form 5500-C or, as appropriate, Form 5500-R and all schedules called for therein *See* § 2520.104-41.

(2) This section does not apply to a plan which elects to file an Annual Return/Report Form 5500 pursuant to § 2520.103-1(d).

13. Section 2520.104a-3 is amended by revising paragraph (d) to read as follows:

§ 2520.104a-3 Summary plan description.

* * * * *

(d) *Filing Address.* The summary plan description shall be filed with the Secretary of Labor by mailing it to SPD, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by delivering it during normal working hours to Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

* * * * *

14. Section 2520.104a-4 is amended by revising paragraph (c) to read as follows:

§ 2520.104a-4 Material modifications to the plan and changes in plan description information.

* * * * *

(d) *Filing Address.* The summary description of material modifications to the plan and changes in the information required by section 102(b) shall be filed with the Secretary of Labor by mailing it to SMM, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by delivering it during normal working hours to Room N-5644, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

* * * * *

Signed at Washington, D.C., this 19th day of December, 1986.

Dennis M. Kass,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-29429 Filed 12-31-86; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 230

[DoD Instruction 1000.12]

Procedures Governing Banking Offices on DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed change in leasing policies for buildings constructed onbase by banking offices results from a Model Installation Waiver Request and is consistent with similar provisions for credit unions now being circulated for comment. If adopted, the change would permit banks to retain title to buildings constructed at their expense beyond the current 25-year limit.

DATE: Comments should be received by February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Adolphi, Office of the Assistant Secretary of Defense (Comptroller), Directorate for Financial Services Policy, room 1A658, the Pentagon, Washington, DC 20301-1100, telephone (202) 697-8281.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on February 25, 1986 (51 FR 6521) the Department of Defense published a revised 32 CFR Part 230.

List of Subjects in 32 CFR Part 230

Credit unions, Defense credit unions.

PART 230—[AMENDED]

Accordingly, 32 CFR Part 230 is amended as follows:

1. The authority citation for Part 230 continues to read as follows:

Authority: 10 U.S.C. 136.

2. Appendix A, Section C, paragraph 2 is amended by redesignating paragraph c to d.

3. Section C is amended to add a new paragraph c to read as follows:

Appendix A—Procedures for Establishing Supporting and Terminating Onbase Banking Offices

C. Leases of Government Real Property

* * * * *

"c. Subject to the Secretarial determination required by 10 U.S.C. 2667, the terms of an existing real estate lease may be extended, before the expiration of the lease, at fair market rental value. In consideration for this extension, the banking institution shall agree to continue maintaining the premises and paying for utilities and services furnished in accordance with DoD Directive 4000.6."

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 29, 1986.

[FR Doc. 86-29464 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 01-86-01]

Special Anchorage Area; Fore River, Portland Harbor, Portland, ME

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is considering a proposal of change in description of the small-craft anchorage, located in Portland Harbor, Maine. This change will constitute a latitude and longitude coordinate description of the point marked by anchorage buoy "D". No other changes will be made to the anchorage. Anchorage buoy "D" serves as a point of reference in the description of the above mentioned anchorage. The buoy has recently been relocated (see Discussion below) consequently, there is confusion as to the location of the anchorage.

The Coast Guard plans to remove Anchorage buoy "D" and no longer use it as a point of reference in describing the special anchorage. This proposed action will amend the description of the anchorage by replacing reference to Anchorage buoy "D" with the actual geographic coordinates. This will clear up any confusion as to the location of the anchorage.

DATE: Comments must be received on or before February 17, 1987.

ADDRESSES: Comments should be mailed to Commander (oan) First Coast Guard District, Capt. John Foster Williams Coast Guard Building, 408 Atlantic Avenue, Boston MA 02210-2209. The comments and other materials reference in this notice will be available for inspection and copying at 408 Atlantic Ave., Room 628. Normal office hours are between 7:00 am and 4:00 pm., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: QMC Thomas M. Hall, (617) 223-8337.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (01 86 01) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter and project officer is QMC Thomas Hall, Aids to Navigation Branch, First Coast Guard District. The project attorney is Dana J. St. James, LT., USCGR. First Coast Guard District Legal Office.

Discussion of Proposed Regulations

In the past, Anchorage Buoy "D" has marked the northernmost point of the small-craft anchorage described in Title 33 CFR., Navigation and Navigable Waters, Part 110 Anchorage Regulations, Subpart A, Special Anchorages. A floating dock has since been constructed which does not conflict with the boundaries of the anchorage, but it does conflict with the watch circle of buoy "D". The Aids to Navigation Team stationed at USCG GROUP PORTLAND deemed it necessary to move the buoy so as not to cause damage to the floating dock. The results of this relocation have caused confusion as to the proper boundary of the small-craft anchorage. The Coast Guard feels that by removing the buoy and changing the wording in the Code of Federal Regulations as indicated in the SUMMARY section of this notice, there will be no confusion as to the boundaries of the anchorage, nor will any damage be caused by the close proximity of a buoy to the floating dock. The new point of reference replacing Anchorage buoy "D" will be described as position: 43 degrees, 39 minutes 6 seconds of North latitude, and 70 degrees, 14 minutes, 43 seconds of West longitude. This is the same position of

buoy "D" as indicated in the Federal Register. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

This proposed change is considered to be non-major under Executive Order 12291 of Federal Regulation and nonsignificant under Department of Transpoortation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. There should be no economic impact because all that is required is to remove buoy D, and make the appropriate change in the Code of Federal Regulations, to reflect, the change in the boundary description.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorages.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 of title 33 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 11.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.6a shall be revised to read as follows:

§ 110.6a Fore River, Portland Harbor, Portland, Maine.

The water area beginning at a point on the shoreline near the Coast Guard Base in Position 43–38′43″N and 070–14′49″W; thence 319 to position 43–38′55″N, 070–15′03″; thence 50 to position 43– 39′06″N; 070– 14′ 43″; thence 161 to mainland; thence southwesterly along the shore to the point of beginning.

Dated: December 4, 1986.

R.L. Johanson,

Rear Admiral (Lower Half) U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 86-29457 Filed 12-31-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3135-4]

Approval and Promulgation of Implementation Plan; Ohio

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to take action on the State of Ohio's draft statewide total suspended particulate (TSP) plan to attain and maintain the primary and secondary National Ambient Air Quality Standards. The regulations in this plan are applicable to both the State's attainment and nonattainment areas. For the nonattainment areas, where Part D is applicable, the plan commits the State to submit modelled attainment demonstrations in addition to the regulations already submitted.

For all of the nonattainment areas, except for Lorain County, USEPA is proposing to conditionally approve the draft TSP plan and to lift the section 110(a)(2)(I) TSP growth restrictions in the State's primary nonattainment areas if, within the public comment period on today's notice, the State submits a letter to USEPA that commits to immediately initiate its attainment demonstration schedule. If Ohio does not submit such notification within 30 days, then USEPA, in its final action on the Part D plan, will disapprove that portion of Ohio's plan. Such disapproval will result in the continuation of the section 110(a)(2)(I) growth restrictions.

For the nonattainment area within Lorain County, USEPA is proposing to disapprove the Part D TSP plan because the State does not have an approvable State implementation plan (SIP) for polyvinyl chloride (PCV) silos. If, however, within the public comment period on today's notice the State submits as the Part D SIP for PCV silos an operating permit for the B.F. Goodrich Plant which controls actual emissions to 0.05 lbs/hr and also commits to immediately initiate its attainment demonstration schedule for Lorain County as discussed above, USEPA in its final rulemaking action on the entire Ohio Part D plan would approve this limit for B.F. Goodrich Chemical Plant, consequently conditionally approve the overall Part D SIP for Lorain County, and lift the section 110(a)(2)(I) restrictions. If the State fails to submit the operating permit, USEPA will take final rulemaking action to disapprove Ohio's Part D TSP SIP for the nonattainment areas in Lorain County. This disapproval will result in the continuation of the growth restrictions under section 110(a)(2)(I) of the Clean Air Act in the Lorain County TSP nonattainment areas.

USEPA is proposing these approvals on the condition that Ohio comply with the schedules for attainment established in the draft plan. The terms of the conditional approval will be fully satisfied when the attainment demonstration is completed and approved by USEPA.

For the attainment area, USEPA is proposing to approve the draft plan.

The stateside plan that USEPA proposed action on today is a draft. Before USEPA can take final action on the plan, the State must submit a final plan, including adopted regulations, which is substantially identical to the plan on which USEPA is proposing action today.

Under USEPA's Continuity Policy (44 FR 20372), existing federally approved rules will continue to apply until (1) they are superseded by new federally approved rules and (2) the sources come into compliance with the new rules. In addition, if there is any delay or lapse in the applicability or enforceability of the new requirements, because of a court order or for any other reason, the existing requirements will be applicable and enforceable. It is USEPA's interpretation that the State of Ohio intends each of the rules proposed in this package for controlling the emission of particulate matter to be independently enforceable.

The purpose of this notice is to discuss USEPA's evaluation of the draft plan and to solicit public comments on this rulemaking action.

DATE: Comments must be received by February 2, 1987.

ADDRESSES: Copies of the draft SIP revision are available at the following addresses: (It is recommended that you telephone the contact person listed below before visiting the Region V office of USEPA.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604;

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental

Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores, Sieja, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (the Act), USEPA designated certain areas in each State as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulate (TSP). In Ohio, there are 32 counties which are presently designated, either in part or entirely, nonattainment for the primary and/or secondary TSP NAAQS. These counties are listed in § 81.336 of Title 40 of the Code of Federal Regulations (40 CFR 81.336).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979, notice were published July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 53761), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). The Act requires that nonattainment plan SIP revisions mandated by Part D provide for attainment of the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. The April 4, 1979, General Preamble allows the approval of "Reasonably Available Control Technology (RACT) plus further studies" TSP SIPs. Under this scenario, SIPs for nonattainment areas must contain adopted RACT requirements for traditional stack and nonstack sources (including fugitive nonprocess source emissions). Studies for nontraditional sources of fugitive emission (e.g., public roadways and agricultural tilling) must be conducted. If the studies show that additional controls must be implemented to provide for attainment by the required date, the State must submit schedules outlining the adoption of the necessary measures in legally enforceable form, along with any necessary additional schedules for expeditious implementation of the measures. Upon approving such a plan, USEPA would remove the existing section 110(a)(2)(I) construction ban.

To ensure maintenance of the TSP standards in its attainment areas, to remedy its TSP primary and secondary nonattainment problems, and to meet the 1979 Part D requirements, the State of Ohio, on June 13, 1980, and in subsequent submittals, submitted revisions to USEPA for its statewide TSP SIP. The statewide control strategy developed by the State of Ohio was based upon rules (01 to 11 of Chapter 3745-17 of the Ohio Administrative Code (OAC) that limit particulate emissions. For the nonattainment areas, the rules limit particulate emissions through the implementation of RACT on traditional stack and nonstack sources of particulate matter emissions. Furthermore, certain nontraditional sources of fugitive emissions (e.g., public roads and agricultural tilling) were studied for possible further control. USEPA reviewed the statewide Ohio TSP plan and, on September 21, 1982 (47 FR 41584), proposed to conditionally approve the overall plan. Final approval of the plan was contingent upon the State's meeting the terms of the outstanding conditions by December 31, 1982. A 45-day public comment period was provided for interested individuals to submit their comments on the proposed revisions to the Ohio SIP. Numerous comments were submitted on the proposed conditional approval of the overall statewide TSP plan, including a November 1, 1982, letter from the State in which it requested USEPA to extend the deadlines for meeting some of the conditions until July 1, 1983, and for the others until December 31, 1983. Because Ohio's Part D SIP was intended to provide for attainment of the primary national ambient air quality standard for particulate matter by the end of 1982, USEPA could not approve Ohio's rules conditionally on the basis of the commitment to meet the RACT requirement in the future. In addition, other deficiencies were noted in the rules. USEPA, therefore, prepared a notice of final rulemaking which disapproved the State of Ohio's Part D plan for the primary and secondary particulate matter nonattainment areas within the State. In a November 28, 1983, letter the State requested that "USEPA postpone any action which would disapprove portions of the Ohio SIP for TSP" and submitted a schedule for development and adoption of revisions to the TSP regulations to correct all the deficiencies. Because of the State's request and its commitment to move forward to correct the outstanding SIP deficiencies, USEPA did not publish a final rulemaking on the Ohio TSP SIP.

Because the December 31, 1982, deadline for the attainment of the applicable NAAQS had passed, USEPA on January 27, 1984, published its "Guidance Document for Correction of Part D SIPs for Nonattainments Areas." This document discusses, among other things, the requirements for areas that do not have approved 1979 SIPs required by Part D. USEPA states that:

> If the State submits a plan that provides for attainment as expeditiously as practicable and meets all other Part D requirements, USEPA will propose to approve it and propose to remove any growth or funding restrictions. Since the 1982 deadline has already passed, it will no longer be possible for States to submit plans that provide for attainment by the end of 1982. USEPA will approve plans that demonstrate attainment at later dates, although it will scrutinize control strategy demonstrations and attainment schedules to ensure the most expeditious attainment date.

As stated above, the requirements for an approvable SIP are described in the April 4, 1979, **Federal Register**, and subsequent supplements.

The purpose of today's notice is to propose rulemaking on the State of Ohio's new draft statewide TSP plan to attain and maintain the primary and secondary NAAQS that the State submitted on March 18, 1985. The regulations in this plan are applicable to both the State's attainment and nonattainment areas and consists of draft and final rules. For the nonattainment areas where Part D is applicable, the plan also commits the State to do air quality attainment demonstrations and develop additional regulations (if necessary) to provide for attainment of the primary standard within 5¾ years and the secondary standard with 6¾ years from the date of plan approval. This commitment goes well beyond the commitment to do studies that USEPA accepted for purposes of Part D approval prior to December 31, 1982. Specifically, the new plan consists of (1) draft Rules 3745-17-01, 03, 04, 07, 08, 10 and 11, submitted on March 18, 1985, (2) final Rules 02, 05 and 06 that were submitted by the State in June 1980 and have not been revised since, and (3) final Rule 09 which became effective at the State level in October 1983. Because the plan submitted is a draft, the type of action USEPA is taking is a parallel process technique. (See 46 FR 44477, September 4, 1981). This technique consists of USEPA and the State taking action on the draft plan at as near the same time as possible. The State's public hearing on these draft regulations was held on February 12, 1985, and the public comment period closed on February 22, 1985. USEPA notes that the State must submit a final plan which is

substantially identical to the plan on which USEPA is taking proposed action today, before USEPA would take final action to conditionally approve the Part D Plan.

Before USEPA begins its discussion of the new draft statewide TSP plan, it would like to notify the public that it is withdrawing its proposed conditional approval action taken on September 21, 1982, as it applies to the 1980 Ohio TSP plan. As stated above, numerous comments were received regarding the position taken in the September 21, 1982, notice regarding the 1980 Ohio TSP plan. USEPA will not respond to those comments in today's notice. USEPA will propose action on the new draft TSP plan and will now give the public the opportunity to comment on this new plan. The new plan will become effective in the State of Ohio when the rules are officially adopted. If USEPA receives notification that (and an explanation why) the comments submitted in response to the September 21, 1982, notice are still applicable to today's rulemaking action, they will be considered in the final rulemaking notice on the new TSP plan. USEPA requests that if such comments are submitted, the commentor should specify to which portions of the new SIP revision request they apply.

USEPA's evaluation of the March 18, 1985, draft statewide TSP plan will be discussed in four parts: (I) The adequacy of Rules 3745-17-01 through 11, (II) the adequacy of the commitment to do studies that provide for attainment by expeditious future dates, (III) the Rationale for USEPA's Decision to Lift the section 110(a)(2)(I) TSP Growth Restrictions, and (IV) USEPA's proposed action on the overall draft TSP plan.

I. The Adequacy of Rules 3745-17-01 Through 11

A. Rule 3745-17-01: Definitions

Synopsis of the Rule (Synopsis)

This rule defines the terms used in Rules 3745-17-01 through 11. It replaces Rules AP-3-01 in the existing federally approved SIP. The changes to this rule are as follows:

- The following new terms were added: Banked condition, British Thermal Unit, facility, fuel, fugitive dust source, grain elevator, particulate emissions, permanent storage capacity, reasonably available control measures, salvageable material, stack, stand-by fuel burning equipment, start-up, stationary gas turbine, stationary internal combustion engine, topping-off, total suspended particulates;
- The following terms were modified: Fuel burning equipment, fugitive dust, incinerator, opacity, single fuel burning unit, uncontrolled mass rate of emission;
- The following terms were deleted: Agricultural wastes, domicile waste, garbage, landscape waste, open burning, restricted areas, Ringlemann Chart, and trade waste.

USEPA's Assessment of the Rule (Assessment)

All additions, modifications, and deletions are acceptable. USEPA does, however, have a concern with the definition of particulate emissions. Specifically, the definition of "particulate emissions" in Rule 3745-17-01(B)(11), under certain circumstances, allows the Director of the Ohio Environmental Protection Agency (Director) to modify the definition of particulate emissions. The test methods to be used are specified in Rule 3745-17-03 and are generally USEPA Methods 1 through 5, 9, and 17 (the latter under certain circumstances). These procedures can be found in "Appendix A" of 40 CFR Part 60, "Standards of Performance for New Stationary Sources." The test methods discussed above are fully acceptable to USEPA. Although USEPA proposes to approve the definition of particulate emissions contained in Rule 3745-17-01(B)(11), it notes that when the Director exercises his discretion to allow a source to measure its emissions by a test method other than Method 1 through 5, 9, or 17, as stipulated in "Appendix A" of 40 CFR Part 60, such a substitution constitutes a revision to the SIP and must be submitted to USEPA for review and approval.

In addition, this definition, in referring to the test methods found in Appendix A of 40 CFR Part 60, "Standards of Performance for New Stationary Sources," refers to the "October 31, 1984" version of the Appendix. The correct citation should be "July 1, 1984" and the State has notified the USEPA that it will correct this error upon submittal of the final rules.

USEPA's Proposed Action (Action)

- Approval.

B. Rule 3745-17-02: Ambient Air Quality Standards

Synopsis, Assessment and Action

This rule establishes the Ohio ambient air quality standards for TSP. These are identical to the NAAQS for TSP. USEPA finds this rule acceptable and proposes to approve it.

C. Rule 3745-17-03: Measurement Methods and Procedures

Synopsis

This rule does the following things:

(i) For Rule 3745-17-07, this Rule.

- Specifies the use of the October 31, 1984, version of USEPA Reference Method 9, as set forth in Appendix A of 40 CFR Part 60, "Standards of Performance for New Stationary Sources;" for determining compliance with visible emissions limitations for:

(1) General stack sources.

(2) Roof monitors for electric arc furnace shops (EAFs), argon-oxygen decarburization operations, open hearth furnaces, and blast furnace (BF) casthouses.

(3) Sintering operations.

- Specifies the use of the October 31, 1984, version of USEPA Reference Method 9, in conjunction with modified data reduction procedures, for determining compliance with visible emissions limitations for:

(1) Basic oxygen furnace primary stacks.

(2) Machine scarfing operations.

(3) Fugitive dust sources (excluding coke oven sources and roof monitors for EAFs, argon-oxygen decarburization operations, open hearth furnaces and BF casthouses).

- Specifies test procedures for:

(1) Determining the compliance status of coke battery emission sources including charging operations, offtake piping, charging hold lids, oven doors and pushing operations.

(2) Observing the opacity of emissions from roadways, parking lots and storage piles.

(ii) For Rule 3745-17-08, this Rule.

- Specifies particulate sampling and measurement techniques for general process fugitive dust sources covered under Paragraph (B)(3) of Rule 08, and shiploading operations covered by Paragraph (B)(4) of Rule 08. Specifically, it requires that the amount of particulate emissions shall be determined by using USEPA Reference Test Methods 1-4, 5, and 5D as set forth in Appendix A of 40 CFR Part 60 of October 31, 1984. Specific procedures are also included for the following iron and steel sources:

(1) Electric arc furnaces.

(2) Argon-oxygen decarburization vessels.

(3) Basic oxygen furnaces.

(4) Hot metal transfer operations.

(5) Hot metal desulfurization operations.

(6) Blast furnace casthouses.

(iii) For Rule 3745-17-09, this Rule:

- Specifies the use of Test Methods 1-4, 5 and 5D as included in the Appendix of the 40 CFR Part 60 of October 31, 1984, to determine compliance with particulate emissions limitations.
- Defines the term "maximum burning capacity of an incinerator."

(iv) For Rule 3745-17-10, this Rule:

• Specifies the use of test Methods 1–4, 5 and 5D as included in the Appendix of the 40 CFR Part 60 of October 31, 1984, to determine compliance with particulate emissions limitations, except that the probe and filter holder heating systems in the sampling train used in conjunction with Method 5 may be set at 320 °F.

• Specifies test procedures for determining the heat content of solid, liquid and gaseous fuels, and the ash content of coal.

(v) For Rule 3745–17–11, this Rule:

• Specifies the use of Test Methods 1–4, 5 and 5D as included in the Appendix of the 40 CFR Part 60 of October 31, 1984, to determine compliance with particulate emissions limitations.

• Specifies sampling and measurement techniques for determining particulate emissions from:

(1) General particulate emissions sources.

(2) Basic oxygen furnaces.

(3) Electric arc furnaces.

(4) Coke quenching operations.

(vi) General requirements, this rule:

(1) Adds certification requirements for all visible emissions readers.

(2) Gives the Director discretion to modify any test methods.

(3) Gives the Director discretion to accept or reject an emissions test conducted without prior review and approval by the Director.

Assessment

USEPA finds all of the above provisions of the rule acceptable. USEPA notes that under the test method provisions of the rule the State specifies the use of the Test Methods as found in the "October 31, 1984," version of Appendix A, 40 CFR Part 60, "Standards of Performance for New Stationary Sources". As noted in our discussion on Rule 01, the correct citation should be "July 1, 1984". The State will correct this error upon submittal of the final rules.

Action

• Approval with the understanding that when the Director approves a modification of a specified test method to meet a particular need or condition, the modification must be submitted to USEPA for review and approval as a SIP revision.

D. Rule 3745–17–04: Attainment Dates and Compliance Time Schedules

Synopsis

This rule replaces old Rule AP–3–04 in the existing federally approved SIP. Old Rule AP–3–04 sets a deadline for attainment of the TSP (and sulfur dioxide) ambient air quality standards of no later than April 15, 1977. New Rule 3745–17–04 contains Paragraphs (A), (B), and (C). Paragraph (A) establishes the attainment dates for the primary and secondary TSP ambient air quality standards to be met by Ohio. Paragraph (B) defines the certification and permit application requirements to be met by source owners or operators, subject to the applicable requirements of Rules 3745–17–07, 08, 10 and 11. Paragraph (C) specifies the compliance time schedules to be met by source owners or operators, subject to the applicable requirements of Rules 3745–17–07, 08, 10 and 11.

Assessment

1. Attainment dates (Paragraph (A)).

a. This paragraph lists three separate groups of counties. The attainment dates for the primary and secondary air quality standards for each group are as follows:

(i) April 15, 1977, for both standards,

(ii) April 15, 1977, for the primary standard for certain counties and December 31, 1987, for the secondary standard for other counties,

(iii) December 31, 1982, for the primary standard and December 31, 1987, for the secondary standard.

USEPA has determined that only the date of April 15, 1977, is acceptable because attainment of one or both of these standards had been achieved by that date in the counties listed. The December 31, 1982, date for the primary standard and the December 31, 1987, date for the secondary standard are inapporpriate because Ohio's new TSP plan is not designed to demonstrate attainment until later dates. (Please see the detailed discussion under Section II regarding the new attainment dates.)

2. Certification and permit application requirements (paragraph (B)). Certification and permit application requirements are necessary to ensure that the applicable time schedules specified under Paragraph (C) of this rule are attained.

This rule specifies that no later than:

a. October 1, 1980, except as specified under b. and c. below, any source owner or operator subject to paragraph (B)(2) of Rule 3745–17–07 and paragraph (D) of Rule 08 shall either:

(1) Certify in writing that they are in compliance with the applicable provisions, or

(2) Submit an application for a permit to operate or an application for a modification of a permit to operate in accordance with applicable requirements.

b. October 1, 1982, any source owner or operator, subject to the requirements of Paragraph (D) of Rule 3745–17–08 and is located in Madison Township, Sandusky County, Ohio, shall comply with certification and permit application requirements discussed under a. above.

c. October 1, 1985, any source owner or operator subject to the requirements of Paragraph (D) of Rule 3745–17–08 and is located in applicable areas of Mahoning, Scioto and Trumbull Counties shall comply with the certification and permit application requirements discussed under a. above.

d. October 1, 1985, any source owner or operator subject to the coke oven combustion stack requirements of Rule 3745–17–10 and the coke quench tower requirements of Rule 11 shall either:

(1) Certify that they are in compliance with these provisions, or

(2) Submit an application for a permit to operate or an application for a modification of a permit to operate in accordance with applicable requirements.

e. October 15, 1983, the Columbus and Southern Ohio Electric Company shall submit an application for a permit to operate in accordance with applicable requirements.

USEPA has determined that all of the dates to meet the certification and permit application requirements are acceptable because RACT implementation does not encompass these requirements. These rule requirements merely set forth procedures to establish source status prior to further regulation.

3. Compliance Time Schedules (Paragraph (C)). This rule specifies the following time schedules:

a. Any source owner or operator subject to the applicable requirements of paragraph (B)(2) of Rule 3745–17–07 shall achieve final compliance by December 31, 1982.

b. Except as specified under c. and d. below, any source owner or operator of a fugitive dust source which is subject to paragraph (D) of Rule 3745–17–08 shall achieve final compliance with the specified fugitive dust control requirements of Rule 08 by either August 1, 1981, January 1, 1982, or December 31, 1982, depending upon control measures required.

c. Any source owner or operator located in Madison Township, Sandusky County, Ohio, subject to the requirements of Paragraph (C) of Rule 3745–17–08 shall achieve final compliance with the specified fugitive dust control measures of Rule 08 by either August 1, 1983, January 1, 1984, or January 1, 1985, depending upon control measures required.

d. Any source owner or operator located in specified areas of Mahoning

Trumbull, and Scioto Counties and subject to the requirements of Paragraph (D) of Rule 3745-17-08 shall achieve final compliance with the specified fugitive dust control measures of Rule 08 by either August 1, 1986, January 1, 1987, or January 1, 1988, depending upon control measures required.

e. Any source owner or operator subject to the coke oven battery stack requirements of Rule 3745-17-10 shall achieve final compliance by July 1, 1986.

f. Except as specified under g. below, any source owner or operator subject to the coke quench tower requirements of Rule 3745-17-11 shall achieve final compliance by January 1, 1988.

g. U.S. Steel Corporation, Lorain-Cuyahoga Works or any subsequent owner or operator of said Corporation shall achieve final compliance with the coke quench tower requirements of Rule 3745-17-11 by June 1, 1987.

h. Columbus and Southern Ohio Electric Company or any subsequent owner or operator of said facility shall achieve final compliance with the requirements of paragraph (C)(6)(b) of Rule 3745-17-10 by June 19, 1984.

USEPA has determined that all of the above compliance dates are acceptable. Since the final compliance dates have passed and affected sources are in compliance, USEPA proposes approval of provisions a., b., and c. USEPA 's approval position for provisions d., e., f., g., and h. are discussed below.

Proposed Approval Position for Provisions d., e., f., g., and h

Provision d.

Provision d., paragraph (C)(4) in the rule, would allow until August 1, 1986, January 1, 1987, or January 1, 1988, for applicable fugitive dust sources in Mahoning, Scioto and Trumbull Counties to come into compliance with the appropriate fugitive dust control measures of Rule 08. Fugitive dust sources can be segmented into two categories: (1) Process fugitive emission sources, i.e., conveyor belts, conveyor transfer points. rock crushers, and materials loading spouts, and (2) non-process fugitive emission sources, i.e., industrial plant roads, parking lots and storage piles.

USEPA's discussion of the fugitive dust sources subject to Paragraph (C)(4) of Rule 04 will be segmented into the following two categories: (1) Newly Listed Areas of Mahoning, Scioto, and Trumbull, i.e., those areas listed in 3745-17-04(B)(3), Counties and (2) Previously Listed Areas of Mahoning, Scioto and Trumbull Counties.

Newly Listed Areas of Mahoning, Scioto and Trumbull Counties

For process and non-process fugitive emission sources in the Appendix A areas (Appendix A lists the areas in which the requirements of Rule 08 apply) of Mahoning, Scioto and Trumbull Counties that are listed in 3745-17-04(B)(3) the compliance dates are acceptable because they are as expeditious as practicable. USEPA has determined that the compliance dates are as, expeditious as is now practicable because these sources were not previously included in Appendix A of Rule 08 and that the additional time provided in Provision d. for the sources to come into compliance with the applicable RACT-level control requirements is an expeditious time frame.

There are certain Federally enforceable consent decrees currently outstanding for sources in these Ohio TSP nonattainment areas. These decrees specify final RACT emission limitations which are equal to those contained in the applicable Ohio draft regulations as well as containing schedules which expeditiously lead to final compliance. These consent decree compliance dates are sooner than the ultimate compliance dates contained in Rule 04. However, Rule 04 allows up to these ultimate compliance dates only if more expeditious dates cannot be met. The sources have agreed in consent decrees that more expeditious dates than the ultimate compliance deadlines contained in Rule 04 can be met, and extension of such dates would violate the requirements for expeditious compliance contained in both the Clean Air Act and Rule 04. USEPA has determined that Rule 04 is approvable for these consent decree sources, however, the consent decrees have already defined the most expeditious attainment dates for these affected sources. Both Rule 04 and the Clean Air Act mandate that these expeditious schedules continue to be followed. This approved strategy is also consistent with USEPA's Continuity Policy which holds that SIP control requirements cannot be relaxed while a source is coming into compliance with new SIP revisions.

Previously Listed Areas of Mahoning, Scioto and Trumbull Counties

The process fugitive emission sources in the Appendix A areas of Mahoning, Scioto and Trumbull Counties (as well as all other areas in the Appendix A list) not included in 3745-17-04(B)(3) must immediately comply with all applicable RACT-level control requirements of the Ohio SIP upon final approval of these rules. USEPA has determined that these requirements are RACT-level.

For the non-process fugitive emission sources in the Appendix A areas of Mahoning, Scioto and Trumbull Counties that are listed in 3745-17-04(B)(3), RACT-level control will be obtained by application of Rule 07 visible emission limitations in conjunction with the work practices stipulated for non-process fugitive dust sources in Rule 08 which shall be effective immediately upon final approval of these rules.

Provision e.

Provision e., paragraph (C)(5) in the rule, would allow any owner or operator of a coke oven battery combustion stack to achieve compliance with the Rule 10 emission limit of 0.030 grains of particulate emissions per dry standard cubic foot of exhaust gases (gr/dscf) "as expeditiously as practicable, but not later than July 1, 1986." This time extension is applicable to all the coke batteries in the State. USEPA notes, however, that under several consent decrees numerous coke oven battery stacks have already met a comparable emissions limitation; and, therefore, these sources are not subject to the compliance time extension. For the few remaining sources, USEPA believes that the compliance date extension of "as expeditiously as practicable but not later than July 1, 1986" for sources to meet the 0.030 gr/dscf limit is acceptable. It is acceptable because inclusion of the limit is a tightening of the existing federally approved SIP; and, therefore, additional time is required for sources to assess the adequacy of their existing control programs, to do stack testing and implement new control measures, if necessary.

This requirement is considered to be a tightening of the existing federally approved SIP because of the difference in rule applicability between the existing SIP and the new proposed rule. Under existing Rule AP-3-11, the entire coke oven battery, which includes such emission points as combustion stacks and leaking oven doors, is considered as the "source." To determine compliance with the rule's emission limitation, emissions, from all of the coke battery emission points (pushing, charging lids, charging, standpipes, stacks and doors) are totaled. AP-3-11 limits the legal maximum value of the total emissions, but each emission point can account for any where from 0 to 100 percent of the emissions limit, as long as the aggregate emissions do not exceed this maximum.

In the proposed regulations, these coke batteries fall under the stringent RACT level requirements of proposed Rules 3745-17-07 and 3745-17-08 because all of the existing coke oven batteries in Ohio are in Appendix A areas. (Any new construction would fall under stringent new source review requirements.) Rules 07 and 08 specify RACT level requirements for each of the remaining battery emission points individually, instead of the aggregated emission approach used in existing SIP Rule AP-3-11.

Rule 3745-17-08 limits pushing emissions to 0.04 pounds particulate per ton of coke pushed and limits any particulate emissions from equipment to 0.030 gr/dscf. In addition, each combustion stack must also meet the new limit of 0.030 gr/dscf and the remaining individual point sources in the battery must meet the individual RACT level visible emission limitations in Rule 3745-17-07(B)(2). (Please see the discussion under Rule 07, 2. Visible Emission Limitations for Fugitive Dust.) Thus, these measures will result in RACT control for each point source in the coke battery. Because the individual point source limitation of 0.030 gr/dscf for combustion stack eliminates the attitude of the previous aggregate approach, it represents a new and more restrictive requirement.

Provision f.

Provision f. [(C)(6) in the rule] would allow until January 1, 1988, for a source subject to the Rule 11 emission limitations for a coke quench tower to come into final compliance with the use of this new measurement technique. For coke quench towers, the compliance date is acceptable because continuing RACT-level control is assured for these sources by application of USEPA's Continuity Policy. Under the Continuity Policy, the federally approved Rule AP-3-12 (contained in Ohio's present SIP) ensures a continued RACT-level of control and requires clean water quenching. USEPA notes that, in order to determine compliance with the Rule AP-3-12 RACT emission limitation, USEPA could require particulate mass emission testing immediately and at any time before the January 1, 1988, measurement technique compliance date.

After January 1, 1988, the sources would be subject to the Rule 11 RACT emission limitation which would establish a coke quenching water quality limitation expressed in milligrams per liter (mg/1) of total dissolved solids (TDS).

Provision g.

Provision g. Paragrah (C)(7) in the rule, would allow until June 1, 1987, for U.S. Steel Corporation to achieve final compliance with the Rule 11 emission limitation for a quench tower for a coke oven battery. The emission limitation specifies that: (1) The water used to quench the coke must not exceed a TDS water concentration of 1,500 mg/1, and (2) the tower must be equipped with a baffle system designed and maintained in accordance with good engineering practice which provides coverage of not less than 95 percent of the cross-sectional area of the tower. USEPA believes the compliance date extension until June 1, 1987, is acceptable. It is acceptable because in December 1982 USEPA was party to a consent decree issued to U.S. Steel Corporation that was authorized by an Act of Congress (the Steel Industry Compliance Extension Act) and which included terms and conditions to ensure that the above emission limitation will be achieved. In addition, the final compliance date in Rule 04 of June 1, 1987, is 1 month prior to the final compliance date of July 1, 1987, in the consent decree. Specifically, the consent decree includes the following date and milestone commitments:

Date	Milestone commitments
By June 30, 1984	Install and maintain overlapping baffles covering 95% of the cross-sectional area in quench towers 1 and 2.
Prior to startup of battery J.	Complete installation of baffles in quench tower 3.
By Dec. 31, 1985	Limit the TSD in the quench makeup water to not greater than a monthly average of 1,700 mg/1.
After Dec. 31, 1985	Only blast furnace blowdown may be used as quench makeup water.
By July 1, 1987	Excess flushing liquor (ammonia liquor) for quenching of any material and blast furnace blowdown for coke quenching shall not be used.

Provision h.

Provision h. [(C)(8) in the rule] is applicable to the Columbus and Southern Ohio Electric Company, Conesville Station, boiler number 4. It allows until June 19, 1984, for this boiler to come into compliance with the interim emission limitation. After June 19, 1984, boiler number 4 was to be in compliance with a more stringent limitation derived from curve P-1 of Figure 2 of Rule 10. This interim limit was requested because Columbus was going to construct a coal washing facility for boiler number 4, and time was needed for the source to come into compliance with the final emission limitation. The State has notified the USEPA that Conesville is now in compliance with the applicable Rule 10 limit and that, when revising its rule, the State inadvertently failed to delete this provision. (For economic reasons, no coal washing facility was constructed at Conesville.) Because this provision is no longer applicable, USEPA proposes to approve it as an expired interim limit. The provision, however, was not reviewed for the purposes of final compliance with Part D or RACT.

Action

- Approval of paragraph (A). USEPA notes that, while it is approving this paragraph this approval is contingent upon submittal of revised attainment dates in the final rules for the primary and secondary standards. The State will revise these inappropriate dates to make them consistent with the new attainment dates discussed under Section II.
- Approval of paragraph (B).
- Approval of paragraph (C).

E. Rule 3745-17-05: Non-Degradation Policy

Synopsis, Assessment and Action

This rule articulates the State's non-degradation policy. It prohibits significant and avoidable deterioration of air quality in any part of an area where the present air quality is equal to or better than that required by the State ambient air quality standards established in Rule 3745-17-02. USEPA's review of this rule indicates that it is acceptable. Therefore, USEPA proposes to approve this rule.

F. Rule 3745-17-06: Classification of Regions

Synopsis, Assessment and Action

Rule 3745-17-06, previously codified as AP-3-06, has been repealed by the State. This rule classified areas of the State into one of three air quality priority categories. The emission limitations placed on industrial processes and/or fuel burning equipment were dependent on an area's priority category. Emissions from these source categories are now subject to new Rules 3745-17-10 and 3745-17-11, which specifically enumerate the counties which are subject to the requirements of these rules. Therefore, the separate priority categories specified in Rule 3745-17-06 are no longer necessary. USEPA proposes to approve this revision to the SIP which will in effect repeal Rule 3745-17-06 (old Rule AP-3-06).

G. Rule 3745–17–07: Control of Visible Air Contaminants From Stationary Sources

Synopsis

This rule establishes visible emission (VE) limitations for stack and fugitive dust sources and establishes procedures for granting equivalent VE limitations. Rule 3745–17–07 replaces Rule AP–3–07 in the existing federally approved SIP. New draft Rule 3745–17–07 differs from old Rule AP–3–07 in the following respects:

1. Applicability of the rule;
2. General and specific emission limitations have been established for stack and fugitive dust sources;
3. Exemptions have been established from the stack and fugitive dust VE limitations; and
4. Procedures have been established for equivalent VE limitations.

Assessment

1. *Visible Emission Limitations for Stack Sources [Paragraph (A)]:* a. This paragraph establishes the following VE limits:

• A general VE limit of 20 percent opacity on a 6-minute average basis for stack sources except for one 6-minute average period per hour which may equal but not exceed 60 percent opacity;

• Specific limits for basic oxygen furnaces and machine scarfing operations, within the iron and steel industry, of 20 percent opacity as a 3-minute average except for one 3-minute average period per hour which may equal but not exceed 60 percent opacity.

USEPA has determined that the above general and specific visible emission limitations for stack sources are appropriate and approvable. Visible emission measurement is by the variations of Method 9 stipulated in new Rule 3745–17–03 and proposed for approval as part of this package. Under the existing federally approved SIP, Rule AP–3–07, a violation would occur if *any* opacity reading equals or exceeds 20 percent (except that 12 observations per hour, at 15-second intervals, may equal or exceed 20 percent, but not exceed 60 percent). Under new Rule 3745–17–07, a violation occurs if any *average* opacity value exceeds 20 percent, based on an average of consecutive readings taken over 6 minutes (except that one 6-minute average per hour may exceed 20 percent, but not 60 percent). USEPA finds the new limits approvable for two reasons: (1) No relaxation of the RACT mass emission limitation has occurred, and (2) a 20 percent opacity limitation determined with a 6-minute averaging approach is RACT for continuous sources such as boilers, the types of sources to which those limits normally apply. For stack sources, USEPA views the mass emission limitation to be the principal emission limitation regulating and determining compliance of these sources. additionally, the limits in new Rule 07 do meet the requirements of 40 CFR 51.19(c), in that they provide appropriate VE limitations that will work to ensure that the mass emission control devices will be properly operated and maintained. 40 CFR 51.19(c) calls for the "establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints."

b. This paragraph contains certain VE exemptions from the above general and specific VE limitations for stack sources for the following:

• The start-up and shut-down of fuel burning equipment equipped with baghouses or electrostatic precipitators or which are uncontrolled, or which are equipped with mechanical collectors, under specified conditions;

• The malfunction of any air contaminant source or the malfunction/shutdown of air pollution equipment under specified conditions;

• Intermittent soot-blowing, salt glazing and intermittent ash removal operations under specified conditions;

• The commencement of increased coal firing from a banked condition for fuel burning equipment for a period not to exceed 30 minutes;

• Any air contaminant source which is not subject to specified requirements of Rules 08, 09, 10 and 11—Ohio's rules containing mass emission limits; and

• Any air contaminant source for which an equivalent visible emission limitation has been established.

USEPA has determined that the above exemptions are acceptable in that they are only clarifications in the application of this rule that reflect its use. The State clarified what is vaguely referenced in existing SIP rule 3745–17–07 as "a period of time deemed necessary by the board" through incorporation of the listed exemptions into this proposed rule. Discussed below are the reasons for proposing to approve the following exemptions: (1) Start-up and shut down of fuel burning equipment; (2) malfunction; and (3) any air contaminant source which is not subject to the specific requirements of Rules 08, 09, 10 and 11. Also discussed is the independent enforceability of the mass and visible emission limitations.

Start-up and Shutdown of Fuel Burning Equipment

USEPA believes these exemptions are acceptable inasmuch as they address transient operating conditions that present TSP control problems dissimilar to those encountered during steady state operation. The exemptions in Ohio's rule are only applicable for a limited time span under specific transient operating conditions during which RACT-level control technology is presently incapable of adequately controlling TSP emissions. The Ohio exemptions merely acknowledge these problems and place a limit upon the allowable duration of startup conditions.

In a letter dated January 6, 1984, the State committed to send to USEPA, as proposed SIP revisions, any deviations from the above exemptions for situations involving the start-up and shutdown of fuel burning equipment.

Malfunction

This rule specifies that the malfunction of any source resulting in visible emissions may be exempt from Rule 07 requirements if the source complies with the requirements of Rule 3745–15–06 of the Ohio Administrative Code. Rule 06 established procedures to be followed by a source in the case of the malfunction or scheduled maintenance of its air pollution control equipment. On May 7, 1982 (47 FR 19722), USEPA approved this rule as being consistent with USEPA's malfunction policy of April 27, 1977 (42 FR 21422). This provision of Rule 07 does not constitute an automatic exemption for any source subject to the rule.

Any Air Contaminant Source Which Is Not Subject to Specified Requirements of Rules 08, 09, 10 and 11

The intention of this exemption is to clarify that a few categories of stack sources which are not currently subject to mass emission limitations are also not subject to a visible emission limit. USEPA has reviewed these categories and finds the exemption to be acceptable.

Mass and Visible Emission Limitations are Independently Enforceable

As stated above, Paragraph (A)(4) of Rule 07 (as discussed under 1.b. above) contains certain VE exemptions from the general and specific VE limitations for stack sources specified in the rule. All other stack sources are required to comply with any applicable mass emission limitations specified in Rules 08, 09, 10 and 11, as discussed below in today's notice, as well as the applicable VE limitation in the SIP. These

limitations are independently enforceable.

2. *Visible Emission Limitations for Fugitive Dust [Paragraph (B)]:* a. This paragraph establishes the following VE limits:

• A general VE limit of 20 percent opacity on a 3-minute average for any fugitive dust source;

• Coke oven battery VE limits are specific and vary in terms of their respective emission points. VEs from charging operations shall not exceed 125 seconds during any 5 consecutive charges. VEs may emanate from 10 percent of all offtake piping, 5 percent of all charging hole lids, 10 percent of all oven doors, and may not exceed 20 percent opacity for all pushing operations.

• A specific limit of 20 percent opacity on a 6-minute average basis for electric arc furnace shop roof monitors, argon-oxygen decarburization shop roof monitors, blast furnace casthouses, and fugitive emissions from sintering operations, and

• A specific limit of 5 percent opacity as a 3-minute average fugitive emissions from roadways, parking lots and material storage piles.

USEPA has determined that all of the above general and specific VE limitations for fugitive sources are reflective of RACT. Since fugitive dust sources cannot be readily tested for mass emission VE limitations are of great importance in ensuring that RACT-level control is required. Visible emission limits constitute testable standards of performance. The VE limitations of the federally approved SIP Rule, AP-3-07, applicable to fugitive dust sources would be changed by new rule 07 from equal or exceed 20 percent opacity at any time (except for 12 observations per hour which may equal or exceed 20 percent but not exceed 60 percent, AP-3-07), to 20 percent opacity, based on an average of consecutive readings taken over any 3-minute period. USEPA believes that this revised method is sufficient to assure, in the context of Ohio's rules structure, that RACT is achieved and maintained.

b. This paragraph contains the following exemptions from the above applicable VE limitations:

• It exempts shiploading spouts at grain terminals,

• It exempts any fugitive dust source which is exempted from the requirements of Rule 3745-17-08, and

• It exempts any fugitive dust source which is not located in a geographical area specified in Appendix A of Rule 3745-17-08, unless otherwise specifically required by the Director.

USEPA has determined that these exemptions are acceptable.

• Subparagraph (B)(5)(a) exempts shiploading spouts at grain terminals. For a Part D Plan to be approvable, all sources in the State's nonattainment areas must meet a RACT-level of control. In the State of Ohio, the Part D SIP for shiploading will consist of site-specific operating permits, and they will supersede the requirements of this rule. USEPA has determined that the permits submitted by Ohio for its grain terminals contain acceptable RACT-level opacity limits and work practices which meet the Part D RACT requirements. (Please see Rule 08 for further discussion of the draft permits.) Because these permits will be the Part D SIP for shiploading, the exemption in subparagraph (B)(5)(a) has not been reviewed for the purposes of Part D or RACT. USEPA is proposing to approve these requirements under section 110, as representing the State's interim intent.

• USEPA's discussion of the acceptability of the Rule 08 exemptions are discussed below in Rule 08.

• Ohio has demonstrated that only the areas listed in Appendix A must control fugitive TSP emission sources to achieve the NAAQS. All of the other nonattainment areas in Ohio have been demonstrated by Ohio EPA to achieve NAAQS attainment with RACT control on stack sources alone. Since the visible emissions limitations of Rule (07)(2)(B) refer exclusively to fugitive dust emissions, they are only required in the areas listed in Appendix A.

3. *Paragraph (C): Equivalent Visible Emission Limitations.* a. This paragraph allows a source which is subject to the VE limits of paragraph (A) of this rule to request an "equivalent visible emission limitation" (EVEL) from the Director of OEPA. The EVEL is the average of the opacity of the emissions from the source during any performance test(s) conducted in accordance with Rule 3745-17-03. Although an EVEL normally is an opacity limit which exceeds the general opacity limit, it represents the opacity of a source's visible emissions as measured during a test when the source demonstrates compliance with the applicable mass emissions limit.

For the EVEL procedures to be acceptable, the State must develop specific procedures and methodologies to be used by the Director to determine the EVEL; and these procedures must be submitted to USEPA for approval as part of the SIP. Ohio has developed Ohio Engineering Guides #13, 14 and 15 which establish the procedures that Ohio will use when actually determining an EVEL. USEPA has reviewed these guidelines and believes that, when they are used in conjunction with the above paragraph, they evaluate an EVEL for a particular source. However, the State must provide sufficient criteria by which the Agency can consistently evaluate an EVEL for a particular source. However, the State has not incorporated by reference these guidelines into its rules as the method for determining the EVEL. Therefore, individual SIP revisions must be submitted to USEPA for review and approval.

Action

• Approval of Paragraph (A).

• Approval of Paragraph (B).

• Approval of Paragraph (C) with the understanding that the State submit all equivalent visible emission limitations to USEPA for review and approval as SIP revisions.

H. Rule 3745-17-08: Restriction of Emission of Fugitive Dust

Synopsis

Rule 3745-17-08 replaces AP-3-09 in the existing federally approved SIP. USEPA interprets SIP Rule AP-3-09 to regulate fugitive dust from open dust fugitive sources, including storage piles, sandblasting activities, paved and unpaved roads and material handling operations. New Rule 3745-17-08 controls particulate emissions not only from open dust sources, but also from any industrial process which emits particulate matter into the ambient air by means other than a stack. Industrial process sources which emit particulate matter into the ambient air by means other than a stack are regulated by Rules AP-3-07 and AP-3-12 in the existing SIP.

New Rule 3745-17-08 consists of paragraphs (A), (B), (C) and (D). Paragraph (A) specifies those fugitive dust sources which are required to comply with the provisions of 3745-17-08. Paragraph (B) requires the application of reasonably available control measures (RACM) to all fugitive dust sources covered by this rule. It also defines the control measures to be utilized, at a minimum, for the fugitive dust sources under this paragraph. Paragraph (C) establishes criteria for use by the Director of the Ohio EPA in determining whether a control measure selected by the source is adequate. Paragraph (D) contains procedural requirements for fugitive dust sources located in Appendix A areas. Appendix A generally lists those nonattainment areas in which, according to Ohio EPA modeling, controls on all stack point sources will not be enough to ensure attainment of the primary or secondary

TSP NAAQS by December 31, 1982. Appendix A also lists a few areas which are designated as attainment. The attainment areas listed in Appendix A are those that have achieved attainment by controlling fugitive sources and continued controls on these sources are necessary to maintain the attainment status.

Assessment

1. *Applicability of Control Requirements [Paragraph (A)].* a. This paragraph imposes control requirements on those sources which are either:

• Located in an Appendix A area, or

• Specifically required by the Director to implement the control requirements of Paragraph B, regardless of location, where the Director concludes that the source is causing or contributing to a violation of the ambient air quality standards in Rule 3745-17-02 or the opacity standards in Rule 07.

This paragraph also establishes that sources must comply with the terms of Rule 08 immediately upon the effective date of promulgation of the rule except where additional time for achieving compliance is provided in Paragraph (C) of Rule 3745-17-04.

b. This paragraph exempts the following sources from the requirements of this rule:

• Any fugitive dust source which is located at a grain elevator having a permanent storage capacity of less than 2.5 million bushels; and

• Fugitive dust generated by the Number 3 Blast Furnace and Numbers 15 and 16 Basic Oxygen Furnaces located at the Armco Middletown Works Plant.

USEPA has determined that the above provisions are acceptable. The exemptions are acceptable bacause:

• For grain elevators having a capacity of less than 2.5 million bushels fugitive dust controls are economically unreasonable. Economic analysis of this source category has established that these sources are significantly impacted by the addition of control equipment. Their typically small size, coupled with the high cost of controls, makes installation of control equipment economically unreasonable. For such sources, current practices are RACT.

• The sources at the Armco Middletown Works Plant, which include the Number 3 Blast Furnace and Number 15 and 16 Basic Oxygen Furnaces, are addressed separately by the Armco attainment demonstration and control plan which USEPA approved on March 31, 1981 (46 FR 19468).

2. *Required Control Measures [Paragraph (B)].* a. For open dust sources such as unpaved roads and material stockpiles, measures usch as "periodic spraying with suitable dust suppressants" or "adequte containment methods which minimize or eliminate visible emissions of airborne dust" are specified.

b. For industrial process fugitive sources the use of hoods, fans and other equipment are specified and must meet the following requirements:

• The collection efficiency shall be sufficient to minimize or eliminate visible emissions of fugitive dust at the point(s) of capture to the extent possible with good engineering design, and

• The particulate emission rate from any control equipment which is used only for the control of fugitive dust shall not exceed the following:

(i) 0.005 grain per dry standard cubic foot (gr/dscf) of exhaust gases for fugitive dust from an electric arc furnace and an argon-oxygen decarburization vessel;

(ii) 0.010 gr/dscf of exhaust gases for fugitive dust from a basic oxygen furnace, hot metal transfer operation, hot metal desulfurization operation and blast furnace casthouse;

(iii) 0.020 gr/dscf of exhaust gases for fugitive dust from the discharge end of a sintering plant;

(iv) 0.04 pound of particular emission per ton of coke for fugitive dust from a coke oven battery pushing opration; and

(v) 0.030 gr/dscf of exhaust gases for fugitive dust from sources not specified in paragraphs i-iii above.

Paragraph (B) contains both fugitive dust control measrues in the form of work practices and mass emission limitations that apply to control equipment. USEPA's discussion on the acceptability of Paragraph (B) will be segmented into "Work Practices" and "Mass Emission Limitations That Apply to Control Equipment."

Work Practices

The work practice measures alone are not reflective of RACT. They must be combined with applicable visible emission limitations to reflect RACT levels of control. The applicable visible emission limitations are referenced in Rule 08(C) and are contained in Rule 07. (Please see Rule 07 for a discussion of the visible emission limitations.) The authority to utilize these limitations is based upon viewing Paragraph (B) in conjunction with Paragraph (C). Paragraph (C) establishes the compliance criteria for all fugituve dust sources covered by this rule to assure that the control measures of Paragraph (B) achieve and maintain a RACT level of control. It requires the use of visible emission limitations in conjunction with both work practices and control equipment. Specifically for work pratice measures, USEPA has determined that combining these measures with the applicable RACT level visible emission limitation will result in attainment and maintenance of RACT level source control.

Mass Emission Limitations That Apply to Control Equipment

The mass limitations that apply to control equipment are reflective of RACT levels of control for these pieces of equipment and USEPA has determined that they are acceptable. As stated above, Paragraph (C) applies a visible emissions limitation for all fugitive dust sources. Therefore, for mass emission limitations that apply to control equipment, the RACT visible emission limit contained in Rule 07 is also applicable. When both the Ract mass emission limitation and visible emission limits are applicable, Paragraph (C) requires a source to achieve compliance with both emission limitations, as each is independently enforceable.

c. For shiploading operations at grain terminals the rule allows the owner or operator of such a source to choose between two possible approaches to control:

• Except during topping-off periods or during the loading of tween-deckers or tankers, sources must cover the hatches and loading spouts with tarpaulin covers, to the extent practicable, and evacuate the hatches to control equipment which is designated to achieve an outlet emission rate of .030 grain of particulate emission per dry standard cubic foot of exhaust gases, or

• Sources must install and use control measrues such as deadbox or bullet-type loading spouts which are equivalent to or better than the overall control efficiency of the measures described above.

For this Part D Plan to be approvable, all sources in the State's nonattainment areas must meet a RACT-level of control. In the State of Ohio, the Part D SIP for shiploading will consist of site-specific operating permits; and they will supersede the requirments of this rule. USEPA has determined that the permits Ohio has submitted for these sources contain acceptable RACT-level opacity limits. (For a further discussion of these permits, plase see the discussion below on the Ohio Part D Plan for Shiploading.) Because thse permits will be the Part D SIP for all existing shiploading facilities, the above provision has not been reviewed for the purposes of Part D or RACT. USEPA proposes to take no further action on

these requirements. Since any new shiploading facilities would, by the nature of this industry, be of sufficient size to trigger Federal (and State) new source review and its associated requirements, no shiploading facility could avoid implementing appropriate control measures. Thus, all shiploading facilities, either existing or planned, are assured of a minimum control level reflecting application of RACT or better control technologies.

Ohio Part D Plan for Shiploading

The State had indicated to USEPA that, rather than rely on Rule 3745–17–08 as it applies to shiploading operations at grain terminals, the Ohio Part D plan for these sources will consist of site-specific emission limitations. These emission limitations will be contained in operating permits that are developed for each shiploading source subject to Rule 3745–17–08. On November 20, 1985, the State of Ohio submitted operating permits for its two shiploading facilities, The Andersons Grain Division and Mid-States Terminals Incorporated. To be acceptable as RACT, the permits for these sources must require the installation of systems to control emissions of fugitive dust from shiploading spouts for all types of grains. In addition, the permits must include provisions for self-monitoring, reporting and recordkeeping, and compliance time schedules. USEPA's discussion of the permits will be segmented into: (1) RACT for non-specialty grains; (2) RACT for specialty grains; (3) other permit provisions, and (4) compliance time schedules.

RACT for Non-Specialty Grains. During all types of shiploading, except for specialty grains (which is 10 percent of the grain loaded), the permits for both The Andersons and Mid-States require the utilization of a mineral oil spray system to suppress dust. These permits will restrict the sources to comply with a 20 percent opacity limit at all times, and USEPA has determined that the system and the corresponding opacity limitation are reflective of RACT. Compliance with this 20% opacity limitation is determined by the modified version of Method 9 (40 CFR, Part 60, "Standards of Performance for New Stationary Sources") stipulated in the permits.

RACT for Specialty Grains. For specialty grains, The Andersons and Mid-States each utilize a different system for controlling emissions. Mid-States utilizes a system consisting of covering the hatches and loading spouts with tarpaulins and exhausting the air space between the loan and the tarpaulins to the pollution control equipment baghouses for the entire loading process, except for loading the top 4 feet of hold space. No specific opacity limit can be associated with this work practice (tarpaulin/baghouse) approach. The approach can, however, be tied to a mass emission limit in that the baghouse must meet an emission limitation of 0.030 gr/dscf. USEPA has determined that the system and the corresponding baghouse emission limitation are relfective of RACT for this specialized application. As noted above, the work practice approach is utilized for the entire loading process until the pile reaches the top 4 feet of hold space. Beyond this 4 feet point, the loading is defined as "topping-off" and will go uncontrolled. USEPA finds the uncontrolled period of topping-off to be acceptable because, during this period, a very negligible amount of emissions will occur and only approximately 2½ percent of the total grain loaded on an annual basis will be uncontrolled. For speciality grains, Andersons utilizes an alternative spraying system (water) and a dust evacuation technique to clean the grain. This system will restrict the source to comply with a 40 percent opacity limit at all times. USEPA has determined that the system and the corresponding opacity limitations are reflective of RACT for this specialized application.

Other Permit Requirements. In addition to the above RACT requirements, these permits also include self-monitoring, reporting, and recordkeeping provisions. USEPA has determined that these requirements will ensure that the terms of the permit are fulfilled for specialty grains. The 20 percent opacity limit will ensure that the terms of the permit are fulfilled for all non-specialty grains.

Compliance Time Schedules. For Mid-States, the permit contains a compliance time schedule that specifies a final compliance date of April 30, 1986. By this date, the source is to achieve compliance with the requirements established in the permit which includes the above RACT emission limitations. USEPA has determined that the April 30, 1986, compliance date is now as expeditious as practicable. For The Andersons, the permit does not contain a compliance time schedule because The Andersons is currently employing the mineral spray and specialty grain system and is presently meeting the above RACT requirements.

USEPA has determined that the permits are acceptable as the Ohio Part D plan for shiploading operations because they meet all the applicable Part D and general requirements.

3. *Criteria for use by the Director in determining whether a RACM measure is adequate [Paragraph (C)].* For purposes of determining compliance with the requirements of Paragraph (B) of this rule, the Director shall consider a control measure to be adequate if it complies with the following:

(i) The VE limitation contained in Rule 3745–17–07, and

(ii) If applicable, the grain loading limitation discussed under 2.b. above, for control equipment which is used only for the control of fugitive dust.

Paragraph (C) establishes the compliance criteria for all fugitive dust sources covered by this rule to assure that the control measures of Paragrpah (B) achieve and maintain a RACT level of control. It requires the use of visible emission limitations in conjunction with both work practices and control equipment. Where both mass emission limitations and visible emission limits are applicable, Paragraph (C) requires a source to achieve compliance with both.

USEPA has determined that the above criteria are acceptable because they assure compliance with the requirements for RACT. However, any RACM alternative not specified in the rule must be submitted to USEPA for review and approval as a SIP revision.

4. *Procedural requirements for fugitive dust sources located in Appendix A areas [Paragraph (D)].* This paragraph specifies that onwers or operators of fugitive dust sources located in Appendix A areas must submit a certification of the status of compliance and/or an application for a permit to operate in accordance with Paragraphs (B) and (C) of Rule 3745–17–04.

USEPA has determined that this concept is acceptable because it provides a mechanism to facilitate implementation of the overall control plan. Under Ohio rules, certification by a source stating that it is in compliance subjects it to immediate State and Federal compliance verification and enforcement of Ohio's SIP rules. Alternatively, submission of a permit to operate application by the source triggers State permit review and the required implementation of appropriate control measures on a specific timely schedule contained in the Ohio rules. Thus, all sources are subject to control. Discussion of the merits of the certification and permit requirements of Paragraphs (B) and (C) of Rule 3745–17–04 is found in the discussion on Rule 04.

Appendix A

Appendix A lists all nonattainment areas in Ohio which have been

determined by modeling to require more than RACT control on stack sources to meet the NAAQS. It does not, however, include all Ohio nonattainment areas. USEPA has determined that for the Part D SIP to be approvable, the inclusion of all nonattainment areas in Appendix A is not necessary. Only the areas where the TSP NAAQS cannot be attained (and maintained) by controlling stack sources alone must be included. USEPA has reviewed Ohio's technical support for the Appendix A listing and agrees that the list correctly includes all those TSP nonattainment areas where RACT-level control of stack sources alone will not be sufficient to provide for attainment. The submitted version of this Appendix A is, therefore, approvable.

Action

- Approval of this rule except for Paragraph (B)(4).
- No further action on Paragraph (B)(4).

I. Rule 3745-17-09: Restriction on Particulate Emissions and Odors From Incinerators

Synopsis

Rule 3745-17-09 restricts emissions and odors from incinerators, and replaces Rule AP-3-10 in the existing federally approved SIP. This rule consists of Paragraphs (A), (B), and (C). Paragraph (A) specifies the general provisions of the rule. Paragraph (B) specifies the emission limitations for two size categories of incinerators. Paragraph (C) specidies the design-operation requirements for incineators.

Assessment

1. General provisons [Paragraph (A)].
- This rule applies to any incinerator.
- The incineration capacity, for the purposes of this rule, is considered to be the total capacity of all incinerators which are united either physically or operationally.

USEPA has determined that these general provisions are acceptable.

2. Emission limitations (Paragraph (B)).

This rule specifies the following two emission limitations based on incinerator size:

- 0.10 pound of particulate per 100 pounds of liquid, semi-solid or solid refuse and salvageable material charged for incinerators with a capacity greater than or equal to 100 pounds per hour.
- 0.20 pound of particulate per 100 pounds of liquid, semi-solid or solid refuse and salvageable material charged if the incinerator has a capacity of less than 100 pounds per hour.

USEPA had determined that the above emission limitations are reflective of RACT for all incinerators, except those combusting sewage sludge. The Rule 09 emission limitations for all incinerators are on an "as fired" basis, and the limits in the Ohio SIP Rule AP-3-10, are based upon "combustible refues charged." The "combustible refuse charged" limitation allows for sludges to be incinerated with a correction factor applied to compensate for their moisture content. This could result in a more stringent emission limitation than does an "as fired" limit, but is difficult in practice to determine.

Due to this difficulty, the use of an "as fired" basis is acceptable for all incinerators which do not fire sewage sludge, and for wastes other than sewage sludge, the "as fired" basis has always (in fact) been the basis of Ohio compliance deaterminations with respect to Rule AP-3-10. The State has provided a technical support package to substantiate this position. Thus, the "as fired" basis does not represent a relaxation from State intent but a recognition of it. But as to sewage sludge incinerators only USEPA has been enforcing the existing SIP on a combustible basis. (For other types of incinerators, it is too difficult to determine the combustible fraction). The new rule, as it applies to sewage sludge incinerators, would allow for sludges to be incinerated without correction for their moisture content and, thus, could result in emission rates over 60 percent higher than allowed under the existing rule. USEPA views this as a relaxation without a demonstration that attainment and maintenance of the NAAQS will not be jeopardized.

The Agency, therefore, finds this rule unacceptable as RACT for sewage sludge incinerators. USEPA, however, does believe that the emission limitations of this rule are reflective of RACT for all other incinerators.

3. Design-operation Requirements for Odor [Paragraph (C)].

This paragraph specifies that incinerators, including all associated equipment and grounds, shall be designed, operated and maintained so as to prevent the emission of objectionable odors.

This paragraph deals exclusively with the control of odorous emissions from incinerators. Under Section 110 and Part D of the Clean Air Act, the USEPA is responsible only for restricting emissions of the criteria pollutants. Since the USEPA does not have authority to restrict emissions based on their odor alone, it will take no action on this paragraph.

Action

- Approval of Paragraph A of this rule.
- Approval of Paragraph B of this rule except as it applies to sewage sludge incinerators.
- Disapproval of this rule as it applies to sewage sludge incinerators. Federal SIP regulations AP-3-10 will continue to apply to sewage sludge incinerators. USEPA had determined that AP-3-10 is RACT for these incinerators.
- No action on paragraph (C).

J. Rule 3745-17-10: Restriction on Particulate Emissions From Fuel Burning Equipment

Synopsis

This rule establishes mass emission limits for fuel burning equipment. Under the existing federally approved SIP, these limits are established by AP-3-11. Under existing Rule AP-3-11, and generally under new Rule 3745-17-10, the particulate emission limit applicable to a source is determined by first calculating the maximum heat input into the fuel burning unit or units. Next, the maximum total heat input for all units combined either physically or operationally is calculated. Finally, the maximum allowable emission limitation for a unit is determined by referring to either the P-1 or P-2 curves specified in the Figure 1 graph (which is part of the rule) unless specifically addressed in another subparagraph. New Rule 3745-17-10 differs from AP-3-11 in the following respects:

- Combustion of any product or by-product of a manufacturing process is to be regulated by Rule 3745-17-10, only if the combustion is for the primary purpose of producing heat or power. Disposal of a manufacturing product or by-product by burning is subject to Rule 3745-17-03.
- The test methods and procedures used to measure compliance have been deleted from Rule 3745-17-10. They are however, specified in Rule 3745-17-03.
- Provisions have been included for "derating" a boiler and for exempting certain "stand-by-boilers" from the emission limitation calculations.
- Specific, more stringent RACT emission limitations have been established for sources which burn gaseous fuels and/or No. 2 fuel oil. If these sources are part of a multi-unit operation, i.e., combined physically or operationally their maximum allowable heat inputs are no longer included when making the mass emission limitation calculations from Figure 1 for the other units within the multi-unit operation.

• The P–1 and P–2 curves of Figure 1, which are used to determine the emission limitations for the fuel burning equipment, have been made applicable only to specific counties. Under the existing SIP, each curve corresponds to a priority status designation with areas classified separately according to this priority status. The new rule merely eliminates the priority designations and directly relates each curve with affected areas. No relaxation occurs with this difference in applicability. In addition, for sources located in the counties of Allen, Clinton, Coshocton, Defiance, Henry, Jackson, Muskingum, Noble, Richland, Ross, Sandusky, Seneca, Shelby, and Wyandot, the rule specifies that "Curve P–1," of "Figure I" is to be used in determining the source's emission limitation. Under the existing SIP, sources in these counties are only required to meet the emission limitations specified in "Curve P–2." USEPA notes that the P–1 curve is the more stringent of these two curves.

• Specific emission limits have been set for the coal-fired boilers at the following Ford Motor Company facilities: Brookpark, Sharonville, Canton, Lima, Lorain, and Sandusky.

• Alternative emission requirements have been included for small coal-fired fuel burning equipment which is used exclusively for space heating purposes.

• A specific emission limit of .030 grains of particulate emissions per dry standard cubic foot of exhaust gases has been established for coke oven battery combustion stacks.

• Interim emission limits have been set for Columbia and Southern Ohio Electric Company's Conesville Station boiler number 4 of 0.43 and 0.10 pounds of particulate emissions per million Btu actual heat input.

Assessment.

Ohio's revised method of calculating total actual heat input for use in determining the applicable particulate emission limit for facilities from Figure I was evaluated by USEPA with respect to its potential impacts on particulate control to assure that an overall relaxation would not result from such a revision. Analysis of the rule provisions established that no instances of a relaxation occur for any size of gas or oil units and that the total allowable emissions from physically or operationally united sources decreases.

To assure RACT level control on gas and No. 2 oil units, an emission limitation more stringent than that of Figure I was necessary. Gas and No. 2 oil fired units will be subject to a limit of 0.02 pounds of particulates per million BTU (lb/MMBTU) heat input, which reflect RACT. Under the existing rule, they have only been required to meet a size (and source location) determined limit that was between 0.10 and 0.60 lb/MMBTU. Thus, the new limitation is anywhere between 5 and 30 times more stringent than the existing one for these sources. Figure I requires a RACT level of control for all sources subject to its limitations in the proposed rule.

The revised calculating method which Ohio has proposed could, however, result in a relaxed limit for individual sources still controlled by Figure I that are between 10 and 1,000 MMBTU in size. The total source size used for Figure I emissions limit determination would decrease when any gas or No. 2 oil fired units which are physically or operationally united with them are deleted from source size determination. However, operationally united units will always be subject to a tighter combined emissions limit under the proposed rule than if they were constrained only by Figure I. Thus, USEPA believes that the proposed rule represents an overall tightening of the SIP requirements for these sources. Further, since the emission limitation which Figure I provides for such units is RACT level, no relaxation from RACT control could occur for any source. USEPA believes that these provisions require RACT control for all affected sources; represent an overall tightening of the SIP emissions limitations; and are approvable.

USEPA has determined that acceptable RACT emission limitations have been established for all applicable source categories except for the interim emission limits for the Columbus and Southern Ohio (C&SO) Electric Company's Conesville Station boiler number 4. Interim emission limitations were established for boiler number 4 because the C&SO Electric Company was going to construct a coal washing facility, and time was needed for the source to come into compliance with a more stringent emission limitation derived from curve P–1 of Figure 2 of Rule 10. The State has notified USEPA that these interim limits are no longer applicable, since the source is now in compliance with the Rule 10 emission limitation. Because this provision is no longer applicable, USEPA is proposing to approve it as an expired interim measure. The provision, however, was not reviewed for the purposes of final compliance with Part D on RACT.

USEPA finds the alternative emission requirements for small coal-fired burning equipment acceptable. These small coal-fired boilers are used exclusively for space heating by institutions (primarily schools) and greenhouses. Ohio performed an extensive study of this source category which showed that, for these units, the measures now included in this rule represent RACT control and provide a rate of emissions at or below the limit prescribed by the curves of Figure I of the rule.

Action

• Approval.

K. *Rule 3745–17–11: Restrictions on Particulate Emissions from Industrial Processes*

Synopsis

Rule 3745–17–11 restricts the emission of particulate matter from industrial processes, and is intended to replace Rule AP–3–12 in the existing federally approved SIP. This rule consists of Paragraphs (A) and (B). Paragraph (A) specifies the general provisions of the rule. Paragraph (B) establishes the emission limits applicable to each geographic location in the State.

Assessment

1. The General Provisions of the Rule [Paragraph (A)].

a. This rule applies to:

• Any operation, process, or activity, which releases or may release particulate emissions into the ambient air.

b. This rule exempts:

• The burning of fuel for the primary purpose of producing heat or power by indirect heating under specific circumstances;

• The burning of refuse;

• The processing of salvageable material by burning;

• The loading of ships and drying of grain at grain elevator operations;

• Salt glazing in a gas-fired periodic brick or tile kiln for a period of time not more than 2 hours during any 21 consecutive days of kiln operations; and

• Fugitive dust that the Director has determined is subject to the requirements of Rule 3745–17–08.

c. This rule specifies the emission restriction requirements for applicable sources utilizing "Figure II" and "Table I" of the rule.

(i) *Figure II:* This figure relates uncontrolled mass rate of emission to maximum allowable mass rate of emission. A source complies with the requirements of Figure II if its particulate emission rate, even during operation at the maximum capacity of the source, is always equal to or less than the allowable mass rate of emission of particulate matter based upon the uncontrolled mass rate of emission.

(ii) *Table I.* This table relates process weight of materials introduced into any specific process (at its maximum capacity) that may result in particulate emissions to maximum allowable mass rate of emission. A source complies with the requirement of "Table I" if its rate of particulate emission, even during operation at the process weight rate which reflects the maximum capacity of the source, is always equal to or less than the allowable rate of particulate emission specified by the appropriate equation appearing at the bottom of "Table I" when incorporating the process weight rate which reflects the maximum capacity of the source.

Except as specified under 1.d. below, the more stringent of these two requirements shall apply.

d. Figure II and Table I Nonapplicability

(i) Figure II shall not apply to:

• Any source where the uncontrolled mass rate of emission cannot be ascertained or with an uncontrolled mass rate of emission of less than 10 pounds per hour; or

• Any fluid catalytic cracking unit at a petroleum refinery.

(ii) Table I shall not apply to:

• Any source where the process weight rate cannot be ascertained or which is located within counties specified in paragraphs (B)(2) and (B)(3) of this rule, except as provided in paragraph (A)(2)(c) of this rule.

(iii) Table I shall not apply to any fluid catalytic cracking unit at a petroleum refinery.

e. This rule specifies that the total uncontrolled mass rate of emission is to be used for the purposes of determining compliance with Figure II.

f. This rule defines the term "process weight" for the purposes of Table I.

USEPA has determined that all of the above provisions are acceptable. All listed exemptions are for sources which are appropriately controlled under other rules in this package.

2. Emission Limitations [Paragraph (B)].

a. Generic Emission Limitations:

(i) The rule lists three separate groupings of counties. Applicable sources within each group are subject to the allowable emission rate specified by either:

• Curve P-1 of Figure II or by Table I,

• Curve P-2 of Figure II,

• Curve P-3 of Figure II,

b. Specific Emission Limitations:

Any applicable source owner or operator must comply with the following specific emission limitations:

(i) A quench tower for a coke oven battery:

• The water used to quench the coke shall not exceed a total dissolved solids concentration of 1,500 milligrams per liter;

• The tower shall be equipped with a baffle system designed and maintained in accordance with good engineering practice and which provides coverage of not less than 95 percent of the cross-sectional area of the tower;

(ii) A basic oxygen furnace primary control device shall not exceed 0.030 gr/dscf. of exhaust gases;

(iii) An electric arc furnace primary control device shall not exceed 0.030 gr/dscf of exhaust gases;

(iv) A sintering plant control device serving the windbox shall not exceed 0.030 gr/dscf of exhaust gases;

(v) A stationary gas turbine shall not exceed 0.040 pound per million BTU of actual heat input; and

(vi) A stationary internal combustion engine shall not exceed 0.25 pound per million BTU of actual heat input.

USEPA has determined that all of the generic and specific emission limitations are reflective of RACT with the exception of the generic emission limitation of 8.6 lbs/hr for polyvinyl chloride (PVC) silos.

Within the State of Ohio a RACT emission limitation for PVC silos is only applicable to one source, the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County, Ohio. The area in which B.F. Goodrich is located is designated a secondary nonattainment area for particulates (40 CFR 81.336). Utilizing the process rate curve contained in Rule 11, the generic emission limitation of 8.6 lbs/hr would apply to the PVC silos at B.F. Goodrich. This is identical to the emission limit for this source contained in the present TSP SIP (AP-3-12). This 8.6 lbs/hr limit is not reflective of RACT for B.F. Goodrich since the pollution control equipment, baghouses, which control actual emissions to as low as 0.05 lbs/hr, have been in place on the B.F. Goodrich-Lorain silos since 1980. USEPA believes the correct RACT emission limitation for the PVC silos at B.F. Goodrich is 0.05 lbs/hr. This position is described in a December 13, 1984 (49 FR 43542) final rulemaking action on an alternative emission strategy "bubble" for the B.F. Goodrich Chemical Plant. Because Rule 11 does not contain an acceptable RACT emission limitation for PVC silos, nor has the State submitted a site-specific operating permit for B.F. Goodrich which controls actual emissions to a RACT level of 0.05 lbs/hr as the Part D SIP for silos, USEPA is proposing that this portion of the plan for Lorain County does not meet the RACT requirements of Part D. Because RACT is required on all industrial sources in order to approve a RACT based SIP and because B.F. Goodrich PVC silo element of the Part D SIP for Lorain County is deficient, USEPA cannot propose to approve the Part D TSP plan today for the nonattainment area in Lorain County. However, even though USEPA is proposing that the Rule 11 emission limit does not meet the requirements of RACT under Part D of the Act for the B.F. Goodrich PVC silos, USEPA is proposing to approve Rule 11 under Section 110 of the Act for this source. USEPA is proposing this action because Rule 11 is essentially equal to the existing SIP rule for the B.F. Goodrich PVC silos, it represents current State intent, its approval will assure consistency between USEPA's SIP rule and the State rules, and it does provide some limit on PVC silo emissions.

Additionally, USEPA has discussed with the State the possibility of submitting a RACT based emission limit for B.F. Goodrich PVC silos. If within the public comment period on today's rulemaking notice the State submits as the Part D SIP for PVC silos an operating permit for B.F. Goodrich which controls actual emissions to 0.05 lbs/hr, USEPA in its final rulemaking action on the entire Ohio Part D plan, would approve this limit for B.F. Goodrich, in place of Rule 11, without reproposal. USEPA would then consequently, conditionally approve the overall Part D SIP for Lorain County. If the State fails to submit the operating permit, USEPA will take final rulemaking action to disapprove Ohio's Part D TSP SIP for the nonattainment area in Lorain County. This disapproval will result in the continuation of the growth restrictions under Section 110(a)(2)(I) of the Clean Air Act in the Lorain County TSP nonattainment area.

Action

• Approval of this rule under Part D and Section 110 except as it applies to the PVC silos at the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County.

• Approval of this rule as it applies to PVC silos at the B.F. Goodrich Chemical Plant in Avon Lake, Lorain County under Section 110 only. Because the PVC emission limitation is an integral part of the overall Part D SIP for Lorain County, the overall SIP for Lorain County is not currently acceptable and USEPA is proposing to disapprove it. If, within the public comment period on today's rulemaking notice, the State submits a 0.05 lbs/hr emission limit for the B.F. Goodrich PVC silos, USEPA will approve it in place of Rule 11 without reproposal under Part D and Section 110.

and, under these circumstances USEPA will conditionally approve the Part D TSP plan for Lorain County.

II. The Adequacy of Ohio's Commitment to do an Attainment Demonstration

Ohio's plan includes a commitment to do studies and develop additional rules (where necessary) to provide for attainment of the primary and secondary standards. Upon USEPA's final rulemaking, Ohio's schedule will become part of the approved Ohio TSP SIP. Under the RACT plus commitment to do an attainment demonstration formula, the State must commit to: (1) study the control of nontraditional sources of particulate matter (examples of nontraditional fugitive dust sources include re-entrained dust from public roadways; as well as dust generated as a result of construction or agricultural activities); (2) determine if additional control is needed to achieve attainment (i.e., control in addition to RACT on traditional sources); and (3) adopting whatever additional regulations are needed to provide for expeditious attainment of the primary and secondary TSP NAAQS. In a June 4, 1985, letter, the State has committed to the following attainment demonstration schedule which goes well beyond the commitment to do studies that USEPA accepted for purposes of Part D approval prior to December 31, 1982.

A. Areas Designated Primary Nonattainment Under Section 107 of the Clean Air Act

1. Fifteen months from final approval of Ohio's TSP plan, Ohio will develop and submit a comprehensive short-term particulate emission inventory (stack, process fugitive, and fugitive dust) for each remaining primary nonattainment area (areas which are reclassified to secondary nonattainment or attainment will be dropped from this list).

2. Twenty-one months from final approval, complete and submit the short-term and annual modeling analyses consistent with USEPA modeling guidelines.[1]

3. Twenty-seven months from final approval, develop a control strategy and draft rules for each area where the modeling analysis indicates that the rules being proposed for approval today are inadequate to meet the primary TSP NAAQS.

4. Thirty-three months from final approval, propose rules to meet primary and secondary NAAQS, complete State procedural process and submit final rules to USEPA.

5. As expeditiously as possible but no later than 69 months from final approval, is the ultimate compliance deadline for new control requirements required to meet the primary NAAQS. Strategies which require the installation of capital equipment will require the full 69 months. Open dust strategies may be implemented within 45 months from final approval.

Ohio will complete its schedule for primary areas 69 months from USEPA's final approval of the Ohio TSP plan.

B. Areas Designated Secondary Nonattainment, Unclassified, or Attainment (with a Monitored Violation During the Past 2 Calendar Years) Under Section 107 of the Clean Air Act

1. Twenty-seven months from final approval, develop and submit a comprehensive short-term particulate emission inventory for each remaining secondary nonattainment area.

2. Thirty-three months from final approval, complete and submit the short-term and annual modeling analyses consistent with USEPA modeling guidelines.

3. Thirty-nine months from final approval, develop a control strategy and draft rules for each area where the modeling analysis indicates that the current rules (or revised rules adopted in item A.4 above) are inadequate to meet the secondary TSP NAAQS.

4. Forty-five months from final approval, propose rules to meet the secondary NAAQS (supplementing the rules needed to meet the primary NAAQS), complete the State procedural process, and submit final rules to USEPA.

5. As expeditiously as possible but no later than 81 months from final approval, is the ultimate compliance deadline for new control requirements required to meet the secondary NAAQS. Ohio will complete its schedule for secondary areas 81 months from USEPA's final approval of the Ohio TSP plan.

Assessment

In the January 27, 1984, "Guidance Document for Correction of Part D SIPs for Nonattainment Areas", USEPA discussed, among other things, the requirements for areas that do not have approved 1979 SIPs required by Part D with respect to approval of attainment schedules. USEPA stated that:

> USEPA will approve [post-1982 Part D TSP plans] plans that demonstrate attainment at later dates [after 1982], although it will scrutinize control strategy demonstrations and attainment schedules to ensure the most expeditious attainment date. Since Section 110(a)(2)(A) only allows areas 3 years to attain a new standard, and control methodologies for exiting standards are more readily available, USEPA does not expect to approve attainment schedules that extend beyond 3 years from the date of plan approval.

The above policy is based on the fact that Section 110(a)(2)(A) allows areas 3 years to attain a new standard, after the date that USEPA approves a control strategy for that area. Additionally, this policy presumes that control methodologies for existing standards are readily available. USEPA cannot approve an attainment demonstration schedule that extends beyond 3 years unless: (1) controls are not readily available, or (2) the State first has to assess the adequacy of its existing RACT-level control program for industrial sources before determining whether additional control strategies and regulations must be developed. Given this situation, additional time may be provided for expeditious compliance with the new additional control strategies and regulations. These criteria will be used in reviewing Ohio's schedule.

In the above schedule, the State has committed to do air quality attainment demonstrations (in the form of short-term and long-term (annual) modeling) and to develop control strategies and additional regulations (if necessary) to provide that all areas in Ohio achieve attainment as expeditiously as possible but no later than 5¾ years for the primary standard and 6¾ years for the secondary standard from the date of plan approval. Thus, in 6¾ years or less, Ohio will have demonstrated full modeled attainment. USEPA's assessment of Ohio's schedule will be segmented into three parts: (1) the expeditiousness of the overall schedule; (2) the expeditiousness of the final attainment dates (as expeditously as possible but no later than 5¾ years for the primary standard and 6¾ years for the secondary standard), and (3) the date of USEPA's final approval of the TSP plan as the date when Ohio will initiate the schedule.

Expeditiousness of the Overall Schedule. USEPA believes the schedule

[1] USEPA modeling guidelines: Current USEPA modeling guidelines consist of the "Guideline on Air Quality Models" (April 1978) and "Regional Workshops on Air Quality Modeling: A Summary Report" (April 1981). These guidelines specify procedures for performing modeled attainment demonstrations. Please note that, on December 7, 1984 (49 FR 48018), USEPA proposed certain revisions to its modeling guidelines. Ohio EPA's modeling analysis shall conform to the guidelines that are in effect at the time the modeling actually begins.

is expeditious for two reasons. First, the required short-term and annual modeling analyses to be used by Ohio goes beyond what any other State has performed in the past to meet its TSP studies commitment. In making the judgment that the attainment demonstration schedule is expeditious, USEPA has taken into account the detailed nature of the inventory that is required for reference short-term and annual modeling analyses and the large number of areas within the State where the modeling will be performed. Second, where the modeling indicates that the rules being proposed for approval today are inadequate to meet the primary and secondary NAAQS, Ohio will be required to assess the adequacy of the existing control programs for individual sources where RACT is already in place to determine where additional control strategies and regulations must be developed. This may result in the implementation of innovative control technologies for these RACT sources, as well as for non-traditional sources that may never have been controlled before.

Expeditiousness of the Final Attainment Dates. The State's current schedule calls for attainment as expeditiously as possible, but no later than 5¾ years for the primary standard and 6¾ years for the secondary standard. Although this schedule will extend beyond 3 years from the date of plan approval, USEPA believes the schedules ensure the most expeditious attainment date because each of the steps leading to attainment have been evaluated by USEPA and determined to be the shortest feasible time frame for completing that task. The steps taken are: (1) determining the required level of control, (2) Establishing control requirements in State regulations, and (3) Implementing the required controls. Evidence of the shortest feasible time frame is Ohio's approach to having different compliance dates for sources that will require the installation of capital equipment (5¾ years) and those that are subject to open dust strategies (3¾ years). Sources that will be subject to the ultimate compliance date for the primary standard of 5¾ years (2¼ years to determine the required level of control and establish control requirements in State regulations and 3½ years for sources to implement the required controls) are those that require the installation of capital equipment. Time-consuming steps prior to installation, testing, and operation of capital equipment include: (1) Determining what equipment is needed, (2) designing the system to fit the plan, (3) purchasing the special equipment, (4) installing the equipment, (5) bringing the equipment on line, (6) working through "shake down" of the equipment, and (7) making any necessary process or equipment modifications based on actual operating experience. Open dust strategies will be implemented within 3¾ years (2¾ years to determine the required level of control and establish control requirements in State regulations and 1 year for sources to implement the required controls). Sources that will be subject to the ultimate compliance date for the secondary standard of 6¾ years (3¾ years to determine the required level of control and establish control requirements in State regulations and 3 years for sources to implement the required controls) are those which will require the installation of capital equipment. The secondary schedule is essentially parallel to the primary scheduled and the only reason it concludes one year later is because Ohio is concentrating its efforts in primary nonattainment areas and is beginning its efforts for the secondary standard one year later.

Date Ohio Will Initiate Schedule. Ohio has committed to begin implementation of its schedule upon the date of USEPA's final approval of the TSP plan. USEPA cannot find this commitment expeditious because it does not commit to initiating the schedule immediately. USEPA is aware of no justification of why Ohio should delay in implementing the schedule and, to assist Ohio in this effort, USEPA has made funding available.

USEPA notes that the State's commitment to proceed with the short-term and annual modeling analyses and adoption of additional control strategies is based upon the condition that, upon promulgation of a revised particulate matter standard, the requirement for special TSP modeling be rescinded. USEPA finds this condition acceptable.

Action

- USEPA proposes to approve Ohio's schedule which leads to attainment of the TSP NAAQS if, within 30 days of publication of today's notice, Ohio submits a letter to USEPA that commits to immediately initiate the schedule. If Ohio does not notify USEPA that it intends to immediately begin the schedule, then USEPA will take final action to disapprove that portion of Ohio's Part D plan.

USEPA considers the schedule to be an integral part of the Part D SIP; and upon USEPA's final rulemaking, Ohio's schedule will become part of the approved Ohio TSP SIP. Because of the significance of this schedule, USEPA will discuss (1) the ramifications of Ohio's not meeting the schedule milestones, and (2) the procedures USEPA will implement in reviewing Ohio's submittals under the schedule.

Ramifications of Ohio not meeting the schedule milestones. If Ohio fails to complete and submit any elements identified within the schedule, then USEPA is proposing today, without further notice, to:

- Take final rulemaking action to disapprove Ohio's Part D TSP plan for failure to comply with the conditions of approval, and
- Take final action citing Ohio for failure to carry out its Part D TSP plan, pursuant to Section 173(4) of the Clean Air Act.

Such action would result in the imposition of major source growth restrictions under both Section 110(a)(2)(I) and 173(4) of the Clean Air Act.

Procedures USEPA Will Implement in Reviewing Ohio's Submittals Under the Schedule. When Ohio submits its attainment demonstration and any rules incorporating additional necessary control measures to USEPA as SIP revisions, USEPA will propose rulemaking action on these submittals. Should USEPA ultimately disapprove these SIP revisions, then Ohio would no longer have an approved SIP as required by Part D of the Clean Air Act and the growth restrictions under Section 110(a)(2)(I) would be reimposed.

III. The Rationale for USEPA's Decision to Lift the Section 110(a)(2)(I) TSP Growth Restrictions

USEPA believes it would be appropriate to lift the Section 110(a)(2)(I) TSP growth restrictions in Ohio's primary nonattainment areas in conjunction with a conditional approval of the draft TSP plan. The terms of the conditional approval would be fully satisfied when the attainment demonstration is completed and approved by USEPA. USEPA would propose to lift the growth restrictions at the time of final conditional approval because continued imposition of the restrictions after such time would serve no further purpose in Ohio. The purpose of the section 110(a)(2)(I) restrictions is to encourage States that have failed in the planning process to expeditiously complete the planning necessary to provide for attainment of the primary NAAQS. Once Ohio initiates the described schedules, Ohio will be doing all that it can do by way of planning for attainment of the primary TSP NAAQS as expeditiously as possible. When the draft rules become final, Ohio will have stringent RACT requirements in place

for all traditional industrial sources. These RACT requirements will bring Ohio very close to attainment of the primary TSP NAAQS in most counties. When Ohio initiates its schedule, the State will be conducting a comprehensive short-term particulate emission inventory and both short-term and annual modeling analyses. Based upon these analyses, Ohio shall then develop a control strategy and impose additional requirements on sources as necessary to insure attainment of the NAAQS by the attainment dates established in the plan. Ohio will be conducting these activities as expeditiously as practicable. Continued imposition of growth restrictions would not serve to expedite Ohio's planning process or bring about attainment in any shorter time frame.

Lifting growth restrictions in Ohio would also bring the State into parity with other States with primary TSP nonattainment areas. In the 1979–1983 period, USEPA removed section 110(a)(2)(I) growth restrictions in many States in conjunction with conditional approval of TSP SIPs containing only RACT for traditional industrial sources and commitments to conduct studies on non-traditional sources. In some cases these plans did not contain any commitments to do modeling anlaysis or even to reach attainment by any given dates. Further, USEPA has not reimposed growth restrictions in these areas for failure to demonstrate attainment of the TSP NAAQS by the statutory deadline because USEPA has proposed to revise the primary particulate matter NAAQS by replacing the existing TSP indicator with a PM_{10} indicator. USEPA anticipates that final action on the revised PM_{10} NAAQS will impose significant new planning burdens on many primary nonattainment areas. Consequently, implementation of the revised PM_{10} NAAQS will proceed under section 110 rather than Part D. See 50 FR 13130 (April 2, 1985). As a result, the section 110(a)(2)(I) growth restrictions will no longer be applicable to particulate matter nonattainment areas. For these same reasons, USEPA believes that it would be inappropriate to continue to impose the restrictions in Ohio if it conditionally approves the draft TSP plan.

IV. USEPA's Proposed Action on the Overall Statewide Draft TSP SIP

The State of Ohio's draft statewide TSP plan is applicable to both the State's attainment and primary and secondary nonattainment areas. The acceptability of the statewide plan will be segmented into attainment and nonattainment areas.

Attainment Areas

For the attainment areas, the plan is based upon regulations that do not result in any relaxations from existing levels of control and will ensure continued attainment. Therefore, USEPA finds the plan for the attainment areas acceptable.

Nonattainment Areas, Where Part D is Applicable

For the nonattainment areas, where Part D is applicable, the rules limit emissions through the implementation of RACT on traditional stack and nonstack sources of particulate. In addition, the State has made a commitment to do an attainment demonstration and adopt any necessary additional controls. USEPA has determined that the State of Ohio's draft nonattainment TSP plan (1) contains TSP regulations that reflect acceptable RACT levels of control on all traditional sources, except for the PVC silos at the B.F. Goodrich Chemical Plant in Lorain County, Ohio, and (2) contains an acceptable commitment to do air quality attainment demonstrations and develop additional regulations (where necessary) to provide for attainment of the primary and secondary TSP standard within 5¾ years and the secondary within 6¾ years. The commitment, however, contains the date of USEPA's final approval of the TSP plan as the date when work on the air quality attainment demonstration will be initiated. In order to conditionally approve a SIP which is based on RACT plus a commitment to do an attainment demonstration, the SIP must include RACT on all industrial sources; and the attainment demonstration schedule must be initiated and completed expeditiously. As is discussed above, Ohio's plan meets these criteria with the following two exceptions: (1) RACT is not included on the PVC silos at the B.F. Goodrich Chemical Plant in Lorain County, and (2) Ohio has not committed to begin its attainment demonstration schedule expeditiously. Therefore, because Ohio's nonattainment plan does not include RACT on all industrial sources in Lorain County and does not begin its attainment demonstration schedule expeditiously, USEPA is proposing the following action on the plan:

- For the nonattainment areas within Lorain County, USEPA is proposing to disapprove the Part D TSP plan because the State does not have an approvable SIP for PVC silos. If, however, within the public comment period on today's notice the State submits as the Part D SIP for PVC silos an operating permit for the B.F. Goodrich Chemical Plant which controls actual emissions to 0.05 lbs/hr and also commits to immediately initiate its attainment demonstration schedule as discussed below, USEPA in its final rulemaking action on the entire Ohio Part D plan would approve this limit for B.F. Goodrich Chemical Plant and consequently conditionally approve the overall Part D SIP for Lorain County. If the State fails to submit the operating permit or schedule commitments, USEP will take final rulemaking action to disapprove Ohio's Part D TSP SIP for the nonattainment areas in Lorain County. This disapproval will result in the continuation of the growth restrictions under section 110(a)(2)(I) of the Clean Air Act in the Lorain County TSP nonattainment areas.
- For all of the nonattainment areas, except for Lorain County, USEAPA is proposing to conditionally approve the draft TSP plan and to lift the section 110(a)(2)(I) TSP growth restrictions in the State primary nonattainment areas, if, within the public comment period on today's notice, the State submits a letter to USEPA that commits to immediately initiate its attainment demonstration schedule. If Ohio does not submit such notification within 30 days, then USEPA in its final action on the Part D plan, will disapprove that portion of Ohio's plan. Such disapproval will result in the continuation of the section 110(a)(2)(I) growth restrictions.

USEPA is proposing these approvals on the condition that Ohio comply with the schedules for attainment established in the draft plan. The terms of the conditional approval will be fully satisfied when the attainment demonstration is completed and approved by USEPA.

Interested parties are invited to submit comments on this proposed approval, USEPA will consider all comments within 30 days of publication of this notice.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the Region V office listed at the beginning of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the attached rule will not have, if promulgated at the Federal level, a significant economic impact on a substantial number of small entities (See 46 FR 8709). At the time of USEPA's final rulemaking, the affected sources will be subject to the then

applicable provisions of the Ohio TSP regulations as a matter of State law. Thus, no additional requirements will be imposed upon these sources, at that time, as a result of adding these requirements to the Federal SIP.

Authority: 42 U.S.C. 7401–7642.

Dated April 10, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–29157 Filed 12–31–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 704 and 721

[OPTS–50559 and OPTS–82029; FRL–3137–5]

Trichlorobutylene Oxide; Epibromohydrin; Hexafluoropropylene Oxide; Proposed Significant New Uses of Chemical Substances; Submission of Notice of Manufacture, Import, or Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for trichlorobutylene oxide (TCBO) (CAS Number 3083–25–8), epibromohydrin (EBH) (CAS Number 3132–64–7), and hexafluoropropylene oxide (HFPO) (CAS Number 428–59–1). EPA believes that these substances may be hazardous to human health, and that the uses identified in this proposed rule may result in significant human exposure. As a result of this rule, certain persons who intend to manufacture, import, or process these substances for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, prohibit or limit that activity before it occurs.

EPA is also proposing under section 8(a) of TSCA that manufacturers, importers, and processors of HFPO who are not covered by the SNUR notification requirements notify EPA of manufacture, import, or processing of this chemical substance. Small businesses that manufacture, import, or process HFPO, and manufacturers and importers of HFPO who have previously reported on those activities under EPA's Preliminary Assessment Information Rule, would be exempt from the section 8(a) reporting rule.

DATE: Written comments on this proposed rule should be submitted by March 3, 1987.

ADDRESS: Comments should bear the docket control numbers OPTS–50559 and OPTS–82029 and should be submitted to: TSCA Public Information Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection in Rm. NE–G004 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

The Agency is proposing this rule pursuant to sections 5(a)(2) and 8(a) of TSCA, 15 U.S.C. 2604(a)(2) and 2607(a).

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use. The Agency must make this determination by rule after consideration of all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

Section 8(a) of TSCA authorizes the Administrator to promulgate rules which require each person, (other than a small manufacturer, importer, or processor) who manufacturers, imports, or processes or who proposes to manufacture, import, or process a chemical substance, to submit such reports as the Administrator may reasonably require.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** notice, and information. EPA is proposing that these general provisions apply to this rule except as specified in proposed §§ 721.320 and 721.324. On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, somg of which would apply to this SNUR.

General provisions applicable to section 8(a) rules were published in the **Federal Register** of May 25, 1983 (40 CFR Part 704, Subpart A). EPA is proposing that these general provisions apply to this rule.

III. Summary of This Proposed Rule

A. Significant New Use Rule

EPA is proposing to designate any use of TCBO, any use of EBH, and any use of HFPO other than as an intermediate in the manufacture of fluorinated substances in an enclosed process as significant new uses of these chemical substances. This proposed rule would require persons who intend to manufacture, import, or process TCBO, EBH, or HFPO for these significant new uses to notify EPA at least 90 days before beginning such manufacture, import, or processing.

EPA believes that the initiation of new manufacture, import, or processing of TCBO, EBH, or HFPO for the significant new uses described in this proposed rule has a high potential to increase the magnitude and duration of exposure to these substances and to change the type or form of exposure from that which

currently exists. These substances are members of the category of chemical substances known as halogenated alkyl epoxides. One member of this category, epichlorohydrin has been demonstrated to cause carcinogenic effects in rats and existing data show that it may also cause mutagenic, neurotoxic, and reproductive effects, as well as certain other chronic effects (e.g., liver and kidney effects). Based upon the similarity in chemical structure between epichlorohydrin and TCBO, EBH, and HFPO, EPA believes that these substances may exhibit similar toxic effects. Given the potential toxicity of these chemical substances, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to TCBO, EBH, or HFPO at levels which could result in adverse effects.

The consideration of these factors has resulted in EPA's decision to propose that certain uses of TCBO, EBH, or HFPO be designated significant new uses of these chemical substances. Persons intending to manufacture, import, or process TCBO, EBH, or HFPO for these significant new uses would be required to notify EPA 90 days before they begin such manfacture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to TCBO, EBH, or HFPO before they can occur.

B. Section 8(a) Rule

The proposed SNUR described above will ensure EPA is notified in the event that HFPO is manufactured, imported, or processed for any use other than as an intermediate in the manufacture of fluorinated substances in an enclosed process. However, persons who manufacture or import HFPO would not be required to report to EPA if the HFPO they were manufacturing or importing was to be used as an intermediate in the manufacture of fluorinated substances in an enclosed process. Persons could also use HFPO as an intermediate in the manufacture of fluorinated substances in an enclosed process, but certain portions of the processing operation (such as raw material transfer) could result in potentially high human exposures.

EPA has had the opportunity to evaluate the only ongoing use of HFPO, which is for the manufacture of fluorinated substances in an enclosed process, and exposures resulting from the manufacturing, importing, or processing HFPO for that use. No firms currently import HFPO. The sole firm that manufactures HFPO is also the only processor of the substance. That company utilizes personal protective practices and engineering controls that the Agency believes are sufficient to minimize exposure to HFPO.

However, EPA is concerned that future HFPO manufacturing, importing, and processing activities associated with this use could present the opportunity for increased human exposure to this chemical substance. Because the SNUR would not provide notification of future manufacturing, importing, and processing activities associated with this use, and because the substance is a possible human health hazard, EPA believes it is necessary to require reporting under TSCA section 8(a) if HFPO activities not covered by the SNUR are initiated.

EPA is therefore proposing that persons who intend to manufacture, import, or process HFPO for use as an intermediate in the manufacture of fluorinated substances in an enclosed process be required to notify EPA within 30 days after making the firm management decision to commit financial resources for the manufacturing, importing, or processing of HFPO.

Persons who manufactured, imported, or processed HFPO for use as an intermediate in the manufacture of fluorinated substances in an enclosed process as of the effective date of the final rule would be exempt from reporting, provided those persons had already reported to EPA on such activities under section 8(a) of TSCA. On June 22, 1982 (47 FR 26998) the Agency required manufacturers and importers of HFPO to report on their activities using a "Preliminary Assessment Information Manufacturer's Report" (EPA Form 7710–35). The current manufacturer (and processor) of HFPO provided considerable information about the facility's manufacturing and processing engineering practices, special personal protective practices that are undertaken at that facility, and the results of workplace monitoring to determine atmospheric concentrations of HFPO. EPA is proposing to exempt this facility from reporting because the Agency has had the opportunity to evaluate these previously reported HFPO activities, and has found that adequate steps are being taken to minimize human exposure.

Small manufacturers (including importers) as described at 40 CFR 704.3 would be exempt from reporting under the section 8(a) rule. Processors meeting the same size standards as those described for small manufacturers at 40 CFR 704.3 would also be exempt from reporting (see proposed § 704.104(a)(4)). Small business exemptions do not apply to reporting under the SNUR.

EPA proposes to require that persons who are subject to the section 8(a) rule submit a Premanufacture Notice Form (EPA Form 7710–25). A copy of that form can be found at 40 CFR Part 720, Appendix A.

IV. Discussion of Chemical Substances

A. Background

Section 4(e) of TSCA established an Interagency Testing Committee (TC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated the category of halogenated alkyl epoxides for priority consideration in its Second Report, published in the **Federal Register** of April 19, 1978 (43 FR 16684). The ITC defined this category as "halogenated noncyclic aliphatic hydrocarbons with one or more epoxy functional groups." Seven specific compounds in this category are discussed in the ITC report: epichlorohydrin, 1,1,1-trichloro-2,3-epoxy-propane (TCPO), 1-4-dichloro-2,3-epoxybutane (DCBO), tetrafluoro-ethylene oxide (TFEO), TCBO, EBH, and HFPO.

The ITC recommended that halogenated alkyl epoxides be considered for testing for carcinogenicity, mutagenicity, teratogenicity, and other chronic effects. The ITC also recommended that epidemiology studies be considered. The ITC's recommendations for this category were based on high production levels for one member of this category (500 million pounds per year for epichlorohydrin), a National Institute for Occupational Safety and Health estimate of between 50,000 to 140,000 workers exposed to epichlorohydrin each year, expected increases in the use of other halogenated alkyl epoxides, and limited studies on the oncogenic, mutagenic, teratogenic, and other chronic effects of members of this category of substances.

In the **Federal Register** on December 30, 1983 (48 FR 57695), EPA published a "decision not to test" 6 of the halogenated alkyl epoxides.

B. Epichlorohydrin

EPA decided that testing of epichlorohydrin was not necessary because the oncogenic and mutagenic effects of this chemical substance are already well documented. Epichlorohydrin has been reported to produce carcinomas of the nasal cavity, squamous cell hyperplasia, papillomas,

and carcinomas of the forestomach, and squamous cell carcinomas of the oral cavity in rats. There are also extensive data on the nutagenicity of epichlorohydrin, demonstrating gene mutations and chromosomal aberrations both *in vivo* and *in vitro*. In light of the available data for epichlorohydrin, EPA considers all of the members of the halogenated alkyl epoxide category to present a potential health hazard to humans should exposures occur.

C. TCPO, DCBO, and TFEO

EPA decided that the testing of TCPO, DCBO, and TFEO was not appropriate because none of these three substances is listed on the TSCA inventory. If a person decided to manufacture, import, or process one of these three substances, they would be subject to the PMN requirements of 40 CFR Part 720. The PMN requirements are essentially the same as the reporting requirements under a SNUR.

D. TCBO and EBH

TCBO and EBH are both listed on the TSCA inventory. EPA surveyed the companies reporting production for the original inventory, and found that TCBO is not currently being manufactured, imported, or processed, and EBH is being produced in quantities of 25 pounds or less solely for research and development. In the case of these two chemical substances, EPA does not believe that testing currently is warranted in light of the low production volume, low levels of exposure, and limited number of persons exposed. EPA therefore decided to monitor changes in exposures to TCBO and EBH with a SNUR instead of promulgating a test rule at this time.

E. HFPO

Also in the **Federal Register** of December 30, 1983 (48 FR 57686), EPA proposed to require oncogenicity, mutagenicity, and reproductive effects testing for HFPO. One commenter on that proposed rule argued that: (1) Only one company manufactures, imports, or processes HFPO, (2) extensive engineering and personal protective controls are used in HFPO manufacturing, importing, and processing operations, and (3) the cost of the proposed health effects testing was prohibitive in light of the relatively low production volume of HFPO, the low levels of exposure, and the limited number of persons exposed. For these reasons, EPA decided to monitor changes in exposures to HFPO with a combined SNUR/section 8(a) rule instead of promulgating a final test rule for HFPO at this time.

V. Alternatives

Before proposing this rule, EPA considered alternative regulatory actions.

1. One alternative would be to promulgate only a section 8(a) reporting rule for these substances. Under such a rule, EPA could require any person to report information to EPA when they intend to manufacture, import, or process TCBO, EBH, or HFPO. However, in the case of these particular substances, the use of section 8(a) rather than SNUR authority could have several drawbacks. First, EPA would not be able to take immediate follow-up regulatory action under section 5(e) or 5(f) to prohibit or limit the activity. In addition, EPA may not receive important information from small businesses, because such firms are generally exempt from section 8(a) reporting requirements. In view of the level of health and environmental concern for TCBO, EBH, and HFPO, the Agency believes that a section 8(a) rule for those substances would not meet EPA's regulatory objectives as effectively as would a SNUR.

In the case of HFPO, a SNUR alone would not ensure that the Agency was notified in every instance of new manufacture, import, or processing, since there is an ongoing use associated with the substance. Therefore, EPA is proposing combined significant new use and section 8(a) reporting for HFPO. The limitations of reporting under section 8(a) described above would still exist in cases where the HFPO was manufactured, imported, or processed for use in the manufacture of fluorinated substances in an enclosed process. However, EPA has evaluated current manufacture and processing for this ongoing use and has determined that the requirement for special engineering equipment in manufacturing and processing HFPO for this use makes it unlikely that small businesses would engage in manufacture, importation, or processing for this use.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacturing, importing, or processing operations at this time to enable EPA to make a conclusive determination of risk. Therefore, the Agency is not able at this time to take action under section 6 to regulate TCBO, EBH, or HFPO.

VI. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of the SNUR were considered ongoing as of the date of promulgation, it would be difficult for the Agency to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final; this would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of TCBO, EBH, or HFPO for a significant new use designated in this rule between proposal and promulgation of the SNUR would have to cease that activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions expires.

EPA recognizes that this interpretation of section 5 may disrupt the commercial activities of persons who begin manufacturing, importing, or processing TCBO, EBH, or HFPO for a significant new use during the proposal period of this SNUR. However, this proposed rule constitutes notice of the potential disruption, and persons who commence the proposed significant new use prior to promulgation of the SNUR do so at their own risk.

The Agency does not wish to disrupt unnecessarily the commercial activities of persons who manufacture, import, or process TCBO, EBH, or HFPO for a proposed significant new use prior to promulgation of thie SNUR. EPA therefore has proposed a new § 721.18(h) in Subpart A of Part 721 (51 FR 15105, April 22, 1986) to allow for advance compliance with SNURs (i.e., compliance prior to the date of promulgation).

VII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential risks to human health that may be posed by a significant new use of TCBO, EBH, or HFPO, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of risks posed by these substances when utilized for an intended use. The Agency believes that the results of carcinogenicity, mutagenicity, reproductive effects, and other chronic effects testing would help characterize the principal potential adverse human health effects of concern to the Agency. These studies may not be the only means of addressing potential risks. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substances. Test data should be developed according to TSCA Good Laboratory Practices Standards at 40 CFR Part 972. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health or environmental effects of the substances.

EPA urges SNUR notice submitters to provide detailed information on human exposure and environmental release that may result from the significant new use of TCBO, EBH, or HFPO. In addition, EPA urges persons to submit information on potential benefits of the substances and information on risks posed by the substances compared to risks posed by potential substitutes.

VIII. Economic Impact

The Agency has evaluated the potential costs of establishing notice requirements for potential manufacturers, importers, and processors of TCBO, EBH, or HFPO.

A. Significant New Use Rule

After promulgation of this SNUR, the Agency believes there are two possible courses of action for a person who intends to manufacture, import, or process TCBO, EBH, or HFPO for a significant new use: (1) File a notice with information describing the method of controlling exposures that would mitigate health and environmental concerns; or, (2) not initiate the significant new use of TCBO, EBH, or HFPO.

In some circumstances it may be cost-effective for a person to file a notice with data that show there exist means of controlling exposures (e.g., personal protective equipment or engineering controls) that would mitigate EPA's health concerns. In this case, the company incurs the costs of filing a notice ($1,400 to $8,000) and possibly the cost of utilizing exposure controls that, without the existence of this rule, would not have been used. These costs cannot be quantified at this time, since industrial processes and exposure controls vary among companies. The company may also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing and the cost of regulatory follow-up, if any.

A person may find the cost of controlling exposures too expensive to justify the manufacutre, import, or processing of TCBO, EBH, or HFPO for the significant new use. This outcome does not result in any direct costs, but the prospective manufacturer, importer, or processor may lose benefits that would have been derived from such manufacture, import, or processing of TCBO, EBH, or HFPO. EPA cannot quantify these potential lost benefits because EPA cannot reasonably anticipate the future level of use of these chemical substances, the profit margins of these uses, and other related factors.

B. Section 8(a) Rule

Firms subject to section 8(a) reporting for HFPO would be required to submit the required information on the same reporting form as required for significant new use reporting. The costs for a section 8(a) reporting would be the same as for significant new use reporting, described above. There are no exposure control costs or delay costs.

The Agency's complete economic analysis is available in the public record for this rule (OPTS-50559 and OPTS-82029).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control numbers OPTS-50559 and OPTS-82029). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. Economic analysis of combined significant new use rule for epibromohydrin, 1,1,1-trichloro-3,4-epoxybutane, and hexafluoropropylene oxide and section 8(a) rule for hexafluoropropylene oxide.
2. Hexafluoroproylene Oxide Proposed Test Rule. **Federal Register**, December 30, 1983. (48 FR 57686).
3. Halogenated Alkyl Epoxides Response to the Interagency Testing Committee. **Federal Register**, December 30, 1986. (48 FR 57695).
4. Second Report of the Interagency Testing Committee; Receipt and Request for Comments. **Federal Register**, April 19, 1978. (43 FR 16684).
5. E.I. du Pont de Nemours & Company. Comments on Hexafluoroproylene Oxide Proposed Test Rule. March 28, 1984.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this proposed rule would not be a "major" rule because it will not have an effect on the economy of $100 million or more, and would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a notice would be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substances involved, there would be few notices submitted. Furthermore, while the expanse of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few notices for the substances. Therefore, the Agency

believes that the number of small businesses affected by this rule would not be substantial, even if all notice submitters were small firms.

The section 8(a) rule for HFPO will exempt "small" manufacturers (as defined in 40 CFR 704.4) and "Small" processors from reporting on this chemical substance.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2070–0067 and 2070–0038. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 704 and 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 23, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 704—[AMENDED]

1. In Part 704:

a. The authority citation for Part 704 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

b. By adding a new § 704.104 to Subpart B to read as follows:

§ 704.104 Hexafluoropropylene oxide.

(a) *Definitions.* (1) "HFPO" means the chemical substance hexafluoropropylene oxide, CAS Number 428–59–1.

(2) "Enclosed process" means a process that is designed and operated so that there is no intentional release of a chemical substance. In an enclosed process, only fugitive or inadvertent releases occur, and special measures are taken to prevent worker exposure and environmental contamination.

(3) "Small processor" means a processor that meets either the standard in paragraph (a)(3)(i) of this section or the standard in paragraph (a)(3)(ii) of this section.

(i) *First standard.* A processor of a chemical substance is small if its total annual sales, when combined with those of its parent company, if any, are less than $40 million. However, if the annual processing volume of a particular chemical substance at any individual site owned or controlled by the processor is greater than 45,400 kilograms (100,000 pounds), the processor shall not qualify as small for purposes of reporting on the processing of that chemical substance at that site, unless the processor qualifies as small under paragraph (a)(3)(ii) of this section.

(ii) *Second standard.* A processor of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of the particular chemical substance processed by that company.

(iii) *Inflation index.* EPA will use the Inflation Index described in the definition of "small manufacturer" that is set forth in § 704.3 for purposes of adjusting the total annual sales values of this small processor definition. EPA will provide **Federal Register** notification when changing the total annual sales values of this definition.

(b) *Persons who must report.* Except as provided in paragraph (c) of this section, the following persons are subject to this section:

(1) Persons who manufacture or propose to manufacture HFPO for use as an intermediate in the manufacture of fluorinated substances in an enclosed process.

(2) Persons who import or propose to import HFPO for use as an intermediate in the manufacture of fluorinated substances in an enclosed process.

(3) Persons who process or propose to process HFPO as an intermediate in the manufacture of fluorinated substances in an enclosed process.

(c) *Persons not subject to this rule.* The following persons are not subject to this rule:

(1) Small processors.

(2) Persons described in § 704.5(a) through (d).

(3) Persons who have already submitted to EPA a completed copy of the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35, as described at § 712.28 of this Chapter) for HFPO, as required by § 712.30(d) of this Chapter are not required to report under this section with respect to activities previously reported on.

(d) *What information to report.* Persons identified in paragraph (b) of this section must submit a Premanufacture Notice form (EPA Form 7710–25) as described in Part 720, Appendix A, of this Chapter.

(e) *When to report.* (1) Persons who are manufacturing, importing, or processing, or who propose to manufacture, import, or process HFPO for use as an intermediate in the manufacture of fluorinated substances in an enclosed process as of [the effective date of the final rule] must report by [60 days after the effective date].

(2) Persons who propose to manufacture, import, or process HFPO for use as an intermediate in the manufacture of fluorinated substances in an enclosed process after [the effective date of the final rule] must report within 30 days after making a firm management decision to commit financial resources for the manufacturing, importing, or processing of HFPO.

(f) *Recordkeeping.* Persons subject to the reporting requirements of this section must retain documentation of information contained in their reports for a period of 5 years from the date of submission of the reports.

(g) *Where to send reports.* Reports must be submitted by certified mail to: Document Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, NE–G004, 401 M Street, SW., Washington, DC 20460. ATTN: HFPO Reporting.

PART 721—[AMENDED]

2. In Part 721:

a. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

b. By adding a new § 721.320 to Subpart B to read as follows:

§ 721.320 Epibromohydrin.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance epibromohydrin, CAS Number 3132–64–7, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

c. By adding a new § 721.324 to Subpart B to read as follows:

§ 721.324 Trichlorobutylene oxide.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance trichlorobutylene oxide (TCBO), CAS Number 3083-25-8, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved.]

d. By adding a new § 721.347 to Subpart B to read as follows:

§ 721.347 Hexafluoropropylene oxide.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance hexafluoropropylene oxide (HFPO), CAS Number 428-59-1, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use other than as an intermediate in the manufacture of fluorinated substances in an enclosed process.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Definitions.* In addition to the definitions in § 721.3, the following definitions apply to this section:

(i) "Enclosed process" means a process that is designed and operated so that there is no intentional release of a chemical substance. In an enclosed process, only fugitive or inadvertent releases occur, and special measures are taken to prevent worker exposure and environmental contamination.

(ii) [Reserved.]

(2) [Reserved.]

[FR Doc. 86-29492 Filed 12-31-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program

AGENCY: Federal Emergency Management Agency [FEMA].

ACTION: Proposed rule.

SUMMARY: This proposed rule would make two revisions in the coverage for condominiums under the Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program. One of the proposed revisions responds to FEMA's discovery that the declarations and bylaws of some condominium associations provide for an assessment of unit owners in one condominium building for damage to the common building elements in other condominium buildings of the association by adding coverage for such an assessment to the SFIP Dwelling Form. The other proposed revision clarifies the relationship of the coverage for condominium unit owners to the coverage for the condominium association, which should facilitate the claims adjustment process.

DATE: Comments must be received on or before March 3, 1987.

ADDRESS: Send comments to—Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472; telephone number [202] 646-3422.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number [202] 646-3422.

SUPPLEMENTARY INFORMATION: The Standard Flood Insurance Policy (SFIP), Dwelling Form, provides building coverage for a residential condominium unit and for the commonly owned condominium building elements in the condominium building in which the residential condominium unit is located, to the extent that flood damage is not paid for under an insurance policy issued to the condominium association and to the extent that the residential condominium unit owner is responsible for paying for the flood damage under the condominium association's declarations and bylaws. This proposed rule would make two changes to this coverage by mandatory endorsements to be added to Dwelling Form policies and to General Property Form (the SFIP form issued to condominium associations) policies.

One proposed change was occasioned by FEMA's discovery that the declarations and bylaws of some condominium associations provided for an assessment of unit owners in one condominium building for damage to the common building elements in other condominium buildings of the association. This proposed change would add coverage for such an assessment to the Dwelling Form coverage, so long as the other condominium buildings are insured under the NFIP (directly or with a Write-Your-Own insurance company) in the name of the condominium association in an amount at least equal to the actual cash value of each building's common elements or the maximum building coverage limits available under the NFIP, whichever is less. This proposed coverage under the Dwelling Form for the common elements of other buildings of the condominium association would be subject to any condominium association coverage being primary, as is the case for the existing Dwelling Form coverage for the common elements of the building in which the insured unit is located (see discussion below).

The other proposed change merely clarifies the relationship of coverage under the Dwelling Form (issued to individual unit owners) to condominium association coverage (if NFIP coverage, the General Property Form) for the same items. The building coverage of the General Property Form responds to building elements owned in common by the condominium association members and if those limits are not exhausted, to building items within the individual condominium units, as well as to installed appliances for heating, cooling, plumbing, and electrical purposes in the individual units. The National Flood Insurance Program (NFIP) only pays, under the residential unit owner's coverage (Dwelling Form), for covered flood damage not paid for under any condominium association coverage, whether provided under the NFIP (directly or with a Write-Your-Own insurance company) or otherwise. This proposed change clarifies this by adding a provision in the Dwelling Form that any condominium association coverage must respond *before* payment is made under the unit owner's policy (Dwelling Form). In the event that a payment is inadvertently made first under a unit owner's NFIP policy (Dwelling Form), or under a unit owner's policy that is not a NFIP policy, this proposed change includes the addition of a provision to the General Property Form that there will be no payment under the General Property Form for anything already paid

for under any insurance in the name of a condominium unit owner. Thus, a unit owner cannot receive the benefit of payment under different policies for the same damage.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule does not significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

This proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collection of information requirement as defined in section 3502 of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, it is proposed to amend 44 CFR Chapter 1, Subchapter B as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Appendix A(3) is added to Part 61 as a mandatory endorsement to Appendix A(1) to read as follows:

Appendix A(3)

Mandatory Endorsement to Appendix A(1)

Federal Emergency Management Agency, Federal Insurance Administration

Dwelling Form Endorsement 1

1. The Insuring Agreement (appearing immediately before Article I) is hereby amended by adding within the parentheses after "42 U.S.C. 4001 *et seq.*" the phrase ", hereinafter called the Act".

2. Paragraph A.1 of Article IV is hereby amended by deleting the semicolon after the words "building's common elements" and substituting in its place the following: "and the common elements of any other building of your condominium association covered by insurance that is (i) in the name of your condominium association, (ii) under the Act, and (iii) in an amount at least equal to the actual cash value of each building's common elements or the maximum building coverage limit available under the Act, whichever is less; provided that the insurance under this policy shall be excess over any insurance in the name of your condominium association covering the same property covered by this policy; and".

3. Appendix A(4) is added to Part 61 as a mandatory endorsement to Appendix A(2) to read as follows:

Appendix A(4)

Mandatory Endorsement to Appendix A(2)

Federal Emergency Management Agency, Federal Insurance Administration

General Property Form Endorsement 2

Nonduplication of Condominium Coverage. If the named Insured on this policy is a condominium association, the Insurer shall not be liable for any loss or any portion of any loss for which payment is made under any insurance in the name of any condominium unit owner, i.e., any member of the condominium association.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 86-29025 Filed 12-31-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-450, RM-5382]

Radio Broadcasting Services; Monticello, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Edward A. Holderly proposing the allotment of FM Channel 299A to Monticello, Indiana as that community's second FM channel. We also propose herein to reallocate FM Channel 237A from Logansport, Indiana to Monticello, Indiana to reflect its actual usage in the community.

DATES: Comments must be filed on or before February 13, 1987 and reply comments on or before March 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Edward A. Holderly, R.R. #2, Box 404, Monticello, Indiana 47960 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-450, adopted November 14, 1986, and released December 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-29422 Filed 12-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-449, RM-5479]

Radio Broadcasting Services; Thomaston, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Donna Lee Knauer, proposing the allocation of FM Channel 295B to Thomaston, Maine, as that community's first FM broadcast service. Canadian concurrence is required for the allocation of this channel.

DATES: Comments must be filed on or before February 13, 1987, and reply comments on or before March 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donna Lee Knauer, 175 Chestnut Street, Randolph, Massachusetts 02368.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–449, adopted November 14, 1986, and released December 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–29423 Filed 12–31–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–447, RM–5427]

Radio Broadcasting Services; Newberry, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Leon B. Van Dam, proposing the allocation of FM Class B1 Channel 250 to Newberry, Michigan. This proposal could provide a second broadcast service to Newberry. Canadian concurrence is required for the allotment of this channel.

DATES: Comments must be filed on or before February 13, 1987, and reply comments on or before March 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Leon B. Van Dam, P.O. Box 152, Newberry, Michigan 49868.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–447, adopted November 10, 1986, and released December 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–29424 Filed 12–31–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–451, RM–5461]

Radio Broadcasting Services; Taft, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition to allocate Channel 262A to Taft, Oklahoma, as the community's first local FM service, at the request of Tareeca J. McKee. A site restriction of 5.1 kilometers (3.2 miles) southwest is required.

DATES: Comments must be filed on or before February 13, 1987, and reply comments on or before March 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Tareeca J. McKee, P.O. Box 1329, Muskogee, Oklahoma 74402.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket adopted November 14, 1986, released December 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission considering or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

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

[FR Doc. 86–29425 Filed 12–31–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-448, RM-5410]

Radio Broadcasting Services; Centerville, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mid-America Gospel Radio Network, Inc., licensee of Station KGGL(FM), Channel 288A, proposing the substitution of Channel 289C2 for Channel 288A at Centerville, Utah, in order to provide that community with its first wide coverage FM station.

DATES: Comments must be filed on or before February 13, 1987, and reply comments on or before March 2, 1987.

ADDRESS: Federal Communications Commission Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Howard J. Braun, Esquire, Russel C. Balch, Esquire, Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue, NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket adopted November 14, 1986, and released December 15, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-29426 Filed 12-31-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 1
Friday, January 2, 1987

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

Forms Under Review by Office of Management and Budget

December 26, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250 (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Plan for Estimating Daily Livestock Slaughter Under Federal Inspection
Daily
Businesses or other for-profit; 40,820 responses; 680 hours; not applicable under 3504(h)
James A. Ray (202) 447-6231

• Federal Crop Insurance Corporation
Claim for Peach Indemnity
FCI-63-Peach
On occasion
Individuals or households; Farms; 100 responses; 50 hours; not applicable under 3504(h)
Peter F. Cole (202) 447-3325

• Federal Crop Insurance Corporation
Regulations—Crop Insurance Program
Recordkeeping; On occasion
Individuals or households; Farms; 75,000 responses; 12,818 hours; not applicable under 3504(h)
Peter F. Cole (202) 447-3325

• Federal Crop Insurance Corporation
Field Inspection and Claim for Indemnity
FCI-74, FCI-74T-P-C, FCI-63-APPLES
On occasion
Individuals or households; Farms; 528,000 responses; 132,000 hours, not applicable under 3504(h)
Peter F. Cole (202) 447-3325

Revision

• Farmers Home Administration
7 CFR 1944-E, Rural Rental Housing Loan Policies, Procedures and Authorizations
FmHA 1944-7, -33, -34, -35
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 21,405 responses; 139,456 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

• National Agricultural Statistics Service
Fruit, Nut and Specialty Crops
On occasion; Monthly; Annually
Farms; Business or other for-profit; 52,992 responses; 14,979 hours; not applicable under 3504(h)
Larry Gambrell (202) 447-7737

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 86-29415 Filed 12-31-86; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of the Farwe l (TX) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Farwell Grain Inspection Company (Farwell) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: February 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Farwell's designation terminates on January 31, 1987, and requested applications for official agency designation to provide official services within a specified geographic area in the August 1, 1986, **Federal Register** (51 FR 27573). Applications were to be postmarked by September 2, 1986. Farwell was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant name and requested comments on the same in the October 1, 1986, **Federal Register** (51 FR 35015). Comments were to be postmarked by November 17, 1986. No comments were received regarding Farwell's designation renewal.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Farwell is able to provide official services in the geographic area for which the Service is renewing its designation. Effective

February 1, 1987, and terminating January 31, 1990, Farwell will provide official inspection services in its entire specified geographic area, previously described in the August 1 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agency at the following address: Farwell Grain Inspection Company, 112 9th Street, P.O. Box 488, Farwell, TX 79325.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 11, 1986.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 86-29319 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Barton & Gray (KY) and North Dakota (ND) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Barton & Gray Grain Inspection Service, Inc., and North Dakota Grain Inspection Service, Inc.

DATE: Applications to be postmarked on or before February 2, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Barton & Gray Grain Inspection Service, Inc. (Barton & Gray), 121 Pearl Street, P.O. Box 91, Owensboro, KY 42301, and North Dakota Grain Inspection Service, Inc. (North Dakota), 1601 Seventh Avenue North, Fargo, ND 58102, were each designated under the Act as an official agency to provide inspection functions on July 1, 1984.

Each official agency's designation terminates on June 30, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Barton & Gray in the States of Indiana and Kentucky, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Indiana, Perry and Spencer Counties.

In Kentucky,

Bounded on the North by the northern Daviess and Hancock County lines;

Bounded on the East by the eastern Hancock, Ohio, and Muhlenberg County lines;

Bounded on the South by the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; and

Bounded on the West by State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

The geographic area presently assigned to North Dakota in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Steele County line from State Route 32 east; the eastern Steele County line south to State Route 200; State Route 200 east-southeast to the State line;

Bounded on the East by the eastern North Dakota State line;

Bounded on the south by the southern North Dakota State line west to State Route 1; and

Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

An exception to the described geographic area is the following location situated inside North Dakota's area which has been and will continue to be serviced by Grain Inspection, Inc.: Norway Spur and Oakes Grain, Oakes, Dickey County.

Interested parties, including Barton & Gray and North Dakota, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning July 1, 1987, and ending June 30, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 11, 1986.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 86-29321 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Chattanooga (TN) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Chattanooga Grain Inspection Company, Inc. (Chattanooga).

DATE: Comments to be postmarked on or before February 16, 1987.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the November 3, 1986, **Federal Register** (51 FR 39881). Applications were to be postmarked by December 3, 1986. Chattanooga was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 11, 1986.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 86-29320 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Intent To Prepare an Environmental Impact Statement for the Burnt Mountain Expansion of the Snowmass Ski Area, White River National Forest, Pitkin County, CO

The Forest Service, in cooperation with other Federal, State, and Local agencies, will prepare an Environmental Impact Statement concerning expansion of the Snowmass Ski area onto Burnt Mountain.

The Aspen Skiing Company proposes development on public land adjacent to the existing Snowmass Ski Area. The area proposed for development is commonly known as Burnt Mountain and is included in the Snowmass Ski Area Special Use Permit issued by the Forest Service on September 17, 1965. Burnt Mountain is located within the corporate limits of the town of Snowmass Village. Construction of seven new lifts, three new on-mountain restaurants, and a mountain capacity of 6,600 skiers-at-one-time are proposed.

The White River National Forest completed a detailed environmental analysis of the proposal in 1985 and documented the analysis in an Environmental Assessment. Subsequently, the decision was made to prepare an Environmental Impact Statement. The proposal is consistent with the *Land and Resource Management Plan* of the White River National Forest.

The alternatives of no action and of permitting development as proposed will be analyzed. As scoping progresses, additional mountain development alternatives may be identified for analysis. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Federal, State, and local agencies; potential developers; and individuals or organizations interested in or affected by the proposal are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The Forest Service has scheduled a public scoping meeting to identify issues and concerns related to the proposal on January 28, 1987, 7:00 p.m., Snowmass Conference Center (Kearns Room), Town of Snowmass Village, Colorado.

The draft Environmental Impact Statement is expected to be available for public review in July 1987. The final Environmental Impact Statement is scheduled to be filed by January 31, 1988. A Record of Decision will be ised by the USDA Forest Service when the final Environmental Impact Statement is released. If the decision is to allow development, construction could begin in the spring 1988.

Richard E. Woodrow, Supervisor, White River National Forest, is the responsible official.

Questions and comments about the proposed action and Environmental Impact Statement should be directed to William Johnson, District Ranger, Aspen Ranger District, 806 W. Hallam, Aspen, Colorado 81611, phone 303-925-3445.

Dated: December 23, 1986.

Daniel A. Wagner,

Acting Forest Supervisor.

[FR Doc. 86-29473 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

South Mississippi Electric Power Association; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact relating to the construction of a 161 kV transmission facility in Perry, Greene, and George Counties, Mississippi.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construction of a 48 km (30 miles), 161 kV transmission line on wood H-frame support structures, expansion of a 161/69 kV substation and construction of a new 161/69 kV substation in southeastern Mississippi. South

Mississippi Electric Power Association (SMEPA) of Hattiesburg, Mississippi, has requested approval of financing assistance from REA.

FOR INFORMATION CONTACT: Frank W. Bennett, Director, Southeast Area—Electric, Room 0256, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8434.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request from SMEPA of approval of financing assistance to enable SMEPA to construct the project, required that SMEPA develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed projects and that the impacts are acceptable. The project will allow SMEPA to continue to meet its responsibilities to serve part of its load in a reliable and economical manner.

The length of the proposed transmission line is approximately 48 km (30 miles). It originates at the existing Hintonville Substation in Perry County and traverses across Greene County to the proposed Benndale Substation in George County. The proposed project includes the expansion of the 161/69 kV Hintonville Substation to add the necessary switch gear and protective equipment to provide a 161 kV circuit to the proposed Benndale Substation. The Benndale Substation will step the 161 kV down to 69 kV for interconnection with existing 69 kV transmission facilities in the area. The single circuit 161 kV line will require 30 m (100 ft) of new right-of-way (ROW) for the first 6 km (3.8 miles) from Hintonville and the widening of an existing ROW by 23 m (75 ft) the rest of the length. The new Benndale Substation will require 1.5 ha (3.7 ac) of area that will be cleared and fenced to accommodate the facility. The Hintonville expansion will require approximately 9 m (30 ft) of setback on one side of the existing fence.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains of numerous streams, wetlands, and prime farmlands are located in the preferred ROW. Some transmission line support structures may be located within these areas; however, neither the substation expansion or new substation construction will be located in the 100-year floodplain or wetlands. There is no practicable alternative action that would avoid or reduce the amount of impact to 100-year floodplain or wetlands. The prime farmland in Perry and George Counties (no prime farmland will be affected in Greene County) was rated on the U.S. Department of Agriculture's "Farmland Conversion Impact Rating." The accumulated point value of the prime farmlands was so low as not to warrant the consideration of alternatives to avoid these lands pursuant to the Farmland Protection Policy, 7 CFR Part 658.

Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action and upgrading the existing system. Alternative line routes, structure types and methods of delivery were also evaluated. REA determined that there is a demonstrated need for the project and constructing it within the preferred ROW is an environmentally acceptable project to meet the needs of SMEPA.

REA has reviewed the BER and believes it represents a fair and accurate evaluation of the proposed project and its potential impacts. As a result of its independent evaluation, REA has adopted SMEPA's BER as its Environmental Assessment (EA) and has concluded that REA approval of financing assistance to SMEPA to enable it to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the proposed project.

Copies of REA's EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0256, 14th Street and Independence Avenue SW., Washington, DC 20250 or at the office of SMEPA located on Highway 49 North, Hattiesburg, Mississippi 39404.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, SMEPA published notices in newspapers with a general circulation in the 3 counties where the project will be located. The notices advised the public of potential impacts to wetlands and floodplains and announced the availability of the BER. The public was given at least 30 days to respond to the notice. No responses to the notices were sent to SMEPA or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8509-Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Dated: December 24, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-29419 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals 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: Pacific Tuna Fisheries
Form Number: Agency—N/A; OMB—0648-0148
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 146 respondents; 1,653 reporting hours
Needs and Uses: The United States participation in the Inter-American Tropical Tunas Convention (IATTC) results in certain reporting requirements for U.S. fishermen who fish in the Commission's area of management responsibility. The data are used by the National Marine Fisheries Service and IATTC biologists to determine the effects of fishing and natural factors on tuna abundance. Results form the basis of management decisions
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Daily
Respondent's Obligation: Mandatory
OMB Desk Officer: Donald Arbuckle, 395-7340

Agency: National Oceanic and Atmospheric Administration
Title: Report of Observation/Samples Collected by Oceanographic Programs
Form Number: Agency—NOAA 24-23; OMB—0648-0033

Type of Request: Extension of the expiration date of a currently approved collection
Burden: 30 respondents; 100 reporting hours
Needs and Uses: The United Nations Education, Scientific, and Cultural Organization sponsors an international marine data inventory. NOAA is the U.S. participant in the inventory program. The information provided by scientists to NOAA is used to maintain an international inventory of research activities
Affected Public: State or local governments; federal agencies or employees; non-profit institutions
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Donald Arbuckle, 395-7340

Agency: National Oceanic and Atmospheric Administration
Title: National Oceanographic Data Center Documentation Form
Form Number: Agency—NOAA-24-13; OMB—0648-0024
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 300 respondents; 750 reporting hours
Needs and Uses: NOAA's National Oceanographic Data Center is the national archive and permanent data base for marine environmental data (physical, chemical, and biological). Marine scientists providing data to the Center submit a form describing the nature and format of the data
Affected Public: State or local governments; federal agencies or employees; non-profit institutions
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Donald Arbuckle, 395-7340

Agency: National Oceanic and Atmospheric Administration
Title: Certification of Exemption Renewal
Form Number: Agency—N/A; OMB—0648-0078
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 38 respondents; 58 reporting hours
Needs and Uses: The Endangered Species Act of 1973 prohibits the interstate sale of products composed in whole or in part of any officially designated endangered species of fish or wildlife. However, for pre-act products, Certificates of Exemption are granted by the Department. NOAA uses the information provided to monitor compliance with the law by distinguishing legitimate trade items from illegitimate ones
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Quarterly, other (every 3 years)
Respondent's Obligation: Mandatory
OMB Desk Officer: Donald Arbuckle, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, 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 Donald Arbuckle, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 24, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-29466 Filed 12-31-86; 8:30 a.m.]

BILLING CODE 3510-CW-M

Agency Form 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 Papework Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Marine Sanctuary Research Permit (Cordell Bank National Marine Sanctuary)
Form Number: Agency—N/A; OMB—N/A
Type of Request: New collection
Burden: 3 respondents; 5 reporting hours
Needs and Uses: Persons seeking to conduct activities in the marine sanctuary which would otherwise be prohibited may request a permit. The information collected is used to determine if the proposed activity is in compliance with long-term management goals, and can therefore be allowed
Affected Public: Individuals; state or local governments; businesses or other for-profit institutions; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Donald Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, 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 Donald Arbuckle, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 24, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-29467 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Service Annual Survey; Notice of Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published December 4, 1986, (51 FR 43751), I have determined that 1986 receipts/revenues for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. This survey will yield estimates of receipts/revenues for selected service industries, including hotels, rooming houses, camps and other lodging places; personal, business, automotive, and repair services; motion pictures and amusement services; health, legal, and other professional services; job training and vocational rehabilitation services; child day care services; residential care; and noncommercial educational, scientific, and research organizations.

The Census Bureau will require a selected sample of service firms in the United States (with receipts size determining the probability of selection) to report in the 1986 Service Annual Survey. The sample will provide, with measurable reliability, national level statistics on receipts/revenues for the selected service industries specified above.

We will furnish report forms to the firms covered by this survey and will require their submission within 15 days after receipt. Copies of the forms are available upon written request to the

Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 24, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86-29444 Filed 12-31-86; 8:45 a.m.]

BILLING CODE 3510-07-M

International Trade Administration

[A-429-601]

Urea from the German Democratic Republic; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that urea from the German Democratic Republic (GDR) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 9, 1987.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, (202 377-4087) or Mary S. Clapp (202 377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that urea from the GDR is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 144.11 percent.

If this investigation proceeds normally, we will make a final determination by March 9, 1986.

Case History

On July 16, 1986, we received a petition in proper form filed by the Ad Hoc Committee of Domestic Nitrogen Producers, a coalition of major U.S. producers of urea and other nitrogen fertilizers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the GDR are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated such an investigation on August 5, 1986, (51 FR 28854, August 12, 1986) and notified the ITC of our action.

On October 10, 1986, a questionnaire was presented to Chemie Export-Import (Chemie), the exporter of urea in the GDR. An extension of time in which to respond was granted and on December 2, 1986, we received a response from Chemie. As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that the GDR is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The product covered by this investigation is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) item 480.3000.

In our notice of initiation we included in the scope of the investigation nitrogen solutions currently classified under TSUSA items 480.3000 and 480.6550, as well as solid urea mixed with other fertilizers as currently classified under TSUSA item 480.8030.

However, the petitioner subsequently requested that the investigation be limited to solid urea. Therefore, we have limited the scope to solid urea.

Because Chemie accounted for all exports of this merchandise from the GDR, we limited our investigation to it.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales of urea for the period January 1, 1986 through June 30, 1986.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for the sales by Chemie because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for foreign inland freight, brokerage, and loading charges.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984) we based these deductions on charges in a non-state-controlled-economy country. The country we used in this investigation was the Federal Republic of Germany (FRG). We used costs in the FRG for the reasons stated below in the "Foreign Market Value" section.

Foreign Market Value

Petitioner alleged that the GDR is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the GDR's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the GDR is a state-controlled-economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of the GDR controls the prices and levels of production of the fertilizer industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing urea, we determined that the FRG would be the most appropriate surrogate. However, we were unable to

obtain costs or prices from a producer in the FRG. Absent those data from the FRG or other suitable surrogate countries, as the best information otherwise available, we constructed a value for urea using the factors of production reported by Chemie. Where Chemie's response failed to provide such factor data, we used factor data contained in the petition. We determined costs of the factors in the FRG from public sources. Because of the unavailability of industry data in the FRG, we used the statutory minimum of 10 percent of manufacturing costs for general expenses and the statutory minimum of eight percent for profit.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Preliminary Negative Determination of Critical Circumstances

The petitioner alleges that "critical circumstances" exist within the meaning of section 733(e) of the Act, with respect to imports of urea from the GDR. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM 146 trade statistics on imports of this merchandise for equal periods immediately preceding and following the filing of the petition, from April through October 1986. While there was an increase in imports over previous years during 1986, the average monthly imports in the period immediately following the filing of the petition were lower than those in the period immediately preceding the filing. Based on this analysis, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of urea from the GDR.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of urea from the GDR that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 144.11 per cent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 on February 5, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The parties name, address, and telephone number: (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 29, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 23, 1986.

[FR Doc. 86-29468 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-601]

Urea From the Socialist Republic of Romania: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have peliminarily determined that urea from the Socialist Republic of Romania (Romania) is being, or is likely to be, sold in the United States, at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 9, 1987.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, (202 377-4087) or Mary S. Clapp (202 377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that urea from Romania is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 53.71 percent.

If this investigation proceeds normally, we will make a final determination by March 9, 1986.

Case History

On July 16, 1986, we received a petition in proper form filed by the Ad Hoc Committee of Domestic Nitrogen Producers, a coalition of major U.S. producers of urea and other nitrogen fertilizers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Romania are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated such an investigation on August 5, 1986, (51 FR 28857, August 12, 1986) and notified the ITC of our action.

On October 10, 1986, a questionnaire was pesented to I.C.E. Chimica (Chimica), a state trading agency. An extension of time in which to respond was granted and on December 1, 1986, we received a response. As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that Romania is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The product covered by this investigation is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) item 480.300.

In our notice of initiation we included in the scope of the investigation nitrogen solutions currently classified under TSUSA items 480.3000 and 480.6550, as well as solid urea mixed with other fertilizers as currently classified under TSUSA item 480.8030.

However, the petitioner subsequently requested that the investigation be limited to solid urea. Therefore, we have limited the scope to solid urea.

Because Chimica accounted for all exports of this merchandise from Romania, we limited our investigation to it.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales of urea for the period July 1, 1985 through December 30, 1985.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Chimica because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for foreign inland freight, brokerage, and loading charges.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984) we based these deductions on charges in a non-state-controlled-economy country. The country we used in this investigation was the United Kingdom (UK). We used costs in the UK for the reasons stated below in the "Foreign Market Value" section.

Foreign Market Value

Petitioner alleged that Romania is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of Romania's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that Romania is a state-controlled-economy country for purposes of this investigation. Basic to our decision on this issue is that fact that the central government of Romania controls the prices and levels of production of the fertilizer industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing urea, we determined that the UK would be the most appropriate surrogate. We sent a questionnaire to, and received a response from, a major producer of urea in the UK, Imperial Chemical Industries PLC (ICI). We supplemented the information in this response while visiting ICI's facility in the UK. We are in the process of analyzing the information.

Our preliminary analysis indicates that additional information is needed from ICI. We will attempt to obtain this additional data and to verify all of ICI's information prior to the final determination. However, lacking this information at this time, we find it inapprorate to use the ICI data for this determination.

Therefore, as the best information otherwise available, we calculated constructed value based on the factors of production included in the petition because the Romanian response did not include Romanian factors of production. We valued gas, electricity, and labor in the UK from public sources because the ICI response did not provide this information. Where UK values were not available from public sources, we used cost data from the petition relative to the production in Romania. Because of the unavailability of industry data in the UK, we used the statutory minimum of 10 percent of the sum of material and production costs for general expenses and the statutory minimum of eight percent for profit.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Preliminary Negative Determination of Critical Circumstances

The petitioners allege that "critical circumstances" exist within the meaning of section 733(e) of the Act, with respect to imports of urea from Romania. In determining whether critical circumstances exist, we must examine whether:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise

which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM 146 trade statistics on imports of this merchandise for equal periods immediately preceeding and following the filing of the petition, from April through October 1986. While there was an increase in imports over previous years during 1986, the average monthly imports in the period immediately following the filling of the petition were lower than those in the period immediately preceding the filing. Based on this analysis, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we preliminarily determine that critical citcumstances do not exist with respect to imports of urea from Romania.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of urea from Romania that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 53.71 per cent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 on February 3, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 27, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 23, 1986.

[FR Doc. 86-29469 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-601]

Urea From the Union of Soviet Socialist Republics; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that urea from the Union of Soviet Socialist Republics (USSR) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 9, 1987.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, (202 377-4087) or Mary S. Clapp (202 377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:.

Preliminary Determination

We have preliminarily determined that urea from the USSR is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 84.90 percent.

If this investigation proceeds normally, we will make a final determination by March 9, 1986.

Case History

On July 16, 1986, we received a petition in proper form filed by the Ad Hoc Committee of Domestic Nitrogen Producers, a coalition of major U.S. producers of urea and other nitrogen fertilizers. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the USSR are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated such an investigation on August 5, 1986, (51 FR 28857, August 12, 1986) and notified the ITC of our action.

On October 10, 1986, a questionnaire was presented to counsel for eight U.S. importers acting on behalf of the government of the USSR. An extension of time in which to respond was granted and on December 2, 1986, we received a response from Sojuzpromexport, the exporter or urea in the USSR. As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that the USSR is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The product covered by this investigation is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) item 480.3000.

In our notice of initiation we included in the scope of the investigation nitrogen solutions currently classified under TSUSA items 480.3000 and 480.6550, as well as solid urea mixed with other fertilizers as currently classified under TSUSA item 480.8030.

However, the petitioner subsequently requested that the investigation be limited to solid urea. Therefore, we have limited the scope to solid urea.

Because Sojuzpromexport accounted for all exports of this merchandise from the USSR, we limited our investigation to it.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales of urea for the period January 1, 1986 through June 30, 1986.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Sojuzpromexport because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for foreign inland freight, brokerage, and loading charges.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984) we based these deductions on charges in a non-state-controlled-economy country. The country we used in this investigation was the United Kingdom (UK). We used costs in the UK for the reasons stated below in the "Foreign Market Value" section.

Foreign Market Value

Petitioner alleged that the USSR is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the USSR's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the USSR is a state-controlled-economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of the USSR controls the prices and levels of production of the fertilizer industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing urea, we determined that the UK would be the most appropriate surrogate. We sent a questionnaire to, and received a response from, a major producer of urea in the UK, Imperial Chemical Industries PLC (ICI). We supplemented the information in this response while visiting ICI's facility in the UK. We are in the process of analyzing the information.

Our preliminary analysis indicates that additional information is needed from ICI. We will attempt to obtain this additional data and to verify all of ICI's information prior to the final determination. However, lacking this information at this time, we find it inappropriate to use the ICI data for this determination.

Therefore, as the best information otherwise available, we calculated constructed value based on the factors of production reported by the Soviet producer or, where the Soviet response was not sufficient, those included in the petition. We valued gas, electricity, and labor in the UK from public sources because ICI response did not provide this information. Where either the response did not report factors, or where UK values were not available from public sources, we used factors and cost data from the petition relative to the production in the USSR. Because of the unavailability of industry data in the UK, we used the statutory minimum of 10 percent of the sum of material and production costs for general expenses and the statutory minimum of eight percent for profit.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Preliminary Negative Determination of Critical Circumstances

The petitioner alleges that "critical circumstances" exist within the meaning of section 733(e) of the Act, with respect to imports of urea from the USSR. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM 146 trade statistics on imports of this merchandise for equal periods immediately preceeding and following the filing of the petition, from April through October 1986. While there was an increase in imports over previous years during 1986, the average monthly imports in the period immediately following the filing of the petition were lower than those in the period immediately preceding the filing. Based on this analysis, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of urea from the USSR.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries or urea from the USSR that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 84.90 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietory information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 on February 4, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 28, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

December 23, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-29470 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Modification No. 4 to Marine Mammal Permit No. 336; Dr. Richard H. Lambertsen

Notice is hereby given that, pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permit (50 CFR Part 222), Scientific Research Permit No. 336 issued to Dr. Richard H. Lambertsen, Department of Physiological Sciences, University of Florida, Gainesville, Florida 32610, on May 19, 1981, is modified August 31, 1981 (46 FR 43732), January 13, 1983 (48 FR 2400), and September 17, 1986 (51 FR 34115) is further modified as follows:

Section B.5 is replaced by:

5. The authority to import the material described herein shall extend through March 31, 1987.

This modification became effective on December 24, 1986.

Issuance of this Modification, as required by the Endangered Species Act of 1973, is based on the finding that such Modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Modification; and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

The Permit, as modified, and documentation pertaining to the modifications are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service

[FR Doc. 86-29449 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-22-M

Modification No. 1 to Marine Mammal Permit No. 448; Massachusetts Cooperative Fishery Research Unit (P330)

Notice is hereby given that pursuant to the provisions of Section 220.24 of the regulations on endangered species (50 CFR Parts 217 through 227), Scientific Research Permit No. 448 issued to the Massachusetts Cooperative Fishery Research Unit, University of Massachusetts, Amherst, Massachusetts 01003, on February 7, 1984 (49 FR 4541), is modified as follows.

Section B.1 is replaced by:

1. The research shall be conducted by the means, in the areas and for the purposes set forth in the application and the modification request.

Section B.8 is replaced by:

8. This permit is valid with respect to the taking authorized herein until December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register.**

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220 through 222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification and Permit are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: December 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29450 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-22-M

Modification No. 4 to Marine Mammal Permit No. 334; Ocean World (P21D)

Notice is hereby given that, pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 334 issued to Ocean World, 17th Street Causway, Fort Lauderdale, Florida on May 8, 1981 (46 FR 26673) as modified on October 6, 1982 (47 FR 44830), December 31, 1984 (50 FR 873), and January 24, 1986 (51 FR 4408) is further modified as follows:

Section B.2 is replaced by:

2. This Permit is valid with respect to the taking authorized herein until December 31, 1987. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29451 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, Commerce.

The Mid-Atlantic Fishery Management Council will convene public meetings on January 7-8, 1987, at the Sands, Atlantic City, NJ, to discuss the Summer Flounder FMP, Amendment #7 to the Surf Clam and Ocean Quahog FMP and other fishery management and administrative matters. The meeting may be lengthened or shortened depending upon progress of the agenda. The Council may go into closed session to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South and New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: December 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29446 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, Commerce.

The New England Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will hold a public meeting on January 6, 1987, at the King's Grant Inn in Danvers, MA, at 9 a.m. and will adjourn at approximately 3:30 p.m., to discuss reports of the enforcement, groundfish, and scallop oversight committees; the status of surf clam and ocean quahog and lobster; reports on the gillnet/recreational issue and financial assistance programs; as well as other fishery management and administrative matters. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: December 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29447 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, Commerce.

The North Pacific Fishery Management Council will convene public meetings on January 21-23, 1987, at the Hotel Captain Cook in Anchorage, AK, beginning at 9 a.m. on the 21st. The Council will review proposals for amendments to the Bering Sea/Aleutian Islands and Gulf of Alaska groundfish plans and determine which should be further developed by the plan teams and presented at the March meeting. Final decisions on these amendments will be made in May. The Council also will review halibut regulatory proposals for 1987 and select a contractor to study future options for groundfish management. There will also be staff reports on the salmon fisheries and Council review of regulatory actions taken by the Alaska Board of Fisheries concerning salmon off Southeast Alaska.

The Council's SSC and AP will begin at 10 a.m. on Monday, January 19, and continue on Tuesday January 20. Other workgroup and plan team meetings may be held on short notice during the week. The Council may meet in executive session at some time during the meeting to discuss personnel, ongoing litigation or foreign affairs. For further information, contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; tel: (907) 274-4563.

Dated: December 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29448 Filed 12-31-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Strategic Defense Initiative Advisory Committee

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Strategic Defense Initiative Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Strategic Defense Initiative (SDI) was established by Presidential directive to conduct research on technologies which could lead to

effective defenses against ballistic missiles. The ultimate goal of the SDI is to determine the feasibility of eliminating the threat posed by nuclear ballistic missiles and increasing the contribution of defensive systems to U.S. and allied security. The SDI Organization will undertake a comprehensive program to examine and evaluate key technologies associated with concepts for defense against ballistic missiles. The SDI will be carefully coordinated with other defense programs. The basic approach will be to consider layered systems that can be deployed in such a way as to increase the contribution of defenses to deterrence and move the United States toward its ultimate goal of a thoroughly reliable defense. The program will also provide a hedge against Soviet options for near-term deployment of limited ballistic missile defenses.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 29, 1986.

[FR Doc. 86-29465 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-01-M

Meeting of the National Advisory Panel on the Education of Handicapped Dependents

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Committee Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools (ODS) coordinator.

DATES: February 11, 1987, 9 a.m. to 4 p.m.; February 12, 1987, 9 a.m. to 4 p.m.; February 13, 1987, 9 a.m. to 4 p.m.

ADDRESS: Pentagon, Room 3E752, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Paul, Special Education Coordinator, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-1100 (202/325-7810).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Pub. L. 94-142). The Panel is directed to (1) review information regarding improvements in services provided to handicapped students in DoDDS, (2) receive and consider the views of various parent, student, handicapped individuals and professional groups, (3) review the findings of fact and decision of each impartial due process hearing, (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties, (5) make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and procedure, (6) comment publicly on rules or standards regarding the education of handicapped children, (7) submit an annual report of its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: New special education legislation, related services, personnel development, administration, and budget.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 24, 1986.

[FR Doc. 86-29443 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Notice of Open Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 15-16 January 1987.

Time: 1300-1700 hours, 15 January; 0830-1500 hours, 16 January.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force will meet in the Pentagon for the purpose of having their kick-off meeting. The first day will be spent reviewing the Terms of Reference. The second day the Panel will receive their charge and map out the best strategy in which to accomplish its mission. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-29526 Filed 12-31-86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser-to-Submarine Communications will meet on January 26, 1987. The meeting will be held at the Pentagon, Washington, DC. The meeting will commence at 8:45 a.m. and terminate at 4:30 p.m. on January 26, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review and assess current laser technology programs with a view toward addressing communications problems pertaining to exploitation of the submarine over its full depth, range and speed capabilities. The agenda will include technical briefings and discussions addressing program plans and technology status. These briefings and discussion will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research, (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: December 19, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-29411 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Integrated Avionics for Advanced Aircraft and Aircraft Retrofit will meet on January 26 and 27,

1987. The meeting will be held at the Wright-Patterson Air Force Base, Dayton, Ohio. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on January 26 and 27, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to define what is meant by integrated avionics, what new aircraft and avionics suites should be addressed, assess common service requirements, and determine if the magnitude of the problem necessitates the establishment of a separate joint program office. The agenda will include technical briefings and discussions addressing integrated avionics technologies of the services. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: December 19, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-29412 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Over the Horizon Targeting Capabilities will meet on January 27 and 28, 1987, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on January 27; and commence at 8:30 a.m. and terminate at 4:00 p.m. on January 28, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct a comprehensive review of existing and planned over the horizon targeting programs; determine current and projected over the horizon targeting and related command and control capabilities and limitations; and identify any problems and recommend solutions. The agenda will consist of technical briefings and discussions addressing over the horizon targeting capabilities, program tactics and operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. According, 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: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: December 19, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-29413 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.c. app.), notice is hereby given that the Naval Research Advisory Committee will meet on January 28 and 29, 1987. The meeting will be held at the Pacific Missile Test Center, Pt. Mugu, California. The meeting will commence at 7:30 a.m. and terminate at 4:00 p.m. on January 28; and commence at 8:00 a.m. and terminate at 4:00 p.m. on January 29, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefing and tours for the Committee members on electronic warfare, threat simulation and range testing. The agenda will include technical briefings and discussions addressing countermeasures test and evaluation, major weapons programs, EW simulation, and range operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: December 12, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 86-29414 Filed 12-31-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

Purpose

This regulation prescribes labor standards for Federally financed and

assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA).

The recordkeeping requirements in this regulation, 48 CFR 1 (22.4), are a restatement of requirements previously cleared under OMB control numbers 1215–0140, 1215–1049, and 1215–0017 for 29 CFR 5.5(a)(i), 5.5(c), and 5.15 (records to be kept by employers undr the Fair Labor Standards Act (FLSA) 29 CFR Part 516, which is the basic recordkeeping regulation for all the laws administered by the Wage and Hour Division of ESA).

48 CFR Part 1, (22.406–3) supplements the recordkeeping and information collection requirements prescribed in 29 CFR 5.5(a) (1) (ii) cleared under OMB control number 1215–0140 by providing SF XXX1, Request for Authorization of Additional Classification and Rate, for the Contractor and the Government to enter the recordkeeping and information collection data required by 29 CFR 5.5(a)(1)(ii) prior to transmitting the data to DOL.

48 CFR part 1 (22.406–7(b) and 22.406–8(d) prescribe the use of SF XXX2 and SF XXX3, respectively, for the Government to record the information obtained in the compliance checks (investigation interviews) prescribed in 29 CFR 5.6(a) (3).

These FS's SF XXX1, XXX2, and XXX3 place no further burden on the contractor or the Government other than the information collection burdens already cleared by OMB for 29 CFR Part 5.

Annual Reporting Burden: Respondents N/A, Responses per respondents N/A, Total annual responses N/A, Hours per response N/A, Total annual burden current OMB inventory, 630 hours.

Obtaining copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite the new recordkeeping and reporting requirements for contracts subject to the Davis Bacon and related acts.

Dated: December 19, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–29393 Filed 12–31–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Office of the Secretary

Education Appeal Board; Designation of Jurisdiction; Mendocino and North Rose-Wolcott

AGENCY: Department of Education.

ACTION: Notice of designation of jurisdiction to Education Appeal Board.

SUMMARY: The Secretary designates the Education Appeal Board (EAB) as the forum for hearing disputes regarding the Fiscal Year (FY) 1986 funding decisions made by the Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), to deny third year continuation grants under the Bilingual Education Act (Act) to the Mendocino, California County Office of Education (Mendocino)—by letters of November 7, 1986 and October 14, 1986—and to the North Rose-Wolcott, New York Central School (North Rose-Wolcott)—by letters of November 17, 1986. Mendocino requested review of OBEMLA's decision on its grant application in a letter of December 17, 1986, and North Rose-Wolcott requested review of OBEMLA's decision on its application in an undated letter received on December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Honorable Ernest C. Cannellos, Chairman, Education Appeal Board, 400 Maryland Ave., SW. (Room 1065, FOB–6), Washington, DC 20202. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION:

Background

Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234–1234c), the EAB has jurisdiction to conduct: (1) Audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary. Such review is specifically available in cases that concern the use of funds provided under the Bilingual Education Act. Final regulations implementing the statutory provisions in sections 451–454 of the General Education Provisions Act were published in the **Federal Register** at 46 FR 27305 on May 18, 1981 (34 CFR Part 78). Section 78.2 of those regulations contain the present jurisdiction of the EAB, which includes the authority to review proceedings designated by the Secretary of Education in the **Federal Register.**

In FY 1986 the Director of OBEMLA sent letters denying third year continuation grants to Mendocino and North Rose-Wolcott. The November 7, 1986 letter to Mendocino specified that the primary basis for the funding decision was the failure of Mendocino's third year continuation application to meet the applicable statutory and regulation requirements of a transitional bilingual education program designed to serve limited English proficient (LEP) students at 20 U.S.C. 3223(a) (1) and (4) and 34 CFR 500.4. North Rose-Wolcott was informed that it had failed to complete satisfactorily the previous two budget periods by serving the numbers of LEP students approved in the first and second year applications. Further, OBEMLA advised North Rose-Wolcott that the district's annual performance report did not satisfy the parent advisory committee requirements of the Act at 20 U.S.C. 3231(e).

By letters of December 17, 1986 from Mendocino to Carol Pendas Whitten, and a letter of unknown date (received on December 16, 1986), from North Rose-Wolcott to Ernest C. Cannellos, Chairman of the EAB, EAB review of these funding decisions was requested based upon the EAB termination hearing procedures (North Rose-Wolcott alternatively requested the withholding hearing procedures). Following this designation, Mendocino and North Rose-Wolcott will be free to assert before the EAB their procedural claims as well as their claims as to the substantive basis for OBEMLA's funding decisions.

Designation of Jurisdiction

Under the authority in section 451(a)(4) of the General Education Provisions Act (20 U.S.C. 1234(a)(4)) and 34 CFR 78.2(a)(5) of the EAB regulations, the Secretary hereby designates the EAB as the forum to review the FY 1986 funding denials of the Director of OBEMLA discussed in letters of November 7, 1986 and October 14, 1986 to Mendocino and in a letter of November 17, 1986 to North Rose-Wolcott. The EAB is to review these funding decisions under the general rules of procedure governing the EAB's conduct of proceedings in 34 CFR 78.41–78.84.

Any questions should be addressed to Honorable Ernest C. Cannellos, Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB–6), Washington, DC 20202, Telephone: (202) 245–7835.

(Catalog of Federal Domestic Assistance Number Not Applicable)

Dated: December 29, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-29511 Filed 12-31-86; 8:45 am]

BILLING CODE 4000-01-M

Assessment Policy Committee, National Assessment of Education Progress (NAEP); Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Education has scheduled a meeting of the Assessment Policy Committee of the National Assessment of Educational Progress (NAEP). The purpose of the meeting is to provide guidance and direction to the Office of Educational Research and Improvement supported NAEP project. The entire meeting will be open to the public.

DATE: January 17, 1987, 8:30 a.m. to 3:00 p.m.

Location: Harbour Island Hotel, Tampa, Florida

FOR FURTHER INFORMATION CONTACT: Mr. Paul Barton, Liaison-APC, National Assessment of Educational Progress, CN 6710, Princeton, NJ 08541-6710, telephone: (800) 223-0267.

SUPPLEMENTARY INFORMATION: One of the primary purposes of NAEP is to assess the performance of children and young adults in the basic skills of reading, mathematics, and communications. The Assessment Policy Committee (APC) is established by section 405 (k)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1221e(k)(2)(A). The committee is responsible for the design of NAEP including the selection of learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, and the form and content of the reporting and dissemination of the assessment results. The committee is also responsible for the implementation of studies to evaluate and improve the form and utilization of the National Assessment.

The Agenda for the meeting includes:—

- Review of the recommendations of the Study Group on the National Assessment of Student Achievement;
- Filling of vacancies on the APC, and election to two new APC positions recently created by Congress (an elementary and a secondary school principal);
- Status of the 1987 Continuation Application;
- Major NAEP reports planned for 1987;
- State Assessments: The next round;
- The release of *The Writing Report Card;*
- Follow-up effort on the young adult literacy study.

To assure adequate seating arrangements and to obtain an advance copy of the final agenda, individuals wishing to attend may contact Mr. Paul Barton at the address above.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Improvement)

Dated: December 21, 1986.

Chester E. Finn, Jr.

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 86-29427 Filed 12-31-86; 8:45 am]

BILLING CODE 4001-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3136-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed December 22, 1986 Through December 26, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860522, Draft, EPA, TX, Calvert Lignite Mine and Texas-New Mexico Power, One Power Plant Projects, Construction and Operation, Permits, Robertson County, Due: February 17, 1987, Contact: Norm Thomas (214) 767-2716.

EIS No. 860523, Draft, BLM, ND, North Dakota Resource Management Plan, Dunn and Bowman Counties, Due: March 25, 1987, Contact: Mark Stiles (701) 225-9148.

EIS No. 860524, Draft, CDB, CA, Santa Maria Town Center Expansion, Development, CDBG, Santa Barbara County, Due: February 17, 1987, Contact: Barbara Sutton Hutchins (805) 925-0951.

EIS No. 860526, Draft, FHW, FL, FL-5/US 1 Upgrading, FL-922/NE 123th Street to NE 203rd Street, Dade County, Due: February 17, 1987, Contact: P. E. Carpenter (904) 681-7223.

EIS No. 860527, FSuppl, FHW, CA, I-8 and CA-125 Interchange Improvement, Fletcher Parkway to Amaya Drive, Revision Change, San Diego County, Due: February 2, 1987, Contact: Michael Cook (916) 551-1307.

EIS No. 860528, FSuppl, COE, CA, Sacramento River Deep Water Ship Channel, Widening/Deepening, Environmental Impact Description Update, Due: February 2, 1987, Contact: Jeff Groska (916) 551-1860.

EIS No. 860529, Draft, FHW, RI, Quonset Point/Davisville Highway Access Improvement, from RI-4 Freeway, Kent and Washington Counties, Due: February 20, 1987, Contact: James Condron (401) 528-4551.

EIS No. 860530, Final, Adoption, FHA, MN, WI, St. Croix and Taylors Falls Wastewater Treatment Facilities Plan, Outfall Line Route Revision, Due: February 2, 1987, Contact: John Melbo (612) 725-5842.

EIS No. 860531, Draft, COE, NY, Shinnecock Inlet Navigation, Beach Erosion Control and Water Quality Improvement, Suffolk County, Due: February 17, 1987, Contact: Karen Gustina (212) 264-4662.

EIS No. 860532, Draft, FHW, KY, Russellville Bypass/US 68 Improvement, US 68 West to US 68 East, Logan County, Due: February 27, 1987, Contact: Robert Johnson (502) 227-7321.

Amended Notice

EIS No. 860515, Draft, VAD, CA, Northern California VA National Cemetery, Development, Alameda and Merced Counties, Due: February 9, 1987, Published FR 12-29-86—Incorrect state.

Dated: December 29, 1986.

William Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 86-29508 Filed 12-31-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3137-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 15, 1986 through December 19, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-F65017-OH, Rating EC2, Wayne Nat'l Forest, Land and Resource Mgmt. Plan, OH. SUMMARY: EPA's review resulted in requests for

more information regarding the measures that would be implemented to protect water quality, the erosion controls along off-road vehicle trails, and the methodology for identification of critical wetland habitat.

ERP No. DR-BLM-G61031-NM, Rating LO, New Mexico Statewide Wilderness Study, Wilderness Study Area Recommendations and Designations, NM. SUMMARY: EPA has no objections to the proposed action as described.

ERP No. D-COE-H40130-IA, Rating EC2, IA-415 Highway Modifications, Segment C, IA-415 and NW 78th St. to Barrier Dam Roadway, Saylorville Lake Recreation Areas, Access Roadway Improvement—1976 Water Resource Act Sect. III, IA, SUMMARY: EPA expressed concern about selection of the most environmentally damaging alternative and the proposed alignment's impact on the water quality of Rock Creek. EPA requested that the Corps of Engineers work with the County to mitigate indirect water quality impacts from induced development.

ERP No. D-COE-K34005-CA, Rating EO2, Pamo Dam and Reservior Emergency Water Supply Project, Construction, 404 Permit, Santa Ysabel Creek, CA. SUMMARY: EPA expressed environmental objections because the project, as proposed, fails to comply with Clean Water Act Sect. 404 Guidelines in terms of alternatives analysis, mitigation measures, and other criteria. The draft EIS also did not adequately discuss secondary growth in San Diego County caused by the project. EPA requested that the Corps of Engineers (COE) prepare a revised draft EIS to ensure full disclosure of all project impacts, and requested a meeting with the COE to discuss EPA's concerns on the draft EIS.

ERP No. D-FHW-E40696-GA, Rating EO2, Georgia Project F-111-1(16) Spur Construction, Abercorn St./GA-204 to GA-21/I-516/Lynes Parkway, 404 Permit, USCG Permit, GA. SUMMARY: EPA's primary concern for the proposed project are the predicted 24.2 acre losses of valuable estuarine wetlands and the lack of a complete mitigation plan. Other concerns relate to noise impacts, fisheries documentation, and the air quality and alternative analyses. EPA requests these concerns be addressed in the final EIS. Further, the final EIS should particularly provide a wetland mitigation plan reviewed by EPA and other regulatory agencies.

ERP No. D-FHW-G40117-TX, Rating LO, US 259/Kilgore Bypass Construction, US 259 N. of Kilgore to US 259 S. of Kilgore, 404 Permit, TX. SUMMARY: EPA expresses no objections to the project as described. Additional air quality information has been requested.

Final EISs

ERP No. F-AFS-G65043-NM, Gila Nat'l Forest, Land and Resource Mgmt. Plan, NM. SUMMARY: EPA has no objections to the proposed action as described.

Dated: December 29, 1986.

William D. Dickerson,

Acting Director, Office of Federal Activitives.

[FR Doc. 86-29509 Filed 12-31-86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-3137-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202), 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Water

Title: NPDES Discharge Monitoring Report (EPA ICR #0229). (This is a renewal of an existing collection, with no changes proposed.)

Abstract: A 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 determine compliance with permit limitations.

Respondents: Businesses, publicly-owned treatment works, and other facilities discharging wastewater.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0820, Generator Requirements—Exporters of Hazardous Waste, was approved 12/5/86 (OMB #2050-0035; expires 12/31/88).

* * * * *

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503

Dated: December 29, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 85-29495 Filed 12-31-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/28L FRL-3137-4]

Inorganic Arsenicals; Preliminary Determination To Cancel Registrations of Pesticide Products Containing Inorganic Arsenicals Registered for Nonwood Preservative Use; Availability of the Draft; Notice of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination to cancel.

SUMMARY: This Notice announces the Agency's preliminary determination to conclude the Special Review of the inorganic arsenicals: lead arsenate, calcium arsenate, sodium arsenite, sodium arsenate, and arsenic trioxide. The Agency proposes to cancel, pursuant to section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), all registered uses of these chemicals with the exception of the the turf herbicidal use of the flowable formulation of calcium arsenate, the grapefruit growth regulator use of lead arsenate, and the grape fungicidal use of sodium arsenite. These three uses and the desiccant use of arsenic acid are still under Special Review. All copper acetoarsenite and arsenic acid herbicide registrations have already been voluntarily cancelled. This Notice further informs the public of the availability of documents supporting this action and of the Draft Notice of Intent to Cancel and invites comments on the proposal.

DATE: Comments and other relevant information on the preliminary determination announced in this Notice must be received on or before February 17, 1987.

ADDRESS: Written comments indentified as "OPP-30000/28L" should be sent by mail to:

Information Services Section,
Program Management and Support Division (TS-757C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.
In person, bring comments to:
Rm. 236, CM#2,
1921 Jefferson Davis Highway,
Arlington, VA.

Information submitted in any comment or response concerning this Notice may be claimed confidential by marking any part of or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. An edited copy of any comment containing material claimed to be CBI must be submitted (with the CBI portions deleted) for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. A Public Docket containing all non-CBI written comments will be available for inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:.

Douglas McKinney,
Registration Division (TS-767C),
Office of Pesticide Programs,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460.
Office location and telephone number
Rm. 1006, CM#2,
1921 Jefferson Davis Highway,
Arlington, VA,
(703-557-5488).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency issued a Notice of Rebuttable Presumption Against Registration (hereafter referred to as Special Review) for the wood preservative and nonwood preservative uses of the inorganic arsenicals which was published in the **Federal Register** of October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for oncogenicity, teratogenicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7). Acute toxicity was added later as a concern.

In January 1981, the Agency issued a preliminary determination (46 FR 13020) which proposed changes to the terms and conditions of registration for the wood preservative uses of the inorganic arsenicals. That proposal (PD 2/3) was based on a detailed assessment of the risks and benefits of continued registration of the wood preservative use of the inorganic arsenicals. The final detemination, which required certain modifications to the terms and conditions of registration, was published in the **Federal Register** of July 13, 1984 (49 FR 28666). The Agency received hearing requests from registrants contesting the requirements of that Notice. After considering alternative mechanisms suggested by registrants for accomplishing the goals of the July 13, 1984 Notice, the Agency issued an Amended Notice of Intent to Cancel, which was published in the **Federal Register** of January 10, 1986 (51 FR 1334), which resolved issues relating to the wood preservative uses of the inorganic arsenicals with minor modifications to the requirements of the original Notice. All registrants have either modified their registrations in accordance with the requirements of the Amended Notice or their registrations were cancelled by operation of law.

Th inorganic arsenical pesticide registrations not considered in the wood preservative decision were the desiccant and herbicide uses of arsenic acid; the insecticide, herbicide, and molluscicide uses of lead arsenate; the insecticide, herbicide, and molluscicide uses of calcium arsenate; the herbicide, insecticide, (including termiticide) and acaricide uses of sodium arsenite; the insecticide, herbicide, rodenticide, and antifoulant uses of arsenic trioxide; the insecticide use of sodium arsenate, and the larvicide use of copper acetoarsenite. All registrations of copper acetoarsenite and the herbicidal use of arsenic acid have been voluntarily cancelled and will not be discussed further herein.

This Notice announces the Agency's proposal to cancel the remaining (nonwood preservative) pesticidal uses of the inorganic arsenicals listed above based on the risk/benefit assessment contained in this Notice with the exception of the desiccant uses of arsenic acid on okra (grown for seed) and cotton, the growth regulator use of lead arsenate, the fungicide use of sodium arsenite on grapes, and the herbicide use of the flowable formulation of calcium arsenate on turf. Consideration of these excepted uses of being deferred at this time because the Agency's Risk Assessment Forum is reassessing the carcinogenic potency of inorganic arsenic as it relates to dietary and demal exposures. Although inhalation risks for arsenic acid have been quantified and exposure information exists, the Agency does not believe at this time that the inhalation risks associated with the desiccant use would serve as a basis for cancellation in light of the existing benefits. Thefore, EPA has decided to defer consideration of this use until the Forum completes its reassessment. The Agency is also deferring consideration of oncogenic risks from dermal exposure for the uses under consideration in this document. Additionally, the Agency has required data under authority of section 3(c)(2)(B) of FIFRA to delineate the extent and nature of residues in/on food crops. These residue data, some of which will not be available until early 1988, and the reassessment of the carcinogenic potency are pivotal to the dietary and dermal risk analysis for the uses enumerated above.

In accordance with FIFRA, EPA is sending a copy of this Notice and the draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel for the required 30-day review. EPA is also providing a 45-day public comment period on these documents. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory position and actions are appropriate.

In addition, copies of a draft Notice of Intent to Cancel Registrations of Inorganic Arsenical Products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1).

II. Legal Background

A pesticide may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA (7 U.S.C. 136 et seq.). Before a product can be registered, it must be shown that the product can be used without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for

registration, the Administrator may cancel the registration under section 6 of FIFRA.

The Agency has created an administrative process for fully evaluating whether a pesticide satisfies or continues to satisfy that statutory standard for registration. This Special Review process provides an informal procedure through which EPA may gather and evaluate information about the risks and benefits of a pesticide's use. It also provides a means by which interested members of the public may comment on, and participate in, EPA's decision making process. The regulations governing this process are set forth in 40 CFR Part 154.

III. Summary of Risk/Benefit Evaluation

A. Risk Determination

The adverse effects of concern associated with inorganic arsenical pesticides are oncogenicity, mutagenicity, teratogenicity, and acute toxicity. An extensive body of data is contained in published studies describing the adverse health effects associated with exposure to inorganic arsenic. The EPA has reviewed the existing scientific literature and developed a "Health Assessment Document for Inorganic Arsenic" (OHEA Document). Risk information is also contained in the Wood Preservatives Position Document 2/3 (WP PD 2/3) and Position Document 4 (WP PD 4) decision documents made available in January 1981 and July 1984, respectively. These documents are available from the Agency at the address given above. A brief summary of the risk data is presented below.

1. Interconversions of Inorganic Arsenic

The pesticides covered by this document include both trivalent (sodium arsenite, arsenic trioxide) and pentavalent (lead arsenate, calcium arsenate, and sodium arsenate) inorganic arsenicals. Many studies have shown that man and other animals oxidize trivalent arsenic (arsenite) to pentavalent arsenic (arsenate) (WP PD 2/3, pp. 95–102). However, firm evidence demonstrating the *in vivo* reduction of arsenate to arsenite has only recently been developed in the rat by (Roland and Davies, 1982) (OHEA Document) and in mice and rabbits (Vahter et al., 1983) (OHEA Document). Based on this oxidation/reduction interconversion, data on both arsenate and arsenite are relevant in evaluating the risks posed by the inorganic arsenicals and justify regulation of the two groups of chemicals together.

2. On Cogenicity

a. *Hazard identification.* Human epidemiology studies have provided the most persuasive evidence linking exposure to inorganic arsenic to an increase in cancer among humans. A detailed discussion of these studies and the model developed for estimating oncogenic risks from inhalation exposure to inorganic arsenic are contained in the OHEA Document (pp. 2–12 through 2–19 and 7–1 through 7–149). The studies of copper smelters which provide the basis for the quantitative risk assessment are summarized below.

Enterline and Marsh (1980, 1982) observed a significant increase in mortality from lung cancer in workers exposed to airborne arsenic at a Tacoma, Washington, copper smelter. Lee and Feldstein (1983) found a correlation between respiratory cancer mortality and length of employment for workers in an Anaconda, Montana, copper smelting plant that had been previously examined by Lee and Fraumeni (1969). Higgins et al. (1982), who focused primarily upon the most heavily exposed workers at this Anaconda smelter, concluded that inhalation exposure to arsenic was strongly related to respiratory cancer mortality in these workers. Exposure to possible confounding factors such as smoking, asbestos, and sulfur dioxide did not appear to account for the excess respiratory cancer observed in the study. Smoking was thought to be responsible for a small fraction of the mortality, but significantly increased mortality was observed among non-smokers as well.

Brown and Chu (1983a, b, and c) applied the "multistage" model to the Anaconda smelter studies to estimate carcinogenic risk. Using this approach, the carcinogenic response was considered as a function of: (1) The rate of exposure, (2) the duration of exposure, (3) age at initial exposure, and (4) time since the cessation of exposure. From their analysis of the data, Brown and Chu determined that inorganic arsenic acts as a late-stage carcinogen because the excess lung cancer mortality risk was found to be greater among those persons whose initial exposure was later in life. They further contended that the mortality was independent of the time after exposure stopped.

Consistent demonstration of arsenic carcinogenicity in laboratory animal tests has not been observed. However, recent data indicate that malignant and nonmalignant neoplasms can be demonstrated in animals if arsenic retention in the lung is increased. The Agency has not, however, relied on animal carcinogenicity studies in reaching the regulatory conclusions contained herein.

Based on the human data, the Agency's Carcinogen Assessment Group (CAG) has determined that sufficient evidence exists to classify inorganic arsenic as a Group A carcinogen (carcinogenic to humans) based on the Agency's classification sheme published in the **Federal Register** of September 24, 1986 (51 FR 33992).

The Agency has determined that the oncogenic risk criterion set forth in 40 CFR 154.7(a)(2) has been exceeded.

b. *Dose response for assessing inhalation risks.* As stated previously, the oncogenic risk from inhalation of arsenic is based on the epidemiological studies by Higgins et al. (1982), Lee-Feldstein (1983), and Enterline and Marsh (1982), and the series of analyses for NCI by Brown and Chu (1983). The Agency estimated unit risk per ug/m^3 as ranging from 1.25×10^{-3} (ug/m^3)$^{-1}$ to 7.60×10^{-3} *ug/m^3)$^{-1}$ using linear models. Taking a geometric means, the final unit risk was estimated to be 4.3×10^{-3} (ug/m^3)$^{-1}$. To estimate oncogenic risks from inhalation exposure to inorganic arsenic (Wood Preservatives PD 4, pp. 5–8), the equation

(1) $P = 1 - e^{-4.29 \times 10^{-3} X}$ was derived (McGaughy, 1984) where P is the lifetime cancer risk based on a lifetime continuous exposure and where X is the continuous exposure in ug/m^3. The equation is based on a linear nonthreshold risk model which assumes that the lifetime risk is proportional to the cumulative lifetime exposure. For an individual exposed 1 day per year for 30 years the risk equation is approximately (2) $P + 1.5 \times 10^{-2} W$ where W is the exposure in mg/kg per working day (McGaughy, October 20, 1986). In this derivation, 60 kg was assumed as the body weight of the exposed individuals.

In the Wood Preservatives PD 4, the Agency estimated inhalation risks using a model which assumes that the cancer incident at any age induced by the agent is proportional to the cumulative exposure up to that age. This model implicitly assumes that the agent is a first stage carcinogen.

As previously stated, Brown and Chu (1983) suggested that arsenic may be a late state carcinogen. If this is correct, exposure late in life would be expected to induce greater risk than mid-life exposure, and exposure of young people may produce less risk than mid-life exposure. However, in the population at large both early and late exposure would probably occur, so that on

average the excess risks would largely cancel out. Although older people could be identified qualitatively as a sensitive subpopulation for intermittent exposure, the theory is not considered well enough established to make quantitative estimates of excess risk for this subgroup (McGaughy 1986).

Based upon these considerations, oncogenic risks from inhalation exposure of the nonwood uses of inorganic arsenic covered by this notice will be determined using the standard cumulative dose assumptions, which make no assumption about which state in the multi-stage process is affected by the agent. The Agency's Carcinogenic Assessment Group (CAG) considers this model to be the most appropriate. Using these assumptions, equation (2) above results in risks 33 percent higher than if risks were calculated using the model in the Wood Preservations PD 4.

3. Exposure Analysis

Use of most of the inorganic arsenicals covered by this proposed action has ceased because many of the product registrations are suspended or the products have not been manufactured in a number of years; therefore, information on current use practices is unavailable. However, by reliance on the available data base for estimating worker exposure, the Agency has been able to generate exposure estimates for certain application methods. In some cases, however, the Agency's data base was inapplicable and empirical data were unavailable; wherever appropriate, the Agency made assumptions to enable the development of an exposure analysis.

Exposure assessments were performed for both the inhalation and dermal routes. When estimating inhalation exposure, respiratory protection was not factored into the exposure assessment. Dermal exposures will not be used to estimate oncogenic risks since consideration of these risks is being deferred pending requantification of the carcinogenic potency by the Agency's Risk Assessment Forum.

a. *Lead Arsenate.* Lead arsenate (dust) is registered for foliar application to fruit trees to control insects, particularly the cherry fruit fly. The pesticide is typically applied aerially as a dust at a rate of 50 lbs/acre using a 15 percent active ingredient (ai) dust formulation (75 mol. wt. As/346 mol. wt lead arsenate x 15 percent=3.25 percent arsenic). Using surrogate data by Wolfe (1967), mean inhalation exposure for loading and applying dusts is estimated to be 0.15 and 0.17 mg/hr, respectively. Applying the 3.25 factor, the inhalation rate for mixing/loading would be 0.5 mg/hr and 0.55 mg/hr for application. Annual inhalation exposure may be estimated for each respective mixer/loader and pesticide application operation by multiplying the exposure rate times the hours per day times the number of days per year engaged in the specific operation. Using this equation, annual mixer/loader inhalation exposure has been estimated as: 0.5 mg/hr x 2.5 hr/dy x 6 days/yr = 7.5 mg/yr and annual applicator exposure has been estimated as: 0.55 mg/hr x 4 hr/day x 6 days/yr = 13 mg/yr.

According to Wolfe (1967), a mixer/loader receives a mean dermal exposure of 73 mg/hr while applicator (pilot) dermal exposure is 24 mg/hr. Using these data, mixer/loader exposure for lead arsenate dust is estimated as: 73 mg/hr x 3.25 = 238 mg/hr 238 mg/hr x 2.5 hr/day x 6 days/yr =3570 mg/yr and, applicator dermal exposure may be estimated as: 24 mg/hr x 3.25 = 78 mg/hr 78 mg/hr x 4 hr/day x 6 days/yr = 1872 mg/yr.

Exposures from use on ornamentals would be comparable, because a dust formulation is also used.

Exposures from the use of lead arsenate molluscicide baits cannot be quantified from the existing information; however, since the prepared bait is spread as a solid and arsenic is nonvolatile, limited inhalation exposure is expected to occur.

User exposure from lead arsenate insecticide baits is negligible. However, the Agency's Pesticide Incident Monitoring System (PIMS) has many recorded incidents of accidental poisoning from the use of these baits in and around homes. Nine of these incidents involved hospitalizations and 16 involved child poisonings from "roach hive" products.

Lead arsenate is also registered for use as a noncrop herbicide and is applied at a rate of 40 to 200 lb ai/A for crabgrass and annual blue grass control. However, available information indicated there is no current usage. If used, some worker exposure would be expected to occur.

b. *Sodium arsenite.* Sodium arsenite is used as a broad spectrum herbicide and is applied by hand sprayer or sprinkler can to industrial sites, lots, tank farms, and other places where total removal of plant growth is desired. The average concentration is 40 percent (some concentrates range from 15 to 70 percent by weight) which is equivalent to 23 percent arsenic metal by weight (40 x 75/130). The concentrated sodium arsenite solution is typically diluted 1:5 for use, making the effective use concentration 23 percent or 4.6 percent arsenic. Using estimates by Lunchick (1985), a mixer/loader of a liquid formulation would receive inhalation exposure of about 0.02 mg/hr/lb/A. Since the application rate is 3 lb ai/A, the inhalation rate for mixing/loading may be estimated as 0.02 x 3 = 0.06 mg/hr x 58% As = 0.03 mg/hr. Annual mixer/loader exposure may be estimated as: 0.03 mg/hr x 0.5 hr/day x 1 day/yr = 0.02 mg/yr.

Using the same data base, mixer/loader dermal exposure may be estimated as: 160 mg/hr/lb/A x 3 lb/A = 480 mg/hr 480 mg/hr x 58% As x 0.5 hr/day x 1 day/yr = 140 mg/yr.

For application, the Agency relied on a surrogate study by Lavy (1980), where 1.9 percent 2,4,5–T was sprayed on brush with a backpack sprayer, resulting in 0.3 mg/hr inhalation exposure, and 27 mg/hr dermal exposure. Because the concentration of 2,4,5–T and arsenic differ by a factor of 2.4, inhalation exposure has been estimated as: 0.3 mg/hr x 2.4 x 58% As = 0.4 mg/hr arsenic. Annual applicator inhalation exposure may be estimated as: 0.4 mg/hr x 6 hr/day x 1 day/yr = 2.4 mg/yr and annual applicator dermal exposure may be estimated as: 27 mg/hr x 2.4 x 58% As = 38 mg/hr x 6 hr/day x 1 day/yr = 228 mg/yr.

According to the USDA Report (1980), sodium arsenic is effective in termite control under buildings. A 10 percent (5.8 percent arsenic) solution (original concentrate level unspecified, but assumed to range from 29 to 50 percent arsenic) is applied by injection. Mixer/loader exposure would be similar to the herbicide use, namely 0.03 mg/hr by inhalation and 280 mg/hr dermally. Annual mixer/loader inhalation exposure may be estimated as: 0.3 mg/hr x 0.5 hr/day x 10 days/yr = 0.2 mg/yr and annual mixer/loader dermal exposure may be estimated as: 280 mg/hr x 0.5 hr/day x 10 days/yr = 1400 mg/yr.

Applicator inhalation and dermal exposures are considered to be negligible for the termite use because sodium arsenite is applied by an injection apparatus which is essentially a closed system.

Inhalation exposure from the use of insecticidal baits would be negligible. However, spillage of 6 ml of the most concentrated insecticidal formulation available for this use (1.6 percent ai) would result in dermal exposure of 56 mg/incident derived as follows: 6 ml (gm) x 0.016 (%) = 96 mg/incident x 58% As = 56 mg/incident.

Many acute accidental oral exposures to sodium arsenite have been reported to the Agency's Pesticide Incident

Monitoring System. during a search of the PIMS files from 1966 to 1979, sixty-one incidents involving either sodium arsenite or sodium arsenite in combination with other ingredients were reported. Fifty-eight children were involved in 42 of the incidents; Fifteen of these children died and six were hospitalized. Of the remaining 19 incidents, nine were unspecified as to the exposure effects, four involved the hospitalization of five adults and six resulted in the fatalities of nine adults.

Sodium arsenite has formerely been used in a dip to control ticks on livestock; however, there is no recent history of use. Possible mixer/loader exposure is similar to mixer/loader exposures estimated for the herbicidal use of sodium arsenite. Because this exposure situation is unique and surrogate data are unavailable, the Agency has not attempted to approximate applicator exposure in the absence of actual use. Potentially significant application could be associated with the use of the dip for beef, cattle, sheep and goats.

c. *Calcium arsenate.* According to USDA (1980), calcium arsenate is used to control flies on poultry manure. Application is by hand sprayer where 2.5 lbs of 70 percent calcium arsenate is diluted in 4 gallons of water. This yields a working solution of 2 percent arsenic (2.5 lbs. x 0.7 (%) x 0.38 [ratio of arsenic]/by 4 x 8.3 (water dilution) = 2 percent) resulting in applicator inhalation exposure as per Lavy (1980) of 0.3 mg/hr x 0.38 = 0.1 mg/hr As. Annual applicator inhalation exposure may be estimated as: 0.1 mg/hr x 2 hr/day x 20 days/yr = 4.0 mg/yr and annual applicator dermal exposure may be estimated as: 27 mg/hr x 38% As = 10 mg/hr x 2 hr/day x 20 days/yr = 410 mg/yr.

As mentioned earlier, Lunchick (1985) estimates inhalation exposure from the mixer/loader task to be 0.03 mg/hr and it is assumed the mixer/loader procedure for fly control is comparable, resulting in an annual exposure of: 0.03 mg/hr×0.5 hr/day×20 days/yr=0.3 mg/yr and accordingly, dermal mixer/loader exposure may be estimated as: 275 mg/hr×0.5 hr/day×20 days/yr≐2750 mg/yr.

A granular formulation of calcium arsenate may be applied by broadcast spreader to control white grubs. This formation typically contains 48 percent ai and is applied once per year at a rate of 105 lb/A. In the absence of suitable surrogate or empirical data, exposure cannot be quantified with existing information but is expected to be low if the product were used.

Calcium arsenate bait for slugs and snails is made up as a formulation containing 80 percent bran, 10 percent molasses, and 10 percent calcium arsenate (made up from 70 percent wettable powder/dust). It is then applied to the soil near plants for protection. Because the prepared bait is spread as a solid, and arsenic is nonvolatile, limited inhalation exposure is expected to occur.

Calcium arsenate has not been used as a herbicide on crops in a number of years. Since neither surrogate nor empirical data are available, the Agency has not attempted to estimate exposure.

d. *Arsenic trioxide.* Arsenic trioxide rodenticide and insecticide baits are available as pellets, wettable powders, pastes, an as a liquid. Negligible inhalation exposure is expected to result from use of these formulations. However, many instances of accidental ingestion and in some cases death following this exposure have been associated with the use of arsenic trioxide baits. These incidents most frequently involved children under the age of five. Spillage of 6 ml of a liquid formulation on the hands would result in a dermal exposure of: 6 ml (gm)×0.0114 (% As)=68 mg/incident. PIMS reports indicated 72 incidents involving arsenic trioxide between 1966 and 1979. Ten of these incidents resulted in child fatalities.

Arsenic trioxide is an active ingredient in an antifouling paint for boats. According to EPA's current use information, the paint is applied in two coats on separate days. Assuming two boats are painted/year, exposure to the paint will be four times (days) per year. The Agency has relied on a surrogate study by Gold et al. (1981), where painting a 2 percent solution of chlorpyrifos resulted in dermal exposure of 2.13 μg/square cm/hr. Assuming that 3000 square cm of skin are exposed, dermal exposure may be estimated as: 3000 cm^2×2.13=7.7 mg/hr. Assuming it takes 2 hours to paint the bottom of a small boat, daily dermal exposure may be estimated as: 7.7 mg/hr×2 hr=15 mg/day, and annual exposure may be estimated as: 15 mg/day×4 days=60 mg/yr.

Since arsenic is nonvolatile, minimal inhalation exposure is expected.

Although arsenic trioxide is registered as a noncrop herbicide, the Agency is unaware of any current herbicidal use of this pesticide. If arsenic trioxide were used, there would be some exposure by the inhalation route to the mixer/loader and applicator.

e. *Sodium Arsenate.* Limited, if any, inhalation exposure is expected to result from the use of sodium arsenate baits; however, accidential poisonings of children have been associated with use of this insecticidal bait. In 186 reported pesticide incidents 190 children were involved. Five fatalities and 43 hospitalizations were reported. Spillage of 6 ml of sodium arsenate has been estimated to result in a dermal exposure of 78 mg/incident derived as follows: 6 ml (gm)×0.013 (%)=0.078 gm arsenic/incident.

Quantitative Risk Assessment

The linear non-threshold model was used to estimate inhalation risks at low levels of inhalation exposure. This model provides an estimate of the upper limit of risk, which is not likely to be exceeded. Since actual risk could be considerably lower than the estimated upper limit risk, the risk estimates presented throughout this document should be viewed as upper-limit estimates and not as accurate representations of true cancer risks.

Oncogenic risks have been quantified for those uses where the Agency has estimates of inhalation exposure. These risk estimates are based on the assumptions, data, and other information discussed in the preceding units. As described in the Wood Preservatives PD 4 (1984), the Agency assumed 100 percent of inhaled inorganic arsenic is absorbed in estimating risks and that an applicator or mixer/loader weighs 70 kg. The carcinogenic potency for quantifying risk from inhalation exposure to the inorganic arsenicals is 1.5×10^{-2} $(mg/kg/day)^{-1}$ over a 30-year working lifetime. Risks for mixer/loaders and applicators are presented in the following Table 1:

TABLE 1. ONCOGENICITY RISK ASSESSMENT [1]

Pesticide	Annual exposure (days)	Upper limit risk [2]	
		Mixer/loader	Applicator
Lead arsenate:			
Insecticide (foliar)	6	10^{-3}	10^{-3}
Sodium arsenite:			
1. Herbicide (Terrestrial)	1	10^{-5}	10^{-3} to 10^{-4}

TABLE 1. ONCOGENICITY RISK ASSESSMENT [1]—Continued

Pesticide	Annual exposure (days)	Upper limit risk [2]	
		Mixer/loader	Applicator
2. Termiticide	10	10^{-4} to 10^{-5}	negl.
3. Acaricide (ticks)		10^{-5}	
Calcium arsenate:			
Insecticide (fly)	20	10^{-4} to 10^{-5}	10^{-3}

[1] Inorganic arsenic is classified as a Human Carcinogen (Group A) in accordance with the Agency's Proposed Guidelines (U.S. EPA, 1984, 49 FR 46294).
[2] Based on inhalation exposure.

B. Additional Information on Risks

1. Mutagenicity

Various inorganic arsenicals have been assayed for mutagenic activity in a variety of test systems ranging from bacterial cells to peripheral lymphocytes from humans exposed to arsenic. The evidence supports the following conclusions. Arsenic is either inactive or extremely weak for the induction of gene mutations *in vitro*. Arsenic is clastogenic (causing DNA breakage) and induces sister chromatid exchanges in a variety of cell types including human cells *in vitro*, with trivalent arsenic being more potent than pentavalent arsenic by approximately one order of magnitude. Lastly, arsenic may affect DNA by the inhibition of DNA repair processes or by its occasional substitution for phosphorus in the DNA backbone.

The Agency's review of the mutagenicity data base to date has yielded evidence of mutagenicity of both arsenates and arsenites. Therefore, the Agency has concluded that the risk criterion in 40 CFR 154.7(a)(2) has been exceeded. The inorganic arsenicals may have the potential to cause chromosomal changes in human beings, although the mutagenic potency of arsenic is weak when compared to other known metal mutagens. Further discussion on the mutagenicity of arsenic is presented in the OHEA Document (pp. 6–1 through 6–40).

2. Teratogenicity

Parenteral administration of pentavalent and trivalent arsenic to experimental animals during pregnancy has produced gross malformations in the offspring. Additionally, increased mortality, increased resorptions, and decreased body weights of fetuses have been observed in these studies. In contrast, oral administration of sodium arsenate to experimental animals has either failed to produce gross malformations in the offspring or has produced only a slightly increased incidence and only at dosage levels that have also caused significant maternal toxicity. No-observed-effect-levels (NOELs) could not be established from these studies. Oral administration of sodium arsenite to experimental animals did not produce gross malformations in the offspring, but increased resorptions were reported.

As discussed in the Wood Preservatives PD 4 (pp. 93–94), existing studies using parenteral routes of administration are of limited usefulness for quantitatively predicting the potential hazards to humans exposed to inorganic arsenical pesticides by inhalation, oral, and dermal routes of exposure. The Agency's reevalutation of these studies indicates that the presumption of teratogenicity has not been rebutted and that the risk criterion on 40 CFR 154.7(a)(2) has been exceeded. However, the teratogenic potential of the inorganic arsenicals cannot be quantified until an adequate study is performed. The Agency has required teratogencity testing under authority of section 3(c)(2)(B) of FIFRA, using the gavage route of administration in order to develop a human teratogenicity/fetotoxicity risk assessment.

3. Acute Effects

Arsenic is known to be acutely toxic. The symptoms which follow oral exposure to inorganic arsenic include severe gastrointestinal damage resulting in vomiting and diarrhea, and general vascular collapse leading to shock, coma, and death. Muscular cramps, facial edema, and cardiovascular reactions are also known to occur following oral exposure to arsenic.

Trivalent arsenicals such as arsenic trioxide and sodium arsenite are approximately four times as acutely toxic as pentavalent lead arsenate and socium arsenate. However, pentavelent and trivalent inorganic arsenicals are both in the Agency's acute toxicity Category I, the most toxic category.

Many poisonings and fatalities have been recorded in the Agency's PIMS following the accidental ingestion of lead arsenate, arsenic trioxide, sodium arsenate, and sodium arsenite baits. Additionally, reports from the National Clearing House for Poison Control Centers indicate that a disproportionate number of accidental poisonings involve inorganic arsenicals and children under the age of five. Based on this information, the Agency concludes that the criterion of 40 CFR 154.7(a)(1) has been met or exceeded.

C. Benefits Analysis

In March 1982, the Agency performed a use-by-use benefits analysis of the non-wood uses of the inorganic arsenicals. This analysis was updated in March 1985. Addressed in the analysis were the major and minor uses of arsenic acid, lead arsenate, sodium arsenite, calcium arsenate, arsenic trioxide, sodium arsenate and copper acetoarsenite. The analysis estimated quantities utilized, identified alternatives and their availability, determined the change in pesticide costs associated with the use of the alternatives and evaluated the impact of cancellation on crop production and retail prices, as appropriate. Copies of these documents are available from the contact person listed above. A summary of this benefits assessment for the five inorganic arsenicals covered by this proposed action is presented below.

Lead arsenate baits are used in domestic dwellings to control cockroaches, silverfish and crickets. Less than 10,000 pounds of active ingredient are used annually as baits. A number of alternative insecticides are available including chlorpyrifos, diazinon, and propoxur. The economic impact on the consumer from cancellation of the insecticidal use of lead arsenate could range from $.84 to $6.7 million, the actual amount depending on whether the alternative chemical is applied by homeowners or professionals.

Although there are products containing lead arsenate as an active ingredient registered for use as a herbicide and foliar insecticide, the Agency is unaware of any current use of these products. Most registrations are suspended and alternatives are available. No economic impact is expected as a result of cancellation of these uses of lead arsenate.

Sodium arsenite is registered as a terrestrial and aquatic herbicide and as an insecticide. There is some minor and declining use as a terrestrial herbicide, but alternative hrebicides are available.

Sodium arsenite is no longer used as an insecticide. No economic impact is expected as a result of cancellation of the herbicide and insecticide registrations of sodium arsenite.

Calcium arsenate herbicide (crop) and insecticide registrations have been suspended for failure of the registrants to comply with Data Call-in Notices issued in 1986 under the authority of section 3(c)(2)(B) of FIFRA. Prior to suspension, there was no known usage of calcium arsenate on these sites. Alternatives are available. No economic impact is expected as a result of cancellation of these uses.

Approximately 85 percent of the pesticidal use of arsenic trioxide is as a liquid rodenticide bait to control rats and mice in and around homes. A small percentage of the remainder is used in a pelletized or dry bait form to kill moles and pocket gophers. Similarly priced and more effective alternatives such as warfarin and brodifacoum are available to control rats and mice. Strychnine, which is slightly more expensive, is the only registered alternative for moles and gophers. Nationwide, user costs would be expected to increase by approximately $5,000 annually if arsenic trioxide were cancelled for moles and pocket gophers, resulting in no measurable economic impact. No adverse economic impact is anticipated if the use for mice and rats were cancelled.

There is no known usage of arsenic trioxide as a noncrop herbicide; use as a noncrop insecticide and as an antifouling agent is limited. Alternatives are available. The economic impact of cancellation of these latter uses is expected to be negligible.

Sodium arsenate ant baits are used in approximately 1 percent of U.S. homes. Comparatively priced alternatives such as diazinon, chlorpyrifos and propoxur are available. Therefore, no impact is expected as a result of cancellation. Many registrations are currently suspended for failure of the registrants to comply with data requirements imposed under the authority of section 3(c)(2)(B) of FIFRA.

III. Comments of Registrants and Other Interested Parties

A total of 288 rebuttal comments were submitted to the Agency in response to the initiation of the Special Review of the wood preservative and nonwood preservative uses of the inorganic arsenicals. Of these, 16 comments specifically addressed the nonwood uses of the inorganic arsenicals. Several persons submitted testimonials regarding the efficacy and safety of inoganic arsenical ant stakes and cockroach hives as a result of the use of "tamperproof" packaging. The majority of these comments (11), however, concerned the unreasonable adverse effects determinations. The Agency's findings regarding these health effects have been summarized in the preceding unit on Risk Determination. The Agency's position regarding the adverse health effects remains unchanged since the Notice of Special Review. Interested persons are referred to the Wood Preservatives PD 2/3 (pp. 95–195) and Wood Preservatives PD 4 (pp. 88–107) for a detailed analysis of the rebuttal comments regarding health effects.

Finally, a few comments pertained to worker exposure during the application of inorganic arsenical pesticides. Because use of arsenical pesticides has declined markedly since the initiation of the Special Review and because application practices have changed, the Agency believes the rebuttals are not indicative of current usage, use parameters and use practices. Therefore, no analysis of the exposure rebuttals is presented; however, the Agency invites interested persons to submit information regarding current use practices and worker exposure.

IV. Proposed Regulatory Action and Rationale

There are three options available to the Agency for regulating pesticides. One, registrations may be continued without change; two, the terms and conditions of registration may be modified; and three, registrations may be cancelled.

The exposure information detailed in this document indicates that potentially significant inhalation worker exposures occur when inorganic arsenical pesticides are mixed and applied. The Agency has also determined that the risk reduction resulting from the use of a respirator would not change the risk/benefit determination, in light of the limited benefits. Finally, acute oral exposures have been reported involving children under the age of five, primarily as a result of exposure to the inorganic arsenical rodenticides and insecticides.

The Agency has estimated that worker oncogenic risks from inhalation exposure to the inorganic arsenicals without the use of respirators ranges from 10^{-} to 10^{-5} for the insecticide (foliar) use of lead arsenate, the insecticide (fly) use of calcium arsenate and the herbicide, termiticide and acaricide uses of sodium arsenite. Measures considered to reduce these inhalation risks were the use of dust masks or respirators, which would be expected to reduce inhalation exposure by 80 to 90 percent, respectively, and restricting the use of affected products to certified applicators. However, these uses have been declining in recent years, in many cases there is virtually no use of the chemical, and many of the registrations have either been suspended or voluntarily cancelled. Consequently, the Agency has determined that the use of protective clothing or a restricted use classification would not reduce the risks to an acceptable level in light of the limited benefits. For other use situations, including the molluscicide and herbicide uses of lead arsenate, the herbicide and antifoulant uses of arsenic trioxide, and the molluscicide and herbicide (except on turf) uses of calcium arsenate, some unquantified inhalation risks exist. Since most of these registrations have also either been suspended or voluntarily cancelled and viable alternatives are available without significant economic impact, the Agency has determined that the risks from continued registration outweigh the benefits. In addition, acute risks to children result from ingestion of the arsenic trioxide insecticide and rodenticide baits and the lead arsenate, sodium arsenate and sodium arsenite insecticide baits. The benefits of such uses are very small because of availability of alternatives; therefore, the acute risks posed by these uses are believed to outweigh the benefits.

Based on the risk/benefit information presented above and detailed in the referenced documents, the Agency has concluded that the risks from the inorganic arsenicals covered by this action outweigh the benefits of continued registration. In reaching this determination to cancel, the Agency considered regulatory measures short of cancellation which might reduce risks; however, these measures would not bring the risks to an acceptable level. Therefore, the Agency proposes to cancel the following inorganic arsenical pesticide registrations:

1. Lead arsenate insecticide, herbicide and molluscicide uses for: Terrestrial food crops—agricultural food crop uses, Terrestrial non-food crops—agricultural non-food crop uses, ornamental plants, trees, lawns and turf, golf course fairways, greens and tees; Forestry forest trees; Indoor—domestic dwellings.

2. Sodium arsenite herbicide, insecticide (including termiticide use) and acaricide uses for: Terrestrial non-food crops—bare ground, golf course sand traps, industrial areas, industrial/commercial buildings (outdoor), noncrop areas, railroad rights-of-way; Domestic outdoor-domestic dwellings (outdoor);

Forestry—forest trees; Indoor domestic—dwellings (indoor), cattle, sheep, and goats; and Aquatic non-food—ponds.

3. Calcium arsenate insecticide, herbicide, and molluscide uses for: Terrestrial non-food crops agricultural non-food crop uses, commercial lawns and turf, ornamental plants, non-crop areas; Domestic outdoor—domestic dwellings; Domestic indoor—outdoor animal quarters (manure treatment), corrals, feedlots, and loafing sheds (manure treatment), and poultry premises (manure treatment).

4. Arsenic trioxide insecticide, herbicide, rodenticide, and antifoulant uses for: Terrestrial non-food crops—golf courses, ornamental plants and lawns, non-crop areas; Domestic outdoor—domestic dwellings; Aquatic non-food—boat/ship hulls; Indoor agricultural premises-domestic dwellings, commercial, industrial and public premises, food handling premises, food processing areas.

5. Sodium arsenate insecticide uses for: Domestic outdoor—domestic dwellings; Domestic indoor—domestic dwellings.

Consideration of the lead arsenate plant growth regulator use on grapefruit, the sodium arsenite fungicide use on grapes, the desiccant use of arsenic acid on cotton and okra, and the flowable formulation of calcium arsenate for use on turf is deferred pending the Risk Assessment Forum's reassessment of the carcinogenic potency for oral/dermal risks and/or the receipt of dietary exposure data required under authority of section 3(c)(2)(B) of FIFRA.

In reaching a final determination, the Agency will re-review any use where data are submitted demonstrating that the risk/benefit profile differs significantly from that contained herein, such that modification of the terms and conditions of registration are viable alternatives to complete cancellation.

Existing Stocks

EPA proposes to allow the sale and distribution of existing stocks of inorganic arsenical pesticide products subject to this propsoed cancellation for up to 6 months after publication in the **Federal Register** of EPA's final Notice of Intent to Cancel. After the 6 months, no person could lawfully distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person existing stocks of products subject to the Notice.

This existing stocks provision, however, applies only to registrations that are in compliance with FIFRA at the time the Notice of Intent to Cancel is published. Suspended registrations will not be subject to the terms and conditions of the existing stocks provision contained in this notice. Persons holding such products must dispose of those stocks in accordance with the Resource Conservation and Recovery Act (RCRA). "Existing stocks" are defined as any quantity of inorganic arsenical products subject to this Notice that has been formulated, packaged and labeled for use and is being held for shipment or release or has been shipped or released into commerce as of the date of publication of the final Notice in the **Federal Register**. The use of such existing stocks would be allowed for up to one and one-half years after publication of the final Notice of Intent to Cancel. Registrants would have to relabel existing stocks in their possession to indicate the time limitations on distribution, sale, and use. In addition, EPA would also require registrants to contact commercial distributors of inorganic arsenical products to inform them of the time limitations on distribution, sale, and use, and to provide supplemental labeling reflecting the time limitations for existing stocks in the possession of commercial distributors. Upon expiration of the time limitation for use of existing stocks, disposal would be in accordance with the requirements of the Resource Conservation and Recovery Act.

The Agency believes continued use of the inorganic arsenicals throughout the existing stocks provisionary period will not pose an unreasonable risk to man or the environment. Most inorganic arsenical registrations are suspended and a number of others are no longer used. For these reasons, the Agency anticipates use of inorganic arsenicals throughout the existing stocks provisionary period will be minimal.

V. Procedural Matters

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA sections 6(b) and 25(d), EPA will transmit copies of this Notice and the Draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel unless the Secretary and the Panel waive their right to review the proposed decision. If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the proposal, EPA will issue the comments and EPA's responses with the final Notice for publication in the **Federal Register**.

Moreover, unless the time constraints are waived or modified, EPA may not issue the final Notice sooner than 60 days after sending this preliminary Notice to the Secretary and the Panel. If neither the Secretary nor the Panel comments within the 30 days, however, EPA could issue its final notice at the end of the 30-day comment period.

B. Intrastate Products

Pursuant to 40 CFR 162.17, EPA hereby notifies the producers of all potentially affected intrastate inorganic arsenical products that they are required to submit a complete application for Federal registration. These applications must be submitted within 60 days of the date on which this Notice is published in the **Federal Register** or the date on which the intrastate producer receives a copy of this Notice, whichever is alter. If an intrastate producer fails to submit a timely application, EPA will consider his Notice of Intent to Apply as an application for Federal registration for purposes of the review described below.

In addition, for purposes of FIFRA section 3(c)(6), this Notice also constitutes a Notice of Intent to Deny registration of pesticide products containing inorganic arsenicals for the uses listed in Unit IV above. The statute provides applicants with a 30-day period in which to correct the application to make it acceptable for registration. In this case, EPA has proposed a determination that there are no changes in the terms and conditions of use of the inorganic arsenical products subject to this Notice that would make such products acceptable for registration. Intrastate producers may, however, if they choose, submit applications for registration with additional terms and conditions on use that they believe would satisfy the statutory standard for registration.

EPA will review all applications submitted. If EPA decides, based on comments received in response to this Notice, to issue a final notice allowing continued use of the inorganic arsenicals under some circumstances, EPA will notify intrastate producers of that decision and allow them at least 30 days in which to make changes that would allow EPA to approve the application. If the application has not been corrected in the prescribed manner within the period allowed, the application may be denied. On the other hand, if EPA issues a final notice cancelling the registrations of the inorganic arsenical products enumerated herein, that notice will also include a final Notice of Denial for all applications for Federal registration of

intrastate pesticide products containing the uses of the inorganic arsenicals subject to that Notice.

Under FIFRA section 3(c)(6), the issuance of a denial entitles an applicant, or other interested person with the concurrence of the applicant, to request an adjudicatory hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed below in Unit V.C.

C. Procedures for Requesting a Cancellation or Denial Hearing

Registrants, applicants, and other interested parties who would be adversely affected by any decision to cancel or deny applications for the registration of inorganic arsenicals products would be entitled to request a hearing in which to contest EPA's final decision to cancel registration and deny applications. Under FIFRA, such persons must submit their requests for a hearing within 30 days either of receipt of the final Notice of Intent to Cancel or Notice of Denial or of its publication in the **Federal Register**, whichever is later. Hearing requests must contain information concerning the basis of the request, as EPA will explain in detail in any final Notice of Intent to Cancel or Notice or Denial. If a timely, properly formulated hearing request is submitted, the product registrations which are the subject of the requests will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled, or in the case of intrastate products, the application would be finally denied by operation of law 30 days after the final Notice was issued. A final cancellation or denial would have the effect of prohibiting further sale and distribution, except as specified in the existing stocks provision of the Notice.

It should be noted that registrants and applicants are not required to request a hearing at this time in order to be allowed to continue to sell and distribute their products within this period.

D. Public Record

The Agency has established a public record (public docket OPP-30000/28L) for the nonwood uses of the inorganic arsenicals Special Review which contains all written comments. These comments are available for public inspection and copying in Rm. 236 at the Virginia address given previously, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. This public record will include: (1) This Notice; (2) any other notices pertinent to the inorganic arsenicals Special Review; (3) any documents (other than information claimed to be confidential business information) which were relied upon by the Agency in reaching its determination, (4) all documents and copies of written comments submitted to the Agency in response to the Special Review; (5) any written response to the Proposed Notice of Intent to Cancel by the Secretary of Agriculture or the Scientific Advisory Panel; (6) a transcript of all public meetings held by the Agency or the Scientific Advisory Panel for the purpose of gathering information on the inorganic arsenicals; (7) memoranda describing each meeting between Agency personnel and any person outside government which concerns the inorganic arsenicals Special Review decision; (8) all comments, documents, proposals, or other materials concerning the Special Review submitted by a person or party outside government; and (9) a current index of materials in the public docket.

Dated: December 23, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-29494 Filed 12-31-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/28M; FRL-3137-3]

Pentachlorophenol; Amendment of Notice of Intent to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of notice of intent to cancel.

SUMMARY: This Notice amends the Amended Notice of Intent to Cancel the registrations for wood preservative pentachlorophenol products published in the **Federal Register** of January 10, 1986 (51 FR 1334) with regard to the limits of hexachlorodibenzo-p-dioxin (HxCDD) and other contaminants in pentachlorophenol products.

DATES: Registrants or applicants for registration of pentachlorophenol wood preservative products who responded to the January 10, 1986 Amended Notice by renewing their hearing requests filed in response to the original July 13, 1984 Notice of Intent to Cancel must file amended objections or otherwise affirm their previously filed hearing request on or before February 2, 1987, or within 30 days from receipt of this Notice, whichever date is later, to avoid dismissal of their hearing requests on issues related to HxCDD and other contaminants in pentachlorophenol as detailed in this amended Notice.

ADDRESS: Applications to amend the confidential statements of formula for wood preservative products containing pentachlorophenol or its derivatives must be submitted to: By mail:

Lois Rossi, Acting Product Manager 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 229, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900)

Amendments to objections must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Spencer Duffy, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006F, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1529).

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of July 13, 1984 (48 FR 28666), EPA issued a Notice of Intent to Cancel Registrations of Pesticide Products Containing Creosote, Pentachlorophenol (Including Its Salts) and the Inorganic Arsenicals ("July 13, 1984 Notice") pursuant to section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This July 13, 1984 Notice concluded the Special Review (previously called Rebuttable Presumption against Registration) process for the wood preservative uses of these three chemicals, and announced that certain modifications in the terms and conditions of registrations of products for these uses were required in order to avoid cancellation. On January 10, 1986 (51 FR 1334), the Agency issued in the **Federal Register** an Amended Notice of Intent to Cancel for creosote, pentachlorophenol, and the inorganic arsenicals ("January 10 Amended Notice"). The amendments set forth in the January 10 Amended Notice were minor in scope, and either clarified a provision of the July 13, 1984 Notice, provided a somewhat different mechanism to achieve a degree of risk

protection equivalent to that afforded by the prior provision, or made certain minor changes in timing for certain of the label requirements. A revised existing stocks provision was also provided. The legal background for this action was discussed in both the July 13, 1984 and January 10, 1986 **Federal Register** Notices.

Regarding the limits for HxCDD and other contaminants in pentachlorophenol, the January 10 Amended Notice required registrants of products containing technical pentachlorophenol or its salts to amend the Confidential Statements of Formula for those products to indicate that the HxCDD contamination in the technical pentachlorophenol used in the product does not exceed 1 ppm, and that 2,3,7,8-TCDD is below the limits of detection. (The January 10 Amended Notice also required that the methods used to lower the HxCDD content would not increase the hexachlorobenzene and polychlorinated dibenzofuran levels above the levels in products marketed at the time of publication of the January 10 Amended Notice.) As an alternative, registrants could certify that the exclusive source of any quantity of pentachlorophenol or its salts used in manufacturing or formulating the product was one or more specified, purchased, registered pentachlorophenol products.

Registrants who had requested a hearing in response to the July 13, 1984 Notice were required to file amended objections or otherwise affirm their previously filed hearing request in a timely manner in order to avoid dismissal of their hearing requests. The Agency received affirmations of previously filed hearing requests from three pentachlorophenol registrants in response to the January 10 Amended Notice. Two of those registrants raised a challenge only to the specified levels for HxCDD and other contaminants; the remaining registrant renewed his challenge to all the provisions pertaining to pentachlorophenol. No other registrant filed a renewed hearing request to contest the modifications to the terms and conditions of registration required by the January 10 Amended Notice.

Subsequent to the publication of the January 10 Amended Notice, the Agency reached agreement with two of the pentachlorophenol registrants that requested a hearing on maximum certified limits for HxCDD and other contaminants of pentachlorophenol and the mechanisms for the verification and enforcement of such limitations. The Agency has concluded that the terms and conditions set forth in this amended Notice regarding such contaminant limitations are sufficient to prevent unreasonable adverse effects on the environment. With the phased-in reduction of the HxCDD levels and the specified limits for other contaminants, as implemented by the compliance procedures, the Agency believes that the benefits of use of pentachlorophenol for wood preservation will exceed the risks of such use. This Notice does not make any other changes to the modifications to the terms and conditions of registration required to avoid cancellation set forth in Unit IV of the January 10 Amended Notice.

This Notice sets forth requirements for various categories of manufacturing-use and end-use pentachlorophenol products. For end-use products, there are applicable requirements for end-use products formulated exclusively from purchased, registered pentachlorophenol manufacturing-use products, and for all other end-use products.

Unit II of this Notice sets forth the required changes in the Confidential Statements of Formula for pentachlorophenol wood preservative products relating to levels of HxCDD and other contaminants. Basically, the Agency is requiring the registrants of pentachlorophenol to reduce the levels of HxCDD in accordance with a three-step schedule. The maximum batch level initially is 15 ppm; after February 2, 1988, the maximum batch HxCDD level will be 6 ppm, with a maximum monthly average of 3 ppm. Finally, after February 2, 1989, the maximum batch HxCDD level will be 4 ppm, with a maximum monthly average of 2 ppm.

Unit III sets forth the "Compliance Procedures" by which compliance with certified limits for HxCDD and the other pentachlorophenol contaminants will be measured, monitored, and enforced for the various categories of manufacturing and end-use products. In brief summary, the Compliance Procedures provide that every batch of manufacturing-use products containing a pentachlorophenol active ingredient must be sampled and analyzed for HxCDD content; analysis for HCB and 2,3,7,8-TCDD must be performed monthly. This information must be reported to the Agency on a monthly basis. The sampling and analytical methods used by each registrant of a manufacturing-use product must be reviewed and approved by EPA. A portion of each sample analyzed must be retained for 5 years after the date of analysis, and records of the results of each analysis must be kept for 10 years after the date of analysis. Samples and records must be made available to the Agency upon request.

As specified in the Compliance Procedures, violations of the certified limits for pentachlorophenol products will be enforced through stop sale orders or any other appropriate actions under FIFRA. The Compliance Procedures include a requirement that at least once a month or after the production of 120 batches, whichever comes earlier, the manufacturing-use registrant must monitor the levels of HCB, 2,3,7,8-TCDD, total tetra-, penta-, and heptachlorinated dibenzo-p-dioxins, and tetra-, penta-, hexa-, and heptachlorinated dibenzofurans. These results must also be reported to the Agency. The Compliance Procedures specify that where manufacturing-use products are formulated exclusively from purchased, registered products, registrants of those products may rely upon the certification of the earlier registrants. Finally, registrants of end-use products must either certify that their products are formulated exclusively from purchased, registered pentachlorophenol products or provide the Agency with the necessary means to verify that their products conform to the maximum certified limits for HxCDD and other contaminants. Registrants of end-use products are also subject to certain reporting and record retention requirements. Records maintained in accordance with the requirements of the Compliance Procedures must be kept for 10 years after the date of release for shipment, and must be made available for inspection and copying by the Agency.

Unit IV provides a discussion of the procedures which will be followed in implementing the modificaitons to the terms and conditions of registration required by Units II and III of this Notice.

II. Required Changes in the Terms and Conditions of Registration to Avoid Cancellation

A. Manufacturing-Use Pentachlorophenol Products

The Agency has determined that any registrant of a wood preservative pentachlorophenol (or its derivatives, including but not limited to, salts, and esters) manufacturing-use product, as defined in the Compliance Procedures contained in Unit III of this Notice, containing pentachlorophenol or its derivatives must, within the time permitted by Unit IV of this Notice, amend the Confidential Statement of Formula for that product to state as follows:

1. During the time period which runs from Feburary 2, 1987 to February 2, 1988, each batch of pentachlorophenol manufacturing-use product or portion thereof released for shipment will contain no more than 15 ppm HxCDD. This reduction in HxCDD content must be achieved without increasing the amount of hexachlorobenzene (HCB) beyond 75 ppm.

2. During the time period which runs from February 2, 1988 to February 2, 1989, each batch of pentachlorophenol manufacturing-use product or portion thereof released for shipment will contain no more than 6 ppm HXCDD, and the average of all batches released for shipment in any calendar month will not exceed 3 ppm. This reduction in HxCDD content must be achieved without increasing the amount of hexachlorobenzene (HCB) beyond 75 ppm.

3. After February 2, 1989, each batch of pentachlorophenol manufacturing-use product or portion thereof released for shipment will contain no more than 4 ppm HxCDD, and the average of all batches released for shipment in any calendar month will not exceed 2 ppm HcCDD. This reduction in HxCDD content must be achieved without inceasing the amount of HCB beyond 75 ppm.

4. The manufacturing-use pentachlorophenol wood preservative products do not contain any 2,3,7,8-TCDD at a limit of detection of no higher than 1 ppb.

5. The "Compliance Procedures for Certified Limits for HxCDD and Other Contaminants in Pentachlorophenol Wood Preservative Products", set forth in Unit III below, provide the mechanism by which compliance with the certified limits for HxCDD, HCB, 2,3,7,8-TCDD and other contaminants will be measured, monitored, and enforced.

B. End-Use Pentachlorophenol Products

The Agency has determined that any registrant of a wood preservative end-use product containing pentachlorophenol (or its derivatives, including but not limited to, its salts and esters), must, within the time permitted by Unit IV of this Notice, amend the Confidential Statement of Formula for that product to state as follows:

1. The presence of any quantity of pentachlorophenol in any quantity of the end-use product which is sold or distributed after February 2, 1987 is attributed solely to manufacture or formulation of the end-use product from manufacturing-use pentachlorophenol containing no more than the applicable certified limit of HxCDD and other contaminants specified in Unit II.A above. This requirement applies both to end-use products formulated exclusively from purchased, registered manufacturing-use pentachlorophenol and to end-use products which are not formulated exclusively from purchased, registered manufacturing-use pentachlorophenol.

2. For end-use products which are formulated exclusively from purchased, registered pentachlorophenol manufacturing-use products, the composition statement for the end-use product must state that the end-use product will not contain any quantity of any pentachlorophenol manufacturing-use product which the registrant or manufacturer of the end-use product knows, or has been informed was not manufactured, sampled, analyzed, or labeled in accordance with the terms and condition of registration set forth in this Notice.

3. For those end-use products not formulated exclusively from purchased, registered pentachlorophenol manufacturing-use products, the registrant must comply with the same requirements and conditions for registration relating to sampling, analysis, and sample collection and retention for the end-use product as for manufacturing-use pentachlorophenol products, as specified in the Compliance Procedures in Unit III of this Notice. In the alternative, registrants of these end-use pentachlorophenol products may elect to fulfill these requirements through sampling and analysis of the parent manufacturing-use product instead of the end-use product, subject to the conditions specified in the Compliance Procedure of Unit III.

4. The "Compliance Procedures for Certified Limits for HxCDD and Other Contaminants in Pentachlorophenol Wood Preservative Products", set forth in Unit III below, provide the mechanisms by which compliance with the certified limits for HxCDD, HCB, 2,3,7,8-TCDD, and other contaminants will be measured, monitored, and enforced.

Unit III contains the text of the "Compliance Procedures for Certified Limits for HxCDD and Other Contaminants in Pentachlorophenol Wood Preservative Products" as set forth in the Settlement Agreement dated November 7, 1986, between EPA, Vulcan Material Company, and Idacon, Inc.

III. Compliance Procedures for Certified Limits for HXCDD and Other Contaminants in Pentachlorophenol Wood Preservative Products

A. Preface

1. Overview

The primary objective of this document is to establish reliable and enforceable methods for implementing certified limits for certain contaminants in registered pentachlorophenol wood preservative products. Accordingly, this document sets forth the mechanisms by which compliance with certified limits for hexachlorodibenzo-p-dioxin (HxCDD), hexachlorobenzene (HCB), and 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) in pentachlorophenol wood preservative products will be measured, monitored, and enforced. Mechanisms for achieving compliance with the certified limits for the various categories of manufacturing-use and end-use products are included.

The particular contaminant limits chosen have been arrived at after due consideration of potential risks, technical and economic feasibility, and overall practicability. The compliance procedures are designed to be consistent with the settlement agreement between the Agency and the American Wood Preservers Institute, the National Forest Products Association, the Society of American Wood Preservers, Inc., Chapman Chemical Company, and others entered into on September 30, 1985, in *In the Matter of Chapman Chemical Co., et al.*, FIFRA Docket Nos. 529, et al. That agreement provides that any registrant of a pentachlorophenol wood preservative product must amend the confidential statement of formula for that product to state either (1) that the exclusive source of any quantity of pentachlorophenol used in manufacturing or formulating the product is one or more specified, purchased, registered pentachlorophenol products, or (2) that the product conforms to the uniform maximum certified limits for HxCDD and other contaminants.

Specifically, the procedures set out in this document call for a three-phase reduction scheme for HxCDD in pentachlorophenol manufacturing-use products, arriving at an average concentration of 2 ppm or less in 2 years. The reduction in HxCDD content must be achieved without increasing the amount of HCB currently found in pentachlorophenol products. In addition, although available information does not indicate that 2,3,7,8-TCDD is a contaminant in pentachlorophenol

products registered for use in the United States, the Agency must be confident that the HxCDD reduction methods used do not result in the production of detectable amounts of 2,3,7,8-TCDD. Accordingly, registrants of pentachlorophenol wood preservative products must certify that their products do not contain any 2,3,7,8-TCDD at a limit of detection no higher than 1 ppb.

In order to ensure that monitoring and enforcement of compliance with the new certified limits will be as practicable as possible, these procedures provide that every batch of manufacturing-use product containing a technical pentachlorophenol active ingredient must be sampled and analyzed for HxCDD content prior to incorporation in end-use products (except that where a single product is produced by the same registrant as both a manufacturing-use and end-use product, it will be sampled and analyzed before packaging, mixing with other batches, or formulation, as if it were a manufacturing use product only); analysis for HCB and 2,3,7,8-TCDD must be performed monthly. The sampling and analytical methods used by each registrant of a manufacturing-use product must be reviewed and approved by EPA. A portion of each sample analyzed must be retained and records of the results of each analysis must be kept. Where manufacturing-use products are formulated exclusively from purchased, registered products, registrants of those products may rely upon the certification of the earlier registrants.

Registrants of end-use products must either certify that their products are formulated exclusively from purchased, registered pentachlorophenol products or provide the Agency with the necessary means to verify that their products conform to the maximum certified limits for HxCDD and other contaminants. Registrants of end-use products are also subject to certain reporting and record retention requirements.

Registrants are also required to measure and report levels of other dioxin and furan contaminants in pentachlorophenol wood preservative products on a regular basis in order to allow the Agency to monitor levels of these substances in current products. Based on this information, the Agency will determine whether further regulatory action related to these pentachlorophenol contaminants is necessary or appropriate.

Any pentachlorophenol wood preservative product that has not been manufactured, sampled, analyzed, packaged, and labeled in accordance with the terms and conditions of its registration, as approved pursuant to the amended notice of intent to cancel implementing these compliance procedures, will be subject to a stop sale, use, or removal order or to seizure under section 13 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In addition, any person who sells or distributes any pentachlorophenol product which does not comply with the terms and conditions of its registration, as approved pursuant to the amended notice of intent to cancel implementing these compliance procedures, will be subject to civil or criminal penalties under section 14 of FIFRA.

2. Definitions

For purposes of this document, the following terms are defined as set forth below:

a. The term "Amended Notice" means the amended notice of intent to cancel issued for publication in the **Federal Register** by the Agency that encompasses the terms of these compliance procedures and announces the Agency's regulatory intent to make the terms binding on all pentachlorophenol wood preservative registrations.

b. The term "average", when used to describe the monthly limitation for HxCDD, means a weighted average. Therefore, in calculating the monthly average ppm HxCDD (p.e.), the mathematical weight assigned to each batch of product shall be proportional to the pentachlorophenol equivalent of that batch.

c. The term "code", as used in Unit D, means an identification system that an end-use registrant may include on its labels to indicate the source of the manufacturing-use product used, without specifically naming the source on the label. The key to the code must be provided to the Agency in the composition statement for the end-use product.

d. The term "composition statement" is used to encompass the statement required in connection with the registration of a pesticide under FIFRA section 3 and all of the supporting data and information necessary to verify the accuracy of the contents of the statement. In determining the adequacy of the statement, the Agency will consider the statement and its supporting decumentation as a unit.

e. The term "distribute or sell" means to sell, offer for sale, hold for sale, distribute, release for shipment, deliver for shipment, or ship.

f. The term "penta" means technical grade pentachlorophenol.

g. The term "pentachlorophenol" means only the chlorinated phenol, C_6HCl_5O.

h. The term "pentachlorophenol equivalent" (or "p.e.") means the amount of pentachlorophenol that would be present in a product if all the pentachlorophenol were in the penta form and if no diluent ingredients were added. The amount of pentachlorophenol equivalent in a product is related to the amount of penta derivative in that product by the ratio of the respective molecular weights: pure pentachlorophenol molecular weight/pure pentachlorophenol derivative moledular weight. The pentachlorophenol equivalent HxCDD concentration is expressed as the weight of HxCDD per weight of pentachlorophenol equivalent:

$$\frac{\text{mg HxCDD}}{\dfrac{\text{pentachlorophenol MW}}{\text{pentachlorophenol derivative MW}}\ \text{(Kg penta derivative)}} = \text{ppm HxCDD (p.e.)}$$

However, where the penta contains less than 85 percent pentachlorophenol or the penta derivative is derived from penta containing less than 85 percent pentachlorophenol, the HxCDD concentration must be corrected for percent pentachlorophenol.

i. The term "penta derivative" means the technical grade of a penta derivative, including but not limited to metal salts and esters.

j. The term "pentachlorophenol end-use product" (or "pentachlorophenol EP") means any pentachlorophenol product that bears label instructions for or is intended for use as a wood preservative.

k. The term "pentachlorophenol manufacturing-use product" (or "pentachlorophenol MP") means all other pentachlorophenol products that

are not pentachlorophenol EPs, including any product which bears label instructions for or is intended for use in manufacture or formulation of wood preservative end-use products.

l. The term "pentachlorophenol products" means any wood preservative pesticide containing pentachlorophenol or any pentachlorophenol derivative, including but not limited to metal salts of pentachlorophenol and pentachlorophenol esters.

m. The term "purchased" means bought from another producer, provided the other producer does not share ownership with the purchaser.

n. A product is "released for shipment", in accordance with the definition of "released for shipment" set forth in EPA Policy and Criteria Notice Number 2030.1, when the producer manifests an intent to introduce the product into United States commerce.

o. The term "technical grade" means a substance that contains an active ingredient in the purest form attained during manufacture and that contains no inert ingredients which have been intentionally added for any purpose other than synthesis or purification of the active ingredient.

Terms defined in FIFRA and not explicitly defined are used in this document with the meaning given to them in FIFRA.

B. Registration of Pentachlorophenol Wood Preservative Pesticides

No person shall sell, offer for sale, hold for sale, distribute, release for shipment, deliver for shipment, or ship (hereafter "distribute or sell") in any State any quantity of any wood preservative pesticide containing pentachlorophenol or any pentachlorophenol derivative (hereafter "pentachlorophenol products"), including but not limited to metal salts of pentachlorophenol and pentachlorophenol esters, unless such pesticide is registered pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act or is intended solely for export pursuant to section 17(a) of FIFRA. Any pentachlorophenol product which bears label instructions for or is intended for use as a wood preservative, shall be classified as a pentachlorophenol end-use product (EP). Any other pentachlorophenol product, including any product which bears label instructions for or is intended for use in manufacture or formulation of wood preservative end-use products, shall be classified as a pentachlorophenol manufacturing-use product (MP). Nothing in these Compliance Procedures precludes a single product from being both an MP and an EP. However, for purposes of the procedures set forth herein, such a product shall be considered an MP as to the registrant/producer of the product.

After the effective date of the amended notice of intent to cancel implementing these compliance procedures, no application for registration or amended registration of any pentachlorophenol product shall be approved unless, in addition to any other requirements for registration, the applicant has satisfied all requirements for registration of a pentachlorophenol manufacturing-use product established by Section C or all requirements for registration of a pentachlorophenol end-use product established by Section D.

C. Requirements Concerning Manufacturing-Use products

1. Application for amended registration

After the effective date of the amended notice of intent to cancel implementing these compliance procedures, no registrant of a pentachlorophenol MP shall distribute or sell in any State any quantity of such product unless registration for such product has been amended to conform to the criteria specified in Unit C, paragraph 2.

2. Approval of registration

(a) *Types of manufacturing-use products.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the MP consists of or is formulated from a technical-grade pentachlorophenol or pentachlorophenol derivative. Each such pentachlorophenol MP shall be classified as follows:

(1) Each MP consisting of technical-grade pentachlorophenol shall be classified as a "Type 1 MP."

(2) Each MP consisting of a technical-grade pentachlorophenol derivative shall be classified as a "Type 2 MP." Type 2A MPs consist of Type 2 MPs derived exclusively from purchased, registered Type 1 MPs; Type 2B MPs consist of all other Type 2 MPs.

(3) Each MP consisting of a mixture formulated from a technical-grade pentachlorophenol or pentachlorophenol derivative and other ingredients shall be classified as a "Type 3 MP." Type 3A MPs consist of Type 3 MPs in which all the pentachlorophenol in the product is derived exclusively from purchased, registered Type 1 or Type 2 MPs; Type 3B MPs consist of all other Type 3 MPs.

(b) *Composition statement*—(1) *Certified limit for HxCDD.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the composition statement for the product includes a certification that each batch of the product or portion thereof that the registrant releases for shipment complies with the following limits for HxCDD. Compliance with the HxCDD certified limit will be enforced according to the procedures set out in Unit III.C.2(c)(1)(D).

Phase 1. Each current batch of pentachlorophenol product or portion thereof will contain no more than 15 ppm HxCDD (p.e. basis);

Phase 2. One year after the date of publication of the Amended Notice, each batch of pentachlorophenol product or portion thereof will contain no more than 6 ppm HxCDD (p.e.), and the average of all batches released for shipment in any calendar month will not exceed 3 ppm (p.e.); and

Phase 3. Two years after the date of publication of the Amended Notice, each batch of pentachlorophenol product or portion thereof will contain no more than 4 ppm HxCDD (p.e.), and the average of all batches released for shipment in any calendar month will not exceed 2 ppm (p.e.).

In calculating the monthly average ppm HxCDD (p.e.), the mathematical weight assigned to each batch shall be proportional to the pentachlorophenol equivalent of that batch.

The certified limit for HxCDD shall be attained without exceeding the following contaminant limitations for hexachlorobenzene (HCB), and 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) in pentachlorophenol MPs on a pentachlorophenol equivalent basis: 75 ppm HCB and no detectable 2,3,7,8-TCDD at a limit of detection no higher than 1 ppb.

(2) *Type 1, Type 2B, and Type 3B MPs*—(A) *Sampling method*—(i) *Description of method.* No application for registration or amended registration of a pentachloro-phenol Type 1, Type 2B, or Type 3B MP shall be approved unless the composition statement for the product describes a method for sampling the product to determine HxCDD content which has been reviewed and approved by EPA. Each applicant for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall submit a written description of the proposed sampling method for the product, including all handling steps from sample selection to storage and all data evaluation steps. EPA will review the proposed sampling method, and all subsequent proposed revisions thereof, for conformity to the basic criteria specified in Unit C, paragraph 2(b)(2)(A)(ii). Within 90 days

following receipt of a proposed sampling method, EPA will either approve the method, notify the applicant that the method is unsatisfactory or incomplete, or acknowledge receipt of the method with a brief explanation of factors requiring further review. If EPA determines that a proposed sampling method is unsatisfactory or incomplete, the applicant may consult with EPA concerning appropriate modifications of the proposed method.

(ii) *Criteria for approval of method.* The sampling method for each pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be consistent with sound statistical and sampling techniques. The sampling method shall be designed to provide a high degree of reliability so that analysis of samples collected by the method will demonstrate whether or not each individual batch of the MP, and any portion thereof which is distributed or sold, or used in manufacture or formulation of other products, meets the stated certified limit for HxCDD. The sampling method shall include a complete description of the criteria which will define a "batch" of the MP. Every batch of the MP shall be sampled and analyzed for HxCDD content. At least one representative sample (may be composite) of not less than 75 grams on a pentachlorophenol equivalent basis shall be taken from each batch of MP.

The sampling method shall provide for additional sampling for process monitoring or additional analyses at any time if EPA determines that these additional steps are necessary to assure compliance with the HxCDD limitation. The basis for such a determination is whether the sampling method continues to provide a high degree of reliability so that analysis of samples collected by the method will demonstrate that the MP meets the stated certified limit for HxCDD.

(B) *Analytical method.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the composition statement for the product describes or cites a method for analysis of the product to determine HxCDD content which has been reviewed and approved by EPA. Each applicant for registration or amended registration of a Type 1, Type 2B, or Type 3B MP shall either submit a written description of a proposed analytical method for the product or cite an appropriate method from among the EPA-approved methods. (Copies of EPA-approved methods are available from the Agency.) All proposed analytical methods other than those already approved will be reviewed by EPA for conformity to basic criteria for acceptable analytical methods including adequacy of the method (1) to extract or partition HxCDD from pentachlorophenol products; (2) to separate HxCDD from any interferences present in the extract; and (3) to separate and quantify HxCDD using an appropriate detection method that has sufficient sensitivity and selectivity to achieve the desired limits of detection. Within 90 days following receipt of a proposed analytical method, EPA will either approve the method, notify the applicant that the method is unsatisfactory or incomplete, or acknowledge receipt of the method with a brief explanation of factors requiring further review. If EPA determines that a proposed analytical method is unsatisfactory or incomplete, the applicant may consult with EPA concerning appropriate modifications of the proposed method.

(C) *Use of approved methods.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the composition statement for the product states that each batch of the MP will be sampled and analyzed, utilizing the sampling method and the analytical method described in the composition statement, to establish compliance with the certified limit for HxCDD specified in Unit C, paragraph 2(b)(1).

(D) *Other required analyses.* Periodically, but at least once a month or after the production of 120 batches, whichever comes earlier, each pentachlorophenol Type 1,Type 2B, Type 3B MP shall be analyzed for HCB, 2,3,7,8-TCDD, total tetra, penta, and hepta chlorinated dibenzo-p-dioxins (PCDDs), and tetra, penta, hexa, and hepta chlorinated dibenzofurans (PCDFs). Analyses for the PCDDs and PCDFs shall, at a minimum, provide information on the total concentration of each individual homologue; however, isomeric analyses will be acceptable so long as the total concentration of the homologue can be determined from the results. If the analytical method for 2,3,7,8-TCDD is not isomer specific, any TCDD detected will be assumed to be 2,3,7,8-TCDD.

Samples used for these analyses shall also be analyzed for HxCDD, and for purposes of the required records, a complete contaminant level profile (i.e., concentrations of HxCDD, HCB, TCDD, PeCDD, HpCDD, TCDF, PeCDF, HxCDF, HpCDF and 2,3,7,8-TCDD) shall be reported for the same sample.

Records for these analyses shall be maintained and made available for inspection as described in Unit C, paragraph 2(c)(1)(A). Samples shall be maintained as described in Unit C, paragraph 2(c)(1)(B).

Type 3B MP option. In lieu of providing analytical information on the mixture, registrants of Type 3B MPs may elect to provide the required information on the parent Type 1 or Type 2 MP used to formulate the Type 3B MP. Selection of this option is possible only if the registrant agrees to all of the following conditions:

(i) Samples of and records for the parent Type 1 or Type 2 MP will be obtained, analyzed, and maintained as described in Unit C, paragraphs 2(b)(2)(A)-(D) and 2(c)(1)(A)-(D);

(ii) Records correlating individual batches of Type 3B MP with the specific batch(es) of Type 1 or Type 2 MP used to make the Type 3B MP are maintained;

(iii) EPA has determined that formulation of the Type 3B MP would not be expected to result in additional HxCDD, and that the HxCDD content of the Type 3B MP on a pentachlorophenol equivalent basis is readily ascertainable from the required records; and

(iv) Duly authorized inspectors will be allowed to collect samples of the parent Type 1 or Type 2 MP used to make the Type 3B MP under the same conditions that they would be allowed to sample the Type 3B MP.

All other conditions and requirements for registration set forth in this document for Type 3B MPs would be effective as written.

(3) *Type 2A and Type 3A MPs*—(A) *Use of conforming MP.* No application for registration or amended registration of a pentachlorophenol Type 2A or Type 3A MP shall be approved unless the composition statement for the product states that the presence of any form of pentachorophenol in any quantity of the Type 2A or Type 3A MP which the registrant distributes or sells shall be attributable solely to formulation of the Type 2A or Type 3A MP from one or more specified, purchased, registered pentachorophenol Type 1 or Type 2 MPs which have been certified to meet the limits for HxCDD specified in Unit C, paragraph 2(b)(1).

(B) *HxCDD formation.* No application for registration or amended registration of a pentachorophenol Type 2A or Type 3A MP shall be approved unless EPA determines that formulation of the Type 2A or Type 3A MP would not be expected to result in the presence of additional HxCDD.

(C) *Agreed conditions*—(1) *Type 1, Type 2B, and Type 3B MPs*—(A)

Required records—(i) *Reporting requirements.* No application for registration or amended registration of a pentachorophenol Type 1, Type 2B or, Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, to provide the Agency by the 15th day of the month the results of the analyses for HxCDD of all Type 1, Type 2B, or Type 3B MPs distributed or sold during the preceding calendar month. The monthly report must, at a minimum, include information, identified by batch numbrer, on the HxCDD content of every batch (or portion thereof) of Type 1, Type 2B, or Type 3B MP distributed or sold, and the average HxCDD content of all batches (or portions thereof) distributed or sold during the reporting month.

(ii) *Retention requirements.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B or Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, that records of the results of each analysis of the MP performed to establish compliance with the certified limit for HxCDD specified in Unit C, paragraph 2(b)(1) will be maintained at specified locations for 10 years after the date of analysis. For each sample analyzed, the records shall include the sample number, the batch number, the batch weight, the date of analysis for HxCDD content, the approved analytical method used, the limit of detection, the concentration of HxCDD detected, the percent recovery, the calculated HxCDD concentration (pentachorophenol equivalent basis), the name and address of the analytical laboratory, and the signature of the analyst.

(B) *Retention of samples.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, and Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, that a representative portion of each sample of the MP that is analyzed to establish compliance with the certified limit to HxCDD specified in Unit C, paragraph 2(b)(1), will be retained at specified locations for 5 years after the date of analysis. Each sample retained shall contain at least 50 grams on a pentachlorophenol equivalent basis or a sufficient amount to enable at least two subsequent analyses of the sample by the approved analytical method for the product, whichever is greater. Each sample shall be clearly identified as to batch number, date of manufacture, and date of analysis, stored securely, and adequately protected from light, high temperatures, and other conditions which might cause degradation.

(C) *Collection of samples.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B or Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, that samples of the MP retained pursuant to Unit C, paragraph 2(c)(1)(A), will be made available at the specified location for collection at any reasonable time by any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, upon the presentation of appropriate credentials. For any given sample, the officer or employee may collect an aliquot no larger than one-half of the total sample or an amount sufficient for analysis, whichever is greater, and shall provide a written receipt describing the sample(s) collected. If any sample so collected is analyzed, a copy of the results of such analysis shall be furnished promptly to the registrant.

(D) *Compliance with HxCDD certified limit*—(i) *Batch limitation.* The HxCDD batch limitation for pentachlorophenol MPs described in Unit C, paragraph 2(b) shall be strictly enforced. Violations of the HxCDD batch limitation shall be enforced through stop sale orders or any other appropriate actions under FIFRA.

(ii) *Monthly average limitation.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, to abide by the procedures set forth in this paragraph for ensuring compliance with the monthly average limitation for HxCDD described in Unit C paragraph 2(b). Any registrant reporting a monthly average greater than 3.0 ppm HxCDD (p.e.) during Phase 2 or 2.0 ppm HxCDD (p.e.) therefore in Phase 3, but less than or equal to 3.1 ppm (Phase 2) or 2.1 ppm (Phase 3) for 2 consecutive months, or any registrant reporting a monthly average greater than 3.2 ppm (Phase 2) or 2.2 ppm (Phase 3) for any 1 month shall not thereafter distribute or sell any batch of pentachlorophenol product that contains greater than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3) HxCCD until it can be matched with one or more batches containing less than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3), such that the average of the matched batches is equal to or less than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3) ppm. (No low batch may be used for matching purposes more than once.) Such matching provision shall be in effect until the registrant adequately demonstrates to the Agency that a monthly average equal to or less than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3) HxCCD (p.e.) has been maintained for at least 1 month.

(2) *Type 2A and 3A MPs*—(A) *Required Records.* No application for registration or amended registration of a pentachlorophenol Type 2A or Type 3A MP shall be approved unless the applicant agrees, as a condition of registration, to maintain records for each batch of the Type 2A or Type 3A MP, stating:

(1) The date each such batch or portion thereof, is released for shipment;

(2) The registration number of the Type 1 or Type 2 MP Used to formulate each such batch; and

(3) The batch number(s) for each such registered Type 1 or Type 2 MP. The applicant shall also agree, as a condition of registration, to maintain all such records at specified locations for ten years beginning on the date of release for shipment.

(3) *All MPs*—(A) *Inspection of records.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the applicant agrees, as a condition of registration, that all records maintained pursuant to Unit C, paragraphs 2(c)(1)(A), 2(c)(2)(A), and 2(b)(2)(D) will be made available at the specified location for inspection and copying at any reasonable time by any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, upon the presentation of appropriate credentials.

(B) *Acknowledgment.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the applicant acknowledges as a condition of registration, that any failure by the applicant or any of its employees, agents, or contractors to conform to the composition statement or labeling submitted for the product, or to comply with any of the terms and conditions of the registration for such product in this document shall constitute a violation of FIFRA section 12(a)(1)(C) or 12(a)(1)(E).

(d) *Label requirements.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the labeling submitted for the product conforms to the following requirements:

(1) *Batch number.* The label or package for each packaging unit of the pentachlorophenol MP which is distributed or sold shall bear the batch number(s) of the penta product contained therein. In lieu of using the

batch number(s), a lot number may be used; however, records that specifically identify particular batches with an individual lot must be maintained and made available as described in Unit C, paragraphs 2(c)(1)(A), (2)(c)(2)(A), and 2(c)(3)(A).

(2) *Statement of compliance.* The label on each packaging unit of the pentachlorophenol MP which is distributed or sold shall state, "The registrant has complied with all terms and conditions of the registration governing the composition of this product as approved by the United States Environmental Protection Agency under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act."

D. Requirements Concerning End-Use Products

a. Application for amended registration

After the effective date of the amended notice of intent to cancel implementing these compliance procedures, no registrant of a pentachlorophenol EP shall distribute or sell in any State any quantity of such product unless the registration for such product has been amended to conform to the criteria specified in Unit D, paragraph 2.

2. Approval of registration

(a) *Composition Statement*—(1) *Certified limit for HxCDD.* No application for registration or amended registration or a pentachlorophenol EP shall be approved unless the composition statement for the product states that the presence of any quantity of pentachlorophenol in any quantity of the EP which the registrant distributes or sells after the effective date of the amended notice of intent to cancel implementing these compliance procedures, shall be attributable solely to manufacture or formulation of the EP from a batch(es) of pentachlorophenol MP which, pursuant to Unit C, paragraph 2(b)(1, contains no more than the applicable certified batch limit of HxCDD (p.e.).

(2) *Identification of MP.* No application for registration or amended registration of a pentachlorophenol EP shall be approved unless the composition statement for the product identifies each pentachlorophenol MP which the EP may legally contain, along with a code identifying each such MP.

(3) *Use of conforming MP*—(A) *EPs from purchased, registered MPs.* No application for registration or amended registration of a pentachlorophenol EP formulated exclusively from purchased, registered pentachlorophenol MPs shall be approved unless the composition statement for the product states that the EP will not contain any quantity of any pentachlorophenol MP which the registrant or manufacturer of the EP knows, or has been informed, was not manufactured, sampled, analyzed, or labeled in accordance with the terms and conditions of its registration, as described in Section C, paragraph 2.

(B) *All other EPs.* No application for registration or amended registration of a pentachlorophenol EP not formulated exclusively from purchased, registered pentachlorphenol MPs shall be approved unless the applicant complies with the same requirements and conditions for registration relating to sampling, analysis, and sample collection and retention for the EP as for Type 1, Type 2B, and Type 3B, MPs, as specified in Unit C, paragraphs 2(b)(2) and 2(c)(1). In the alternative, registrants of these EPs may elect to fulfill these requirements through sampling and analysis of the parent MP instead of the EP. Selection of this option is possible only if the registrant agrees to all of the following conditions:

(i) Samples of the parent MP will be obtained, analyzed, and retained as described in Unit C, paragraphs 2(b)(2)(A)-(D) and 2(c)(1)(B);

(ii) Duly authorized inspectors will be allowed to collect samples of the parent MP used to make the EP, as described in Unit C, paragraph 2(c)(1)(D), under the same conditions that they would be allowed to sample the EP; and

(iii) The companion recordkeeping option described in Unit D, paragraph 2(b)(2), is selected.

All other conditions and requirements for registration set forth in this document for EPs would be effective as written.

(b) *Records*—(1) *EPs from purchased, registered MPs*—(A) *Required records.* No application for registration or amended registration of a pentachlorophenol EP formulated exclusively from purchased, registered MPs shall be approved unless the applicant agrees, as a condition of registration, to maintain records for each lot, batch, or other production unit of the EP, stating:

(i) The date each such lot, batch, or other production unit, or portion thereof, is released for shipment;

(ii) The registration number of the MP used to manufacture or formulate each lot, batch, or other production unit;

(iii) The batch number(s) for each such MP.

Each applicant shall also agree, as a condition of registration, to maintain all such records at specified locations for 10 years after the date of release for shipment.

(B) *Inspection of records.* No application for registration or amended registration of a pentachlorophenol EP fomulated exclusively from purchased, registered MPs shall be approved unless the applicant agrees, as a condition of registration, that all records maintained pursuant to Unit D, paragraph 2(b)(1)(A), will be made available at the specified location for inspection and copying at any reasonable time by any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, upon the presentation of appropriate credentials.

(2) *All other EPs.* No application for registration or amended registration of a pentachlorophenol EP not formulated exclusively from purchased, registered pentachlorophenol MPs shall be approved unless the applicant complies with the same requirements and conditions for registration relating to record collection, retention, reporting, and inspection for the EP as for Type 1, Type 2B, and Type 3B MPs, as specified in Unit C, paragraphs 2(c)(1)(A) and 2(c)(3)(A). Except that registrants of these EPs may elect to fulfill these requirements through appropriate recordkeeping on the parent MP instead of the EP. Selection of this option is possible only if the registrant agrees to all of the following options:

(i) Records on the parent MP will be collected, retained, and reported as described in Unit C, paragraph 2(c)(1)(A);

(ii) Records correlating individual batches of EP with the specific batch(es) of MP used to make the EP, as described in Unit D, paragraph 2(b)(1)(A), will be maintained;

(iii) Duly authorized inspectors will be allowed to inspect the records on the parent MP used to make the EP, as described in Unit C, paragraph 2(c)(3)(A), under the same conditions they would be allowed to inspect the records on the EP; and

(iv) The companion sampling option described in Unit D, paragraph 2(a)(3)(B), is selected.

All other conditions and requirements for registration set forth in this document for EPs would be effective as written.

(c) *Label requirements.* No application for registration or amended registration of a pentachlorophenol EP shall be approved unless the labeling submitted for the product conforms to the following requirements:

(1) *Commercial lot information.* The label or package for each packaging unit

of the pentachlorophenol EP which is distributed or sold shall bear:

(A) A commercial lot, batch, or production unit number;

(B) The code, as listed in the composition statement for the EP, which identifies the pentachlorophenol MP(s) used to manufacture or formulate the lot, batch, or production unit to which the packaging unit belongs; and

(C) The date such lot, batch, or production unit was packaged.

(2) *Statement of compliance.* The label on each packaging unit of pentachlorophenol EP which is distributed or sold shall state, "The registrant has complied with all terms and conditions of the registration governing the composition of this product as approved by the United States Environmental Protection Agency under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act."

(3) *Permissible use.* The label on each packaging unit of pentachlorophenol EP which is distributed or sold shall state that the use of the EP for any purpose other than those stated on the label, including use of the EP in manufacture or formulation of other pesticide products or in repackaging of the product, is prohibited.

(d) *Exception for existing stocks.* None of the requirements for registration of a pentachlorophenol EP established by Unit D, paragraphs 2(a)(c) shall apply to EPs manufactured or formulated as provided in Unit E, paragraph 1 from existing stocks of MPs as defined in Section E, paragraph 1, or to existing stocks of EPs as defined in Unit E, paragraph 2.

E. Existing Stocks

1. Manufacturing-Use products

Each registrant of a pentachlorophenol EP(s) who held on or before the publication date of the amended notice of intent to cancel implementing these compliance procedures any existing stocks of a pentachlorophenol MP purchased after January 1, 1986, may distribute or sell for up to 1 year after the date of publication of the amended notice any quantity of such registered pentachlorophenol EP(s) manufactured or formulated before or after the effective date of the amended notice from such existing stocks.

2. End-Use products

Each registrant of a pentachlorophenol EP(s) who holds any existing stocks of such registered pentachlorophenol EP(s) manufactured or formulated on or before the publication date of the amended notice of intent to cancel implementing these compliance procedures may distribute or sell such existing stocks for up to 1 year after the date of publication of the amended notice.

IV. Procedural Matters—Procedure for Amending the Terms and Conditions of Registration To Avoid Cancellation or Denial of Application

This Notice amends the January 10, 1986 Amendment of Notice of Intent to Cancel Registrations of Pesticide Products Containing Pentachlorophenol (Including its Salts). This action is taken pursuant to the authority granted by section 6(b) of FIFRA. This amended Notice applies only to those pentachlorophenol registrants, applicants, or adversely affected persons who responded in the statutorily prescribed manner to the January 10 Amended Notice. It creates no new hearing rights and affects only those registrations which have been preserved by compliance with statutory procedures. This amended Notice does not affect those registrations which were cancelled by operation of law because of the absence of a response to the prior notices in a statutorily prescribed manner.

Registrants who responded to the January 10 Amended Notice by amending their objections or otherwise affirming their previously filed hearing requests to the cancellation proceeding on the wood preservative chemicals (In re Chapman Chemical Company, et al., FIFRA Docket Nos. 529, et al.) have two options if they wish to avoid cancellation. They may submit applications for amended registrations in accordance with the terms and conditions of registration set forth in Units II and III of this Notice, or, in the alternative, they may amend, or affirm, their objections filed in response to the January 10 Amended Notice.

An applicant for a new registration whose product is subject to this Notice must submit an amended application in accordance with the terms and conditions of registration required by this Notice within the applicable 30-day period to avoid denial of the application.

To avoid cancellation, applications for amended registration or amended applications for new registration must be submitted within 30 days of publication of this Notice or receipt of this Notice, whichever occurs later.

Applications must be submitted to: Lois Rossi, Product Manager 21; whose address and office location are given under ADDRESSES.

Any amendments or affirmations to objections filed in response to the January 10 Amended Notice must be filed by a registrant hearing party within 30 days of receipt of this Notice or within 30 days from publication of this Notice, whichever occurs later.

Amendments to objections must be submitted to the Hearing Clerk (A-110), at the address given under **ADDRESSES.**

Dated: December 23, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-29493 Filed 12-31-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Procedures for Monitoring Bank Secrecy Act Compliance.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval to implement requirements for a new information collection on FDIC-supervised banks. The collection requirements will be contained in final rules which are expected to be issued jointly by the five Federal financial institution regulatory agencies (Office of the Comptroller of the Currency, the

Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation and the National Credit Union Administration). The five Federal financial institution regulatory agencies are amending their respective regulations to require the institutions that they regulate to establish and maintain procedures to assure and monitor compliance with the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR Part 103. Each examination of an insured financial institution shall include a review of the procedures required to be established and maintained. The agencies are taking this action to comply with section 1359 of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, October 27, 1986) which requires the agencies to promulgate such regulations to take effect by January 27, 1987. Financial institutions would be expected to have developed and implemented their compliance programs by April 27, 1987. For FDIC-supervised banks the burden involved in the preparation of the initial procedures is estimated to be 34,800 hours, collectively. The annual maintenance of acceptable procedures is estimated at 4,350 hours, collectively.

Dated: December 24, 1986.

Federal Deposit Insurance Corporation,

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-29454 Filed 12-31-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

The National Board Plan for Carrying Out Emergency Food and Shelter Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice sets out the text of the Plan by which the National Board, created by Pub. L. 98-8 and extended by Pub. L. 99-500, will conduct a program for distributing $70,000,000 to local private voluntary organizations and units of local government for the purpose of delivering emergency food and shelter to needy individuals in localities determined by the Board. The distribution formula for selecting these localities, and the award amount for each, follow the Plan text.

DATED: The award to the National Board for Pub. L. 99-500 was made November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Fran McCarthy, Individual Assistance Division, Disaster Assistance Program, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3652.

Dennis Kwiatkowski,

Chairman, National Board for Emergency Food and Shelter Program.

Preamble

Public Law 99-500 has been passed to continue the provision of emergency food and shelter services to needy individuals. The National Board would like to reiterate that grant awards from this program are designed to address emergency needs which have become evident in recent years. This program is not intended to address or correct structural poverty or long-standing problems. Rather, this appropriation is for the purchase of food and shelter, to supplement and extend current available resources and not to substitute or reimburse ongoing programs and services.

The National Board expects Local Boards to abide by the stated rules of this Plan and focus on the following concerns and principles mandated by the National Board.

- Serve *needy* individuals without discrimination but avoid duplication of benefits.
- Take the *MOST COST EFFECTIVE* approach in buying or leasing eligible items or services.
- Refuse to authorize the spending of funds on costs that differ from those allowed in the Plan, unless a request is made *in advance and approved* by the National Board.
- Restrict shelter rehabilitation to minimum work required to make a facility safe, secure and sanitary, or to bring the facility into compliance with local building codes. Avoid decorative or nonessential repairs and purchases as this is outside the intent of this program. *The benefit of rehabilitation to provide service should be carefully weighed against the response to needs that exist at this time.* In such cases, the National Board counsels that emphasis should be placed on currently existing needs.

The National Board is mandated, as are Local Boards and Local Recipient Organizations (LROs), to carry out the intent of the law. We must all ensure that as decisions are made, we not only question if a specific expenditure falls within the guidelines of eligible costs, but if making this expenditure would fulfill the *intent* of the program and Pub. L. 99-500.

The National Board has attempted to describe this program with some precision while not stifling local initiative. The result was to maximize the sense of enthusiasm and excitement that National Board members have for this tremendously successful public-private partnership. Government and voluntary resources and skills can come together with care and timeliness to assist those in need.

The stewardship of Local Boards and services provided by LROs are proof, once again, of a caring society.

1.0 Background and Introduction

On March 24, 1983, the President signed the "Jobs Stimulus Bill", Pub. L. (PL) 98-8. That Bill provided $50 million for emergency food and shelter to the Federal Emergency Management Agency (FEMA) for allocation by a National Board between March 1983 and March 1984. The Board, chaired by FEMA, consisted of representatives of United Way of America, The Salvation Army, the National Council of Churches, Catholic Charities, USA, the Council of Jewish Federations, Inc., and the American Red Cross. Congress designated these agencies because of their history of involvement in human service programs. This funding was provided to address emergency needs which had become evident in recent years.

Due to the continuing high need for emergency food and shelter services additional funds were appropriated in November 1983 (Pub. L. 98-151 and 98-181) for $40 million, August 1984 (Pub. L. 98-396) for $70 million, August 1985 (Pub. L. 99-88) for $20 million and in November 1985 (Pub. L. 99-160) for $70 million.

On October 18, 1986 Pub. L. 99-500 was signed by the President, providing $70 million for the Emergency Food and Shelter National Board Program. FEMA awarded the grant to the National Board in November 1986. The National Board has determined that these funds will remain available for use until September 15, 1987.

1.1 Purpose

This Plan details the roles, responsibilities, and implementation procedures which shall be followed by the National Board, Local Boards, and Local Recipient Organizations in the use of this $70 million award. This program is nationwide in scope and will provide food and shelter assistance to needy individuals through local private voluntary organizations and units of government in areas designated by the National Board as being in highest need.

The intent of Congress is to meet the emergency need by supplementing other food and shelter assistance individuals

might currently be receiving, as well as to assist those who are receiving no assistance. Individuals who received assistance under previous programs may again be recipients, providing they meet local eligibility requirements. *Services received under this program should not reduce or affect assistance any individual receives under any other federal, state, or local assistance program.*

2.0 Concept of Operations

A. United Way of America will act as the National Board's Secretariat and fiscal agent and perform the necessary administrative duties that the Board must accomplish.

B. Funds distributed by the National Board will be to areas of greatest need. The formula for distribution is explained in Section 2.2B.

C. National Board funds will be distributed to Local Recipient Organizations (LROs) certified eligible by Local Boards. (Refer to Section 2.2D for Selection of Recipient Organizations.)

D. There is an administrative allowance limitation of one and one-quarter percent (1.25%) for local jurisdictions, and three-quarters of one percent (.75%) for National Board administrative costs.

Local administrative funds are intended for use by LROs and not for reimbursement of programs or administrative costs any recipient's parent organization (its state or regional offices) might incur as a result of this additional funding. (See 2.3B, Eligibility of Costs.)

E. The National Board will notify qualifying jurisdictions of award eligiblity no later than December 31, 1986. Unused or recaptured funds will be reallocated by the National Board.

F. All funds shall be paid out by LROs and spending shall cease by September 15, 1987. Local Boards have until October 30, 1987 to submit final reports and complete documentation of expenses *(for specified LROs only)* to the National Board.

2.1 Roles and Responsibilities

A. FEMA's Responsibilities

1. Constitute a National Board consisting of individuals affiliated with United Way of America, The Salvation Army, the National Council of Churches, Catholic Charities, USA, the Council of Jewish Federations, Inc., the American Red Cross, and the Federal Emergency Managemnt Agency.

2. Chair the National Board, using Parliamentary procedures and consensus by the National Board as the mode of operation.

3. Provide guidance, coordination and staff assistance to the National Board.

4. Award the grant to the National Board.

5. Assist the Secretariat in implementation of the National Board Program.

6. Conduct an audit of funds.

7. Initiate federal collection procedures to collect funds due when the efforts of the National Board have not been successful.

B. National Board Responsibilities

1. Identify areas of highest need for food and shelter assistance and determine amount to be distributed to each area.

2. Advise national organizations interested in food and shelter but not represented on the National Board to promote the availability of funds.

3. Develop the operational Plan for distributing funds and establishing criteria for expenditure of funds.

4. In jurisdictions that received previous awards, notify the former Local Board Chair that additional funds are available. In areas newly selected for funding, notify the local United Way, American Red Cross or local government official.

5. Provide copies of award notification materials to National Board member agencies and to heads of government in areas selected to receive funds.

6. Secure certification from Local Boards that funds will be used in accordance with established criteria.

7. Distribute funds to selected Local Recipient Organizations.

8. Hear appeals and grant waivers.

9. Reallocate unclaimed or unused funds.

10. Within 60 days following the grant award, submit to FEMA a plan to review documentation from Local Recipient Organizations.

11. Ensure that funds are properly accounted for, and that funds due are collected and returned to FEMA.

12. Submit end-of-program report on jurisdictions' use of funds to FEMA.

C. Responsibility of Former Local Board Chair, Local United Way/Red Cross (in Newly Funded Areas) or State United Way/United Way in State Capital (for State Set-Aside Committees)

1. Constitute a Local/State Board of individuals nominated by, to the extent practicable, the same voluntary organizations represented on the National Board with the local/State head of government replacing FEMA. Local/State Boards may also include representatives nominated by other community organizations.

2. Convene initial meeting.

D. Responsibility of State Set-Aside Committee

1. Elect a chair.

2. Select needy civil jurisdictions within the state and determine the amount to be awarded to each area.

3. Notify the National Board of selected jurisdictions, local contacts, complete mailing addresses and award amounts as soon as possible and no later than *20 working days* after receipt of award letter.

E. Local Board's Responsibilities

1. Elect a Chair.

2. *Advertise and promote the program and consider all private voluntary and public organizations providing or capable of providing emergency food and shelter services, not just those represented on the Local Board.*

3. Recommend which local organizations should receive grants and the amounts of the grants.

4. Establish an appeals process and, if possible, involve individuals not a part of the dispute in the decision; hear and resolve appeals made by funded or nonfunded organizations; and investigate complaints made by individuals or organizations. Those cases that cannot be handled locally or that involve fraud or other misuse of Federal funds should be referred in writing to the National Board giving details on action that has been taken.

5. Secure and retain signed forms from each Local Recipient Organization (LRO) certifying they have read and understood program guidelines and will comply with cost eligibility and reporting requirements.

6. Return Local Board Certification form, Board Roster *and* Local Board Plan to National Board within *25 working days* after receipt of award notification.

7. Notify National Board of changes in Local Board chair, staff contact, or LRO contacts, including complete addresses and phone numbers.

8. Provide technical assistance to service providers.

9. Coordinate local food distribution and other Federal assistance programs with state agencies which administer those programs (i.e., USDA—surplus food; LIHEAP—utilities, etc.).

10. *Monitor expenditures of funds and compliance with eligible cost provisions at local level and ensure that all recipient organizations maintain proper documentation and submit reports accurately and on time. Ensure that*

recipient organizations spend all funds by September 15, 1987.

11. Reallocate funds within a jurisdiction or LRO as necessary [i.e., food to shelter (or vice-versa)]. When funds are transferred from one recipient organization to another, the Local Board must notify the National Board and the Local Recipient Organizations, *in writing.*

12. Submit reports to the National Board on LROs' expenditures by April 30, 1987 (for period through March 31, 1987), July 31, 1987 (for period through June 30, 1987) and October 30, 1987 (for period through September 15, 1987). *All required report forms will be sent by the National Board.*

13. After close of program, review for accuracy all recipient organizations' reports and documentation. Forward documentation for specified LROs to the National Board as requested. In the event of expenditures violating the eligible costs under this award, the Local Board must require reimbursement to the National Board.

Local Boards are required to remain in operation until all program and audit requirements of the National Board have been satisfied. *All records related to the program must be retained for three (3) years.*

2.2 General Guidelines

A. Grant Award Process

United Way of America has been designated as the fiscal agent for the National Board and as such will process all Local Board plans. Checks will be written to organizations recommended by Local Boards for funding. Local Boards have the right to reallocate funds throughout the program period, as they determine necessary. When a Local Board reallocation between two or more LROs occurs, it is the responsibility of the Local Board to promptly notify the National Board in writing so that the National Board's records can be updated accordingly.

To ensure greater accountability and reporting, grant awards over $1,000 will be made in multiple payments. Recipient organizations with awards of $1,000 or less will receive a single check for the total amount. Those with awards totaling more than $1,000 but less than $100,000 will be paid in two equal installments. Those with awards totaling $100,000 or more will be paid in three equal installments. *The first check will be mailed directly to the Local Recipient Organization and second and third checks will be mailed to the Local Board Chair, upon his/her written request.* The Local Board will distribute second/third checks once they are assured that the organization is implementing the program as intended and according to the guidelines in this Plan.

B. Designation of Target Areas

Local areas will be selected to receive funds from the National Board based upon average unemployment statistics from the Department of Labor for the period July 1985 through June 1986 and poverty statistics from the 1980 census. The Board adopted this combined approach in order to more effectively target funds for high-need areas. *Funds designated for a particular jurisdiction must be used to provide services within that jurisdiction.*

Jurisdictions may qualify for an *award* based upon their rate of unemployment *or* their rate of poverty. Once a jurisdiction's eligibility is established, the National Board will determine its fund distribution based on a ratio calculated as follows: The average number of unemployed within an eligible area divided by the average number of unemployed covered by the national program equals the area's portion of the award (less National Board administrative costs, and less that portion of program funds required to fulfill designated state awards).

Area's average number unemployed divided by average number unemployed in all eligible areas equals area's percentage of the award (less National Board's administrative costs and State awards).

A notice will be placed in the **Federal Register** in December 1986 listing the civil jurisdiction that are selected and the dollar amount each has been awarded.

Puerto Rico and the U.S. territories will receive a percentage of the total award based upon the determination of the National Board.

1. *State Set-Aside.* In addition to the awards made to qualifying jurisdictions, an award shall be made to *each State.* This *State Set-Aside Program* has been adopted to allow greater flexibility in selection of needy jurisdictions and is intended to target pockets of homelessness or poverty in non-qualifying jurisdictions, areas experiencing drastic economic changes such as plant closings, areas with high levels of unemployment of poverty which do not meet the minimum 1000 unemployed, or jurisdictions which have documented measures of need which are not adequately reflected in unemployment and poverty data.

A State Set-Aside Committee in each State will recommend high-need jurisdictions and award amounts to the National Board. Priority consideration is to be given to jurisdictions otherwise ineligible for funding, although funded jurisdiction are not exempt from receiving additional funding.

The distribution of funds to State-Aside Committees will be based on a ratio calculated as follows: The State's average number of unemployed in non-funded jurisdictions divided by the average number of unemployed in non-funded jurisdictions nationwide equals the State's percentage of the total amount available for State Set-Aside Awards.

C. Formation of Local Boards

Each area designated by the National Board to receive funds shall constitute a Local Board with affiliates nominated by, to the extent practicable, the same voluntary organizations represented on the National Board. The County Executive/Mayor, appropriate head of local government or his/her designee will replace the FEMA member. Local Boards may also include representatives nominated by other community organizations. The members of each Local Board will elect a Chair.

If a locality has previously received National Board funding, the previous Chair of the Local Board will be contacted regarding any new funding the locality is designated to receive. The Local Board may elect a new chair.

2. If a locality has not previously received funding and is now designated as being in high need, the National Board has designated the local United Way to constitute and convene a Local Board as described above. In the event the local United Way does not convene the Board, the local American Red Cross or government official will be responsible for convening the initial meeting of the Local Board.

3. In each State, the State United Way (or United Way in the capital city) will be notified of the award amount available to the State Set-Aside Committee and shall convene a committee consisting of State representatives of the same voluntary organizations represented on the National Board. The Governor or his/her representative will replace the FEMA member. Members of the State Set-Aside Committee shall elect a Chair.

State Set-Aside Committees are charged with recommending high-need jurisdictions and award amounts within the State. The State Set-Aside Committee has *20 working days to notify the National Board in writing of its selections and the appropriate contact person for each area.*

The National Board will then notify these jurisdictions directly, and the

State Set Set-Aside Committee may dissolve after Local Boards have been chosen.

4. Local Boards which recommend that they can better utilize their resources by merging their Boards may do so, provided that the head of government for each Local Board sits on the merged Board to ensure that the award amount designated for their respective civil jurisdiction is used to provide assistance to individuals within that jurisdiction

5. Local Boards will have 25 working days after notification of award selection by the National Board in which to:

- Advertise and promote the availability of funds;
- Select local organizations to receive grants; and,
- Complete and return required application forms to the National Board.

If a Local Board is unable to satisfy the National Board as to the local area's capability to utilize funds in accordance with this Plan, the National Board may reallocate the funds to other jurisdictions.

6. The Chair of the Local Board will be the central point of contact between the National Board and the Local Recipient Organizations selected to receive assistance for emergency food and shelter programs. To facilitate program coordination, the Chair of the Local Board will contact the State agencies through which surplus food and other federal assistance is provided. A listing of those agencies will be provided to the Local Board along with the grant award letter.

7. Local Boards will be responsible for monitoring programs carried out by the organizations they have selected to receive funds. LROs with questions concerning cost eligibility or program procedures, should direct them to the Local Board. The Local Board will contact the National Board for further clarification, if necessary.

Local Boards should work with LROs to ensure that funds are being used to meet immediate food and shelter needs on an ongoing basis. Funds should not be reserved for anticipated future needs in lieu of providing immediate assistance.

The Local Board should reallocate funds whenever it determines that the original allocations plan does not reflect the actual need for services of if an LRO is unable to effectively utilize its full award. Funds may also be reallocated if an LRO makes ineligible expenditures or uses funds for item which have clearly not been approved by the Local Board. Funds held in escrow for LROs which have unresolved audit problems must be reallocated within a specified period of time or may be reclaimed by the National Board.

The Local Board may approve reallocations of funds between LROs which have already been approved by the National Board. However, the National Board must be notified in writing of any local transfer of funds between two or more LROs. The Local Board may also return funds to the National Board for reissuance to another LRO or request reallocation of remaining funds before they are released by the National Board (e.g., second checks). Refer to Annex 2.5 for preferred format to use in notifying the National Board of reallocations.

If the Local Board wishes to transfer funds to an agency which was not approved on the original board plan, a request for approval must be made to the National Board. An LRO must be approved by the National Board *prior to* receipt of funds.

The National Board does not need to be notified of changes within a single LROs budget tht have been approved by the Local Board.

To prevent fraud or misuse of funds, Local Boards might wish to create a central clearinghouse for all organizations providing similar assistance to individuals so information can be shared daily. When misuse of funds has been found, the Local Board is advised to reallocate funds from the LRO in question to other LROs. The Local Board must report suspected fraud to local authorities and must notify the National Board of such cases in writing.

D. Selection of Recipient Organizations

In selecting Local Recipient Organizations to receive funds, the Local Board must consider the demonstrated capability of any organization to provide food and shelter assistance. Local participation in the program is not limited to organizations that are part of a state or national organization. Organizations that received awards from previous legislation may again be eligible providing the organization still meets eligibility requirements. The Local Board should be prepared to justify an allocation of ⅓ or more of its total award to a single recipient organization.

For a local organization to be eligible for funding it must:

- Be nonprofit
- Have an accounting system; conduct an annual audit;
- Practice nondiscrimination (those agencies with a religious affiliation wishing to participate in the program must agree not to refuse services to an applicant based on religion, nor will such groups engage in any religious proselytizing in any program receiving Emergency Food and Shelter Program funds); and,
- For private voluntary organizations, have a voluntary board.

Each Local Recipient Organization will be responsible for certifying in writing to the Local Board that it has read and agrees to abide by the cost eligibility and reporting standards of this Plan, and any other requirements made by the Local Board. (See Annex 2.4). Where there is a local non-profit organization which does not have an adequate accounting system but meets all the other criteria, the Local Board may authorize funds to be channeled through a fiscal agent. Fiscal agents will be held accountable for compliance with the Plan.

All agencies receiving funds through a fiscal agent must be separately listed on the Board Plan. Checks will be made out to the fiscal agent on behalf of the recipient organization. The fiscal agent will be responsible for paying all bills and maintaining all financial documentation for the recipient organization. No payment should be made directly to the recipient organization.

Note.—An agency may not serve as *both* an LRO and a vendor of service to other LROs in this program.

2.3 Eligibility of Costs

The intent of this appropriation is for the purchase of food and shelter, to supplement and extend current available resources and *not to substitute or reimburse ongoing programs and services.* Interpretation questions should be cleared by the recipient organization with the Local Board *prior* to action. Local Board unsure of the meaning of these guidelines should contact the Secretariat for clarification *prior to* advising the local recipient organization.

A. Eligible Program Costs include, but are not limited to:

1. Food (hot meals, groceries, food vouchers).

2. Transportation expenses related to the provision of food and/or shelter; limited to actual fuel costs, contracted services or public transportation.

3. Purchase of consumable supplies essential to mass feeding (plastic cups, utensils, detergent, etc.) and/or mass shelters of five or more beds (i.e., soap, toothbrushes, toothpaste, cleaning material, etc.)

4. Purchase of small equipment *not exceeding $300 per item* and essential to mass feeding (e.g., pots, pans, toaster,

blenders, etc.) and/or mass shelters (cots, blankets, linens, etc.)

5. Leasing, *only for the program period*, of capitol equipment associated with mass feeding or mass shelters (i.e., stoves, freezers, vans, etc. with costs over $300 per item) *only if approved in advance by the Local Board.*

6. Lease-purchase agreements for equipment costing over $300 per items only if:

a. The cost of the lease for the program period *remaining* as of the date of the agreement (i.e, date of the agreement up to Septemer 15, 1987 would exceed the purchase price; *and,*

b. The agreement is approved in advance by the Local Board; *and,*

c. The equipment is related to providing mass food or shelter services.

7. Direct expenses associated with *new* or *expanded services* or to *prevent closings* of mass shelters or feeding operations *only during program period* (e.g., rent, cleaning, pest control, utilities, garbage pickup, etc.).

8. Increased utility costs due to expanded services for mass shelters and mass feeding centers.

Note.—This is not intended for reimbursement of normal operating costs.

9. Limited emergency rent or mortgage assistance for individuals or families provided:

a. All other resources have been exhausted *and;*

b. Payment is limited to *one month's* cost for each individual or family *and;*

c. Assistance is provided *only once* in each award phase for each individual or family.

d. Late fees, but *not deposits*, are eligible.

10. First month's rent may be paid when individual or family:

a. Is a transient and plans to stay in area for an extended period of time, *or,*

b. Is being transitioned from a temporary shelter to a more permanent living arrangement, or;

c. Is unable to have existing landlord agree to accept one month's rent payment in lieu of payment for *all* back rent.

d. *Cannot* be provided in addition to assistance provided under Item 9 above.

e. All provisions of Item 9 above apply.

f. Can be provided in addition to assistance provided in Item 11 below.

11. Emergency lodging (e.g., hotel, motel or shelter expenses for individuals or families.)

Note.—An LRO may not operate as a vendor for other LROs.

12. Per diem allowance of $10 per person for mass shelter (five beds or more) providers, only if:

a. Approved in advance by the Local Board; and

b. LRO's total shelter award is expended in this manner.

13. Limited utility assistance (includes gas, electricity, oil, water, firewood) for individuals or families provided:

a. All other resources have been exhausted (e.g., State's Low Income Home Energy Assistance Program); *and,*

b. Payment is limited to *one month's* cost for each utility for each individual or family; *and,*

c. Each utility can be paid only once in each award phase to any individual or family.

d. Reconnet fees, but *not deposits* are eligible, but again only a *one month* payment for each utility for each individual or family in each award phase.

14. Rehabilitation of a mass feeding facility or mass shelter, provided:

a. The facility is owned by local, State or Federal government or a not-for-profit organization (profit-making facilities or individual residences are not eligible), and,

b. The rehabilitation plan and the contract detailing work to be done and material and equipment to be used or purchased is *approved by the Local Board prior to* the start of the rehabilitation project; and,

c. The rehabilitation is necessary to:

1. Expand capacity, or

2. Bring facility into compliance with local building codes, or

3. Make facility safe, secure and sanitary.

d. No award funds are used for *decorative* or *non-essential* purposes.

e. All rehabilitation work is *completed* and *paid for* by the end of the award phase, September 15, 1987 (Expenses which occur after that date will not be accepted as eligible costs.)

Note.—Refer to the Preamble of the Plan for further detail on the National Board's intent with regard to shelter rehabilitation.

Local Boards may further restrict the allowable costs mentioned above as they deem necessary.

B. Ineligible Program Costs

Purposes for which funds cannot be used, include, but are not limited to:

1. Rental Security.

2. Deposits of any kind.

3. Payment of more than one month's rent.

4. Payment of more than one month's mortgage.

5. Payment of more than one month's portion of an accumulated utility bill.

6. Payments made directly to a client.

7. Cash payments of any kind (checks made out to cash).

8. Real property (land or buildings) costing more than $300.

9. Equipment costing more than $300 per item (i.e., vehicles, office equipment, freezers, washers, etc.), except as provided in Section 2.3A.

10. Repairs or rehabilitation to profit-making facilities.

11. Lease-purchase agreements, except as provided in Section 2.3A.

12. Administrative cost reimbursement to State or regional offices of governmental or voluntary organizations.

13. Lobbying efforts.

14. Expenditures made prior to November 18, 1986.

15. Expenditures made after September 15, 1987.

16. Repairs of any kind to an individual's house or apartment.

17. Purchase of supplies or equipment for an individual's home or private use.

18. Client-owned transportation.

19. Purchase of medication and related medical supplies.

20. Purchase of clothing (except underwear/diapers for clients of mass shelters, if necessary).

21. Payments for expenses not incurred (i.e., where no goods or services have been provided during new program period).

22. Payments to LROs themselves (internal transfers of funds) for program expenses that are not eligible under these guidelines, except as provided in Section 2.3A (Documentation must be provided if such payments/transfers are made).

23. Telephone costs, except as administration allowance and limited to the total allowance (1.25%).

24. Salaries, except as administration allowance and limited to the total allowance (1.25%).

25. Encumberment of funds; that is, payments for goods and/or services which are purchased and to be delivered at a later date; unless it is intended that these goods and/or services are *received on or before to September 15, 1987.*

C. Administration Allowance

There is an administration allowance limitation of one and one-quarter percent (1.25%) of total funds received by the Local Board excluding any interest earned.

The local administration allowance is intended for use by LROs and *not* for reimbursement of program or administrative costs a recipient's parent organization (its State or regional offices) might incur as a result of this additional funding (See Section 2.3B, Eligibility of Costs).

The Local Board may elect to use, for its own administrative costs, all or any portion of the 1.25% allowance.

The decision on distribution of the allowance among local LROs rests with the Local Board. No LRO may receive an allowance greater than 1.25% of that LROs award amount except with specific approval by the National Board.

3.0 Waivers

Local Boards may receive requests for variances in the budgets they have approved for LROs. Local Boards may allow such changes provided that the requested items are eligible under this program. If there is any doubt on the part of the Local Board as to eligibility, they should contact the National Board for clarification.

In the event that an expenditure requested by an LRO falls outside the program guidelines, the Local Board if supportive, may request a *written waiver* from the National Board.

The waiver request from the Local Board should clearly state the need for this exception, approximate costs, timelines or any other pertinent information they deem necessary for the National Board to make their decision.

4.0 Reporting Requirements

Local Boards will monitor Local Recipient Organizations' expenditures and eligible cost compliance throughout the program period. Interim reports of expenditures are due to the National Board on April 30, 1987 and July 31, 1987. *A final report accompanied by financial documentation for specified LROs is due October 30, 1987.* The National Board advises Local Boards to request at least one other report from their LROs, at a time deemed appropriate by each Local Board. *The National Board will provide forms for all required reports.*

LROs which successfully completed previous program audits and receiving funds under this program will not be required to submit documentation with their final reports *unless specifically asked to do so by the National Board.* Documentation will be required for LROs not funded in previous phases of the program. In addition, a random sample audit and random on-site audits of LROs will be conducted by National Board staff.

Failure of an LRO to comply with the National Board's reporting requirements may result in their funds being held in escrow. Funds will be held until all reporting requirements have been satisfied. If an LRO does not comply in a timely manner the Local Board or National Board may reclaim and reallocate the funds being in escrow.

The National Board will compile the reports it receives from the Local Boards and submit a detailed accounting of use of all program monies in the form of a report to FEMA by December 31, 1987.

The National Board will conduct an audit of food and shelter expenditures made under this program for specified Local Recipient Organizations. FEMA's Inspector General may also conduct an audit of these funds. The program office in FEMA will prepare a report for the FEMA Director. The FEMA Director will prepare a report to Congress.

5.0 Amendments to Plan

The National Board reserves the right to amend this Plan at any time.

Supplementary Information

The National Board based their determination of high-need localities on four factors: (1) Most current twelve-month unemployment rates; (2) total number of unemployed within a civil jurisdiction; (3) total number of individuals below the property level within a civil jurisdiction; and (4) the total population of the civil jurisdiction. In addition to unemployment, poverty was used to *qualify* a jurisdiction for receipt of an award.

Unemployment data for the period of July 1985 through June 1986 and poverty data from the 1980 Census were used to select the following jurisdictions:

- Jurisdictions, including balance of counties, with 18,000+ unemployed and a 6.1%+ rate of unemployment.
- Jurisdictions, including balance of counties, with 1,000 to 17,999 unemployed and a 10%+ rate of unemployment.
- Jurisdictions, including balance of counties, with 1,000 or more unemployed and an 11%+ rate of poverty.

The following is a listing of localities that meet any of the above qualifications.

Emergency Food and Shelter Program Allocations

Alabama:	
Autauga County	$11,506.00
Baldwin County	29,327.00
Barbour County	10,247.00
Blount County	12,494.00
Butler County	10,208.00
Calhoun County	42,993.00
Chambers County	13,617.00
Cherokee County	10,315.00
Chilton County	14,247.00
Clarke County	11,283.00
Coffee County	12,697.00
Colbert County	29,986.00
Covington County	15,467.00
Cullman County	26,499.00
Dale County	14,818.00
Dallas County	34,218.00

Emergency Food and Shelter Program Allocations—Continued

De Kalb County	25,772.00
Elmore County	13,501.00
Escambia County	17,337.00
Etowah County	49,569.00
Fayette County	10,334.00
Franklin County	19,671.00
Houston County	29,937.00
Jackson County	27,719.00
Jefferson County	214,393.00
Lauderdale County	38,731.00
Lawrence County	16,755.00
Lee County	27,458.00
Limestone County	22,266.00
Madison County	74,247.00
Marengo County	9,869.00
Marion County	20,068.00
Marshall County	36,310.00
Mobile County	164,853.00
Monroe County	11,642.00
Montgomery County	64,455.00
Morgan County	38,024.00
Pickens County	9,753.00
Russell County	20,213.00
St. Clair County	15,061.00
Shelby County	21,608.00
Sumter County	11,216.00
Talladega County	35,913.00
Tallapoosa County	13,937.00
Tuscaloosa County	44,794.00
Walker County	40,000.00
Winston County	20,533.00
State Selection Committee	50,240.49
Total	1,516,101.49
Alaska:	
Fairbanks North Star Borough	41,908.00
Kenai Peninsula Borough	25,850.00
Matanuska-Susitna Census	24,426.00
State Selection Committee	56,451.09
Total	148,635.09
Arizona:	
Apache County	27,458.00
Cochise County	27,283.00
Coconino County	36,930.00
Gila County	16,523.00
Maricopa County	481,125.00
Mohave County	25,995.00
Navajo County	37,036.00
Pima County	153,628.00
Pinal County	39,952.00
Santa Cruz County	13,511.00
Yavapai County	21,385.00
Yuma County	73,753.00
State Selection Committee	6,666.95
Total	961,245.95
Arkansas:	
Ashley County	12,601.00
Benton County	19,128.00
Clark County	10,722.00
Clay County	11,109.00
Columbia County	10,218.00
Conway County	9,811.00
Craighead County	21,995.00
Crawford County	13,772.00
Crittenden County	19,748.00
Drew County	10,538.00
Faulkner County	20,814.00
Garland County	27,467.00

Emergency Food and Shelter Program Allocations—Continued

Greene County	13,976.00
Hot Spring County	17,559.00
Independence County	12,252.00
Jackson County	12,804.00
Jefferson County	28,842.00
Lonoke County	12,630.00
Miller County	15,864.00
Mississippi County	30,644.00
Quachita County	13,046.00
Phillips County	16,891.00
Poinsett County	12,785.00
Pope County	15,022.00
Pulaski County	97,996.00
St. Francis County	23,012.00
Sebastian County	32,378.00
Union County	17,414.00
Washington County	23,923.00
White County	25,463.00
State Selection Committee	99,492.66
Total	700,916.66
California:	
Alameda County	234,110.00
Okland City	150,364.00
Butte County	66,073.00
Calaveras County	9,685.00
Colusa County	9,966.00
Contra Costa County	201,870.00
Fresno County	355,013.00
Glenn County	13,240.00
Humboldt County	45,521.00
Imperial County	126,906.00
Kern County	250,683.00
Kings County	39,584.00
Lake County	21,085.00
Los Angeles County	1,414,405.00
Los Angeles City	1,177,204.00
Madera County	38,789.00
Mendocino County	32,765.00
Merced County	92,184.00
Monterey County	153,763.00
Orange County	490,315.00
Plumas County	10,489.00
Riverside County	258,906.00
Sacramento County	274,548.00
San Benito County	22,780.00
San Bernardino County	272,697.00
San Diego County	481,531.00
San Francisco City/County	220,921.00
San Joaquin County	215,691.00
San Luis Obispo County	43,419.00
Santa Barbara County	89,143.00
Santa Clara County	472,786.00
Santa Cruz County	93,385.00
Shasta County	63,138.00
Siskiyou County	23,932.00
Stanislaus County	200,436.00
Sutter County	38,489.00
Tehama County	18,596.00
Tulare County	162,006.00
Tuolumne County	15,661.00
Ventura County	220,262.00
Yolo County	53,559.00
Yuba County	26,935.00
State Selection Committee	190,198.18
Total	8,393,033.18
Colorado:	
Boulder County	69,230.00
Delta County	9,976.00

Emergency Food and Shelter Program Allocations—Continued

Denver City/County	168,688.00
Fremont County	10,780.00
La Plata County	12,455.00
Larimer County	50,160.00
Mesa County	42,392.00
Montezuma County	10,286.00
Montrose County	13,182.00
Pueblo County	54,693.00
Weld County	46,828.00
State Selection Committee	245,420.93
Total	734,090.93
Fairfield County	179,922.00
Hartford County	175,042.00
New Haven County	178,189.00
State Selection Committee	57,679.00
Total	590,832.50
Delaware:	
Kent County	26,092.00
New Castle County	109,511.00
Sussex County	23,487.00
Total	159,090.00
District of Columbia (total)	238,015.00
Florida:	
Alachua County	27,089.00
Bay County	49,356.00
Brevard County	84,523.00
Broward County	251,661.00
Citrus County	15,622.00
Collier County	31,477.00
Columbia County	13,860.00
Dade County	436,563.00
Miami City	161,008.00
Duval County	162,790.00
Escambia County	65,511.00
Hernando County	16,436.00
Highlands County	14,489.00
Hillsborough County	218,005.00
Indian River County	29,676.00
Jackson County	13,801.00
Lake County	38,344.00
Lee County	49,811.00
Leon County	32,417.00
Manatee County	37,104.00
Marion County	38,480.00
Martin County	19,448.00
Monroe County	10,334.00
Nassau County	13,792.00
Okaloosa County	32,271.00
Orange County	147,806.00
Osceola County	22,005.00
Palm Beach County	208,252.00
Pinellas County	148,504.00
Polk County	176,233.00
Putnam County	16,804.00
St. Johns County	20,969.00
St. Lucie County	59,303.00
Santa Rosa County	20,155.00
Sarasota County	41,414.00
Volusia County	62,926.00
State Selection Committee	90,904.39
Total	2,879,143.39
Georgia:	
Atlanta/De Kalb, Fulton Counties	327,691.00
Macon/Bibb, Jones Counties	52,784.00

Emergency Food and Shelter Program Allocations—Continued

Bartow County	17,937.00
Burke County	9,792.00
Carroll County	18,450.00
Catoosa County	9,860.00
Chatham County	63,332.00
Clarke County	19,109.00
Coffee County	10,625.00
Colquitt County	12,048.00
Coweta County	11,516.00
Dougherty County	48,204.00
Floyd County	26,111.00
Glynn County	16,107.00
Gordon County	13,743.00
Houston County	19,496.00
Laurens County	14,877.00
Lowndes County	19,545.00
Muskogee County	51,593.00
Newton County	11,961.00
Polk County	11,913.00
Richmond County	50,809.00
Spalding County	17,453.00
Sumter County	12,019.00
Thomas County	14,140.00
Tift County	11,186.00
Troup County	20,378.00
Upson County	10,024.00
Walker County	18,683.00
Walton County	10,024.00
Ware County	15,090.00
Whitfield County	24,804.00
State Selection Committee	261,496.37
Total	1,252,800.37
Hawaii:	
Hawaii County	41,868.00
State Selection Committee	83,132.00
Total	125,000.00
Idaho:	
Bingham County	14,160.00
Bonner County	12,998.00
Canyon County	36,155.00
Kootenai County	31,235.00
Minidoka County	9,782.00
Nez Perce County	13,424.00
Shoshone County	9,821.00
Twin Falls County	20,523.00
State Selection Committee	80,600.29
Total	228,698.29
Illinois:	
Aurora/Dupage, Kane Counties	300,767.00
Adams County	33,647.00
Champaign County	40,736.00
Clark County	10,760.00
Clay County	11,245.00
Clinton County	17,617.00
Coles County	20,174.00
Cook County	792,631.00
Chicago City	1,366,095.00
Crawford County	14,111.00
DeKalb County	23,758.00
De Witt County	10,421.00
Edgar County	12,194.00
Effingham County	16,513.00
Fayette County	13,269.00
Franklin County	24,291.00
Fulton County	23,196.00
Hancock County	11,303.00
Henry County	31,477.00

Emergency Food and Shelter Program Allocations—Continued

Jackson County	22,509.00
Jefferson County	24,659.00
Jersey County	11,797.00
Kankakee County	47,700.00
Knox County	39,342.00
LaSalle County	62,092.00
Lawrence County	15,032.00
Mc Donough County	15,709.00
Macon County	63,157.00
Macoupin County	20,901.00
Madison County	124,562.00
Marion County	27,409.00
Mercer County	11,148.00
Montgomery County	17,017.00
Ogle County	22,450.00
Peoria County	81,463.00
Perry County	12,416.00
Richland County	14,111.00
Rock Island County	89,656.00
St. Clair County	125,037.00
Saline County	16,368.00
Shelby County	11,564.00
Tazewell County	56,465.00
Union County	10,557.00
Vermilion County	53,259.00
Warren County	11,855.00
Wayne County	14,479.00
White County	14,509.00
Whiteside County	29,308.00
Will County	128,688.00
Williamson County	34,915.00
Winnebago County	117,250.00
State Selection Committee	241,272.51
Total	4,362,861.51

Indiana:

Allen County	85,182.00
Daviess County	10,625.00
Delaware County	43,419.00
Elkhart County	48,640.00
Fayette County	13,559.00
Greene County	14,615.00
Jay County	10,538.00
Jefferson County	13,346.00
Knox County	16,717.00
Lake County	140,165.00
Gary City	95,313.00
Madison County	40,320.00
Marion County	244,485.00
Monroe County	25,250.00
Perry County	11,622.00
St. Joseph County	77,724.00
Scott County	11,564.00
Tippecanoe County	26,838.00
Vanderbough County	53,404.00
Vigo County	36,223.00
Wayne County	34,547.00
State Selection Committee	297,692.74
Total	1,351,788.74

Iowa:

Blackhawk County	77,627.00
Floyd County	11,080.00
Jackson County	10,421.00
Johnson County	15,864.00
Lee County	18,993.00
Story County	12,775.00
Wapello County	20,010.00
Woodbury County	40,436.00
State Selection Committee	295,846.74
Total	503,052.74

Kansas:

Crawford County	10,770.00
Douglas County	13,754.00
Montgomery County	12,930.00
Wyandotte County	57,095.00
State Selection Committee	191,131.49
Total	285,680.49

Kentucky:

Barren County	18,944.00
Bell County	16,223.00
Boyd County	27,380.00
Boyle County	11,739.00
Carter County	22,809.00
Christian County	16,678.00
Clark County	13,666.00
Clay County	11,128.00
Daviess County	48,233.00
Lexington/Fayette	51,845.00
Floyd County	21,201.00
Graves County	16,814.00
Grayson County	14,034.00
Greenup County	16,601.00
Hardin County	22,170.00
Harlan County	21,385.00
Henderson County	27,167.00
Hopkins County	22,131.00
Jefferson County	267,913.00
Johnson County	14,431.00
Kenton County	43,623.00
Knox County	10,470.00
Laurel County	18,557.00
Letcher County	13,385.00
Lincoln County	12,194.00
Logan County	12,901.00
McCracken County	26,237.00
Madison County	17,366.00
Marion County	11,739.00
Marshall County	14,663.00
Montgomery County	12,262.00
Muhlenberg County	18,673.00
Nelson County	15,429.00
Ohio County	13,947.00
Perry County	13,317.00
Pike County	37,530.00
Pulaski County	26,460.00
Warren County	37,889.00
Whitley County	16,891.00
State Selection Committee	187,964.45
Total	$1,243,989.45

Louisiana:

Shreveport/Bossier, Caddo Parishes	184,562.00
Acadia Parish	36,610.00
Allen Parish	14,683.00
Ascension Parish	41,104.00
Assumption Parish	16,513.00
Avoyelles Parish	31,157.00
Beauregard Parish	16,688.00
Calcasieu Parish	105,743.00
Catahoula Parish	11,177.00
Concordia Parish	19,661.00
De Sota Parish	19,487.00
East Baton Rouge Parish	179,022.00
East Feliciana Parish	10,886.00
Evangeline Parish	23,671.00
Franklin Parish	15,932.00
Iberia Parish	47,593.00
Iberville Parish	21,433.00
Jefferson Parish	222,673.00
Jefferson Davis Parish	20,639.00
Lafayette Parish	92,387.00
Lafourche Parish	47,622.00
Lincoln Parish	10,644.00
Livingston Parish	48,746.00
Madison Parish	10,228.00
Morehouse Parish	22,111.00
Natchitoches Parish	19,448.00
New Orleans City/Orelans	265,337.00
Ouachita Parish	67,487.00
Plaquemines Parish	11,225.00
Pointe Coupee Parish	16,746.00
Rapides Parish	59,777.00
Richland Parish	13,588.00
Sabine Parish	13,191.00
St. Bernard Parish	40,116.00
St. Charles Parish	21,685.00
St. James Parish	16,039.00
St. John Baptist Parish	23,409.00
St. Landry Parish	66,731.00
St. Martin Parish	28,814.00
St. Mary Parish	55,690.00
St. Tammany Parish	63,051.00
Tangipahoa Parish	57,530.00
Terrebonne Parish	59,041.00
Union Parish	11,022.00
Vermilion Parish	37,569.00
Vernon Parish	16,397.00
Washington Parish	25,094.00
Webster Parish	26,867.00
West Baton Rouge Parish	11,942.00
West Carroll Parish	13,007.00
State Selection Committee	31,018.62
Total	2,342,793.62

Maine:

Androscoggin County	30,596.00
Aroostook County	30,925.00
Cumberland County	35,516.00
Hancock County	13,046.00
Kennebec County	25,879.00
Oxford County	14,150.00
Penobscot County	36,058.00
Somerset County	16,891.00
Waldo County	10,789.00
Washington County	11,961.00
State Selection Committee	22,852.17
Total	248,663.17

Maryland:

Allegany County	26,257.00
Dorchester County	14,789.00
Garrett County	12,010.00
Somerset County	10,286.00
Wicomico County	18,935.00
Worcester County	13,007.00
Baltimore City	249,289.00
State Selection Committee	215,627.26
Total	560,200.26

Massachusetts:

Bristol County	137,860.00
Essex County	135,981.00
Hampden County	87,420.00
Hampshire County	24,504.00
Middlesex County	221,494.00
Plymouth County	89,782.00
Suffolk County	147,274.00
Worcester County	121,763.00

Emergency Food and Shelter Program Allocations—Continued

State Selection Committee	63,169.50
Total	1,029,247.50

Michigan

Lansing/Eaton, Ingham Counties	143,526.00
Alpena County	18,179.00
Antrim County	9,976.00
Bay County	58,518.00
Berrien County	70,015.00
Branch County	17,966.00
Calhoun County	59,293.00
Cass County	20,349.00
Charlevoix County	11,312.00
Cheboygan County	21,521.00
Chippewa County	21,308.00
Clare County	11,884.00
Delta County	22,973.00
Dickinson County	14,228.00
Emmet County	16,358.00
Genesee County	210,102.00
Gratiot County	18,199.00
Hillsdale County	22,983.00
Houghton County	15,400.00
Huron County	17,889.00
Ionia County	26,228.00
Iosco County	10,547.00
Isabella County	20,755.00
Kalamazoo County	67,419.00
Kent County	189,192.00
Lapeer County	34,431.00
Lenawee County	42,121.00
Mackinac County	17,337.00
Macomb County	292,765.00
Manistee County	16,097.00
Marquette County	34,857.00
Mason County	16,891.00
Mecosta County	14,644.00
Menominee County	13,772.00
Montcalm County	31,070.00
Muskegon County	77,017.00
Newaygo County	21,094.00
Oakland County	345,483.00
Oceana County	13,627.00
Osceloa County	11,390.00
Presque Isle County	11,099.00
Saginaw County	92,436.00
St. Clair County	68,911.00
St. Joseph County	27,264.00
Sanilac County	19,739.00
Shiawassee County	36,920.00
Tuscola County	28,087.00
Van Buren County	31,061.00
Washtenaw County	74,983.00
Wayne County	360,127.00
Detroit City	558,733.00
Wexford County	17,743.00
State Selection Committee	169,130.25
Total	3,594,949.25

Minnesota:

Becker County	12,281.00
Beltrami County	13,201.00
Blue Earth County	12,891.00
Carlton County	13,288.00
Cass County	10,460.00
Clay County	14,005.00
Crow Wing County	15,855.00

Emergency Food and Shelter Program Allocations—Continued

Hennepin County	244,001.00
Itasca County	20,872.00
Kandiyohi County	11,070.00
Meeker County	10,499.00
Morrison County	12,281.00
Otter Tail County	18,954.00
Pine County	10,073.00
Polk County	13,259.00
St. Louis County	88,881.00
Stearns County	34,402.00
Winona County	15,274.00
State Selection Committee	252,075.81
Total	823,622.81

Mississippi:

Adams County	22,218.00
Alcorn County	23,864.00
Attala County	12,407.00
Bolivar County	18,896.00
Chickasaw County	11,555.00
Clay County	11,777.00
Coahoma County	18,479.00
Copiah County	14,266.00
De Soto County	19,574.00
Forrest County	26,344.00
George County	11,061.00
Grenada County	13,627.00
Harrison County	58,460.00
Hinds County	92,649.00
Holmes County	14,402.00
Jackson County	55,216.00
Jones County	28,426.00
Lafayette County	11,835.00
Lauderdale County	29,540.00
Lee County	31,864.00
Leflore County	20,174.00
Lincoln County	18,654.00
Lowndes County	21,501.00
Madison County	22,121.00
Marion County	14,160.00
Marshall County	16,862.00
Monroe County	16,697.00
Neshoba County	14,044.00
Oktibbeha County	12,978.00
Panola County	14,489.00
Pearl River County	16,484.00
Pike County	20,988.00
Prentiss County	12,271.00
Rankin County	20,843.00
Scott County	11,322.00
Sunflower County	18,363.00
Tippah County	13,017.00
Tishomingo County	12,910.00
Warren County	26,538.00
Washington County	37,124.00
Wayne County	12,542.00
Yazod County	13,104.00
State Selection Committee	97,506.11
Total	1,011,152.11

Missouri:

Kansas City/Clay, Jackson, Platte Counties	214,713.00
Boone County	20,155.00
Buchanan County	29,443.00
Butler County	15,274.00
Cape Girardeau County	14,247.00

Emergency Food and Shelter Program Allocations—Continued

Dunklin County	13,017.00
Greene County	46,431.00
Howell County	11,167.00
Jasper County	24,203.00
Marion County	10,731.00
Newton County	12,097.00
Pettis County	12,940.00
St. Francois County	16,358.00
Scott County	13,956.00
Stoddard County	11,448.00
Taney County	12,378.00
Texas County	10,441.00
St. Louis County	175,536.00
State Selection Committee	287,004.38
Total	951,539.38

Montana:

Gallatin County	13,734.00
Missoula County	28,969.00
State Selection Committee	91,556.29
Total	134,259.29

Nebraska:

Douglas County	129,666.00
Scotts Bluff County	15,099.00
State Selection Committee	102,080.03
Total	246,845.03

Nevada:

Clark County	218,722.00
State Selection Committee	51,341.96
Total	270,063.96

New Hampshire:

Coos County	10,779.00
Grafton County	10,421.00
State Selection Committee	103,800.00
Total	125,000.00

New Jersey:

Atlantic County	85,201.00
Camden County	109,018.00
Cumberland County	54,800.00
Essex County	133,628.00
Newark City	142,761.00
Hudson County	220,718.00
Mercer County	71,923.00
Passaic County	147,206.00
Salem County	19,835.00
Union County	161,404.00
State Selection Committee	310,590.84
Total	1,457,084.84

New Mexico:

Bernalillo County	155,836.00
Chaves County	20,116.00
Cibola County	17,714.00
Curry County	11,622.00
Dona Ana County	40,679.00
Eddy County	28,203.00
Grant County	12,310.00
Lea County	22,596.00
McKinley County	22,305.00
Otero County	14,053.00
Rio Arriba County	25,375.00
Sandoval County	17,772.00
San Juan County	50,334.00

Emergency Food and Shelter Program Allocations—Continued

San Miguel County	12,862.00
Santa Fe County	30,237.00
Taos County	25,511.00
Valencia County	13,714.00
State Selection Committee	19,736.60
Total	540,975.60
New York:	
Albany County	61,985.00
Allegany County	16,213.00
Broome County	63,894.00
Cattaraugus County	32,949.00
Cayuga County	27,990.00
Chautauqua County	50,257.00
Chemung County	29,424.00
Chenango County	15,167.00
Clinton County	25,860.00
Cortland County	16,843.00
Delaware County	11,119.00
Erie County	172,291.00
Buffalo City	141,405.00
Essex County	16,639.00
Franklin County	19,254.00
Fulton County	30,973.00
Greene County	13,947.00
Herkimer County	29,424.00
Jefferson County	47,458.00
Lewis County	10,508.00
Madison County	22,237.00
Monroe County	165,143.00
Nassau County	298,073.00
Niagara County	82,576.00
Oneida County	69,453.00
Onondaga County	139,226.00
Oswego County	51,584.00
Otsego County	15,603.00
Rensselaer County	35,971.00
St. Lawrence County	37,840.00
Schenectady County	33,346.00
Schoharie County	10,208.00
Stueben County	32,145.00
Suffolk County	314,383.00
Sullivan County	17,472.00
Tompkins County	15,400.00
Ulster County	36,630.00
Warren County	20,349.00
Washington County	15,400.00
Westchester County	155,642.00
New York City	2,464,093.00
State Selection Committee	156,239.00
Total	5,022,613.00
North Carolina:	
High Point/Guilford, Davidson Counties	114,936.00
Beaufort County	14,092.00
Bladen County	12,300.00
Brunswick County	15,254.00
Buncombe County	40,494.00
Carteret County	11,283.00
Cleveland County	24,581.00
Columbus County	18,218.00
Craven County	13,356.00
Cumberland County	46,780.00
Duplin County	13,801.00
Durham County	29,802.00
Edgecombe County	19,593.00
Forsyth County	62,324.00
Franklin County	10,877.00
Gaston County	49,153.00
Granville County	9,889.00

Emergency Food and Shelter Program Allocations—Continued

Halifax County	17,656.00
Harnett County	15,855.00
Haywood County	13,298.00
Henderson County	13,898.00
Johnston County	17,240.00
Lee County	13,695.00
Lenoir County	16,668.00
McDowell County	12,339.00
Mecklenburg County	86,877.00
Moore County	11,826.00
Nash County	19,206.00
New Hanover County	33,995.00
Onslow County	12,910.00
Orange County	11,487.00
Person County	9,908.00
Pitt County	20,969.00
Richmond County	13,462.00
Robeson County	48,291.00
Rockingham County	28,949.00
Rutherford County	17,463.00
Sampson County	22,344.00
Scotland County	11,380.00
Stokes County	10,557.00
Surry County	18,712.00
Vance County	12,717.00
Wake County	56,571.00
Wayne County	24,455.00
Wilkes County	12,678.00
Wilson County	27,622.00
State Selection Committee	158,929.15
Total	1,298,690.15
North Dakota:	
Grand Forks County	12,639.00
Stark County	11,448.00
State Selection Committee	100,913.00
Total	125,000.00
Ohio:	
Columbus/Fairfield, Franklin Counties	308,864.00
Adams County	14,712.00
Ashtabula County	59,448.00
Athens County	20,107.00
Belmont County	45,346.00
Brown County	14,712.00
Butler County	99,613.00
Carroll County	12,571.00
Clark County	53,734.00
Clinton County	15,119.00
Columbiana County	50,257.00
Coshocton County	19,380.00
Crawford County	27,855.00
Cuyahoga County	544,911.00
Fayette County	12,901.00
Fulton County	19,264.00
Gallia County	14,605.00
Guernsey County	25,017.00
Hamilton County	277,879.00
Hardin County	13,327.00
Harrison County	12,378.00
Highland County	17,385.00
Hocking County	12,058.00
Huron County	34,363.00
Jackson County	16,174.00
Jefferson County	36,562.00
Knox County	19,041.00
Lawrence County	25,734.00
Logan County	18,199.00
Lorain County	117,027.00
Lucus County	187,245.00

Emergency Food and Shelter Program Allocations—Continued

Mahoning County	117,424.00
Marion County	34,228.00
Meigs County	11,671.00
Mercer County	17,172.00
Monroe County	9,811.00
Montgomery County	183,090.00
Muskingum County	44,504.00
Perry County	20,320.00
Pike County	15,409.00
Richland County	60,455.00
Ross County	33,065.00
Sandusky County	32,262.00
Scioto County	40,785.00
Seneca County	27,225.00
Shelby County	21,327.00
Stark County	183,768.00
Summit County	203,516.00
Trumbull County	117,076.00
Tuscarawas County	46,266.00
Washington County	35,128.00
State Selection Committee	317,672.98
Total	3,717,962.98
Oklahoma:	
Oklahoma City/Canadian, McClain	301,211.00
Beckham County	12,116.00
Bryan County	10,547.00
Caddo County	15,351.00
Carter County	17,850.00
Cherokee County	15,961.00
Comanche County	23,603.00
Creek County	29,356.00
Garvin County	11,341.00
Grady County	20,097.00
Le Flore County	16,765.00
Lincoln County	13,927.00
McCurtain County	15,400.00
Mayes County	16,678.00
Muskogee County	30,344.00
Okmulgee County	15,545.00
Ottawa County	22,838.00
Payne County	15,525.00
Pittsburg County	22,809.00
Pontotoc County	12,320.00
Seminole County	14,354.00
Sequoyah County	14,460.00
Stephens County	18,247.00
Wagoner County	14,644.00
Woodward County	11,690.00
State Selection Committee	168,275.87
Total	881,254.87
Oregon:	
Portland/Clackamas, Multnomah, Washington	411,313.00
Salem/Marion, Polk Counties	102,750.00
Benton County	17,937.00
Clatsop County	13,734.00
Columbia County	16,785.00
Coos County	30,973.00
Deschutes County	34,654.00
Douglas County	42,412.00
Hood River County	11,642.00
Jackson County	57,395.00
Josephine County	24,358.00
Klamath County	29,627.00
Lane County	112,204.00
Lincoln County	15,855.00
Linn County	50,731.00

Emergency Food and Shelter Program Allocations—Continued

Malheur County	12,949.00
Umatilla County	33,995.00
Union County	12,368.00
Wasco County	16,136.00
State Selection Committee	30,634.29
Total	1,078,452.29

Pennsylvania:

Northampton, Lehigh Counties	206,663.000
Allegheny County	461,473.00
Armstrong County	30,915.00
Beaver County	92,514.00
Bedford County	24,426.00
Berks County	116,698.00
Blair County	56,562.00
Bradford County	20,562.00
Cambria County	70,935.00
Carbon County	27,739.00
Centre County	36,785.00
Clarion County	17,918.00
Clearfield County	41,695.00
Clinton County	13,627.00
Columbia County	25,860.00
Crawford County	41,676.00
Dauphin County	63,574.00
Elk County	16,852.00
Erie County	104,262.00
Fayette County	72,891.00
Greene County	18,170.00
Huntingdon County	22,276.00
Indiana County	42,208.00
Jefferson County	22,731.00
Lackawanna County	80,068.00
Lancaster County	77,289.00
Luzerne County	154,722.00
Mifflin County	23,022.00
Northumberland County	45,656.00
Philadelphia City/County	508,408.00
Schuylkill County	67,332.00
Somerset County	39,254.00
Susquehanna County	15,438.00
Tioga County	16,300.00
Wayne County	12,223.00
Westmoreland County	168,882.00
State Selection Committee	414,029.00
Total	3,271,635.60

Rhode Island:

Providence County	132.591.00
State Selection Committee	26,702.10
Total	159,293.10

South Carolina:

Abbeville County	12,891.00
Aiken County	34,073.00
Anderson County	52,552.00
Beaufort County	13,976.00
Berkeley County	21,666.00
Charleston County	60,310.00
Cherokee County	16,484.00
Chester County	14,586.00
Chesterfield County	16,446.00
Clarendon County	12,145.00
Colleton County	13,269.00
Darlington County	27,361.00
Dillon County	13,550.00
Dorchester County	13,608.00
Florence County	41,811.00
Georgetown County	23,564.00
Greenville County	79,903.00
Greenwood County	27,390.00
Horry County	56,145.00
Kershaw County	13,172.00
Lancaster County	21,424.00
Laurens County	19,458.00
Marion County	18,111.00
Marlboro County	17,395.00
Oconee County	17,995.00
Orangeburg County	33,637.00
Richland County	52,029.00
Spartanburg County	68,175.00
Sumter County	29,249.00
Union County	13,986.00
Williamsburg County	14,567.00
York County	38,586.00
State Selection Committee	45,296.07
Total	954,810.07

South Dakota:

Brown County	10,305.00
Pennington County	17,636.00
State Selection Committee	97,069.00
Total	125,000.00

Tennessee:

Anderson County	22,092.00
Bedford County	12,920.00
Blount County	26,634.00
Bradley County	26,673.00
Campbell County	18,344.00
Carroll County	17,220.00
Carter County	19,952.00
Claiborne County	9,831.00
Cocke County	24,920.00
Coffee County	14,489.00
Cumberland County	13,007.00
Davidson County	106,189.00
Decatur County	10,354.00
Dickson County	11,768.00
Dyer County	15,293.00
Franklin County	12,610.00
Gibson County	24,862.00
Giles County	14,140.00
Green County	31,506.00
Hamblen County	23,739.00
Hamilton County	89,076.00
Hardin County	12,314.00
Hawkins County	15,758.00
Henderson County	16,358.00
Henry County	17,317.00
Jefferson County	17,124.00
Knox County	87,758.00
Lauderdale County	12,262.00
Lawrence County	23,090.00
Lincoln County	10,315.00
Loudon County	13,569.00
McMinn County	19,361.00
McNairy County	16,571.00
Macon County	10,896.00
Madison County	30.315.00
Marion County	12,136.00
Marshall County	11,186.00
Maury County	21,714.00
Monroe County	16,232.00
Montgomery County	26,538.00
Obion County	11,438.00
Putnam County	21,279.00
Rhea County	11,254.00
Roane County	19,380.00
Robertson County	15,061.00
Rutherford County	24,339.00
Scott County	14,450.00
Sevier County	32,446.00
Shelby County	240,127.00
Sullivan County	45,220.00
Tipton County	12,910.00
Warren County	19,806.00
Washington County	32,417.00
Wayne County	9,801.00
Weakley County	10,363.00
State Selection Committee	98,535.50
Total	1,555,759.50

Texas:

Abilene/Jones, Taylor Counties	44,882.00
Austin/Travis, Williamson Counties	1,038,862.00
Houston/Fort Bend, Harris Counties	1,317,310.00
Longvew/Gregg, Harrison Counties	88,242.00
Potter, Randall Counties	66,850.00
Anderson County	20,494.00
Angelina County	29,608.00
Bee County	10,402.00
Bell County	52,213.00
Bexar County	336,205.00
Bowie County	33,917.00
Brazoria County	77,269.00
Brazos County	32,272.00
Brown County	13,123.00
Calhoun County	9,801.00
Cameron County	137,259.00
Cass County	18,509.00
Cherokee County	16,562.00
Coryell County	11,729.00
Deaf Smith County	10,402.00
Ector County	59,729.00
Ellis County	25,579.00
El Paso County	227,962.00
Galveston County	112,068.00
Guadalupe County	12,620.00
Hale County	12,581.00
Hardin County	24,213.00
Hays County	16,484.00
Henderson County	17,840.00
Hidalgo County	257,841.00
Hockley County	9,869.00
Howard County	12,920.00
Hunt County	22,489.00
Jasper County	20,039.00
Jefferson County	139,816.00
Jim Wells County	23,012.00
Kaufman County	12,184.00
Kleberg County	13,995.00
Lamar County	16,697.00
Liberty County	27,777.00
Lubbock County	68,242.00
McLennan County	59,158.00
Matagorda County	25,995.00
Maverick County	36,736.00

Emergency Food and Shelter Program Allocations—Continued

Morris County	12,852.00
Nacogdoches County	20,358.00
Navarro County	20,136.00
Nueces County	140,494.00
Orange County	63,332.00
Palo Pinto County	10,741.00
Polk County	10,993.00
Rusk County	16,605.00
San Patricio County	32,630.00
Smith County	59,081.00
Starr County	49,317.00
Tarrant County	331,923.00
Titus County	11,390.00
Tom Green County	26,441.00
Upshur County	16,329.00
Uvalde County	12,620.00
Val Verde County	26,276.00
Van Zandt County	9,695.00
Victoria County	32,203.00
Walker County	12,000.00
Webb County	61,850.00
Wharton County	18,625.00
Wichita County	39,515.00
Willacy County	10,663.00
Zavala County	12,339.00
State Selection Committee	278,690.37
Total	6,145,957.37
Utah:	
Cache County	11,923.00
Salt Lake County	174,411.00
Utah County	52,891.00
Weber County	38,838.00
State Selection Committee	43,494.68
Total	321,557.68
Vermont:	
Franklin County	10,808.00
Rutland County	11,477.00
Washington County	12,087.00
Windham County	10,618.00
State Selection Committee	79,610.00
Total	125,000.00
Virginia:	
Accomack County	10,179.00
Buchanan County	23,835.00
Carroll County	11,603.00
Dickenson County	11,613.00
Dinwiddie County	12,145.00
Halifax County	12,155.00
Lee County	11,884.00
Mecklenburg County	12,242.00
Montgomery County	20,630.00
Patrick County	9,937.00
Pittsylvania County	30,654.00
Pulaski County	18,179.00
Russell County	17,124.00
Smyth County	14,954.00
Tazewell County	21,637.00
Washington County	14,625.00
Wise County	27,990.00
Wythe County	12,969.00
Chesapeake City	29,714.00
Danville City	21,201.00
Hampton City	30,557.00
Lynchburg City	20,407.00
Newport News City	36,300.00
Norfolk City	54,053.00
Petersburg City	19,690.00

Emergency Food and Shelter Program Allocations—Continued

Portsmouth City	41,337.00
Richmond City	55,138.00
Roanoke City	29,036.00
Suffolk City	17,453.00
State Selection Committee	298,938.24
Total	948,179.24
Washington:	
Chelan County	32,078.00
Cowlitz County	39,303.00
Franklin County	15,990.00
Grant County	24,058.00
Grays Harbor County	29,530.00
King County	428,776.00
Kittitas County	11,651.00
Klickitat County	11,893.00
Lewis County	26,760.00
Okanogan County	21,569.00
Pierce County	166,286.00
Skagit County	34,615.00
Snohomish County	136,426.00
Spokane County	122,151.00
Stevens County	14,847.00
Walla Walla County	21,094.00
Whatcom County	45,085.00
Yakima County	112,950.00
State Selection Committee	116,113.83
Total	1,411,175.83
West Virginia:	
Huntington/Wayne, Cabell Counties	48,950.00
Barbour County	10,402.00
Berkeley County	17,831.00
Fayette County	26,605.00
Greenbrier County	20,978.00
Harrison County	32,262.00
Jackson County	16,291.00
Kanawha County	86,392.00
Lewis County	11,981.00
Lincoln County	12,116.00
Logan County	29,724.00
McDowell County	21,317.00
Marion County	32,145.00
Marshall County	19,593.00
Mason County	14,857.00
Mercer County	26,857.00
Mineral County	12,039.00
Mingo County	15,932.00
Monongalia County	19,729.00
Nicholas County	16,387.00
Ohio County	21,908.00
Preston County	15,148.00
Putnam County	19,593.00
Raleigh County	42,441.00
Randolph County	18,683.00
Upshur County	13,404.00
Wetzel County	11,477.00
Wood County	40,039.00
Wyoming County	15,293.00
State Selection Committee	56,516.32
Total	746,890.32
Wisconsin:	
Eau Claire/Chippewa, Eau Claire Counties	42,982.00
Barron County	14,237.00
Clark County	12,426.00
Columbia County	23,467.00

Emergency Food and Shelter Program Allocations—Continued

Dane County	86,092.00
Dunn County	11,632.00
Grant County	17,249.00
Kenosha County	63,991.00
La Crosse County	28,203.00
Milwaukee County	303,516.00
Oconto County	10,324.00
Pierce County	9,782.00
Portage County	22,431.00
Racine County	68,542.00
Trempealeau County	11,874.00
State Selection Committee	316,252.40
Total	1,043,000.40
Wyoming:	
Fremont County	18,895.00
Natrona County	34,701.00
Uinta County	11,913.00
State Selection Committee	59,491.00
Total	125,000.00
American Samoa (total)	41,650.00
Guam (total)	39,550.00
No. Mariana Islands(total)	24,850.00
Puerto Rico (total)	1,106,395.00
Trust Territories (total)	139,350.00
Virgin Islands (total)	54,600.00

[FR Doc. 86-29287 Filed 12-31-86; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that

document to the person filing the agreement at the address shown below.

Agreement No.: 224-011027

Title: Puerto Rico Maritime Shipping Authority Terminal Equipment Lease Agreement

Parties: Puerto Rico Maritime Shipping Authority (PRMSA) Sea-Land Service, Inc. (Sea-Land)

Synopsis: The parties, subsequent to the agreement's being noticed on November 19, 1986 (FR Vol 51, No. 223, Pg 41834), have also requested that the agreement be approved under the provisions of section 15 of the Shipping Act, 1916.

Filing Party: Dennis N. Barnes, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036.

Dated: December 29, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-29439 Filed 12-31-86; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Being Reviewed by the Office of Management and Budget (OMB)

AGENCY: Office of Information Services, GSA.

SUMMARY: Under the Paperwork Reduction Reauthorization Act of 1986 (44 U.S.C. 811), the General Services Administration (GSA) requests the OMB to reinstate a recently lapsed information collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Clarence Urban, Federal Equipment Data Center, GSA, (703) 235-3540.

a. *Purpose.* The information collection contains summary information on Federal Government computer systems, peripheral equipment, central processors, storage devices and related controls.

b. *Annual reporting burden.* Estimated as follows: Respondents, 60; responses, 750; burden hours, 3,000.

Copies of proposals. Copies of these proposals may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: December 18, 1986.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 86-29475 Filed 12-31-86; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Intergovernmental Review of Agency Programs and Activities

AGENCY: HHS, Office of the Secretary.

ACTION: Final notice.

SUMMARY: The Department is making certain changes to its list of financial assistance programs that are subject to or excluded from Executive Order 12372 and 45 CFR Part 100. This notice presents a comprehensive list of all current HHS programs subject to or excluded from coverage under E.O. 12372 and supersedes all previous listings.

EFFECTIVE DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Joel B. Feinglass, Director, Office of Assistance and Cost Policy, Department of Health and Human Services, 200 Independence Avenue SW., Room 513D, Washington, DC 20201; (202) 245-7565.

SUPPLEMENTARY INFORMATION: Executive Order 12372, "Intergovernmental Review of Federal Programs," of July 14, 1982, 47 FR 30959, as amended by E.O. 12416 of April 8, 1983, 48 FR 15887, has two main features. It authorizes States to simplify and consolidate Federally-required State plans to the extent otherwise permitted by law and it sets up a new system for State and local government review of proposed Federal assistance (mainly discretionary grant applications). This new review system replaces OMB Circular A-95's intergovernmental review system, and is more consistent with the President's principles of Federalism and regulatory relief. 45 CFR Part 100 contains the HHS regulations that implement E.O. 12372.

Under the Executive Order, each State that chooses to participate in the intergovernmental review system designs its own process for State and local review and comment on proposed Federal assistance. Federal agencies, using criteria established by the Office of Management and Budget (OMB), designate which of their assistance programs are covered by the Executive Order. As part of its State process, each participating State selects which covered Federal programs the State process will encompass. Almost every State has established a State review process.

We first published proposed lists of covered and excluded programs on January 24, 1983, at 48 FR 3146 and a final list of covered programs on June 24, 1983, at 48 Fr 29203. Since then, new HHS assistance programs have come into being, some programs have ended, and OMB has changed its criteria for excluding programs. Since 1983, no comprehensive listing of covered and excluded programs has been published, until now.

Therefore, on February 11, 1986, at 51 FR 5103, we proposed to update our program coverage. That proposal dealt with the HHS programs which we had not previously specified as either covered or excluded. And it took into account the most recent criteria from OMB.

Programs may be excluded from the Executive Order's coverage if they do not directly affect State or local governments or if intergovernmental consultation and cooperation is inappropriate.

Under those general criteria, programs are excluded from coverage by the Executive Order if they involve (1) proposed Federal legislation, regulations, or budget formulation; (2) national security; (3) direct payments to individuals; (4) financial transfers for which HHS has no funding discretion or direct authority to approve specific sites; (5) research projects whose goals and objectives are national in scope; or (6) assistance to Federally recognized Indian tribes. Our decisions on program coverage vs. exclusion under the Executive Order are guided by these criteria.

Only two written comments were received on our February 11, 1986 **Federal Register** notice, both from States. One State informed us that, their State review process required review of all programs having a State plan requirement, and that none of its agencies is allowed to accept Federal funds without a review by the State Single Point of Contact (SPOC) and State clearinghouse. In a similar comment, another State informed us that it reviews HHS programs that we have excluded from coverage under E.O. 12372.

The Department's response is that a State is free to do such reviews, although the "accommodate or explain" provision of the Executive Order does not apply to excluded programs.

No other written comments were received.

The following programs were not previously listed in 1983 nor in the February 11, 1986 **Federal Register** notice but are included in this notice:

Covered Programs—13.127, Emergency Medical Services For Childen (PHS); 13.129, Technical and Non-Financial Assistance to Community Health Centers (PHS); 13.133, Health Services Delivery to AIDS Victims Demonstration Grants (PHS); 13.134, Assistance for Organ Procurement Organizations (PHS); 13.137, Minority Community Health Coalitions (PHS); Excluded Programs—13.126, Small Business Innovation Research (PHS); 13.131, Shared Research Facilities for Heart, Lung and Blood Diseases (PHS); 13.132, Acquired Immunodeficiency Syndrome (AIDS) Research (PHS); 13.135, Health Professions Research (PHS); 13.136, Injury Research (PHS); 13.138, Protection & Advocacy for Mentally-Ill (PHS); 13.139, Financial Assistance to disadvantaged Health Professions Students (PHS); 13.389, Research Centers in Minority Institutions (PHS); 13.672, Challenge Grants for Child abuse & Neglect (HDS); 13.821, Biophysics and Physiological Sciences (PHS); Partially Excluded Programs—13.671, Family Violence Formula Grant (HDS); 13.673, State Grants for Dependent Care Planning and Development (HDS).

Note that we originally proposed to exclude the entire Refugee and Entrant Assistance Program (13.814) in the February 11, 1986 **Federal Register** notice. We have split the program in this notice between the covered and excluded programs' lists. The State-Administered portion of the program is excluded from coverage because it is a financial transfer for which HHS retains no funding discretion or direct authority to approve specific sites or projects. The other portions of the program, as cited in the covered programs' list, are subject to E.O. 12372 coverage.

The Surplus Property Utilization Program (13.676) was mistakenly listed as a covered program in 1983. However, it is neither a financial assistance program nor a direct development program. E.O. 12372 applies only to financial assistance and direct development programs, and therefore the Surplus Property Utilization Program is outside the scope of E.O. 12372. Accordingly, it is not listed either as covered or excluded.

The Centers for Disease Control's Investigations and Technical Assistance Program (13.283) was erroneously proposed to be listed as a covered program in the February 11, 1986 **Federal Register**. Since the program supports research which is national in scope, we have placed it on the excluded programs list in this notice.

The Department welcomes comments concerning the E.O. 12372 coverage status of the above programs. Send comments to: Joel Feinglass, Director, Office of Assistance & Cost Policy, HHS, Room 513D, 200 Independence Ave. SW., Washington, DC 20202; 202-245-7565.

In this notice, the following abbreviations are used for the HHS agencies that administer assistance programs:

Public Health Service—(PHS); Human Development Services—(HDS); the agencies of the Family Support Administration (FSA) which include the Office of Child Support Enforcement—(OCSE), the Office of Community Services—(OCS), the Office of Refugee Resettlement(ORR), the Office of Family Assistance—(OFA), and the Work Incentive Program (WIN); Health Care Financing Administration—(HCFA); Office of the Secretary—(OS); and Social Security Administration—(SSA).

Programs Covered Under E.O. 12372

The following Catalog of Federal Domestic Assistance (CFDA) HHS programs are covered under E.O. 12372:

CFDA No.	*Program Title*
13.116	Project Grants and Cooperative Agreements For Tuberculois Control Programs (PHS)
13.120	Mental Health For Cuban Entrants (PHS)
13.125	Mental Health Planning and Demonstration Projects (PHS)
13.127	Emergency Medical Services For Children (PHS)
13.128	Refugee Assistance—Mental Health (PHS)
13.129	Technical and Non-Financial Assistance to Community Health Centers (PHS)
13.133	Health Services Delivery to AIDS Victims Demonstration Grants (PHS)
13.134	Assistance For Organ Procurement Organizations (PHS)
13.137	Minority Community Health Coalitions (PHS)
13.217	Family Planning—Services (PHS)
13.224	Community Health Centers (PHS)
13.240	Migrant Health Centers Grants (PHS)
13.258	National Health Service Corps (PHS)
13.260	Family Planning—Personnel Tranining (PHS)
13.268	Childhood Immunization (PHS)
13.293	State Health Planning and Development Agencies (PHS)
13.294	Health Planning-Health Systems Agencies (PHS)
13.292	Cancer Construction (OHS)
13.600	Head Start (HDS)
13.631	Development Disabilities-Special Projects (HDS)
13.665	Discretionary Grants Only—Community Services Block Grants (FSA/OCS)
13.669	Child Abuse and Neglect State Grants (HDS)
13.814	Refugee and Entrant Assistance—Only Portions Covering the Comprehensive Discretionary Social Services Grant Program and Demonstration Projects Which Test Alternative Approaches to Refugee Cash and Medical Assistance and Social Services (see 13.814 under Excluded Programs) (FSA/ORR)
13.888	Home Health Services (OHS)
13.965	Coal Miners Respiratory Impairment Treatment Clinics and Services (PHS)
13.977	Preventive Health Services-Sexually Transmitted Diseases Control Grants (PHS)
13.985	Eye Research-Facility Construction (PHS)
13.987	Health Programs for Refugees (PHS)
13.988	Cooperative Agreements for State-Based Diabetes Control Programs (PHS)
13.990	National Health Promotion (PHS)
13.995	Adolescent Family Life-Demonstration Projects (PHS)
No CFD No.	WIN Discretionary Program (FSA)

Programs Excluded Under E.O. 12372

The Catalog of Federal Domestic Assistance (CFDA) HHS programs are excluded from coverage under E.O. 12372:

CFDA No.	*Program Title*
13.103	FDA Research (PHS)
13.108	Health Education Assistance Loans (PHS)
13.110	Maternal and Child Health Federal Consolidated Programs (PHS)
13.111	Adolescent Family Life Research (PHS)
13.112	Characterization of Environmental Health Hazards (PHS)
13.113	Biological Response to Environmental Health Hazards (PHS)
13.114	Applied Toxiological Research and Testing (PHS)
13.115	Biometry and Risk Estimation (PHS)
13.117	Grants for Preventive Medicine Residency Training (PHS)

CFDA No.	Program Title
13.118	Acquired Immunodeficiency Syndrome (AIDS) Activity (PHS)
13.119	Grants for Podiatric Medicine Training (PHS)
13.121	Diseases of the Teeth and Supporting Tissues (PHS)
13.122	Disorders of Structure, Function and Behavior (PHS)
13.123	Health Professions Pregraduate Scholarship Program for Indians (PHS)
13.124	Nurse Anesthetist Traineeships (PHS)
13.126	Small Business Innovation Research (PHS)
13.131	Shared Research Facilities for Heart, Lung and Blood Diseases (PHS)
13.132	Acquired Immunodeficiency Snydrome (AIDS) Research (PHS)
13.135	Health Professions Research (PHS)
13.136	Injury Research (PHS)
13.138	Protection & Advocacy for Mentally-Ill (PHS)
13.139	Financial Assistance to Disadvantaged health Professions Students (PHS)
13.226	Health Services Research and Development (PHS)
13.228	Indian Health Services-Health Management Development Program (PHS)
13.242	Mental Health Research (PHS)
13.244	Mental Health Clinical or Service Related Training (PHS)
13.262	Occupational Safety and Health Research (PHS)
13.263	Occupational Safety and Health Training (PHS)
13.271	Alcohol Research Scientist Development and Research Scientist Awards (PHS)
13.272	Alcohol National Research Service Awards for Research Training (PHS)
13.273	Alcohol Research Programs (PHS)
13.277	Drug Abuse Research Scientist Development and Research Scientist Awards (PHS)
13.278	Drug Abuse National Research Service Awards for Research Training (PHS)
13.279	Drug Abuse Research (PHS)
13.281	Mental Health Research Scientist Development and Research Scientist Awards (PHS)
13.282	Mental Health Research Service Awards for Research
13.283	Investigations and Technical Assistance (PHS)
13.297	National Research Service Awards Training (Nursing) (PHS)
13.298	Nurse Practitioner and Nurse Midwife Education and Traineeships (PHS)
13.299	Advanced Nurse Training Program (PHS)
13.306	Laboratory Animal Sciences and Primate Research (PHS)
13.333	General Clinical Research Centers (PHS)
13.337	Biomedical Research Support (PHS)
13.339	Health Professions Capitation Grants (PHS)
13.342	Health Professions—Student Loans (PHS)
13.358	Professional Nurse Traineeships (PHS)
13.359	Nurse Training Improvement (PHS)
13.361	Nursing Research Project Grants (PHS)
13.364	Nursing Student Loans (PHS)
13.371	Biomedical Research Technology (PHS)
13.375	Minority Biomedical Research Support (PHS)
13.379	Grants for Graduate Training in Family Medicine (PHS)
13.381	Health Professions—Financial Distress Grants (PHS)
13.389	Research Centers in Minority Institutions (PHS)
13.390	Academic Research Enhancement Awards (PHS)
13.393	Cancer Cause and Prevention Research (PHS)
13.394	Cancer Detection and Diagnosis Research (PHS)
13.395	Cancer Treatment Research (PHS)
13.396	Cancer Biology Research (PHS)
13.397	Cancer Centers Support (PHS)
13.398	Cancer Research Manpower (PHS)
13.399	Cancer Control (PHS)
13.608	Administration for Children, Youth and Families—Child Welfare Research (HDS)
13.612	Native American Programs—Financial Assistance (HDS)
13.632	Administration on Developmental Disabilities—University Affiliated Facilities (HDS)
13.647	Social Services Research and Demonstration (HDS)
13.648	Child Welfare Services Training (HDS)
13.652	Adoption Opportunities (HDS)
13.655	Special Programs for the Aging—Title VI—Grants to Indian Tribes (HDS)
13.658	Foster Care—Title IV-E (HDS)
13.659	Adoption Assistance—Title IV-E (HDS)
13.661	Native American Programs—Research, Demonstration and Evaluation (HDS)
13.662	Native American Programs—Training and Technical Assistance (HDS)
13.665	Community Services Block Grant (FSA/OCS)
13.667	Social Services Block Grant (HDS)
13.668	Special Programs for the Aging—Title IV—Training, Research and Discretionary Projects and Programs (HDS)
13.672	Challenge Grants for Child Abuse & Neglect (HDS)
13.679	Child Support Enforcement (FSA/OCSE)
13.714	Medical Assistance Program (Medicaid) (HCFA)
13.766	Health Financing Research (HCFA)
13.773	Medicare—Hospital Insurance (HCFA)
13.774	Medicare—Supplementary Medical Insurance (HCFA)
13.775	State Medicaid Fraud Control Units (OS)
13.777	Medicaid State Health Care Providers Survey Certification (HCFA)
13.802	Social Security Disability Insurance (SSA)
13.803	Social Security Retirement Insurance (SSA)
13.804	Social Security Benefits to Persons Aged 72 and over (SSA)
13.805	Social Security Survivors Insurance (SSA)
13.806	Special Benefits for Disabled Coal Miners (SSA)
13.808	Assistance Payments—Maintenance Assistance (AFDC) (FSA/OFA)
13.809	Child Support Enforcement Research (FSA/OCSE)
13.811	Child Support Enforcement Interstate Grants (FSA/OCSE)
13.812	Assistance Payments Research (FSA/OFA)
13.814	Refugee and Entrant Assistance—State Administered Portion Only (See 13.814 under Covered Programs) (FSA/ORR)
13.815	Refugee Assistance—Voluntary Agency Program (FSA/ORR)
13.818	Low Income Home Energy Assistance (FSA/OFA)
13.820	Scholarships for First-Year Students of Exceptional Financial Need (PHS)
13.821	Biophysics and Physiological Sciences (PHS)
13.822	Health Careers Opportunity Program (PHS)
13.824	Area Health Education Centers (PHS)
13.837	Heart and Vascular Diseases Research (PHS)
13.838	Lung Diseases Research (PHS)
13.839	Blood Diseases and Resources Research (PHS)
13.845	Dental Research Institutes (PHS)
13.846	Arthritis, Musculoskeletal and Skin Diseases Research (PHS)
13.847	Diabetes, Endocrinology and Metabolism Research (PHS)
13.848	Digestive Diseases and Nutrition Research (PHS)
13.849	Kidney Diseases, Urology and Hematology Research (PHS)
13.853	Clinical Research Related to Neurological and Communicative Disorders (PHS)

CFDA No.	Program Title
13.854	Biological Basis Research (PHS)
13.855	Immunology, Allergic and Immunologic Diseases Research (PHS)
13.856	Microbiology and Infectious Diseases Research (PHS)
13.859	Pharmacological Sciences (PHS)
13.862	Genetics Research (PHS)
13.863	Cellular and Molecular Basis of Disease Research (PHS)
13.864	Population Research (PHS)
13.865	Research for Mothers and Children (PHS)
13.866	Aging Research (PHS)
13.867	Retinal and Choridal Diseases Research (PHS)
13.868	Corneal Diseases Research (PHS)
13.869	Cataract Research (PHS)
13.870	Glaucoma Research (PHS)
13.871	Strabismus, Amblyopia and Visual Processing (PHS)
13.879	Medical Library Assistance (PHS)
13.880	Minority Access to Research Careers (PHS)
13.884	Grants for Residency Training in General Internal Medicine and/or General Pediatrics (PHS)
13.886	Grants for Physician Assistant Training (PHS)
13.891	Alcohol Research Center Grants (PHS)
13.894	Resource and Manpower Development in Environmental Health Sciences (PHS)
13.895	Grants for Faculty Development in Family Medicine (PHS)
13.896	Grants for Predoctoral Training in Family Medicine (PHS)
13.897	Residency Training in the General Practice of Dentistry (PHS)
13.900	Grants for Faculty Development in General Internal Medicine and/or General Pediatrics (PHS)
13.962	Health Administration Graduate Traineeships (PHS)
13.963	Graduate Programs in Health Administration (PHS)
13.964	Traineeships for Students in Schools of Public Health and Other Graduate Public Health Programs (PHS)
13.969	Health Professions Special Education Initiatives (PHS)
13.970	Health Professions Recruitment Program for Indians (PHS)
13.971	Health Professions Preparatory Scholarship Program for Indians (PHS)
13.972	Health Professions Scholarship Program for Indians (PHS)
13.973	Special Loans for Former National Health Service Corps Members to Enter Private Practice (PHS)
13.974	Family Planning Service Delivery Improvement Research Grants (PHS)
13.978	Preventive Health Services Sexually Transmitted Diseases Research (PHS)
13.982	Mental Health Disaster Assistance and Emergency Mental Health (PHS)
13.984	Grants for Establishment of Departments of Family Medicine (PHS)
13.989	Senior International Awards Program (PHS)
13.991	Preventive Health and Health Services Block Grant (PHS)
13.992	Alcohol and Drug Abuse and Mental Health Services Block Grant (PHS)
13.994	Maternal and Child Health Block Grant (PHS)
No CFDA No.	Policy Research (Planning and Evaluation) (OS)

State Plans Covered Under E.O. 12372 But Intergovernmental Review Excluded

E.O. 12372 allows States to simplify and consolidate Federally required State plan submissions. The following programs are formula grants for which HHS has no funding discretion or direct authority to approve specific sites or projects. Therefore, we exclude these programs from the E.O. 12372 provisions and implementing regulations of 45 CFR Part 100 which provide for State and local review and comment on proposed Federal assistance, but we include them for purposes of State plan consolidation and simplification.

CFDA No.	Program title
13.630	Developmental Disabilities—Basic Support and Advocacy Grants (HDS).
13.633	Aging—Title III A&B—Grants for Supportive Services and Senior Centers (HDS).
13.635	Aging—Title III C—Nutrition (HDS).
13.645	Child Welfare Services—State Grants (HDS).
13.646	Work Incentive Program (WIN) (FSA).
13.671	Family Violence Formula Grant (HDS).
13.673	State Grants for Dependent Care Planning and Development (HDS).

In addition, States, at their option, may simplify and consolidate other State plan type submissions, e.g., block grant applications. Currently, several States submit consolidated plans which include from four to twelve different programs including HHS formula and grant programs and programs from other Federal agencies. These consolidated plans appear to be useful to the States for a variety of budgetary, legislative and planning purposes.

Dated: December 23, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-29432 Filed 12-31-86; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a California State Plan Amendment

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 4, 1987 in San Francisco, California to reconsider our decision to disapprove California State Plan amendment 82-3A.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Heaing Officer will notify all participants.

The issue in this matter is whether California SPA 82-3-A violates section 1902(a)(10)(C)(i)(III) of the Social Security Act. California SPA 82-3-A provides that for the medically needy, individuals who are otherwise eligible for Medicaid sometime during a month, and who have excess resources, are eligible for the entire month if they have converted the excess resources to exempt resources or have used the excess resources to discharge legal debts within the month. HCFA has determined this proposed policy is more liberal than SSI policy, which provides that to be eligible for SSI, individuals must meet the resource eligibility requirements as of the first day of the month. (See Program Operations Manual Systems (POMS) section SI 01150.005(C).) Section 1902(a)(10)(C)(i)(III) of the Social Security Act requires States in determining financial eligibility of the aged, blind and disabled medically needy to use the same methodology which is used in determining income and resource elibility under the SSI program. Therefore, by employing a more liberal resource eligibility methodology HCFA initially determined California SPA 82-3-A violates this provision of the Medicaid statute.

The State maintains that the material in SPA 82-3-A should be treated as a clarification of previously existing plan material rather than as new plan material. This material, which amends Attachment 2.6A, page 12, item 7.B of the plan, was part of the State plan prior to the State submittal of SPA 82-16 in 1982. The material in question was omitted from the plan by that plan amendment, which was subsequently approved. The approved State plan thus no longer contained the material in question. The State argues that because the omission was inadvertent rather than deliberate, SPA 82-3-A should not be treated as a new plan amendment, but rather as merely explanatory.

HCFA believes that while the State's omission of the material in question may not have been deliberate, the fact remains that it was omitted from SPA 82-16, and that SPA 82-16, minus the material in question, subsequently became part of the approved State plan. HCFA therefore does not agree with the State that SPA 82-3-A is merely explanatory. Rather, HCFA believes it must be treated as a new plan amendment since it adds to the existing approved plan a material change in the State's treatment of resources. As such its effective date can be no earlier than January 1, 1986, based on a submission date of March 25, 1986 (45 CFR 201.3(g)).

The State argues, based on its proposed effective date of January 1, 1982, that the material in question is protected under the DEFRA moratorium (section 2373(c) of DEFRA). Under the DEFRA Moratorium, the Secretary is prohibited from applying any sanctions, including disallowances to States when States' approved plans contain more liberal income or resource methodologies than permitted by Medicaid statute. The State argues that its proposed revision should be protected under the DEFRA Moratorium because of its requested effective date of January 1, 1982. HCFA believes SPA 82-3-A must be considered as a new plan amendment, rather than a clarification as the State requests. Since it is a new amendment, it cannot be considered part of the approved State plan, and therefore is not protected by the DEFRA Moratorium.

The notice of California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Kenneth W. Kizer, M.D., M.P.H., Director, California State Department of Health Services, 714 P Street, Room 1253, Sacramento, CA 95814.

Dear Dr. Kizer: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 82-3-A was received on November 28, 1986. California SPA 82-3-A provides that for the medically needy, individual who are otherwise eligible for medicaid sometime during a month, and who have excess resources, are eligible for the entire month if they have converted the excess resources to exempt resources or have used the excess resources to discharge debts within the month.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issues to be considered at the hearing are (1) whether the proposed policy is more liberal than SSI policy which provides that to be eligible for SSI, individuals must meet all eligibility requirements, including resources, as of the first day of the month; (2) if the proposed policy is more liberal whether the amendment violates the "same methodology" requirement of section 1902(a)(1))(C)(i)(III); (3) whether the submission should be treated as a new plan amendment and therefore have an effective date earlier than January 1, 1986; and (4) whether disapproval of the plan is precluded by the moratorium established by section 2373(c) of the Deficit Reduction Act of 1984 on certain actions by the Secretary.

I am scheduling a hearing on your request to be held on February 4, 1987 at 10:00 a.m. in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 24, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-29455 Filed 12-31-86; 8:45 am]

BILLING CODE 4120-01-M

Food and Drug Administration

[Docket No. 86N-0414]

Studies for the Development and Improvement of Analytical Methodology for Animal Drug Residues in Tissues; Request for Cooperative Agreement Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the anticipated availability of approximately $300,000 for fiscal year 1987 for cooperative agreements to support studies on the development and improvement of analytical methodologies for residues of animal drugs in tissues. Funds are not currently available for these studies. Accordingly, the government's obligation under this program is contingent upon the availability of appropriated funds from which cooperative agreements will be funded.

The purpose of these agreements is to provide financial assistance to support research for new or improved tissue extraction, cleanup, and quantitative procedures, including multiresidue analytical technology for certain animal drugs. Projects designed to test and evaluate the reliability, performance, and ;practicality of immunoassays in animal drug residue analyisis and screening are also of interest.

FDA anticipates making three or four awards averaging $75,000 to $100,000 (direct and indirect costs) each per year. Support for this program may be for a period of up to 3 years.

DATES: Applications must be received by 5 p.m. March 3, 1987. The earliest date for award is July 1, 1987.

ADDRESS: Completed applications should be submitted to and application kits are available from Olia M. Hopkins (address below).

FOR FURTHER INFORMATION CONTACT:

Programmatic Aspects of the Program: David B. Batson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6510.

or

Business Management Aspects of the Program: Olia M. Hopkins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

SUPPLEMENTARY INFORMATION: FDS's authority to fund research projects is set out in section 301 of the Public Health Service Act (42 USC 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the catalog of Federal Domestic Assistance No. 13.103.

I. Background

The Code of Federal Regulations (21 CFR 556.1; Subpart B) prescribes tolerances for residues of new animal drugs in meat, poultry, eggs, and milk. In order to ensure that the tolerances are met, FDA requires that analytical methods be available that can be used to monitor compliance with the tolerances.

Because the responsibility for providing analytical methods for residues of individual approved drugs in meat, milk, and eggs rests primarily with the drugs' sponsors, FDA is interested in funding research that can be used (1) to monitor for residues of compounds used in food-producing animals, and (2) to improve the efficiency of the FDA/USDA monitoring programs for residues. Accordingly, special consideration will be given to proposed research that will employ recently developed technology to meet the goals and objectives outlined below.

II. Research Goals and Objectives

The specific goals for these cooperative agreements will be to provide financial assistance to investigators conducting research and development in the separation and identification of animal drugs from tissue matrices. Projects may be submitted to fulfill any one or combination of the following goals.

1. Provide new or improved tissue extraction methodology and quantitative determinative techniques for selected animal drugs (see Section III.).

Projects should meet the following specific objectives:

(a) Improve existing extraction methodology for selected animal drugs (see Section III.). These projects should focus on improving and simplifying existing methodologies that have complicated, multistep extraction procedures.

The basic task is to improve and modernize existing established methods by incorporating new, more efficient chemical separation techniques where scientifically appropriate. For example, solid phase extraction technology may be able to replace, either partially or completely, existing multistep solvent extraction procedures. These techniques may be amenable to automation thereby allowing for more efficient laboratory operations and sample analysis.

(b) Develop determinative techniques or systems of chemical analysis for selected animal drugs that are characterized by high sample capacity, sensitivity, and sufficient specificity to meet state-of-the-art standards.

(c) Develop qualitative confirmatory tests for animal drugs for which there exist determinative methodologies. Such tests would extend and strengthen an existing analytical base. Specifically, liquid chromatography, capillary gas chromatography, and mass spectrometry technology may be of potential use in developing confirmatory methodology.

2. Develop new analytical systems and strategies capable of multiresidue or multidrug component separation, determination, and confirmation (see Section III.).

CVM is especially interested in projects developing general extraction and cleanup techniques for groups of animal drugs characterized by common chemical behavior of structure. Supercritical fluid chromatography and multiphasic solvent extraction techniques are of potential application to this program. CVM encourages projects investigating applications of those technologies.

Microbore liquid chomatographic columns are a notable technological improvement and may be of potential application especially when used in a systems approach with mass spectrometry. Other systems approaches to multidrug residue analysis are liquid or gas chromatography, mass spectrometry methodologies, and tandem mass spectrometry techniques.

3. Investigate the reliability and performance of immunoassay procedures for animal drug residue screening.

Immunoassay techniques have been used primarily for research purposes or clinical diagnosis of disease. However, as the technology of immunoassay continues to develop, it is likely that these techniques will find increasing applications in the analysis of residues of animal drugs.

Therefore, in order to properly evaluate and to apply immunoassay techniques in the animal drug residue area, CVM is interested in information on the accuracy and specificity of the conclusions drawn from immunoassay analytical techniques.

Experimental designs specifying tests and procedures which demonstrtate confirmation of immunoassays are of interest. It is important that the confirmatory tests and procedures be based on scientific principles that do not derive from immunochemical theory. This will help assure that the confirmatory date will be independent with minumum biases.

To the extent possible, the animal drugs selected for project development should come from the attached animal drug list (see Section III.).

The development of immunoassays for specific animal drugs is not the primary focus of this goal, although CVM recognizes that good design may dictate assay development. Alternatively, CVM would be interested initially in proposals that would use existing immunossays for confirmatory study.

III. Animal Drug List

The following is a list of animal drugs of regulatory interest to FDA. Investigators are strongly encouraged to select a drug from this listing for project development. No priority order is implied in the drug listing and investigators are free to choose from this list.

The drugs to be considered include but are not limited to:

Aminoglycosides
- Neomycin
- Streptomycin
- Dihydrostreptomycin

Amprolium

Benzimidazoles [1]

[1] These drugs require methodologies with measurement sensitivity in the 1 to 10 parts per billion range. Unstarred drugs require methods in the 100 parts per billion range. Please note that certain drugs require only confirmatory techniques or have matrices specified. For these special cases, projects should address these needs.

Albendazole
Fenbendazole
Mebendazole
Oxfendazole
Thiabendazole
B-Lactams (confirmatory)
Ampicillin
Cephapirin
Cloxacillin
Hetacillin
Penicillin
Chlorhexidine [1]
Chlorsulon (milk)
Dibutyltin Dilaurate [1]
Ethopabate
Gentian Violet [1]
Hygromycin B
Larvadex (confirmatory)
Methylene Blue [1]
Nystatin
Organophosphates [1]
Coumaphos
Cru-fomate
Famfur
Fenthion
Phenothiazine [1]
Piperazine [1]
Sulfonamides (confirmatory) [1]
Xylazine [1]

IV. Reporting Requirements

Financial status reports will be required to be submitted on an annual basis and within 90 days from the last day of the budget period. The progress reports required under a grant award (45 CFR Part 74) are to be submitted by the principal investigator or project manager.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provision of 42 CFR Part 52 and 45 CFR Part 74.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and to any for profit organization.

C. Length of Support

The length of support will depend on the nature of the study and may extend beyond 1 year but not exceed 3 years. For studies where the expected date of completion is more than 1 year, however, continuation of support beyond the first year will be based upon performance during the preceding year and the availability of funds.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of funds.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this request for applications (RFA). Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA-supported program under each award. During monitoring, FDA may direct or redirect the selection of the animal drugs to be studied.
2. FDA will establish an Analytical Technology Advisory Group which will provide guidance and direction to the program with regard to the animal drugs and animal tissues to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.
3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and coauthorship of publications.

VII. Review Procedures and Criteria

A. Review Methods

Applications will undergo initial review by experts in the field of analytical chemistry, drug chemistry, and bioanalysis. The experts will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them based on their relevance to FDA's mission in the regulation of animal drugs.

B. Review Criteria

Applications must be responsive to this RFA. Applications that are judged to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA.
2. Whether the proposed study is within the budget and deadlines specified in the RFA.
3. Soundness of the rationale for the proposed study.
4. Appropriateness of the study design to answer the question posed.
5. Availability and adequacy of laboratory and associated animal facilities.
6. Availability and adequacy of support services, e.g., biostatistical, computer, etc.
7. Research experience, training, and competence of the principal investigator and support staff.

VIII. Method of Application

Format for Applications

Applications must be submitted on Form PHS-398 (application for Public Health Service grant). The face page of the application must reflect the RFA number, RFA-FDA-CVM-87-1. To ensure confidentiality of individual salary information, applicants may choose to include that information only on the original application. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits.

No action will be taken by the funding agency to delete confidential information. Data included in the application, if identified with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the FDA regulations implementing that act (21 CFR 20.61).

Legend

Unless disclosure is required by the Freedom of Information Act, as amended, as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

IX. Submission Requirements

CVM has determined that this program is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of federal programs.

The collection of information requested on Form PHS-398 and the instructions were submitted by the Public Health Service to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

The original and six copies of the completed application are to be delivered to, and application kits are available from, Olia M. Hopkins (address above).

Note.—Do not mail the application to the National Institutes of Health.

Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to RFA-FDA-CVM-87-1.

Applications must be received by 5 p.m., March 3, 1987. A package carrying a legible proof-of-mailing date assigned by the carrier, and which is no later than 1 week prior to the receipt date, is also acceptable. The receipt date will be waived only in extenuating circumstances. To request such a waiver, an explanatory letter with the signed completed application should be included. No waiver will be granted prior to receipt of application. Unless a waiver is granted, applications received after the deadline will be returned to the applicant.

Dated: November 25, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-29515 Filed 12-31-86; 8:45 am]

BILLING CODE 4160-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

Agency Information Collection Being Reviewed by the Office of Management and Budget (OMB)

AGENCY: Office of the Comptroller, General Services Administration (GSA).

SUMMARY: Under the Paperwork Reduction Reauthorization Act of 1986 (44 U.S.C. 811), the GSA requests the OMB to review an information collection for which a form is being revised to include part of the information from another form that was canceled.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edgar K. Davis, Procedures and Evaluation Branch, GSA (202) 566-0208.

Purpose of Collection

To determine the financial capability and responsibility of prospective contractors.

Annual Reporting Burden

Respondents, 8,200; responses, 12,300; burden hours, 20,850.

Copies. Copies of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: December 19, 1986.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 86-29476 Filed 12-31-86; 8:45 am]

BILLING CODE 6820-BN-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits; North Carolina State Museum of Natural History, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531. *et seq.*):

Applicant: North Carolina State Museum of Natural History, Raleigh, NC; PRT-713937.

The applicant requests a permit to acquire up to ten nonliving specimens of masked bobwhite quail (*Colinus virginianus ridgwayi*), Andean condors (*Vultur gryphus*) and whooping cranes (Grus americana) to be derived from mortalities occurring among the captive-bred flocks of these birds maintained by the U.S. Fish and Wildlife Service, to be incorporated into the applicant's avian research collection.

Applicant: The Peregrine Fund, Ithaca, NY; PRT-713339.

The applicant requests a permit to import from Mauritius up to 30 blood samples from captive and captive born Mauritius kestrels (*Falco punctatus*) for purposes of scientific research.

Applicant: Sacramento Zoo, Sacramento, CA; PRT-714140.

The applicant requests a permit to import one captive born female orangutan (*Pongo pygmaeus abelii*) from the Calgary Zoo in Alberta, Canada. This female is to be included in the Orangutan Species Survival Plan Propagation Group and will be paired with a male orangutan at the Sacramento Zoo.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH; PRT-714238.

The applicant requests a permit to import three (two males and one female) captive-born cheetahs (*Acinonyx jubatus*) from the National Zoological Gardens of South Africa for the purpose of education, exhibition and breeding.

Applicant: Jackie D. Wood, Columbus, OH; PRT-714174.

The applicant requests a permit to import up to 50 colon biopsies taken from wild cotton-top marmosets (*Saguinus oedipus*) at the INDERENA Primate Research Station in Colombia. Applicant wishes to import up to 50 intestinal biopsies for purposes of scientific research and enhancement of the propagation of the species.

Applicant: Harold Albers, St. Petersburg, FL; PRT-714255.

The applicant requests a permit to import from Cuba for rehabilitation purposes a brown pelican (*Pelecanus occidentalis*) that has suffered injury to its optic nerve.

Applicant: Tarzan Zerbini International Circus, Carthage, MO; PRT-703757.

The applicant requests a permit to export and reimport 21 bengal tigers (*Panthera tigris*) and 6 Asian elephants (*Elephas maximus*). The applicant proposes to enhance the survival of these species by educating the public about their conservation needs.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-29391 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges; Water Charges on the Wapato Irrigation Project, WA

This notice of proposed operation and maintenance rate is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of Part 171, Subchapter H, Chapter I of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information on the Wapato Irrigation Project for Calendar Year 1987 and subsequent years. This notice is

proposed pursuant to the authority contained in the Acts of August 1, 1914, (38 Stat 583), and March 7, 1938, (45 Stat. 210) and September 26, 1961 (75 Stat 680).

The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1987 amount to $1.75 per acre on the Wapato-Satus Unit, and the Additional Works unit. The public is welcome to participate in the rule making process of the Department of the Interior.

Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, within 30 calendar days of this publication.

Wapato Irrigation Project—General

Administration

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, Wapato-Satus Unit, and the additional work unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season

Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules.

Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Time for Payment of Water Charges

The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent fee ownership, and those leased Indian lands remaining unpaid on July 1, following the due date, there shall be added a penalty of one and one-half percent for each month, or fraction thereof, from the due date until the charges are paid.

No delivery of water will be made without payment or without satisfactory arrangements being made with the Project Engineer. If arrangements are made for delivery of water prior to payment, there will be an interest charge of one and one-half percent per month or fraction thereof, from the time of water delivery until payment is made.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1987 and subsequent until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report	$15.00
(2) Requests for Verification of Account Delinquency Status, Per Report	$10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee), Per Bill	$10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill	$10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report	$10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee	$10.00
(7) Review of subdivision plats	$10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1987 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1987 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1987 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts	$25.95
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands	$25.95
(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre	$2.20
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands	$27.05

(b) In addition to the foregoing charges there shall collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the

opinion of the project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A and B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on and that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Stanley Speaks,

Area Director.

[FR Doc. 86-29477 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[OR-010-07-4212-08:GP7-053]

Intent To Amend Management Framework Plan; Realty Action; Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Opportunity for public comment—Notice of Intent To Amend the Lost River Management Framework Plan; Notice of Realty Action—Exchange of Public Land in Klamath County, Oregon.

In accordance with 43 CFR 1601.3 notice is hereby given that the Bureau of Land Management in the State of Oregon, Lakeview District, intends to amend the Lost River Management Framework Plan (MFP).

The amendment is to specifically identify public land in the Klamath Falls Resource area for retention or disposal; to identify, generally, private land that may be suitable for acquisition and access to the public land by the public. The Klamath Falls Resource Area is located in southeast Klamath County, Oregon, east of the city of Klamath Falls. The area is bounded by highway US 97 to the west, the Winema and Fremont National Forests to the north and east, and the Oregon-California stateline to the south. The existing MFP does not identify which of the 161,000 acres of Bureau administered public lands should be retained for multiple use management nor identify public lands that are suitable for disposal nor the methods of disposal. It also does not identify lands that are difficult or uneconomic to manage and could be sold.

Additionally, this notice serves as the Notice of Realty Action as required by 43 CFR Part 2201. The Lakeview District has received a formal exchange proposal affecting public land described as follows:

Willamette Meridian, OR

T. 37S., R. 9E.,
- Sec. 4, SW¼SW¼—40.00 ac;
- Sec. 9, NW¼NW¼, NE¼SW¼—80.00 ac;
- Sec. 13, W½W½, NE¼SE¼—200.00 ac;
- Sec. 14, NE¼NE¼, SE¼SE¼—80.00 ac;
- Sec. 24, NW¼NE¼, S½NE¼, NE¼NW¼—160.00 ac;
- Sec. 35, SE¼NE¼—40.00 ac.

T. 37S., R. 12E.,
- Sec. 26, SW¼, W½SE¼—240.00 ac;
- Sec. 27, N½NW¼, SE¼NW¼, NE¼SW¼, SE¼—320.00 ac;
- Sec. 28, N½NE¼, SW¼NE¼—120.00 ac;
- Sec. 34, N½NE¼, SE¼NE¼, NE¼SE¼—160.00 ac;
- Sec. 35, Lots 2, 3, NW¼NE¼, NW¼, N½SW¼, NW¼SE¼—397.97 ac.

T. 37S., R. 13E.,
- Sec. 1, Lots 5 and 7—19.72 ac;
- Sec. 11, Lot 2, NW¼SE¼—47.80 ac.

Aggregating 1,905.49 acres more or less.

Contingent upon approval of the amended MFP some or all of the above described 1905.49 acres will be in conformance with the approved land use plan and therefore suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. In exchange for these lands the Federal Government will acquire the following land from the Weyerhaeuser Company:

Willamette Meridian, OR

T. 38S., R. 11E.,
- Sec. 1, SE¼SE¼—40.00 ac;
- Sec. 12, E½E½—160.00 ac;
- Sec. 13, E½E½—160.00 ac.

T. 38S., R. 13E.,
- Sec. 33, SW¼SW¼—40.00 ac.

T. 39S., R. 14E.,
- Sec. 1, Fr. N½NE¼, SE¼NE¼, Fr. N½NW¼, NW¼SW¼, S½SW¼, NE¼SE¼—360.20 ac;
- Sec. 2, all—642.60 ac;
- Sec. 3, Fr. N½NE¼, SW¼NE¼, Fr. N½NW¼, NE¼SE¼—242.37 ac;
- Sec. 4, Lot 1—39.98 ac;
- Sec. 11, NE¼, NE¼NW¼—200.00 ac;
- Sec. 12, NE¼NW¼, SW¼NW¼, W½SW¼—160.00 ac.

Containing 2,045.15 acres more or less.

The purpose of the exchange is to acquire and block-up lands within the eastern portion of the Resource Area near Gerber reservoir. These lands, locally known as the "Gerber block", have high public values for forestry, riparian, watershed and wildlife resources. Acquisition of this land would be consistent with the Bureau's planning system after the plan is amended and the public interest will be well served by the exchange. The value of the lands have not been determined, however upon completion of the final appraisal the acreage will be adjusted or money will be used to equalize values. The public lands will be transferred subject to: (1) A reservation to the United States of a rights-of-way for ditches or canals constructed by the authority of the United States, Act of Aug. 30, 1890 (43 USC 945); (2) all valid existing rights-of-way, leases, permits or licenses in effect at the time of exchange. The mineral estate will be included in the exchange.

The publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by 43 CFR 2201.1(b) any subsequently tendered application allowance of which is discretionary shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

This segregative effect shall terminate upon issuance of a patient to such lands, upon publication in the **Federal Register** of a Notice of Termination of the segregation or two years from date of this publication whichever occurs first.

Supplementary Information

Detailed information concerning the proposed exchange and land use plan amendment is available for review at the Lakeview District Office 1000 South Ninth Street Lakeview Oregon 97630, (503) 947-2177 and the Klamath Falls Resource Area Office 1939 South 6th St Klamath Falls, Oregon 97601, (503) 883-6916.

Comments

A two purpose comment period is provided at this time. The comment period for the land exchange proposal described in the above Notice of Realty Action will be 45 days and the comment period on the preliminary issues and planning criteria for the proposed land use plan amendment will also be 45 days. Comments on each or both proposals should be submitted to Lakeview District Manager at the address noted above. Any adverse comments received as a result of the Notice of Realty Action will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the

absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Public Participation in the Plan Amendment

Major issues involved in the plan amendment are the identification of public lands in the Klamath Falls Resource Area for retention for multiple use management, identification of public lands for disposal, to identify, generally, private land areas suitable for acquisition and access to the public lands by people of the United States.

Disciplines to be represented on the interdisciplinary team preparing the plan amendment and Environmental Assessment (EA) are: Wildlife, recreation, watershed, lands and realty, cultural, forestry and land use planning. More detailed information on planning criteria, issues and preliminary management alternatives is available at the Lakeview District Office, or the Klamath Falls Resource Area Office and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the plan amendment and associated EA will close February 17, 1987. Other public participation activities will include a 60 day review of the draft plan amendment and EA and an open house to receive comments and answer questions. Dates, times, and locations will be announced through local media and mailing to interested parties. Planning documents are available for inspection at the Lakeview District and Klamath Falls Resource Area Office at the addresses noted above during normal working hours.

Dated: December 18, 1986.

Dick Harlow,

Acting District Manager.

[FR Doc. 86-29285 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-940-07-4212-12; A-22407]

Realty Action; Conveyance of Public Lands; Reconveyed Lands Open to Entry in Mohave and Yavapai Counties, AZ

Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following described land was transferred out of Federal ownership in exchange for State-owned land. The land transferred to the State of Arizona is described as follows:

Gila and Salt River Meridian, AZ

T. 6 S., R. 13 E.,
Sec. 1, lot 7, SW¼SE¼.
T. 6 S., R. 14 E.,
Sec. 1, S½SE¼.
T. 7 S., R. 13 E.,
Sec. 3, lot 4, S½N½;
Sec. 8, E½;
Sec. 19, lots 1–4, incl., E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 28, N½NE¼.
T. 7 S., R. 14 E.,
Sec. 6, lots 1–4 incl., SE¼NE¼;
Sec. 30, lots 1–4, incl., W½NE¼, SE¼NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 10 S., R. 11 E.,
Sec. 6, NE¼;
Sec. 19, lots 2 and 3, E½SW¼, SE¼;
Sec. 26, NW¼, S½.

Comprising 4,317.88 acres in Pinal County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of State land by the Federal Government.

The following described land has been reconveyed to the United States:

Gila and Salt River Meridian, AZ

T. 15 N., R. 10 W.,
Sec. 16, N½.
T. 16 N., R. 10 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, all;
Sec. 16, all;
Sec. 18, lots 1–4, incl., E½, E½W½;
Sec. 32, all.
T. 16 N., R. 11 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, lot 1, NE¼, W½, SW¼SE¼, N½SE¼,
T. 16 N., R. 12 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 16½ N., R. 10 W.,
Sec. 32, all.
T. 16½ N., R. 11 W.,
Sec. 32, all.
T. 16½ N., R. 12 W.,
Sec. 36, all.
T. 17 N., R. 11 W.,
Sec. 16, all;
Sec. 18, lots 1–4, incl., E½W½, E½;
Sec. 20, all;
Sec. 28, all;
Sec. 30, lots 1–4, incl., E½W½, E½;
Sec. 32, all.
T. 17 N., R. 12 W.,
Sec. 14, all;
Sec. 24, all;
Sec. 26, all;
Sec. 36, all.

Comprising 18, 113.97 acres in Mohave and Yavapai Counties, Arizona.

At 9:00 a.m. on February 5, 1987, the reconveyed land described above will be open to operation of the public land laws generally subject to valid existing rights and requirements of applicable law.

At 9:00 a.m. on February 5, 1987, the reconveyed land described above will be open to applications under the general mining laws and mineral leasing laws, subject to existing State-issued leases. All applications and offers received prior to 9:00 a.m. on February 5, 1987, will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-29396 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-06-4212-13 CA 17125]

Realty Action; Exchange of Public and Private Lands in Shasta County, CA and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of land exchange conveyance document and order providing for opening of public lands.

SUMMARY: The purpose of this exchange was to acquire non-federal lands within the boundaries of the Shasta-Trinity National Forests which have high public value for watershed management of Shasta Lake. The acquisition of this land is consistent with the Forest Land Adjustment Plan. The land acquired in this exchange will be opened to such forms of disposition as may by law be made of national forest lands. The public interest was served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 978–4815.

The United States issued an exchange conveyance document to Bessie M. Drumm on November 17, 1986, under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands:

Mount Diablo Meridian, CA

T. 32 N., R. 5 W.,
Sec. 31, Lots 24, 25, 26, and 28.
Containing 16.93 acres of public land.

In exchange for these lands, the United States acquired the following described land from Bessie M. Drumm:

Mount Diablo Meridian, CA

TR. 35 N., R. 5 W.,
Sec. 20, NE¼.
Containing 160 acres of private land.

A payment in the amount of $13,000 has been paid to the United States by Bessie M. Drumm to equalize values between the non-Federal land and the public land.

Upon acceptance of title to the private land described above, the land became part of the Shasta-Trinity National Forests and is subject to all the laws, rules, and regulations applicable thereto.

At 10:00 a.m. on February 2, 1987, the land shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the land should be addressed to the Forest Supervisor, Shasta-Trinity National Forest, 2400 Washington Avenue, Redding, California 96001.

Dated: December 24, 1986.

Sharon N. Janis,

Chief, Branch of Adjudication and Records

[FR Doc. 86-29397 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-40-M

[ID-040-07-4212-11 I-23317]

Realty Action; Classification for Recreation Public Purpose Lease of Public Land in Custer County, ID

Term and date: The effective date of this classification will be on or before March 3, 1987. The lease will be subject to the following terms and conditions.

1. Development in accordance with the approved Plan of Development.
2. Civil Rights requirements.
3. All conditions contained in sections 1-8 of Lease form 2912-1.

SUMMARY: The below described public land has been identified and examined and is hereby classified as suitable for lease under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended.

T.8N., R.22E., B.M.
Section 5: SW¼SW¼SE¼NE¼.
Containing 2½ acres.

The Custer County Commissioners have made application for this parcel in order to develop a rural fire station.

The classification is based on the following reasons:

1. The lands are physically suitable for the proposed development.
2. The lands meet the guidelines for conveyances and leases as contained in 43 CFR 2741.4.
3. These lands are valuable for public purposes as stated in 43 CFR 2430.4(a) and may properly be classified for lease under the Recreation and Public Purposes Act as stated in 43 CFR 2430.4(c).

The previously described lands are hereby segregated from appropriation under the public land laws except the R&PP Act including the mining laws for a period of 18 months.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the lease can be obtained by contacting Robert H. Hale, Challis Resource Area Manager, at (208) 756-5400.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 43, Salmon, Idaho 83467. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

The following petition for classification is hereby approved.

Name of Petitioner: Custer County Commissioners

Type of Petition: Recreation and Public Purpose Act of June 14, 1926, as amended.

Jerry W. Goodman,

District Manager.

[FR Doc. 86-29398 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-GG-M

[OR-050-4410-10: GP7-062; OR-40852]

Realty Action; Exchange of Public and Private Lands in Wheeler, Crook, Klamath, Deschutes, Harney and Jefferson Counties, OR; Correction

The following corrections are made in the Notice of Realty Action published in the **Federal Register** on December 11, 1986.

1. On page 44692, first column, line 55, is corrected to read Sec. 34: S½SE¼.
2. On page 44693, first column, line 37, W¼SE¼ is corrected to read W½SE¼.

James L. Hancock,

District Manager.

[FR Doc. 86-29399 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-DN-M

[ID-010-07-4212-11; I-23085]

Realty Action: Boise County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Classification for Recreation and Public Purposes Lease and Conveyance of Public Land in Boise County, Idaho.

SUMMARY: The below-described public land has been examined and found suitable for Recreation and Public Purposes lease and conveyance.

The following land is hereby classified as suitable for lease with an option to purchase under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended.

T 6 N., R. 5 E., B.M.,
Sec. 26, lot 8 (within).
Containing .4 acres, ±.

DATES: The effective date of this classification will be 60 days from the date of **Federal Register** publication provided no protests or adverse comments are received as provided below.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the conditions of the lease/sale can be obtained by contacting Effie Schultsmeier, Realty Specialist, at (208) 344-1582.

SUPPLEMENTARY INFORMATION: The lease/conveyance will be subject to the following terms, conditions, convenants, and reservations:.

Lease

1. Implementation in accordance with the approved plan of development.
2. Civil rights requirements.
3. Site specific stipulations.

Patent

1. Ditches and canals.
2. All minerals.
3. Special pricing clause.
4. Reversionary clause.
5. Road right-of-way I-19290 to U.S. Forest Service.

The classification is based on the following reasons:

1. The land is physically suitable for a visitor center and park.
2. The land meets the guidelines for conveyances and leases as contained in 43 CFR 2741.5.
3. The land is valuable for public purposes as stated in 43 CFR 2430.4(a) and may properly be classified for lease and sale under the Recreation and Public Purposes Act as stated in 43 CFR 2430.4(c).

The previously described land is hereby segregated from appropriation under the public land laws, except the Recreation and Public Purposes Act, including the mining laws for a period of 18 months.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

The following petition for classification is hereby approved.

Name of Petitioner: City of Idaho City, Idaho.

Type of Petition: Recreation and Public Purposes Act of June 14, 1926, as amended.

Dated: December 18, 1986.

J. David Brunner,

District Manager.

[FR Doc. 86-29410 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-GG-M

[MT-930-07-4212-13; M-62060-ND]

Opening of Public Land; Bowman County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Land in Bowman County, North Dakota.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

DATE: At 9 a.m. on February 4, 1987, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, but not from exchange, by the Notice of Reality Action published in the **Federal Register** on December 31, 1985 (50 FR 53404). The segregation terminated on issuance of the patents on May 28, 1986, and November 21, 1986.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was conveyed to Everett Real Estate, Inc.:

Fifth Principal Meridian, North Dakota

T. 131 N., R. 103 W.,
Sec. 30, lot 4.
T. 130 N., R. 104 W.,
Sec. 9, NW¼SW¼;
Sec. 19, S½SE¼,
Sec. 21, S½SE¼.
T. 130 N., R. 105 W.,
Sec. 6, lot 8;
Sec. 7, NE¼SW¼;
Sec. 8, S½SW¼;
Sec. 10, NW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 18, E½SW¼;
Sec. 22, SW¼SW¼.
T. 131 N., R. 105 W.,
Sec. 26, SW¼NW¼;
Sec. 27, SE¼SE¼;
Sec. 30, SE¼NW¼.
T. 130 N., R. 106 W.,
Sec. 1, SE¼SE¼.

Aggregating 807.92 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Bowman County, North Dakota:

Fifth Principal Meridian, North Dakota

T. 131 N., R. 106 W.,
Sec. 24, lot 6 and all accretions thereto;
Sec. 25, lots 2 and 3 and all accretions thereto, W½NW¼;
Sec. 26, NE¼, E½NW¼, NE¼SE¼, S½NW¼SW¼;
Sec. 27, W½E½, NE¼SE¼.

Containing 659.35 acres, more or less.

3. The values of federal public land and the nonfederal land in the exchange were both appraised at $62,700. No minerals were transferred by either party in the exchange.

4. At 9 a.m. on February 4, 1987, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

December 24, 1986.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 86-29395 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Maternal and Child Health Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are available for grants for carrying out the following activities: Special Maternal and Child Health (MCH) projects of regional and national significance which contribute to the improvement of services for mothers, children, and handicapped children; MCH research; training in MCH; genetic disease testing, counseling and information services; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 502(a) of the Social Security Act (42 U.S.C. 702(a)), which is known as the MCH Federal Set-Aside Program. HRSA, through this notice, invites potential applicants to request application packages for the particular grant category in which they are interested and then to make their application for funding. It is anticipated that approximately $20 million will be available to support new and competing renewal projects under the MCH Federal Set-Aside Program.

DATE: Deadlines for receipt of applications differ for the several categories of grants and are as follows:

(1) *Research:* Two cycles, due dates are March 1, 1987 and August 1, 1987;

(2) *Training:* Long-term training—April 1, 1987; continuing education—July 1, 1987.

(3) *Genetic diseases testing, counseling and information:* April 1, 1987;

(4) *Hemophilia diagnostic and treatment centers:* May 1, 1987;

(5) *Special MCH improvements projects which test or show the effectiveness of a given approach or technique in the provision of MCH care:* various dates between March 1 and May 1, 1987.

ADDRESS: Requests for grant application materials should be addressed to: Grants Management Officer, Office of Program Support, Bureau of Health Care Delivery and Assistance, HRSA, Room 7A-18, 5600 Fishers Lane, Rockville, Maryland 20857. Requests should specify the grant category or categories for which an application is requested or

present a summary of the project for which support is being requested to permit the agency to provide the applicant with the appropriate materials.

FOR FURTHER INFORMATION CONTACT: Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, HRSA, Room 6-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Under section 502(a) of the Social Security Act, between 10 and 15 percent of the funds appropriated for Title V of the Act in each fiscal year are to be retained by the Secretary for the award of grants for the purposes specified above. Support for projects covered by this announcement will come from these funds.

Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which in the Department's view will best promote improvements in maternal and child health care (for example, applications which address the unacceptably high rates of infant mortality, availability of and access to services for handicapped and chronically ill children and young adults, and health problems of adolescents).

Eligible Applicants

The statute at section 502(a)(2) provides that training grants may be made only to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit private institutions of higher learning or to nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs. Any public or private entity including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply for grants for Genetic diseases testing, Hemophilia diagnostic and treatment centers, and special MCH Improvement grants.

The regulations implementing this program were published in the March 5, 1986 issue of the **Federal Register** at 51 FR 7726 (42 CFR Part 51a).

Executive Order 12372

The MCH Federal Set-Aside Program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

OMB Catalogue of Federal Domestic Assistance

The MCH program is listed as No. 13.110 in the OMB Catalog of Federal Domestic Assistance.

Dated: November 28, 1986.

David N. Sundwall,

Administrator.

[FR Doc. 86-29459 Filed 12-31-86; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-06-4212-12; A-20347-C]

Exchange of Public and State Land; AZ

December 24, 1986.

Notice is hereby given that the following described land has been transferred out of Federal ownership pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, in exchange for State-owned land. The exchange was made based on approximately equal values.

1. The Federal land transferred to the State is described as follows:

Gila and Salt River Meridian, Arizona

T. 8 S., R. 17 E.,
Sec. 29, SW¼.
T. 20 S., R. 20 E.,
Sec. 22, lot 2.
T. 11 S., R. 27 E.,
Sec. 24, SE¼;
Sec. 25, all;
Sec. 26, all;
Sec. 27, NE¼;
Sec. 28, all;
Sec. 29, all.
T. 11 S., R. 28 E.,
Sec. 30, lots 1-4, incl., E½W½;
Sec. 31, lots 1 and 2, E½NW¼.
T. 5 S., R. 30 E.,
Sec. 17, E½NW¼NE¼;
Sec. 21, NE¼.
T. 6 S., R. 30 E.,
Sec. 1, lots 1, 13, 15, 16, 17, 20, 21, 23, 24 and 25, S½NE¼, SE¼NW¼.
T. 4 S., R. 31 E.,
Sec. 27, NE¼, W½SW¼;
Sec. 28, S½N½, S½;
Sec. 32, SW¼NW¼;
Sec. 33, W½NW¼;
Sec. 35, E½NE¼, NW¼NW¼, NE¼SE¼.
T. 5 S., R. 31 E.,
Sec. 4, lots 1, 2 and 3, S½NW¼;
Sec. 6, lots 5, 5 and 6, S½SE¼;
Sec. 7, N½NE¼;
Sec. 10, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 11, W½, W½SE¼;
Sec. 14, NW¼NW¼;
Sec. 15, NE¼NE¼, W½NW¼, NW¼SW¼;
Sec. 24, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 27, SW¼;
Sec. 28, SE¼;
Sec. 31, lots 3 and 4, E½, E½W½;
Sec. 33, NE¼;
Sec. 34, NW¼.
T. 6 S., R. 31 E.,
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, S½;
Sec. 6, lots 1-5, incl., S½NE¼, SE¼NW¼;
Sec. 8, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, S½NE¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 21, N½N½, SW¼NE¼, S½NW¼, N½SW¼;
Sec. 22, SE¼SW¼, S½SE¼;
Sec. 23, N½;
Sec. 24, E½;
Sec. 25, all;
Sec. 26, E½, N½NW¼.
T. 7 S., R. 31 E.,
Sec. 10, all;
Sec. 13, lots 1-4, incl., NE¼, S½; (surface only)
Sec. 14, all; (surface only)
Sec. 15, all;
Sec. 22, all; (surface only on E½, E½W½, SW¼NW¼, W½SW¼)
Sec. 23, all; (surface only)
Sec. 24, N½, SW¼; (surface only)
Sec. 26, all;
Sec. 27, lots 6 and 7, E½, E½NW¼, NE¼SW¼;
Sec. 34, lots 5, 6 and 7, SE¼SE¼;
Sec. 35, N½, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, S½SW¼, SE¼.
T. 8 S., R. 31 E.,
Sec. 2, SE¼NW¼;
Sec. 12, NW¼NE¼, NE¼NW¼;
Sec. 13, SW¼NW¼;
Sec. 14, SW¼NE¼, SW¼SW¼, E½SW¼, W½SE¼;
Sec. 15, SE¼SE¼;
Sec. 23, E½SE¼;
Sec. 25, N½NE¼;
Sec. 27, E½W½, SE¼;
Sec. 33, E½SE¼, SW¼SE¼;
Sec. 34, NE¼, E½W½, W½SW¼.
T. 9 S., R. 31 E.,
Sec. 7, E½, E½W½;
Sec. 8, all;
Sec. 12, S½NE¼, E½SW¼, SE¼;
Sec. 13, E½, E½NW¼;
Sec. 17, all;
Sec. 18, E½;
Sec. 19, E½NE¼, NE¼SE¼;
Sec. 20, N½, N½S½.
T. 10 S., R. 31 E.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, S½SE¼;
Sec. 11, E½, SE¼SW¼;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 23, E½;
Sec. 24, all;
Sec. 25, all;
Sec. 26, E½E½, SW¼SE¼;
Sec. 35, NE¼, N½SE¼;
Sec. 36, all. (surface only on N½NE¼, SW¼NE¼, SE¼SW¼)
T. 6 S., R. 32 E.,
Sec. 18, all;
Sec. 19, NE¼, E½NW¼, S½SW¼, SW¼SE¼;
Sec. 20, all;
Sec. 29, W½;

Sec. 30, all.
T. 7 S., R. 32 E.,
Sec. 7, all;
Sec. 8, all;
Sec. 9, W½NW¼, SW¼;
Sec. 17, all;
Sec. 18, all;
Sec. 19, all;
Sec. 20, all;
Sec. 21, all;
Sec. 22, W½;
Sec. 27, lots 1–4, incl., W½E½, W½;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 33, N½N½, SE¼NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 34, lots 1–4, incl., W½E½, W½.
T. 8 S., R. 32 E.,
Sec. 3, lots 1–5, incl., SW¼NE¼, S½NW¼, W½SW¼;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, N½S½, S½SW¼;
Sec. 6, lots 3–7, incl., S½NE¼, SE¼NW¼, SE¼;
Sec. 7, NE¼;
Sec. 8, W½NW¼;
Sec. 9, NE¼, E½W½;
Sec. 17, W½SE¼.
T. 9 S., R. 32 E.,
Sec. 3, SW¼SE¼;
Sec. 4, SW¼SE¼;
Sec. 5, SW¼NE¼, E½SW¼;
Sec. 6, S½SE¼;
Sec. 7, N½NE¼;
Sec. 8, SE¼NW¼, N½SW¼; SW¼SE¼;
Sec. 9, NE¼SE¼, S½SE¼;
Sec. 10, lots 2, 3 and 4, W½NE¼, N½NW¼, SE¼NW¼, NW¼SE¼;
Sec. 15, lot 3;
Sec. 17, SW¼NE¼, SE¼NW¼, SW¼SW¼, SE¼SE¼;
Sec. 18, N½NW¼, S½SW¼;
Sec. 28, NE¼NE¼, W½W½, E½W¼;
Sec. 33, NW¼, W½SW¼;
Sec. 34, lots 1–4, incl., W½E½.
T. 10 S., R., 32 E.,
Sec. 5, S½;
Sec. 6, S½;
Sec. 7, all;
Sec. 8, all;
Sec. 17, all;
Sec. 18, all;
Sec. 19, all;
Sec. 20, N½, SW¼;
Sec. 21, NW¼NE¼, NW¼, SE¼SE¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, all; (surface only)
Sec. 33, all.
T. 11 S., R. 32 E.,
Sec. 4, lots 1–4, incl., S½NW¼;
Sec. 5, lots 1–4, incl., S½NE¼;
Sec. 6, lots 1–4, incl.

The areas described comprise 55,329.65 acres; 160.00 acres in Pinal County; 23.67 acres in Cochise County; 3,413.60 acres in Graham County and 51,732.38 acres in Greenlee County.

The purpose of this Notice is to inform interested public, State and local government officials of the transfer of Federal land and acquisition of State land by the Federal government.

2. The State-owned land reconveyed to the United States is described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 26 E.,
Sec. 36, all.
T. 7 S., R. 27 E.,
Sec. 25, all; (surface only)
Sec. 26, N½; (surface only)
Sec. 27, N½N½, SW¼NW¼; (surface only)
Sec. 36, NE¼, N½NW¼.
T. 8 S., R. 27 E.,
Sec. 16, all.
T. 10 S., R. 27 E.,
Sec. 30, lots 1–4, incl., E½W½, E½.
T. 6 S., R. 28 E.,
Sec. 32, SW¼;
Sec. 36, N¼NE¼, SE¼.
T. 7 S., R. 28 E.,
Sec. 15, N½SW¼;
Sec. 16, all.
T. 5 S., R. 29 E.,
Sec. 32, all;
Sec. 34, S½;
Sec. 35, S½;
Sec. 36, lots 1–16, incl., E½NW¼, SW¼NW¼, SW¼.
T. 6 S., R. 29 E.,
Sec. 2, lots 1–4, incl., S½N½, SW¼, N¼SE¼, SE¼SE¼;
Sec. 16,E½NE¼.
T. 7 S., R. 29 E.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 8 S., R. 29 E.,
Sec. 12, E½, S½NW¼, SW¼.
T. 5 S., R. 30 E.,
Sec. 31, lots 3 and 4, SE¼SW¼.
T. 6 S., R. 30 E.,
Sec. 4, SW¼NW¼;
Sec. 5, lots 1–4, incl., S½N½, SW¼;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, all;
Sec. 36, NW¼SW¼.
T. 7 S., R. 30 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 3 and 4, S½NW¼, SW¼;
Sec. 6, lots 1 and 2, S½NE¼, SE¼;
Sec. 7, E½;
Sec. 8, W½;
Sec. 22, E½;
Sec. 23, all;
Sec. 25, N½N½, SE¼NE¼;
Sec. 31, lots 1–4, incl., NE¼, E½W½, N½SE¼;
Sec. 32, NW¼, N½SW¼.
T. 8 S., R. 30 E.,
Sec. 2, lots 1–5, incl., S½N½, SE¼, E½SW¼, NW¼SW¼;
Sec. 4, lots 1–4, incl. S½N½, S½;
Sec. 5, lots 1 and 2, S½NE¼, SE¼;
Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 8, all;
Sec. 16, all;
Sec. 17, all;
Sec. 25, W½; (surface only)
Sec. 26 E½; (surface only)
Sec. 28, NE¼, N½,NW¼, NE¼SE¼; (surface only)
Sec. 34, N½NE¼;
Sec. 35, N½, N½SE¼, SE¼SE¼;
Sec. 36, all.
T. 11 S., R. 30 E.,
Sec. 10, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 15, SW¼, SE¼NE¼, NE¼SE¼; (surface only on SE¼NE¼, NE¼SE¼)
Sec. 16, all;
Sec. 31, lots 3 and 4, E½SE¼;
Sec. 32, all;
Sec. 36, all.
T. 12 S., R. 30 E.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 13 S., R. 30 E.,
Sec. 11, SW¼NE¼, N½SE¼;
Sec. 12, SW¼NE¼, NW¼NW¼, SE¼NW¼, SW¼;
Sec. 13, NW¼NE¼, NW¼.
T. 6 S., R. 31 E.,
Sec. 32, SW¼SW¼.
T. 7 S., R. 31 E.,
Sec. 20, S½NE¼, S½SW¼, SE¼;
Sec. 21, lot 4, SW½NW¼, W½SW¼;
Sec. 28, lots 1, 2 and 3, W½, SW¼SE¼;
Sec. 29, all;
Sec. 31, NE¼NE¼;
Sec. 32, NE¼, N½NW¼, NE¼SE¼;
Sec. 33, lots 1 and 2, W½NE¼, W½.
T. 8 S., R. 31 E.,
Sec. 9, S½SW¼, SE¼NW¼, NE¼SW¼, S½NE¼, SE¼;
Sec. 10, E½, SW¼;
Sec. 11, SW¼NW¼, W½SW¼;
Sec. 14, N½NW¼;
Sec. 15, N½N½, SE¼NW¼, SW¼NE¼, N½SE¼;
Sec. 32, NE¼.
T. 9 S., R. 31 E.,
Sec. 5, lots 3 and 4;
Sec. 6, lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼.
T. 11 S., R. 31 E.,
Sec. 11, all;
Sec. 12, all;
Sec. 13, N½, SE¼;
Sec. 14, N½, SW¼;
Sec. 15, all;
Sec. 16, E½, W½W½;
Sec. 21, all;
Sec. 22, all;
Sec. 23, W½, SE¼;
Sec. 24, E½, SW¼;
Sec. 25, all;
Sec. 27, all;
Sec. 28, E½, N½NW¼;
Sec. 32, S½NE¼, W½, SE¼;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 12 S., R. 31 E.,
Sec. 2, lots 2, 3 and 4, SW¼NE¼, S½NW¼, SW¼;
Sec. 10, all;
Sec. 11, W½, S½SE¼;
Sec. 14, N½;
Sec. 16, all;
Sec. 32, lots 1–4, incl., N½, N½S½;
Sec. 35, lots 1–4, incl., S½NE¼, NE¼NW¼, S½NW¼, N½S½;
Sec. 36, lots 1–4, incl., N½, N½S½.
T. 13 S., R. 31 E.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 8, N½;
Sec. 17, NW¼.
T. 11 S., R. 32 E.,
Sec. 2, lots 1–5, incl., SW¼NW¼, W½SW¼;

Sec. 16, all.
T. 12 S., R. 32 E.,
Sec. 2, lots 1–6, incl., SW¼, S½,NW¼;
Sec. 29, N½N½.
T. 13 S., R. 32 E.,
Sec. 2, lots 1–4, incl., W½W½.

At 9:00 a.m. on January 30, 1987, the reconveyed land described above will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9:00 a.m. on January 30, 1987, the reconveyed land described above will be open to operation of the public land laws generally, and mineral leasing laws, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on January 30, 1987, will be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The mineral estate in the following described land is already in Federal ownership and has been and will remain open to the operation of the mining and mineral leasing laws:

Gila and Salt River Meridian, Arizona

T. 7 S., R. 27 E.,
Sec. 25, all;
Sec. 26, N½;
Sec. 27, N½N½, SW¼NW¼.
T. 8 S., R. 30 E.,
Sec. 25, W½;
Sec. 26, E½;
Sec. 28, NE¼, N½NW¼, NE¼SE¼.
T. 11 S., R. 30 E.,
Sec. 15, SE¼NE¼, NE¼SE¼.
T. 12 S., R. 32 E.,
Sec. 29, N½N½.

The following described reconveyed land will remain closed to the operation of the public land laws, mining and mineral leasing laws until planning for these lands has been completed:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 19 E.,
Sec. 28, lot 1.
T. 11 S., R. 32 E.,
Sec. 32, all.
T. 12 S., R. 32 E.,
Sec. 5, lots 1–4, incl., S½N½, SE¼;
Sec. 8, E½;
Sec. 14, lots 1 and 2, W½NW¼;
Sec. 15, N½;
Sec. 16, all;
Sec. 19, NW¼;
Sec. 30, SW¼NW¼, S½;
Sec. 31, N½, N½S½, SW¼SE¼, S½SW¼;
Sec. 32, N½.
Sec. 33, NE¼SE¼;
Sec. 34, N½, N½SW¼, SE¼SW¼, W½SE¼.

The reconveyed land comprises 50,583.67 acres; 11,328.47 acres in Cochise County; 20.906.77 acres in Graham County; and 18,348.43 acres in Greenlee County, Arizona.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–29479 Filed 12–31–86; 8:45 am]
BILLING CODE 4310-32-M

[AZ-942-07-4520-12]

Filing of Plats of Survey; AZ

December 23, 1986.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a survey of subdivisions in section 28, Township 22 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1986, and was officially filed October 8, 1986.

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a survey of subdivisions in section 8, Township 19 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1986, and was officially filed October 8, 1986.

A supplemental plat showing a subdivision of certain lots in sections 17 and 20, and amended lottings in section 17 and 18, created by the segregation of Mineral Survey No. 4768, in Township 11 South, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted October 23, 1986, and was officially filed October 28, 1986.

These plats were prepared at the request of the U.S. Forest Service, Coconino National Forest.

A plat representing a dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and Tracts 43 and 45, and a survey of subdivisions of sections 26 and 35, Township 14 North, Range 3 West, Gila and Salt River Meridian, Arizona, was accepted December 5, 1986, and was officially filed December 10, 1986.

This plat was prepared at the request of the U.S. Forest Service, Prescott National Forest.

A supplemental plat showing amended lottings in sections 4 and 9, Township 14 North, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted November 6, 1986, and was officially filed November 13, 1986.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

A supplemental plat showing amended lottings created by the segregation of the right-of-way of U.S. Interstate Highway No. 40 in sections 14, 15, 22, and 23, Township 16 North, Range 20½ West, Gila and Salt River Meridian, Arizona, was accepted October 30, 1986, and was officially filed November 5, 1986.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing a subdivision of lot 18 and returning lots 2, 3, 17, and a portion of lot 7, to the status of aliquot parts in section 12, Township 13 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted November 6, 1986, and was officially filed November 13, 1986.

This plat was prepared at the request of H. Mason Coggin, P.E. and L.S., Mining Engineering and Land Surveying.

A supplemental plat showing amended lottings in section 6, Township 18 South, Range 5 West, Gila and Salt River Meridian, Arizona, was accepted December 18, 1986, and was officially filed December 22, 1986.

This plat was prepared at the request of the National Park Service, Western Region.

A plat representing a corrective dependent resurvey of a portion of the line between sections 22 and 27, and also a corrective survey of the subdivision of section 22, Township 15, South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted November 6, 1986, and was officially filed November 13, 1986.

This plat was prepared for the Bureau of Indian Affairs, Phoenix Area Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,
Chief, Branch of Cadastral Survey.

[FR Doc. 86–29480 Filed 12–31–86; 8:45am]
BILLING CODE 4310-32-M

[AZ-940-07-4220-11; A-22422]

Proposed Continuation of Withdrawal, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, Department of Agriculture, proposes that a 20-acre parcel withdrawal within the Coronado National Forest for the Canelo Administrative Site, continue for an additional 20 years. These lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by April 2, 1987.

ADDRESS: Comments should be sent to Arizona State Director, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, (602) 241-5534.

The Forest Service proposes the existing land withdrawal made by Secretarial Order of April 2, 1908, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Gila and Salt River Base Meridian, Arizona

T. 22 S., R. 18 E.,
Sec. 4, E½SW¼NE¼.

The land described above aggregates 20.00 acres in Santa Cruz County.

The withdrawal is essential for protection of substantial capital improvements on the Administrative Site and the continued need of the Sierra Vista Ranger District for administrative functions. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this Notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Arizona State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-29481 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-07-4212-12; A-20347-A]

Reconveyed Land Opened to Entry in Graham and Greenlee Counties, AZ; Correction

December 23, 1986.

This notice will correct the errors in the **Federal Register** notice published on Thursday, October 30, 1986, in Vol. 51, No. 210, pages 39715 and 39716.

1. The following land was erroneously closed to entry:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 28 E.,
Sec. 36, all.

At 9:00 a.m., thirty days from publication of this notice, the reconveyed land described above will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 9:00 a.m., thirty days from publication of this notice, the reconveyed land described above will be open to operation of the public land laws generally, and mineral leasing laws, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m., thirty days from publication of this notice, will be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. The following land was erroneously opened to entry:

Gila and Salt River Meridian, Arizona

T. 9 S., R. 29 E.,
Sec. 30, all south of powerline right-of-way A-7585;
Sec. 31, lots 1-4, incl., E½, E½W½.

The reconveyed land described above shall remain closed to the public land laws in order to protect their wilderness characteristics. The mineral estate in the above-described land was already in Federal ownership and has been and presently remains open to the operation of the mining and mineral leasing laws.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-29478 Filed 12-31-86; 8:45am]

BILLING CODE 4310-32-M

Minerals Management Service

Royalty-In-Kind (RIK) Program

AGENCY: Minerals Management Service, Interior.

ACTION: Amendment to notice of sale offering of royalty oil available from onshore leases.

SUMMARY: The Minerals Management Service (MMS) published a Notice of Sale Offering of Royalty Oil Available from Federal Onshore Leases in the **Federal Register** on December 8, 1986 (51 FR 44128). The MMS is hereby amending the Notice of Sale Offering as it pertains to the definition of "preference eligible applicants" for royalty oil allocation purposes at the sale, to be conducted on January 30, 1987.

DATE: Eligible applicants who want to be considered for preference eligibility must submit written requests by January 16, 1987, to the address shown below. Requests received after that date will not be considered.

ADDRESS: Written requests should be submitted to the Minerals Management Service, Payor Accounting Branch, MS 652, P.O. Box 5760, Denver, Colorado 80217.

FOR FURTHER INFORMATION CONTACT: Jim McNamee, Chief, Royalty-In-Kind Section, at the above address, (303) 231-3605.

SUPPLEMENTARY INFORMATION:

Sale Procedures

In addition to granting preference eligibility to eligible applicants with refineries located within the States of Colorado, Montana, North Dakota, Utah, and Wyoming in the selection of royalty oil at the sale as set forth in the December 8, 1986, Notice, MMS may also grant preference eligibility to refiners that operate refineries in areas proximate to the borders of these States. However, such a refiner must otherwise be an "eligible refiner" as that term is defined in the previous notice and must refine crude oil produced from the above States. The purpose of this amendment is to avoid excluding from the preference eligible class those eligible

refiners with refineries within only a few miles of these States' borders who participate in markets within these States.

Refiners who wish to be granted preference eligibility based on the above criteria must submit a written request together with data to substantiate their request. This data is in addition to that required on the "Application for the Purchase of Royalty Oil" (Form MMS-4070), and must at a minimum include the refinery's exact location, and its crude oil acquisition history for the last 12 calendar months. The request must be received by MMS by January 16, 1987, at the above address in order to be considered. The MMS will make final determinations concerning requests for consideration of preference eligibility by January 23, 1987. Preference eligibility will not be granted to otherwise eligible refiners located outside the borders of the above States that do not submit a written request and provide adequate substantiation.

Refiners who are granted preference eligibility in this sale (Sale 87-1) will not be granted preference eligibility in subsequent sales held for other regions prior to May 1, 1989. However, this provision may be waived if a refiner operates a refinery in the region specified in the subsequent sale other than the refinery used to obtain preference eligibility in this sale.

Dated: December 24, 1986.

David Crow,

"Acting" Director, Minerals Management Service.

[FR Doc. 86-29407 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

[DES 86-51]

Environmental Impact Statement; Garrison Diversion Unit, ND; Availability

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

Pursuant to section 102(2)(C) of the National Environmental Act of 1969, as amended, the Department of the Interior has prepared a draft supplement to the Draft Supplemental Environmental Statement on the Garrison Diversion Unit, which was filed on March 6, 1986, and numbered DES 86-9.

This statement discusses impacts associated with modifications to the Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, resulting from the Garrison Diversion Reformation Act of 1986. Major modifications addressed in this draft supplement are: (1) Constructing and operating a 113,360-acre irrigation project as changed by the Act; (2) building Sykeston Canal to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs; (3) limiting the capacity of the James River feeder canal; and (4) eliminating the use of the Lonetree Reservoir Area and Kraft Slough for mitigation. Written comments may be submitted to the Regional Director or Project Manager within 60 days after filing.

A public hearing will be held beginning at 7 p.m. CST, February 3, 1987, at the Dakota Inn, I-94 and Highway 281, Jamestown, North Dakota.

Copies are available at the following offices:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7423, Department of the Interior, C Street between 18th and 19th Streets, NW., Washington, DC 20240, Telephone: (202) 343-4991.

Document Systems Management Branch, Library Section, Code D-823, Engineering and Research Center, Library, Room 450, P.O. Box 25007—Federal Center, Denver, CO 80225, Telephone: (303) 236-6963.

Regional Director, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107-6900, Telephone: (406) 657-6605.

Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, ND 58502, Telephone: (701) 255-4011, Extension 541.

Copies will also be available for inspection in libraries within the project area.

Dated: December 29, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-29516 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-09-M

[INT-DES 86-51]

Draft Supplement to the Draft Supplemental Environmental Statement; Garrison Diversion Unit, ND; Public Hearing

ACTION: Notice of public hearing.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft supplement to the Draft Supplemental Environmental Statement. This draft supplement (INT-DES 86-51, dated December 30, 1986, was made available to the public on December 30, 1986.

This statement discusses impacts associated with modifications to the Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, resulting from the Garrison Diversion Reformulation Act of 1986. Major modifications addressed in this draft supplement are: (1) Constructing and operating a 113,360-acre irrigation project as changed by the Act; (2) building Sykeston Canal to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs; (3) limiting the capacity of the James River feeder canal; and (4) eliminating the use of the Lonetree Reservoir Area and Kraft Slough for mitigation.

A public hearing will be held at 7 p.m. CST, February 3, 1987, at the Dakota Inn, I-94 and Highway 281, Jamestown, North Dakota. Oral statements at the hearing will be limited to a period of 15 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comments have been heard.

Organizations or individuals desiring to present a statement at the hearing should contact the Regional Director, Bureau of Reclamation, Missouri Basin Region, P.O. Box 36900, Billings, Montana 59107-6900, telephone (406) 657-6605, or Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, North Dakota 58502, telephone (701) 255-4011, Extension 541, and announce their intention to participate prior to January 28, 1987.

Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his or her name will be recalled at the end of the scheduled speakers. The final date for receipt of material submitted for the record will be 60 days after filing the draft supplement with EPA.

Comments will be received from other parties present following the presentation of scheduled testimony if time permits.

If further information is needed, phone (701) 255-4011, Extension 541.

Dated: December 29, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-29517 Filed 12-31-86; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

International Agreement for Solution of the Border Sanitation Problem at Naco, Sonora and Naco, AZ; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action to enter into an agreement to solve the border sanitation problem in the Naco, Sonora-Naco, Arizona area is not a major Federal action that would have a significant adverse affect on the quality of the human environment. Rather it would provide for an improvement to the quality of the environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared for the Government of the United States to enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission, to solve the border sanitation problem in the Naco, Sonora-Naco, Arizona area.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico, United States Section; The Commons, C-310, 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 534-6698, FTS 570-6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

It is proposed that the Government of the United States enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide that Mexico construct in its territory adequate sewage treatment and disposal facilities for the City of Naco, Sonora, Mexico and operate and maintain the facilities in such manner that there are no discharges of untreated domestic and industrial wastewaters crossing the boundary into the United States at Naco, Arizona.

The proposed agreement recommends that Mexico proceed with construction of collection, treatment, and disposal facilities proposed by Mexico in its territory, and operate and maintain them in a manner that will prevent pollution in United States territory. Mexico would rehabilitate an old lagoon system and construct a new pumping plant, sump, force main and collector pipelines. Also, the existing lagoon system would be cleaned and expanded. The existing system and rehabilitated old system would operate as a dual disposal system with one system relying on the other in case of operational outages. All wastewaters would be utilized by Mexico for irrigation in its territory.

The proposed agreement recommends Mexico make all efforts to assure the timely availability of sufficient funds to carry out the construction, operation, and maintenance of the treatment and disposal facilities; and in the event of a breakdown or interruption in the operation of the facilities, special measures would be taken by Mexico to make immediate repairs. If Mexico requests assistance through the Commission, the U.S. Section would seek to provide that assistance so that repairs could be made immediately under the supervision of the Commission.

Finally, the agreement recommends that U.S. and Mexican representatives of the Commission jointly observe the construction, operation, and maintenance of the sewage collection, treatment and disposal system.

Alternatives Considered

Two alternatives were considered:

Preferred Alternative

The Proposed Action provides for the Governments of the United States and Mexico to enter into an agreement for Mexico to construct, operate, and maintain sewage treatment and disposal facilities in its territory for the treatment and disposal of sewage from Naco, Sonora with assurances that there are no discharges of untreated or treated domestic and industrial wastewaters crossing the boundary into the United States at Naco, Arizona.

No Action

Mexico would continue to operate the existing sewage treatment and disposal facilities as in the past with all the attendant problems experienced to date. In the event Mexico constructs, operates, and maintains the proposed system without the proposed agreement, there will be no firm means to assure that this construction, operation, and maintenance will avoid pollution in U.S. territory. The risk is great that sewage will continue to cross the boundary and potential pollution of water supplies and other health hazards will continue without a firm basis for obtaining immediate and effective corrective actions.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment on November 18, 1986.

Findings of the Environmental Assessment

The Draft Environmental Assessment finds that:

1. The agreement would assure, to the extent possible, the prevention of discharges of untreated wastewater into the United States and the attendant health hazards and odors associated with raw sewage that have occurred in the Naco, Arizona area.
2. The well-being of people living and traveling in the Naco, Sonora-Naco, Arizona area would be improved.
3. The City of Bisbee, Arizona municipal water supply wellfied would not be polluted, thereby eliminating a potential health threat and the need for periodic precautionary chlorination of the water supply.
4. Potential health threats of contaminated water within drainage courses on both sides of the international boundary would be eliminated.
5. Adverse impacts as have occurred would be prevented so that the improved water quality would benefit all wildlife in the area.
6. The construction of the works, wholly in Mexico, would neither affect any archaeological or historical sites in United States territory now on, or proposed for nomination to, the National Register of Historic Places, nor affect any United States properties listed on the National Registery of Natural Landmarks.

On the basis of the Draft Environmental Assessment, the U.S. Section determines that an environmental impact statement is not required for the Government of the United States to enter into an agreement

with the Government of Mexico to solve the border sanitation problem in the Naco, Sonora-Naco, Arizona area and hereby supplies notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA) have 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 Draft FONSI and Draft EA are available to fill single copy requests at the above address.

Dated: December 23, 1986.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 86-29428 Filed 12-31-86; 8:45 am]

BILLING CODE 4710-03-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Safe Drinking Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 18, 1986, a proposed consent decree in *United States* v. *Robert Morrison,* Civ. No. IP-85-971C, was lodged with the United States District Court for the Southern District of Indiana. This agreement resolves a judicial enforcement action brought by the United States against Morrison for violations of the Safe Drinking Water Act at a mobile home park owned by Morrison on RR #1 near Danville, Indiana.

The proposed consent decree provides that Morrison will achieve and maintain compliance with the Safe Drinking Water Act and the applicable regulations by performing the required monthly sampling and analysis. Morrison will submit to U.S. EPA and the State of Indiana the results of the analyses and notify U.S. EPA and the State of any failure to conduct the required sampling and analysis and of any violations of maximum contaminant levels ("MCLs") established under the Act. If there is a violation of an MCL, Morrsion must connect a chlorinator to the water system. Morrison has agreed to publish a public notice and individually notify each home connected to the water supply system that the system is subject to the requirements of the Act. Morrison must also comply with the recordkeeping and public notification provisions of the Act. In addition, Morrison will pay a civil penalty of $1,200 for his violations. The decree also provides for stipulated penalties of $100 to $400 per day for violations of the compliance schedule.

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. *Robert Morrison,* D.J. Ref. 90-5-1-2391.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney	EPA
U.S. Attorney, Southern District of Indiana, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.	Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the 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 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General Land and Natural Resources.

[FR Doc. 86-29400 Filed 12-31-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC, 20210.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Alabama
AL86-1 (AL87-1)—Jan. 3, 1986
AL86-2 (AL87-2)—Jan. 3, 1986
AL86-3 (AL87-3)—Jan. 3, 1986
AL86-4 (AL87-4)—Jan. 3, 1986
AL86-5 (AL87-5)—Jan. 3, 1986
AL86-6 (AL87-6)—Jan. 3, 1986
AL86-7 (AL87-7)—Jan. 3, 1986
AL86-8 (AL87-8)—Jan. 3, 1986
AL86-9 (AL87-9)—Jan. 3, 1986
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AL86-26 (AL87-26)—Jan. 3, 1986
AL86-27 (AL87-27)—Jan. 3, 1986
Alaska
AK86-1 (AK87-1)—Jan. 3, 1986
Arizona
AZ86-1 (AZ87-1)—Jan. 3, 1986
AZ86-2 (AZ87-2)—Jan. 3, 1986
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Arkansas
AR86-1 (AR87-1)—Jan. 3, 1986
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AR86-6 (AR87-6)—Jan. 3, 1986
AR86-7 (AR87-7)—Jan. 3, 1986
California
CA86-1 (CA87-1)—Jan. 3, 1986
CA86-2 (CA87-2)—Jan. 3, 1986
CA86-3 (CA87-3)—Jan. 3, 1986
CA86-4 (CA87-4)—Jan. 3, 1986
Colorado
CO86-1 (CO87-1)—Jan. 3, 1986
CO86-2 (CO87-2)—Jan. 3, 1986
CO86-3 (CO87-3)—Jan. 3, 1986
CO86-4 (CO87-4)—Jan. 3, 1986
Connecticut
CT86-1 (CT87-1)—Jan. 3, 1986
CT86-2 (CT87-2)—Jan. 3, 1986
Delaware
DE86-1 (DE87-1)—Jan. 3, 1986
DE86-2 (DE87-2)—Jan. 3, 1986
Dist. of Col
DC86-1 (DC87-1)—Jan. 3, 1986
DC86-2 (DC87-2)—Jan. 3, 1986
Florida
FL86-1 (FL87-1)—Jan. 3, 1986
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GEORGIA
GA86-1 (GA87-1)—Jan. 3, 1986
GA86-2 (GA87-1)—Jan. 3, 1986
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GA86-22 (GA87-22)—Jan. 3, 1986
GUAM
GU86-1 (GU87-1)—Jan. 3, 1986
HAWAII
HI86-1 (HI87-1)—Jan. 3, 1986
IDAHO
ID86-1 (ID87-1)—Jan. 3, 1986
ID86-2 (ID87-2)—Jan. 3, 1986
ID86-3 (ID87-3)—Jan. 3, 1986
ID86-4 (ID87-4)—Jan. 3, 1986
ILLINOIS
IL86-1 (IL87-1)—Jan. 3, 1986
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IL86-19 (IL87-19)—Jan. 3, 1986
INDIANA
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IN86-3 (IN87-3)—Jan. 3, 1986
IN86-4 (IN87-4)—Jan. 3, 1986
IN86-5 (IN87-5)—Jan. 3, 1986
IN86-6 (IN87-6)—Jan. 3, 1986
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IN86-12 (IN87-12)—Jan. 3, 1986
IN86-13 (IN87-13)—Jan. 3, 1986
IN86-14 (IN87-14)—Jan. 3, 1986
IN86-15 (IN87-15)—Mar. 7, 1986
IOWA
IA86-1 (IA87-1)—Jan. 3, 1986
IA86-2 (IA87-2)—Jan. 3, 1986
IA86-3 (IA87-3)—Jan. 3, 1986
IA86-4 (IA87-5)—Jan. 3, 1986
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IA86-7 (IA87-7)—Jan. 3, 1986
IA86-8 (IA87-8)—Jan. 3, 1986
IA86-9 (IA87-9)—Jan. 3, 1986
IA86-10 (IA87-10)—Apr. 11, 1986
IA86-11 (IA87-11)—May 3, 1986
IA86-12 (IA87-12)—July 25, 1986
KANSAS
KS86-1 (KS87-1)—Jan. 3, 1986
KS86-2 (KS87-2)—Jan. 3, 1986
KS86-3 (KS87-3)—Jan. 3, 1986
KS86-4 (KS87-4)—Jan. 3, 1986
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KS86-8 (KS87-8)—Jan. 3, 1986
KS86-9 (KS87-9)—Jan. 3, 1986
KENTUCKY
KY86-1 (KY87-1)—Jan. 3, 1986

KY86-2 (KY87-2)—Jan. 3, 1986
KY86-3 (KY87-3)—Jan. 3, 1986
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KY86-27 (KY87-27)—Jan. 3, 1986
KY86-28 (KY87-28)—Jan. 3, 1986

LOUISIANA
LA86-1 (LA87-1)—Jan. 3, 1986
LA86-2 (LA87-2)—Jan. 3, 1986
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LA86-4 (LA87-4)—Jan. 3, 1986
LA86-5 (LA87-5)—Jan. 3, 1986

MAINE
ME86-1 (ME87-1)—Jan. 3, 1986
ME86-2 (ME87-2)—Jan. 3, 1986
ME86-3 (ME87-3)—Jan. 3, 1986

MARYLAND
MD86-1 (MD87-1)—Jan. 3, 1986
MD86-2 (MD87-2)—Jan. 3, 1986
MD86-3 (MD87-3)—Jan. 3, 1986
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MD86-14 (MD87-14)—Jan. 3, 1986
MD86-15 (MD87-15)—Jan. 3, 1986

MASSACHUSETTS
MA86-1 (MA87-1)—Jan. 3, 1986
MA86-2 (MA87-2)—Jan. 3, 1986
MA86-3 (MA87-3)—Jan. 3, 1986

MICHIGAN
MI86-1 (MI87-1)—Jan. 3, 1986
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Minnesota
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Mississippi
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Missouri
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Montana
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Nebraska
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Nevada
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New Hampshire
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New Jersey
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New Mexico
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NM86-2 (NM87-2)—Jan. 3, 1986
NM86-3 (NM87-3)—May 30 1986

New York
NY86-1 (NY87-1)—Jan. 3, 1986
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NC86-30 (NC87-30)—Jan. 3, 1986
NC86-31 (NC87-31)—Jan. 3, 1986

North Dakota
ND86-1 (ND87-1)—Jan. 3, 1986
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ND86-3 (ND87-3)—Mar. 14, 1986
ND86-4 (ND87-4)—Mar. 14, 1986

Ohio
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Oklahoma
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Oregon
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Pennsylvania
PA86-1 (PA87-1)—Jan. 3, 1986
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Puerto Rico
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PR86-3 (PR87-3)—Jan. 3, 1986

Rhode Island
RI86-1 (RI87-1)—Jan. 3, 1986

South Carolina
SC86-1 (SC87-1)—Jan. 3, 1986
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South Dakota
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Tennessee
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Texas
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TX86-39 (TX87-39)—Nov. 3, 1986
TX86-40 (TX87-40)—Nov. 7, 1986
TX86-41 (TX87-41)—Nov. 3, 1986
TX86-42 (TX87-42)—Nov. 3, 1986
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TX86-48 (TX87-48)—Nov. 3, 1986
TX86-49 (TX87-49)—Nov. 3, 1986

Utah
UT86-1 (UT87-1)—Jan. 3, 1986
UT86-2 (UT87-2)—Jan. 3, 1986
UT86-3 (UT87-3)—July 7, 1986

Vermont
VT86-1 (VT87-1)—Jan. 3, 1986
VT86-2 (VT87-2)—Jan. 3, 1986

Virginia
VA86-1 (VA87-1)—Jan. 3, 1986
VA86-2 (VA87-2)—Jan. 3, 1986
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VA86-16 (VA87-16)—Jan. 3, 1986

Virgin Islands
VI86-1 (VI87-1)—Jan. 3, 1986
VI86-2 (VI87-2)—Jan. 3, 1986

Washington
WA86-1 (WA87-1)—Jan. 3, 1986
WA86-2 (WA87-2)—Jan. 3, 1986
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West Virginia
WV86-1 (WV87-1)—Jan. 3, 1986
WV86-2 (WV87-2)—Jan. 3, 1986
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Wisconsin
WI86-1 (WI87-1)—Jan. 3, 1986
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WI86-16 (WI87-16)—Jan. 3, 1986

Wyoming
WY86-1 (WY87-1)—Jan. 3, 1986

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This

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Signed at Washington, DC, this 29th day of December 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-29510 Filed 12-31-86; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[V-87-1]

Zurn Industries, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for variance.

SUMMARY: This notice announces the application of Zurn Industries, Inc., for a variance from the standards prescribed in 29 CFR 1926.451(1)(5) concerning boatswain's chairs and in 29 CFR 1926.552(c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (iii), and (c)(16) concerning personnel hoists.

DATE: Comments from interested persons must be received by February 2, 1987.

Requests for a hearing from affected employers and employees must be received by February 2, 1987.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3656, Washington, DC 20210

or the following Regional Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 16-18 North Street, 1 Dock Square Building, 4th Floor, Boston, Massachusetts 02109

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604

U.S. Department of Labor, Occupational Safety and Health Administration, 525 Griffin Square Building, Room 602, Dallas, Texas 75202

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294

U.S. Department of Labor, Occupational Safety and Health Administration, 11349 Federal Building, 450 Golden Gate Avenue, Post Office Box 36017, San Francisco, California 94102

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174

I. Notice of Application

Notice is hereby given that Zurn Industries, Inc., 405 North Reo Street, Tampa, Florida 33609, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the standards prescribed in 29 CFR 1926.451(1)(5) concerning boatswain's chairs and 29 CFR 1926.552 (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i) and (iii), and (c)(16) concerning personnel hoists.

The addresses of the places of employment that will be affected by the application are all of the applicant's present and future construction projects in States under Federal jurisdiction where the erection, maintenance and modification of chimneys, towers and similar work occur.

The applicant certified that employees who would be affected by the variance have been notified of the application by giving a copy of it to the authorized employees' representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1926.451(1)(5) and 1926.552 (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14) (i) and (iii) and (c)(16).

The applicant is engaged in the erection of chimneys, towers, and similar tall concrete and steel structures which necessitates the transportation of men and material to and from the elevated work platform during construction activities. The applicant explains that in constructing this type of structure, the elevated work platform or scaffold is moved upward with the construction. Section 1926.451(a)(13) requires that access to this platform shall be provided for the employees by an access ladder or an equivalent safe means. The applicant states that as the height of the construction increases above 200 feet, it becomes impractical, unsafe and sometimes impossible to use an access ladder. Therefore, some other safe means of access must be provided.

Section 1926.552(c) sets forth the requirements for personnel hoisting from one elevation to another. The purpose of the standard is to provide requirements so that employees are safely transported to and from the elevated work platform by mechanical means during the construction, alteration, repair, maintenance, or demolition of a structure, building, or other work. This standard, however, does not provide specific safety requirements for hoisting personnel to and from an elevated work platform.

Consequently, the applicant contends that it is unable to comply with the requirements for constructing a hoist tower outside or inside of a structure, anchoring the hoist tower to the structure, electrically interlocking entrance doors or gates, emergency stop switches, and using a minimum of two wire ropes for drums type hoists, as required under §§ 1926.552 (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14) (i) and (iii), and (c)(16), respectively.

Section 1926.552(c)(1) requires that a hoist tower located outside a structure shall be enclosed for the full height on the side or sides used for entrance and exit to the structure. Section 1926.552(c)(2) requires that a hoist tower located inside a structure shall be enclosed on all four sides throughout the full height of the structure. According to

the applicant, a hoist tower located outside a structure is impractical and hazardous for tapered stack, chimney or shaft structures. As the structure rises, it becomes increasingly difficult to provide safe access from an outside hoist tower either to the structure or to the movable scaffolds used in constructing the chimney liner. Also, a hoist tower must be kept higher than the structure under construction. Consequently, the continual extension of the outside hoist tower exposes the employees to high wind conditions and interferes with the guying, erecting and bracing of a chimney. Further, a hoist tower must be rigid in order to function effectively. That rigidity would be difficult to maintain, given the wind conditions at heights over several hundred feet.

The applicant contends that it is hazardous to erect and brace a hoist tower inside a structure because it interferes with the design and construction of proper scaffolding. The applicant also notes that there is insufficient room for a hoist tower inside the structure which decreases in size as it rises.

Accordingly, rather than construct a hoist tower as specified in § 1926.552(c)(2), the applicant proposes to use a rope-guided hoist system to safely transport employees from the bottom landing to the elevated work platforms. The cage will run on a pair of taut guide ropes which is designed to retain the cage in the hoistway during all stages of loading and vertical movement. The applicant uses the safety cage only for hoisting and lowering employees. The safety cage and safety cables are pulled aside on the foundation when not in use and the hoisting rope-connection is used for hoisting material. Periodically, the applicant states that it may also use an additional material hoist system for concrete hauling only which meets the material hoist requirements in § 1926.552. All employees located at the bottom of the structure are protected from falling material during hoisting and overhead activities by suitable canopy or shield.

The applicant also contends that, because the cage operates on the inside of the structure, it cannot be used safely to transport employees to and from the bracket scaffold on the outside of an existing structure, or to and from the elevated scaffolds when constructing a small diameter structure. The applicant states that it will raise and lower employees on a work platform where space permits or in a boatswain's chair when it is not feasible to use the cage or work platform. Under the applicant's proposal, the cage will be temporarily disconnected from the hoisting cable and a work platform or boatswain's chair will be securely attached to the cable. The employee's safety belt will be attached to a suitable lifeline securely attached to the rigging at the top and to a weight at the bottom, in order to further ensure the safety of the employees on the work platform or in the boatswain's chair.

Under the terms of § 1926.451(1)(5), employers are required to provide and enforce the use of a block and falls with a boatswain's chair. The primary purpose of the standard is to provide an employee who is suspended in a boatswain's chair with a safe method for controlling his ascent, descent and stopping locations. The applicant contends that a block and falls is very difficult or impossible to operate on a structure over 200 feet. The applicant proposes to substitute a hoisting cable, operated from the hoist machine, for the block and falls required by §1926.451(1)(5).

Additionally, Zurn proposes to conform to the following requirements:

1. *Qualified Person.* (a) A qualified competent person as defined in § 1926.32 (f) and (l) shall be responsible for assuring that the design, maintenance and inspection of the personnel hoisting system is in accordance with all prescribed requirements for safe use.

(b) A qualified competent person shall remain at ground level at all times whenever employees are being transported to and from the elevated work platform to assist in the event of an emergency.

2. *Hoist Machine.* (a) *Type of hoist.* The hoist machine shall be designated as a portable man hoist.

(b) *Power up and power down.* The hoist machine shall be a base-mounted drum hoist designed so that linespeed is controlled. Power up and power down requirements are as follows:

(i) Lowering by disengagement of the driving components (free-wheeling) shall not be permitted;

(ii) The drive system for the hoist shall be that the system is continuously interconnected through a torque converter, mechanical coupling or equivalent coupling;

(iii) Where forward/reverse coupling and/or shifting transmission is used in the drive train, a braking mechanism located on the winding drum side of the clutch as described in paragraph (f) of this section shall automatically apply when the transmission is in the neutral position; and

(iv) Belt drives shall not be permitted.

(c) *Source of power.* The hoist machine may be powered by any air, electric, hydraulic or internal combustion drive mechanism.

(d) *Constant pressure control switch.*

(i) The hoist shall be equipped with a hand or foot operated constant pressure control switch (deadman control switch) which shall stop the hoist immediately upon release; and

(ii) The switch shall be provided with appropriate protection to prevent it from activating in the event it is struck by falling or moving objects.

(e) *Line speed indicator.*

(i) The hoist shall be equipped with a line speed indicator maintained in good working order.

(ii) The line speed indicator shall be within the clear view of the hoist operator during hoisting.

(f) *Braking systems.* The hoist shall be provided with two independent braking systems located on the winding side of the clutch or couplings (one automatic braking system and one manual) each capable of stopping and holding 150 percent of the maximum lineload for personnel hoist.

(g) *Slack rope switch.* The hoist shall be equipped with a slack rope switch to prevent further rotation of the hoist drum in slack rope conditions.

(h) *Frame.* The hoist machine frame shall be self-supporting, rigid, welded steel structure with skid base. Holding brackets for anchor lines, as well as legs for anchor bolts, shall be an integral component of the frame.

(i) *Location.* The hoist machine shall be located far enough from the footblock to obtain correct fleet angle for proper spooling of the cable on the drum.

(j) *Drum and flange diameter.*

(i) The hoist shall have a winding drum not less than 24 times the diameter of the rope used; and

(ii) The flange diameter shall be approximately 1½ times the rope drum diameter.

(k) *Spooling of the rope.* The rope shall not be spooled closer than two inches from the outer edge of the hoist drum flange.

(l) *Electrical system.* All electrical equipment shall be weatherproof.

(m) *Limited switches.* The hoisting system shall be equipped with limit switches and related equipment which will automatically prevent overtravel of the cage at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

3. *Operating Controls and Devices.* (a) *Operator.* Only trained and experienced employees who are knowledgeable in the operation of the hoist system shall control the hoist machine.

(b) *Speed limitations.* The hoist shall not be operated at a speed in excess of:

(i) 100 ft./min. when using the work platform or boatswain's chair; and

(ii) 250 ft./min. (± 10%) for the cage when transporting employees.

(iii) Line speed for material hoisting shall be maintained within the design limitations of the system.

(c) *Communication.*

(i) Communication between the hoist operator and employees on all working platforms, in the moving cage, or in the boatswain's chair, shall be maintained by a voice type intercommunication system.

(ii) When communication stops, is interrupted or fails, the hoisting motion shall cease until safe movement is assured.

4. *Hoist Rope.* (a) *Grade.* Hoisting wire rope shall be extra improved plow steel or equivalent grade of nonrotating type or regular lay rope with proper swivel.

(b) *Factor of safety.* The hoist rope shall maintain a factor of safety not less than 8.9 throughout its use for hoisting personnel and material.

(c) *Size.* The hoist rope shall be not less than one-half inch in diameter.

(d) *Installation, removal and replacement.*

(i) Wire rope shall be thoroughly inspected before the start of each job or new setup; and

(ii) During use, wire rope shall be removed and replaced with new wire rope if any of the conditions described in § 1926.552(a)(3) for wire rope removal or severe corrosion occur.

(e) *Attachments.* The rope shall be attached to the cage by a shackle or positive locking link.

(f) *Wire rope fastenings.* Where clip fastenings are used:

(i) They shall be used in conformance to § 1926.251(c) and Table H20;

(ii) There shall be at least three clips used at each fastening;

(iii) Clips shall be installed with the "U" of the clips on deadend of rope; and

(iv) Spacing clip-to-clip shall be six times the diameter of the rope.

5. *Footblocks.* (a) *Type of block.* The footblocks shall be:

(i) Construction-type blocks of solid single-piece bail or an equivalent block with roller bearing and a safety factor of four times the safe workload;

(ii) Designed for the applied loading, size and type of rope being used;

(iii) Designed with a guard to guarantee containment of the rope within the sheave groove;

(iv) Rigidly bolted down; and

(v) Serve to turn the moving rope to and from the horizontal or vertical for suitable change of direction of rope travel.

(b) *Directional change.* The change from the horizontal direction of the hoist rope at the footblock to the vertical direction shall be approximately 90°.

(c) *Diameter.* The line diameter of the footblock shall be not less than 24 times the rope diameter. (Note: This diameter to diameter ratio for rope to sheave size is predicated on regular inspection of the rope and immediate discard from the system when any of the conditions mentioned in § 1926.552(a)(3) is observable.)

6. *Cathead and Sheaves.* (a) *Qualified person.* A qualified competent person shall be responsible for the design and maintenance of the cathead (overhead structure).

(b) *Support.* The cathead shall consist of a wide flange beam or two steel channel sections securely bolted back-to-back to prevent spreading.

(c) *Installation.* All sheaves shall revolve on shafts which rotate on bearings. Bearings shall be securely mounted to maintain proper bearing position at all times.

(d) *Sheave safeguards.* Each sheave shall be provided with suitable rope guides to prevent the hoist rope from leaving the sheave grooves in case there is abnormal vibration or swing of the hoist rope.

(3) *Diameter.* The cathead sheaves shall have a minimum diameter equal to 24 times the diameter of the rope when the rope travels on the sheave at an angle of approximately 90° (see note to 5(c)). Example: When using one-half inch rope, the corresponding minimum sheave diameter shall be 12 inches.

7. *Guide Ropes.* (a) *Number of cables.* Two guide ropes (steel safety cables not less than one-half inch in diameter) shall be fixed by swivels to the cathead and shall be free of damage or defect at all times.

(b) *Cable fastening and alignment tension.* One end of each cable shall be securely and properly fastened to the overhead support, with appropriate tension applied at the foundation.

(c) *Safety clamps.* Safety clamps shall be properly designed and constructed to fit the guide ropes.

(d) *Application of tension.* The clamping device used for tension shall be of a type that will not damage the ropes.

(e) *Height.* The guide ropes shall run the height of the structure.

8. *Cage.* (a) *Construction.* The cage shall be of steel frame construction.

(b) *Floor.* The floor shall be securely fastened in place with a loading factor of 4.

(c) *Walls.*

(i) The cage walls shall consist of aluminum expanded metal or equivalent; and

(ii) The walls shall cover the full height of the cage between the floor and the overhead covering.

(d) *Roof.* The roof shall be sloped and constructed of ⅛ inch aluminum or equivalent.

(e) *Overhead weight.*

(i) An overhead weight such as a headache ball of sufficient weight shall compensate for the weight of the hoist rope between the cathead and footblock, if required, to prevent line run.

(ii) Provisions shall be made to restrain the movement of the overhead weight.

(f) *Enclosures.* The cage shall be permanently enclosed on the top and all sides except the entrance and exit.

(g) *Types of gates.*

(i) The gate shall guard the full height of the entrance openings.

(ii) The gate shall be equipped with a functioning mechanical locking device.

(h) *Operating procedures.* Procedures for operating the cage shall be conspiciously posted at the hoist operator's station.

(i) *Handholds.* The cage shall be equipped with handholds to accommodate each occupant.

(j) *Capacity.* The rated capacity of the cage shall conform to the following:

(i) The maximum load for personnel hoisting for the two-man cage shall be two men or 500 pounds, and for the four-man cage it shall be four men or 1,000 pounds;

(ii) The weight of the cage and all auxiliary equipment attached to the cage shall be included in the maximum rated load for material hoisting; and

(iii) A sign stating the loading capacities shall be posted in the cage, notifying employees of either the reduced rating for the specific job or the standard rating which applies when the initial job drop tests have been performed without damaging any components at 125 percent of the posted load.

9. *Safety Clamps.* (a) *Attachment and operation.* Safety clamps shall be attached to the cage for gripping the guide ropes and shall operate on the broken rope principle.

(b) *Function.* The safety clamps shall be capable of stopping and holding the cage at the maximum allowable speed and load.

(c) *Spring compression force.* The clamping force required for each individual hoisting system shall be pre-determined and pre-set.

(d) *Maintenance.* The safety clamp assemblies shall be kept clean and functional at all times.

10. *Overhead Protection.* All employees located at the base of the structure shall be protected from falling material and other debris from the elevated work platforms by suitable canopy or shield.

11. *Emergency Escape Device.* (a) *Location.* An emergency escape device shall be provided in the cage or at the bottom landing. The device shall conform to the following requirements:

(i) If the emergency escape device is stored in the cage it shall be long enough to reach the bottom landing from the highest escape point;

(ii) If the emergency escape device is stored at the bottom landing there shall be a means provided in the cage for raising the device to the highest escape point; and

(iii) Operating instructions shall be attached to the escape device.

(b) *Training.*

(i) All employees to be transported in the cage shall be instructed in the use of the emergency escape system prior to being transported in the cage.

(ii) All employees shall be given instruction periodically in the use of the hoisting and emergency escape systems.

12. *Work Platforms and Boatswain's Chairs.* (a) *Work platform.*

(i) A work platform with 42-inch high enclosure may be used to raise and lower employees whenever it is not technically feasible to use the cage.

(ii) The employer shall comply with the applicable scaffolding strength factor provisions in § 1926.451(a)(7) and (a)(19).

(b) *Boatswain's chairs.* A boatswain's chair shall only be used when the cage or work platform is impracticable.

(c) *Hoisting cable.* A hoisting cable shall be substituted for the block and falls required by § 1926.451(1)(5) on structures over 200 feet.

(d) *Safety belts and lifelines.* An employee riding on the work platform or in the boatswain's chair shall be equipped with a safety belt and lifeline in accordance with § 1926.104 and the applicable provisions of § 1926.451(1).

13. *Welding.* All field welding shall be done by qualified welders in accordance with § 1926.552(b)(5).

Copies of the application for variance will be made available for inspection and copying upon request at the locations listed above. All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the application no later than February 2, 1987. In addition, employees and employers who believe they would be adversely affected by the grant or denial of the variance may request a hearing on the application no later than February 2, 1987, in conformity with the requirements of 29 CFR 1905.15. Submission of writen comments and requests for a hearing should be in quadruplicate and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, DC on this 23rd day of December, 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86-29336 Filed 12-31-86; 8:45 am]

BILLING CODE 4510-26

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant, to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #1) to the National Council on the Arts will be held on January 12-14, 1987, from 9:00 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

December 19, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-29401 File 12-31-86; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant, to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #2) to the National Council on the Arts will be held on January 26-28, 1987, from 9:00 a.m.—5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

December 23, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-29402 File 12-31-86; 8:45 am]

BILLING CODE 7537-01-M

Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (State Programs Section) to the National Council on the Arts will be held on January 21-23, 1987 from 9:00 a.m.-5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC. 20506.

A portion of this meeting will be open to the public on January 21, 1987 from 9:00 a.m.-11:00 a.m., January 22, 1987 from 2:00 p.m.-5:00 p.m. and on January 23, 1987 from 9:00 a.m.-5:00 p.m. to discuss orientation, recommendations of applications referred by small groups, policy issues related to reassessment and other issues.

The remaining sessions of this meeting on January 21, 1987 from 11:30 a.m.-5:00 p.m. and on January 22, 1987

from 9:00 a.m.–12:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

December 23, 1986.

[FR Doc. 86–29403 Filed 12–31–86; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Survey Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9520.

OMB Desk Officer: Carlos Tellez, (202) 395–7340.

Title: Computer Science Faculty Mobility Study, Summer 1987.

Affected Public: 600 respondents; total of 600 burden hours.

Abstract: A 1981 study confirmed the existence and investigated the reasons for the high degree of mobility among computer science faculty. This is a follow-up to that previous study. It will include a survey of the PH.D. granting Computer Science Departments in the U.S. and then an inquiry with the individuals identified.

Dated: December 29, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86–29438 Filed 12–31–86; 8:45 am]

BILLING CODE 7555–01–M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 20, 1986, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on December 22, 1986: David H. Elliot.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 86–29482 Filed 12–31–86; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–15492; 812–6090]

Integrated ARROs Fund et al; Application

December 22, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Integrated ARROs Fund I and Integrated ARROs Fund II ("Funds"); and IR Pass-through Corporation.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 17(b) from sections 10(h)(1) and 10(h)(2), 14(a), 16(a), 17(a), 17(d) and 32(a) of the 1940 Act.

Summary of Application: Applicants seek an order to permit the Funds and future Integrated ARROs Funds organized by IR Pass-through Corporation ("Pass-through") to acquire and hold specified real estate lease-related contract rights ("Payment Obligations") which represent amounts payable to their sponsor, from privately offered real estate limited partnerships organized by the Fund's sponsor.

Filing Date: The application was filed on April 12, 1985, and amended on August 23, 1985, May 15, 1986, June 18, 1986 and July 9, 1986.

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 January 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve 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, 666 Third Avenue, New York, N.Y. 10017.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Curtis R. Hilliard (202) 272–3026 or Special Counsel Houghton R. Hallock, Jr. (202) 272–3030 (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 commerical copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

The Funds have been organized as grantor trusts by Pass-through, a Delaware corporation which is a wholly-owned subsidiary of Integrated Resources, Inc. ("Integrated"). Integrated is a financial services company engaged in the organization, management and sale of investment programs, primarily in the form of limited partnerships, and in the sale, reinsurance and direct writing of life insurance.

The Funds have registered with the Commission as closed-end investment companies, and propose to offer non-redeemable units of beneficial interest to eligible investors. An independent, qualified evaluator will be employed by Applicants to, among other things, determine the price at which units in the Funds should be offered to the public. Such price will be based on the value of the underlying Payment Obligations

acquired by the Fund. Units of the Funds will be offered by Integrated Resources Equity Corporation ("Underwriter") only to investors believed to have a minimum net worth. Due to the illiquid nature of the Payment Obligations, units of the Funds will be very speculative investments.

The Funds, organized as grantor trusts, will have a commercial bank or trust company, unaffiliated with Pass-through or Integrated, serve as trustee ("Trustee") of each Fund, and will not have separate boards of directors. While the Trustee will administer the Funds' affairs, it will not be authorized to manage the Funds' security portfolios. Each Fund will acquire a group of Payment Obligations from Integrated which will be disclosed in the Fund's prospectus prior to the sale of units of the Fund. The group of Payment Obligations comprising the security portfolio of a particular Fund will not be changed except in the case of default or prepayment.

The Payment Obligations will be debt obligations issued by the Partnerships which have been previously sponsored by Integrated. The Partnerships are privately offered investment programs sponsored by Integrated, through its subsidiaries and affiliates, or programs in which integrated, its subsidiaries or affiliates, act as general partner. The Partnerships have acquired, and subsequently leased, commercial real estate, in most cases to corporations. The Partnerships' real estate leases generally provide that the Partnerships will receive the stated rental and pay the debt service on the property and their own administrative expenses, and that the lessee will pay all taxes (with certain exceptions such as the lessor's income taxes), assessments, levies, fees, utility costs, charges, licenses, permit fees, governmental charges and other expenses or amounts incurred in connection with the leased property.

The Payment Obligations were issued to Integrated by the Partnerships for services performed by Integrated or for real property purchase contracts sold to them by Integrated. They have a term of 40 years; however, during the first 15 years, interest accumulates but is not paid out. Thereafter, payments will be made at specified levels that will retire the Payment Obligations at the end of their 40-year terms. It is generally expected, and the Partnerships' debt service and other financial requirements have been so structured, that the Partnerships will use revenues from the scheduled rental payments derived under the real estate leases, and any disposition proceeds from the sales of the underlying real estate, to make payments on the Payment Obligations.

Under the terms of the proposed offering, the minimum purchase of Fund units will be $10,000 (10 units at $1,000 each), except for purchases by individual retirement accounts, where the minimum investment will be $2,000 (two units at $1,000 each). Further, in the initial offering, units will be made available only to investors reasonably believed to have, either individually or in combination with their spouse, a net worth of at least $75,000, exclusive of their principal residence. In order to provide liquidity to unitholders, the Underwriter, or another subsidiary of Integrated will continuously make a market in units of the Funds. In doing so, the Underwriter, or another subsidiary of Integrated, will use bid and asked prices believed to reflect the market value of Fund units, and which do not result in unreasonably large spreads relative to the spreads which exist in connection with markets for other, comparable securities.

Since each of the Funds has registered as a closed-end, management investment company, they cannot be treated as unit investment trusts under the Act. The Funds have not registered as unit investment trusts because, due to the illiquid nature of the Payment Obligations, their shares cannot be redeemable. Because the Funds cannot comply with certain of the Act's requirements applicable to closed-end, management investment companies, with which unit investment trusts need not comply, the Funds have applied for certain exemptions from the Act to permit them to operate as proposed.

Applicants have requested relief under sections 6(c) and 17(b) of the Act exempting them from the provisions of sections 10(h)(1) and 10(h)(2) as stated therein, 14(a), 16(a), 17(a), 17(d) and 32(a) of the Act to permit them to operate the Funds as described above. Applicants have identified these sections of the Act as being inapposite to the operations of the Funds as fixed-portfolio, non-managed companies.

Sections 10(h)(1) and 10(h)(2) apply the provisions of sections 10 (a) and (b) of the Act to the board of directors of the depositor or an unincorporated registered management company not having a board of directors, such as the Funds. Under the proposed organization of the Funds, the board of directors of Integrated, absent an exemption from those sections, would have to meet the requirements of sections 10 (a) and (b). This is not the case today. Applicants submit that although the Funds are structured as closed-end, management investment companies they are more analogous to unit investment trusts and do not require traditional methods of management and investment. In addition, Applicants note that unit investment trusts are exempt from the $100,000 minimum capital requirement of section 14(a) by virtue of Rule 14a-3 under the Act. Applicants argue that policy considerations similar to those underlying Rule 14a-3 justify granting the Funds an exemption from section 14(a) of the Act. Applicants contend that investors in the Funds, like investors in a traditional unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio. Furthermore, all costs of organizing the Funds will be borne by Integrated.

Section 17(a) of the Act generally prohibits an affiliated person of an investment company from purchasing or selling securities or other property to or from the company. While the potential for abuse in connection with such transactions is manifest in the context of a regular management investment company, Applicants argue that the same potential does not exist where the investment company has a fixed securities portfolio which is fully identified and priced before investors purchase their units. According to Applicants it is for this reason that section 17(a)(1)(C) provides an exception for unit investment trust from the provisions of section 17(a)(1). Applicants contend that since each of the Funds will have a fixed portfolio of Payment Obligations assembled on the same basis as the securities portfolios of traditional unit investment trusts, the acquisition of the Payment Obligations from Integrated should be exempted from the provision of section 17(a) of the Act. Applicants also state that the Partnerships which are the issuers of the Payment Obligations may be deemed affiliated persons of both Integrated and the Funds, and that the proposed arrangements and transactions incidental to them could be considered subject to section 17(d) of the Act. Applicants request an exemption to permit payments from the Partnerships to the respective Funds holding their Payment Obligations, and to permit the general partners of the Partnerships, in their discretion, to accept offers by lessees to purchase their respective properties or to sell the properties on such terms as they deem appropriate and to otherwise deal with the properties and the other assets of the Partnerships without regard to the fact that a Fund is the holder of the Payment Obligations, except as otherwise

required by such Payment Obligations. Applicants contend that the Funds could not function if each such transaction were deemed to come within the meaning of a joint transaction in section 17(d) and required an individual Commission order before consummation.

Furthermore, in order to eliminate any question as to the need to obtain annual approval of the Trustee by Fund unitholders, Applicants have requested an exemption from section 16(a). Applicants submit that yearly ratification of the Trustee is not necessary for the protection of investors, and that the additional expense, including yearly proxy solicitations, is not justified. Applicants request that the ratification of the Trustee be required only once in each three-year period. Finally, Applicants request an exemption from the provisions of section 32(a) of the Act to allow unitholders to ratify continuation of a Fund's independent certified public accountant once every three years, instead of once per year as required by section 32(a)(2). Applicants submit that since each of the Funds will be passive and not engaged in any investing or reinvesting of securities, the financial statements for each Fund will be mainly records of receipts and distributions, except in the limited circumstances of a default on or sale of a Payment Obligation. Applicants assert that the substance of any audit performed for the Funds by their independent accountants will not be extensive.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29445 Filed 12-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23931; File No. SR-OCC-86-25]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On December 11, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), concerning the settlement of foreign currency option exercises and assignments. The Commission is publishing this notice to solicit comment on the rule change.

The proposed rule change consists of a Credit and Security Agreement between Citibank, N.A. and OCC designed to effectuate Delivery-versus-Payment ("DVP") settlement [1] of exercises and assignments of Deutsche Mark options. OCC currently has a similar agreement in place with Bank of America for settlements of exercises and assignments of currency options. Under the proposed agreement, Citibank, N.A. would replace Bank of America for settlement of exercises of Deutsche Mark options.

Like the Bank of America agreement, the proposed agreement provides for an overdraft facility to ensure deliveries to Clearing Members notwithstanding the default of a Delivering or Paying Clearing Member. These overdrafts would be secured by the U.S. dollar settlement amounts held in OCC's accounts at Citibank branches in New York and Frankfurt for Deutsche Mark overdrafts, and the Deutsche Marks held in OCC's account at the Frankfurt branch of Citibank for U.S. dollar overdrafts. Loans resulting from overdrafts would also be secured by OCC's right to apply a defaulting Clearing Member's margin of Clearing Fund deposits against the defaulting Clearing Member's outstanding obligations, as well as OCC's right to assess all Clearing Members' Clearing Fund deposits for related losses.

Because of the rapid growth of the foreign currency options market, OCC believes it is in the best interest of OCC, the industry and the investing public to use more than one bank for settlements of exercises and assignments of foreign currency options. OCC states in its filing that the proposed agreement will promote the prompt and accurate settlement of foreign currency option exercises, while safeguarding securities and funds in OCC's custody or control, by diversifying OCC's foreign currency settlement activities.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, 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 the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by January 23, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: December 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29496 Filed 12-31-86; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* OCC Rule 1606A.

[Rel. No. 34-23925; File No. SR-Phlx-86-42]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Extension of its Specialist Allocation and Evaluation Pilot Program through March 31, 1987

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 November 26, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. hereby proposes to extend the applicability of its specialist allocation and evaluation rules (Rules 500 through 506) through March 31, 1987. The Exchange has been applying these rules and intends to continue to apply them until a permanent rule is approved by the Commission.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements conserning 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 aspect of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the Exchange's specialist allocation and evaluation pilot program to enable it to study alternative rule proposals regarding these matters. The Exchange expects that such a proposal regarding permanent rules will be filed with the Commission by the end of this pilot extension period. The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate transaction in securities pending approval of permanent rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act to permit its specialist allocation and evaluation pilot to remain in effect without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

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 in that it will provide the Exchange with the additional time necessary to prepare permanent specialist allocation and evaluation rules to be filed with the Commission by the end of this pilot extension period, while at the same time permitting the pilot to remain in effect without interruption.

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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by January 23, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: December 23, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29497 Filed 12-31-86; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3.

DEPARTMENT OF STATE

[CM-8/1030]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Radio Communications; Meetings

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: January 15, 1987; February 19, 1987; March 19, 1987; April 16, 1987; May 21, 1987 and June 18, 1987. All meetings will be held in room 9230 of the Department of Transportation building, 400 Seventh Street, SW., Washington, DC 20950-0001.

The purpose of these meetings is to prepare for the Thirty-third Session of the Subcommittee on Radio Communications of the International maritime Organization which will be held in July 1987. In particular the working group will discuss the following topics:

1. Global Maritime Distress and Safety System (GMDSS).

2. Preparations for the International Telecommunications Union (ITU) World Administrative Radio Conference (WARC) for Mobile Telecommunications.

For further information, contact Lt. McDannold, U.S. Coast Guard Headquarters (G-TTS-1/63), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-2860.

Members of the public may attend all meetings up to the seating capacity of the room.

Dated: December 18, 1986.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-29483 Filed 12-31-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1032]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Fire Protection; Meeting

The Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 21, 1987 at 9:30 in Room 1303 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to discuss plans for the 32nd Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection, January 26-30, 1987.

Items of discussion include the following:

1. *Fire Test Procedures:* Flame spread on division linings and deck coverings; ignitability of primary deck coverings; criteria for upholstered furniture, bedding and smoke and toxicity of surface finish materials on board ships.

2. Line clearing in chemical tankers.

3. *Fire Fighting Systems:* Fire main and fire pump sizing; fixed halogenated hydrocarbon units.

4. Review of safety provisions applicable to ships converted to floating reception facilities.

5. Amendments to the standards for devices to prevent the passage of flame into cargo tanks.

6. Amendments to the guidelines for inert gas systems.

7. Protection of cargo spaces in which casks containing irradiated nuclear fuel are stowed.

8. Materials other than steel for pipes (e.g. fiberglass pipes).

9. Guidelines for the design, performance and operational procedures for cargo tank venting arrangements.

10. Aluminum helicopter platforms.

11. Other miscellaneous subjects.

Members of the public may attend up to the seating capacity of the room.

For further information contact Ms. Marjorie M. Murtagh, U.S. Coast Guard (G-MTH-4), 2100 Second Street, SW., Washington, DC 20593-0100; Telephone: (202) 267-2997.

Dated: December 19, 1986.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-29484 Filed 12-31-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1033]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Lifesaving, Search, and Rescue; Meeting

The Working Group on Lifesaving, Search, and Rescue, of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 28, 1987 at 9:00 a.m. in Room 6319 at Coast Guard Headquarters, 2100 Second St., SW., Washington, DC.

The purpose of the meeting is to finalize preparations for the 19th Session of the Lifesaving, Search, and Rescue Subcommittee (LSR) of the International Maritime Organization (IMO) which is scheduled for June 22-26, 1987 in London. This is the first meeting of the Subcommittee since its work program was expanded to include search and rescue. It was formerly designated the Lifesaving Appliances Subcommittee (LSA). In particular, the working group will discuss development of U.S. positions dealing with, inter alia, the following topics:

—Clarification of 1983 Amendments to the 1974 Safety of Life at Sea Convention (SOLAS), Chapter III.

—Maximum stowage height of survival craft.

—Free-fall lifeboats including requirements for oars and acceleration protection in lifeboats.

—Preparation of guidance for fast rescue boats.

—Compatibility of SOLAS Chapter III provisions with the Global Maritime Distress and Safety System (GMDSS).

—Equivalent arrangements related to lifesaving appliances.

—Review of Assembly resolutions relating to lifesaving appliances, which may require revision or revocation as a result of the coming into force of the 1983 SOLAS Amendments.

—Survival in cold water.

—Symbols for emergency and operational purposes on board ships.

—Review and amendment of lifesaving provisions of international instruments relating to safety of fishing vessels.

—Review of SOLAS regulation V/17 (Pilot Ladders and Mechanical Pilot Hoists).

—Inflatable liferafts.

—Matters concerning search and rescue, including those related to the 1979 SAR Conference and the introduction of the GMDSS.

—Compatibility of lifesaving appliances with search and rescue operations.

Members of the public may attend up to the seating capacity of the room.

For further information or for documentation pertaining to the meeting, contact Mr. Robert Markle, U.S. Coast Guard Headquarters (G-MVI-3), 2100 Second St., SW., Washington, DC 20593-0001, Telephone: (202) 267-1444.

Dated: December 22, 1986.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-29485 Filed 12-31-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1031]

Chairman's Ad Hoc Group on Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 15, 1987 at 10:30 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

The purpose of the meeting on January 15 will be to review the results of the November 11-12 meeting of the Advisory Board of the Center for Telecommunications Development in Geneva. Other items to be discussed will include: (a) The Ad Hoc Group's activities in 1987; (b) a review of U.S. Foundation for World Communications Development as a mechanism for building a partnership between government and the private sector; and (c) an update report on the activities of various USG agencies in promoting communications development.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647-1007.

Request for further information should be directed to Mr. D. Clark Norton, State Department, Washington, DC, telephone (202) 647-1007.

Dated: December 19, 1986.

Domenick Iacovo,

Office of Technical Standards and Development.

[FR Doc. 86-29514 Filed 12-31-86; 8:45 am]

BILLING CODE 4710-07-M

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing; Adoption of the Revised Comprehensive Plan; Management and Development; Water Resources; Correction

In a notice appearing on page 45422 of the **Federal Register** dated Thursday, December 18, 1986, (FR Doc. 86-28335) the Susquehanna River Basin

Commission announced that two public hearings would be held in the State of New York to receive comments from citizens, government agencies and others on the adoption of the revised Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin. That notice inadvertently omitted the date of the second hearing at Binghamton, NY. Therefore, the Commission hereby reannounces that the second hearing on the revised Comprehensive Plan will be held on February 11, 1987 at the Holiday Inn, the Arena, 2–8 Hawley St., Binghamton, NY. at 7:00 p.m.

Dated: December 23, 1986.

Robert J. Bielo,

Executive Director.

[FR Doc. 86–29405 Filed 12–31–86; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 44432]

U.S.-London Gateways Case; Hearing

Notice is hereby given that the hearing in the above-titled proceeding will commence on January 6, 1987, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

Dated at Washington, DC, December 22, 1986.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 86–29430 Filed 12–31–86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-083]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–403; 5 U.S.C. App. I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, January 27, 1987, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9:00 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the October 28, 1986, meeting.
3. Report on bridge-to-bridge radiotelephone violations.
4. Coast Guard proposal to amend the "Bridge-to-Bridge Radiotelephone Act".
5. Proposal to initiate regulations to provide for mandatory participation in Vessel Traffic Service New Orleans upon completion of surveillance expansion project.
6. Proposal for formation of working group to amend VTS New Orleans operating procedures to include surveillance expansion and mandatory participation.
7. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: December 18, 1986.

Peter J. Rots,

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

[FR Doc. 86–29458 Filed 12–31–86; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Honolulu, HI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a third supplement to the Final Environmental Impact Statement will be prepared for the proposed Interstate Route H–3 project in the City and County of Honolulu, State of Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Norman L. Arthur, Acting Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii, Department of Transportation, will prepare a supplement to the approved Final Environmental Impact Statement (FEIS) for proposed Interstate Route H–3 between the Halawa Interchange and the Halekou Interchange.

The proposed action is the construction of approximately 10.7 miles of a new 4-lane divided Interstate and Defense Highway facility. Beginning from a point in the Halawa Interchange at the leeward Oahu terminus, H–3 extends northeasterly through the North Halawa Valley on at-grade roadways and elevated viaduct sections. It then enters twin bore 5,100-foot long tunnels through the Koolau Mountain Range and emerges in Haiku Valley and windward Oahu. H–3 then swings southeasterly on a viaduct structure, enters a cut and cover tunnel at Hospital Rock in the vicinity of the Kaneohe State Hospital, continues at-grade to the Kaneohe Interchange at Federal-aid Primary Route 63, Likelike Highway, skirts the upland boundary of Ho'omaluhia Park, and finally connects with the Halekou Interchange at Federal-aid Primary Route 83, Kamehameha Highway.

A 4.3-mile section between the Halekou Interchange and the Kaneohe Marine Corps Air Station, which is the windward terminus of H–3, was completed during the early 1970's.

In accordance with 23 CFR 771.129, the FHWA has prepared a written re-evaluation of the FEIS, a supplemented, and has determined that a third supplement to the FEIS must be prepared and processed to disclose the environmental consequences of the H–3 project on the Luluku Discontiguous Archaeological District which has been determined likely to be eligible for inclusion in the National Register of Historic Places. The Luluku Discontiguous Archaeological District consists of seventeen (17) individual archaeological sites which are located within and around the limits of the proposed Kaneohe Interchange.

The new supplemental environmental impact statement will present alternative designs of the proposed Kaneohe Interchange which minimize the adverse effects on the Luluku Discontiguous Archaeological District.

Section 4(f) of the U.S. Department of Transportation Act of 1966, as amended, does not apply to the remaining 10.7-mile section of H–3, including the proposed Kaneohe Interchange. This exemption is contained in Pub. L. 99–500, section 114 (99th Cong., 2d Sess.).

FHWA will solicit comments on these alternatives from appropriate Federal, State and County agencies, private organizations and individual citizens. Informational meetings are being held on Oahu during January 1987. In addition, a combined location/design and Section 106 public hearing will be

held. Public notice of the time and place of the hearing will be issued by FHWA and the Hawaii Department of Transportation.

Scoping of the draft third supplement to the FEIS is not required under 23 CFR 771.129. The FHWA intends to circulate the new document within 2 weeks of this Notice of Intent.

To ensure that the full range of issues are addressed and that all significant issues are identified, all interested parties are invited to offer comments, questions and suggestions on the proposed action and the supplement to the FEIS. These should be directed to the FHWA at the address provided above.

Issued on: December 19, 1986.

Norman L. Arthur,

Acting Division Administrator, Honolulu, Hawaii.

[FR Doc. 86-29406 Filed 12-31-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 22, 1986.

The Department of the Treasury has made revisions and resubmitted the following public information collection requriement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0619
Form Number: IRS Form 6765
Type of Review: Resubmission
Title: Credit for Increasing Research Activities (or for Claiming the Orphan Drug Credit)
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Office.

[FR Doc. 86-29498 Filed 12-31-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 23, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96.511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0475
Form Number: ATF F 4473, Part I and Part II, and ATF REC 5300/1 and 7570/2
Type of Review: Extension
Title: Record Retention Period and Certain Firearms Records
Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Office.

[FR Doc. 86-9499 Filed 12-31-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 24, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0052
Form Numbers: ATF F 5130.9 (103)
Type of Review: Extension
Title: Brewer's Monthly Report of Operations
Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Financial Management Service

OMB Number: 1510-0007
Form Number: SF 1199A
Type of Review: Extension
Title: Direct Deposit Sign-Up Form
Clearance Officer: Douglas C. Lewis, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545-0052
Form Number: IRS Form 990 PF
Type of Review: Extension
Title: Set-Asides Made by Private Foundations (EE-156-78 Final)

OMB Number: 1545-0794
Form Number: None
Type of Review: Extension
Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time for Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (LR-311-81 Final (TD 7925))
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Office.

[FR Doc. 86-29500 Filed 12-31-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 22, 1986.

The Department of Treasury has

submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0029
Form Number: TFS 5118
Type of Review: Reinstatement
Title: Depositor's Application for Payment of Postal Savings Certificates

OMB Number: 1512-0038
Form Number: TFS 6114
Type of Review: Reinstatement
Title: More Information Letter

OMB Number: 1512-0042
Form Number: SF 1055
Type of Review: Reinstatement
Title: Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor

Clearance Officer: Douglas C. Lewis, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Office.
[FR Doc. 86-29501 Filed 12-31-86; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated December 22, 1986.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0099
Form Number:T1 IRS Form 1065
Type of Review: Resubmission
Title: U.S. Partnership Return of Income, Capital Gains and Losses, Partners' Shares of Income, Credits, Deductions, etc., Partner's Share of Income, Credits, Deductions, etc.

OMB Number: 1545-0128
Form Number: IRS Form 1120L
Type of Review: Resubmission
Title: U.S. Life Insurance Company Income Tax Return

OMB Number: 1545-0257
Form Number: IRS Form 8109
Type of Review: Resubmission
Title: Federal Tax Deposit Coupon, FTD Reorder Form

OMB Number: 1545-0566
Form Number: IRS Form 1120M
Type of Review: Resubmission
Title: U.S. Mutual Insurance Company Income Tax Return

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Office.
[FR Doc. 86-29502 Filed 12-31-86; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Forms 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 contains a new collection and 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) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copiese of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, 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 60 days of this notice.

Dated: December 29, 1986.

By direction of the Administrator.

David A. Cox,
Associate Deputy Administrator for Management.

New Collection

1. Department of Medicine and Surgery.
2. Evaluation of Effectiveness and Costs of Adult Day Health Care (ADHC).
3. VA Forms 10-20818a through k.
4. Semi-annually.
5. Individuals or households; Businesses or other for-profit; and Non-profit institutions.
6. 3,292 responses.
7. 1,636.5 hours.
8. Not applicable.

[FR Doc. 86-29460 Filed 12-31-86; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52. No. 1
Friday, January 2, 1987

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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:45 p.m. on Tuesday, December 23, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act, and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

At that same meeting, the Board also considered:

The application of Texas County Bank, Houston, Missouri, an insured State nonmember bank in organization, for consent to merge, under its charter and title, with Farmers State Bank of Texas County, Houston, Missouri.

The application of Westgate State Bank, Wyandotte County (P.O. Kansas City), Kansas, an insured State nonmember bank, for consent to merge, under its charter and with the title "Industrial State Bank," with Industrial State Bank, Kansas City, Kansas, and for consent to establish the sole office of Industrial State Bank as a branch of the resultant bank and to redesignate the present main office location of Industrial State Bank as the main office location of the resultant bank.

A memorandum requesting that the Director of the Division of Bank Supervision be delegated authority to act on the application of Merchants Bank of Boston, a Co-Operative Bank, Boston, Massachusetts, an operating noninsured co-operative bank, for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not request consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(A)(i), and (c)(9)(B)).

Dated: December 30, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-29518 Filed 12-30-86; 11:26 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 6, 1987 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 8, 1987 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1986-42
Vigo G. Nielsen, Jr., on behalf of Dart & Kraft, Inc.
Draft Advisory Opinion 1986-44
John F. Markes on behalf of EdPAC.
Proposed Revisions of Title 26 Regulations.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-29521 Filed 12-30-86; 2:25 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board will hold a meeting commencing at 11:00 a.m., Friday, January 9, 1987, and continue until all official business is completed. An executive session will be held at approximately 12:00 noon, Friday, January 9, 1987.

PLACE: Capitol Holiday Inn, Columbia Room and Mars Room, 550 C Street, SW., Washington, DC. 20024.

STATUS OF MEETING: Open: [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—November 1, 1986
3. Election of the Chairman and Vice Chairman
4. Personal and Personnel Matters (Closed)
5. Litigation and Investigation Matters (Closed)

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date issued: December 30, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-29523 Filed 12-30-86; 3:53 pm]

BILLING CODE 6820-35-M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 1:00 p.m., Friday, January 9, 1987, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Columbia Room, 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —April 10, 1986
3. 45 CFR Part 1612—The Lobbying Regulation
   —Report from the Office of the General Counsel
   —Report from the Office of Monitoring Audit and Compliance
   —Public Comment
   —Recommendations to the Board

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date issued: December 30, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86-29524 Filed 12-30-86; 3:54 p.m.]

BILLING CODE 6820-35-M

POSTAL SERVICE

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 46983, December 29, 1986.

PREVIOUSLY ANNOUNCED DATE OF MEETING: January 6, 1987.

CHANGE: Addition of the following agenda item:

3. Officer Compensation.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 86-29522 Filed 12-30-86; 2:26 p.m.]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 5, 1987:

A closed meeting will be held on Tuesday, January 6, 1987, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 6, 1987, at 2:30 p.m., will be:

Participation in civil proceeding.
Settlement of administrative proceedings.
Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Jonathan G. Katz,

Secretary.

December 30, 1986.

[FR Doc. 86-29520 Filed 12-30-86; 1:56 pm]

BILLING CODE 8010-01-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES:

9:00 a.m.-5:00 p.m., Thursday, January 15, 1987

9:00 a.m.-5:00 p.m., Friday, January 16, 1987

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE):

Meeting of Board of Directors convened.
Consideration of minutes of eighth meeting.
President's report.
Committee reports.
Report on presidential search.
Consideration of grant applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: December 29, 1986.

Charles Duryea Smith,

Attorney Adviser, United States Institute of Peace.

[FR Doc. 86-29519 Filed 12-30-86; 11:34 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 52, No. 1
Friday, January 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 61220-6120]

Groundfish of the Gulf of Alaska

Correction

In proposed rule document 86-27895 beginning on page 44812 in the issue of Friday, December 12, 1986, make the following corrections:

1. On page 44816, in the third column, under **Regulatory Changes**, in the last paragraph, in the first line, "1672.5(a)(1)" should read "672.5(a)(2)".

2. On page 44817, in the first column, in the third complete paragraph, in the eighth line, "specificaction" should read "specific action".

§ 672.7 [Corrected]

On page 44818, in the first column, in amendatory instruction 7, in the second line, "resignating" should read "redesignating".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 61113-6213]

Foreign Fishing, Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands

Correction

In proposed rule document 86-27077 beginning on page 43397 in the issue of Tuesday, December 2, 1986, make the following corrections:

1. On page 43398, in the first column, in the second complete paragraph, in the first line, "672.20(a)," should read "672.20(a)(2),".

2. On page 43399, in "TABLE 1", in the fifth column heading designated "Reserve", add footnote 1 at the end of "Reserve".

3. On the same page, in the second column, in the first complete paragraph, in the fifth line, "1978" should read "1987".

4. On page 43401, in the second column, in the file line at the end of the document, the FR Doc. number should read "86-27077".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78P-0173 et al.]

Approved Variances for Laser Light Shows; Availability

Correction

In notice document 86-26990 beginning on page 43473 in the issue of Tuesday, December 2, 1986, make the following corrections:

On page 43474, the table should be corrected as follows:

1. In the third column, in the third line, "Incorporated" was misspelled.

2. In the same column, in the fourth line, the second word should read "Systems".

3. In the second column, in the entry for "82P-0137 (renewal)", in the second line, "Virginia" was misspelled.

4. In the third column, in the 11th line, "krypton lasers" should read "krypton ion lasers".

5. In the same column, in the 19th line, "heliumneon" should read "helium-neon".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-4213-24; CA-13968]

Filing an Airport Lease Application, Serial Number CA-13968, San Bernardino County, CA

Correction

In notice document 86-25129 appearing on page 40356 in the issue of Thursday, November 6, 1986, make the following correction:

In the third column, in the land description for the San Bernardino Meridian, in the fourth line, "Sec. 21" should read "Sec. 29".

BILLING CODE 1505-01-D

federal register

Friday
January 2, 1987

Part II

Department of Transportation

Research and Special Programs Administration

Prince George's County, MD; Code Section Governing Transportation of Radioactive Materials; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling, No. IR-18; Docket No. IRA-28]

Prince George's County, MD; Code Section Governing Transportation of Radioactive Materials

Applicant: Prince George's County, MD.

County Law Affected: Prince George's County Code Section 18-187 dated May 13, 1980, governing the shipment and transportation of radioactive materials into, within, through, and out of the County.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633, 49 U.S.C. app. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 through 179) issued thereunder.

Modes Affected: Rail and Highway.

Issue Date: January 2, 1987.

Ruling: Subsections (b)(2), (c), (d), (e) and (f) of Prince George's County Code Section 18-187, are inconsistent with the HMTA and regulations issued thereunder and thus are preempted. Subsections 18-187 (a)(1), (b)(1), (b)(3)-(7) are consistent. Subsection 18-187 (a)(2) is not a requirement and thus is not subject to preemption under the HMTA.

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) concerning whether Section 18-187 of the Prince George's County Code is inconsistent with the HMTA and regulations issued thereunder and thus preempted by section 112(a) of the HMTA. This ruling was applied for under, and is issued pursuant to, the procedures set forth at 49 CFR 107.201 through 107.209.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366-4401].

I. Background

A. Chronology

On May 5, 1983, the Government of Prince George's County, Maryland (the County) filed an application for an administrative ruling seeking a determination as to whether Prince George's County Code Section 18-187, restricting the movement of radioactive materials into, within, through, and out of the County, is inconsistent with the HMTA or the Hazardous Materials Regulations (HMR) issued thereunder. In its application, the County claimed that certain subsections of the code section were consistent with HMR, but did not address the consistency of the remaining subsections.

On October 4, 1984, the Materials Transportation Bureau (predecessor to OHMT) published a Notice and Invitation to Comment [49 FR 39260]. In response to that invitation, comments were received from four companies, four industry associations, and one individual. All commenters asserted that the Prince George's County Code Section was inconsistent with the HMTA and the regulations issued thereunder. All were of the opinion that the code section would delay the transportation of radioactive materials and thus be an obstacle to the execution of the HMTA and the HMR. Several of the commenters noted that some of the provisions of the code section provided the County Executive with broad discretionary authority as to the movement of radioactive materials through the County. Several commenters also claimed that an intolerable burden would be imposed on interstate commerce if the prenotification requirements of the Code were upheld. A few of the commenters cited and relied on previous inconsistency rulings, especially inconsistency rulings 7 through 15 of November 27, 1984 (49 FR 46632).

B. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 U.S.C. app. 1811(a)) preempts "... any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

Although advisory in nature, inconsistency rulings issued by the Department under 49 CFR Part 107, Subpart C provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision thereof. If a state or political subdivision requirement is found to be inconsistent, such a finding provides the basis for application to the Secretary of Transportation for a determination as to whether preemption will be waived (49 U.S.C. app. 1811(b); 49 CFR 107.215 through 107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A Federal court might find a non-Federal requirement statutorily preempted under another statute or preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, the Department of Transportation does not make such determinations in the context of an inconsistency ruling.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following case law criteria for determining whether a state or local requirement is consistent:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

There is a longstanding Federal-state relationship in the field of highway transportation safety which recognizes the legitimacy of state action taken to protect persons and property within the state, even where such action impacts upon interstate commerce. Despite the dominant role that Congress intended for the standards of the Department, there are certain aspects of hazardous materials transportation that are not amenable to exclusive nationwide regulation. One example is traffic control. Although the Federal Government can regulate in order to establish certain national standards promoting the safe, smooth flow of highway traffic, maintaining that flow in the face of short-term disruptions is necessarily a predominantly local responsibility. Another aspect of hazardous materials transportation that

is not amenable to effective nationwide regulation is the problem of safety hazards which are peculiar to a local area. To the extent that nationwide regulations do not adequately address a uniquely local safety hazard, state or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard. The mere claim of uniqueness, however, is insufficient to insulate a non-Federal requirement from the preemption provisions of the HMTA.

Certain areas of transportation safety do demand a strong, predominant Federal role. In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" S. Rep. 1192, 93rd Cong., 2d Sess., 37–38 (1974). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While HMTA did not totally preclude State or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

It is important to note that, even when there is an unquestionably unique local safety hazard, a State or local government may not resolve the problem by effectively exporting it to another jurisdiction. *(Kassell v. Consolidated Freightways*, 450 U.S. 662 (1981)). For example, a previous inconsistency ruling dealing with a hazardous materials routing rule issued by the City of Boston (IR–3, 46 FR 18918, March 26, 1981), stated that consistency with the HMTA requires a state or local government to "act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." (46 FR 18922).

II. Prince George's County Code Section 18–187

Subsection (a)(1) of section 18–187 states that the purposes of the code section are "To provide minimum standards and regulations insuring the safe shipment and transportation of radioactive materials into, within, through, and out of Prince George's County" and "To regulate the transport of hazardous radioactive wastes through Prince George's County." The right of state and local governments to regulate the transportation of hazardous materials through their jurisdictions was recognized in IR–12 (49 FR 46650, November 27, 1984) and IR–15 (49 FR 46660, November 27, 1984) provided the requirements are consistent with the HMTA and the HMR. IR–12 stated:

> The HMTA does not preempt all state and local regulations of hazardous materials transportation safety, only those regulations which are inconsistent. Therefore, the mere statement of intent to regulate is not inconsistent with the HMTA. 49 FR 46651.

Section 18–187(a)(1) imposes no obligation to act on any party; therefore, no problem arises under the "dual compliance" test. With regard to the "obstacle" test, the statement of intent does not indicate a role for local government which exceeds that intended by the framers of the HMTA. Therefore, section 18–187(a)(1) is consistent with the HMTA.

In subsection (a)(23) of section 18–187, the County makes four findings regarding the transportation of "hazardous radioactive wastes and other radioactive materials." The following is a summary of their findings:

(A) The increased production of hazardous radioactive materials has led to increased transportation of them and more transportation accidents involving release of radioactivity into the environment.

(B) Although the County does not know the kinds or numbers of hazardous shipments going through its jurisdiction, there is persuasive evidence that the shipments are substantial and will increase in the foreseeable future.

(C) There is no monitoring of many of these shipments by either the Federal Government or the County, and Federal enforcement capabilities are inadequate unless supplemented by State or local action.

(D) Thus, these radioactive materials shipments into, within, through and out of Prince George's County pose a significant threat to the public health and safety and the environment.

Since the County did not submit comments on its application, and the Department does not have information to support them, it is difficult to determine the basis for these findings. No evidence has been presented showing that the threat to Prince George's County residents is any greater than to residents of adjoining jurisdictions in Maryland, Virginia or the District of Columbia. Although the validity of the findings is not substantiated, because they impose no obligation to act, I find section 18–187(a)(2) does not constitute a "requirement" within the meaning of the HMTA. As in IR–9, (49 FR 46644, November 27, 1984), a State or local action which is not a "requirement" is not subject to preemption under the HMTA. Thus, the issue of inconsistency does not arise.

Subsections (b)(1)–(7) of section 18–187 contain definitions relating to the County's requirements.

IR–5 (47 FR 51991, November 18, 1982), which dealt with definitions of hazard classes in the City of New York Administrative Code is relevant in considering local definitions:

> In addition to the fact that the City's differing hazard class definitions present an obstacle to the accomplishment of the general Congressional purpose of promoting uniformity in hazardous materials transportation, those definitions also present an obstacle to the accomplishment of the more specific purpose of achieving the maximum level of compliance with the HMR. The HMR are, in and of themselves, a technical set of regulations which occupy approximately 1,000 pages of the Code of Federal Regulations. . . . For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme. . . . Such duplication is a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety. 47 FR 51994.

As noted in several prior inconsistency rulings, the Federal role in defining hazard classes is exclusive. (IR–5; IR–6, 48 FR 760 (January 6, 1983); IR–8, 49 FR 46637 (November 27, 1984); IR–12, 49 FR 46650 (November 27, 1984); IR–15, 49 FR 46660 (November 27, 1984); IR–16, 49 FR 20872 (May 20, 1985). Thus, review of (b)(1) through (7) will consider whether these County definitions conflict with the HMR's exclusive hazard classification scheme. In general, definitions of terms other than hazard classes are not requirements in and of themselves. However, an otherwise "consistent appearing" requirement may be rendered inconsistent if it is based on a definition that is inconsistent.

Subsections (b)(1) and (b)(3), respectively, define the terms—"curie" and "millicurie" as follows:

> "curie"—an expression of the quantity of radiation in terms of the number of atoms which disintegrate per second; a curie is that quantity of radioactive materials which

decays such that thirty-seven billion atoms disintegrate per second.

"millicurie"—one-thousandth of a curie.

Although these terms are not specifically defined by either the HMTA or the HMR, they are used in the HMR to establish the degree of regulation (if any) to specific forms or amounts of radioactive materials. The definitions of them in section 18–187(b)(1) and (b)(3) are consistent with their usage in the HMR.

The term "large quantity radioactive materials" is defined in section 18–187(b)(2) as "a quantity the aggregate radioactivity of which exceeds that specified in Volume 10 of the Code of Federal Regulations (CFR) Part 71 entitled 'Packaging of Radioactive Material for Transport'; section 71.4(f)." When the County adopted this regulation, the HMR contained a similar definition. However, in a final rule issued on July 1, 1983 (Docket No. HM–169; 48 FR 10218) the term "highway route controlled quantity" was substituted for "large quantity radioactive materials." Therefore, use of the superseded terminology could cause confusion and undermine compliance with the HMTA and the HMR; thus, section 18–187(b)(2) is inconsistent with the HMTA and the HMR.

Subsection (b)(4) of section 18–187 defines "person" as "any individual, partnership, or corporation engaged in the transportation of passengers or property, as common, contract, or private carrier, or freight forwarder." That definition does not use the exact wording that is in the 49 CFR 171.8 definition of "person," but the intent of (b)(4) apparently is to include most individuals or entities engaged in the transportation of hazardous materials; however, it fails to include shippers (other than freight forwarders). Because it thus applies the County's requirements to fewer persons than the HMR, this definition minimizes possible dual compliance or obstacle requirements, and, therefore, is consistent with the HMTA and the HMR.

The definitions of "radioactive" and "radioactive material" in sections 18–187 (b)(5) and (b)(6), respectively, are as follows:

"radioactive"—spontaneously emitting ionizing radiation.

"radioactive material"—any material or combination of materials which spontaneously emits ionizing radiation.

Both definitions have the limitation that "Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material and in which the radioactivity is essentially uniformly distributed are not considered to be radioactive." (The (b)(5) limitation erroneously refers to specific "gravity" instead of specific "activity," but its intent is clear.)

This definition of "radioactive material" uses essentially the same wording that is in 49 U.S.C. app. 1807(b) and 49 CFR 173.403(y). The term "radioactive" is not specifically defined in either the HMTA or the HMR, but its definition in section 18–187(b)(5) is consistent with its usage in the HMTA and the HMR, including its use in the HMTA and HMR definitions of "radioactive material." Thus, section 18–187(b)(5) and (b)(6) are consistent with the HMTA and the HMR.

Finally, the definition of "transport" in section 18–187(b)(7) is different than under the HMTA (49 U.S.C. app. 1802(6)), since it includes only rail and highway transportation. Therefore, shipments of radioactive materials by air and water are excluded under this subsection. The definition's limitation of the County's program to highway and rail minimizes any "dual compliance" problem and presents no obstacle to the accomplishment and execution of the HMTA or the HMR. Although a regulation allowing certain hazardous materials to be carried by motor vehicle but not by other modes of transportation is inconsistent with the HMTA, *South Dakota Dept. of Public Safety ex rel. Melgaard v. Maddenham*, 339 N.W. 2d 786 (S.D. 1983), an otherwise consistent requirement will not be found inconsistent merely because it applies only to certain modes of transportation. Here, section 18–187(b)(7) indicates an intention to regulate highway and rail transportation but does not indicate an intention to bar transport by other modes. Therefore, I find that section 18–187(b)(7) is consistent with the HMTA and the HMR.

In summary, with respect to definitions in the County's rules, therefore, I find that section 18–187(b)(2) is inconsistent with the HMTA and the HMR and thus is preempted, and that the remaining subsections, section 18–187(b)(1), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7), are consistent with the HMTA and the HMR.

The County's substantive regulations contain an extensive permitting system for the transportation of radioactive materials into, within, through or out of the County. A "Certificate of Emergency Transport" is required for transportation of numerous types of radioactive materials. Specific information must be provided to obtain the Certificate, and the County Executive has discretion to require more information. Conditions for obtaining the Certificate include the making of several findings by the County Executive and the filing of a bond by the applicant.

The essence of section 18–187 is found in subsection (c)(1), which prohibits the transportation in the County of certain classes of radioactive materials uless the transporter obtains a "Certificate of Emergency Transport" authorizing those materials to be transported into, within, through, or out of the County. Subsection (c)(1) provides:

(c) Transporting of radioactive materials.

(1) No person shall transport into, within, through, or out of Prince George's County any of the following materials unless a "Certificate of Emergency Transport" has been issued by the County Executive or his designee:

(A) Plutonium isotopes in any quantity and form exceeding two grams or twenty(20) curies, whichever is less;

(B) Uranium enriched in the isotope U–235 exceeding twenty-five (25) atomic percent of the total uranium content in quantities where the U–235 content exceeds one kilogram;

(C) Any elements with atomic number eighty-nine (89) or greater, the activity of which exceeds twenty (20) curies;

(D) Spent reactor fuel elements or mixed fission products associated with such fuel elements which exceeds [sic] twenty (20) curies;

(E) Large quantity [now highway route controlled quantity] radioactive materials;

(F) Any quantity, arrangement, and packaging combination of fissile material specified by the United States Nuclear Regulatory Commission as a "Fissile Class III" shipment in 10 CFR, 571.4(d)(3) [sic] relating to packaging of radioactive materials for transport.

(G) Any shipment or transportation of radioactive material that is required by any federal or Prince George's County regulating agency to be accompanied by an escort for safety reasons.

Classes (A)–(E) are identical to classes considered in IR–12 (49 FR 46650, November 27, 1984), in which a St. Lawrence County (N.Y.) law was found to have created, in effect, a new hazard class by the imposition of additional requirements on a subgroup of radioactive materials. That ruling stated:

If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety. 46 FR 46651.

Thus, the establishment of these classes was found to "constitute an obstacle to the accomplishment of Congressional objectives of enhanced safety and regulatory uniformity underlying

enactment of the HMTA and adoption of the HMR." 49 FR 46651. As was the case in IR-12, the regulations here fail to distinguish between highway route controlled quantity radioactive materials, which are regulated under 49 CFR 177.825(b), and radioactive materials for which placarding is required, which is regulated under 49 CFR 177.825(a). The effect of these County provisions is to bar transportation of radioactive materials which is in compliance with the HMTA and the HMR unless a County Certificate is obtained. These restrictions apply because of the hazardous nature of the cargo and create the likelihood of diversion of transportation to other jurisdictions. Thus, Prince George's County's requirements in section 18-187(c)(1) (A)-(E) are inconsistent with the HMTA and the HMR.

The reference in section 18-187(c)(1)(F) to "10 CFR 571.4(d)(3)" is erroneous and should have been to 10 CFR 71.4(d)(3). This subsection covers all fissile material shipments designated as Fissile Class III, regardless of the quantity, arrangement, or package combination of the shipment. In section 18-187(c)(1)(G), the County went one step further in its hazardous class designations by creating a sweeping category including any radioactive materials shipment required by any Federal or County agency to have an escort for safety reasons. As with subsections (A) through (E), the County has improperly established a hazard class requiring a transportation permit; thus, section 18-187(c)(1)(F) and (G) are inconsistent with the HMTA and the HMR.

In summary, therefore, all of section 18-187(c)(1) (A)-(G) constitutes a system of hazard class designations at variance with the HMTA and the HMR. Just as in IR-12, and other cited inconsistency rulings, the section 18-187(c)(1) designation of hazard classes constitutes an obstacle to the accomplishment of the Congressional objectives underlying the enactment of the HMTA and the adoption of the HMR.

As indicated above, paragraphs (c), (d) and (e) of section 18-187 establish a detailed and subjective permit system for the above types of radioactive materials. However, the HMR already provide extensive regulation of the transportation of radioactive materials. Part 173, Subpart I (173.401 through 173.478) of 49 CFR provides detailed packaging requirements for radioactive materials and incorporates by reference the Nuclear Regulatory Commission requirements in 10 CFR Part 71. Highway routing and training requirements concerning radioactive materials are contained in 49 CFR 173.825. In addition, 49 CFR 173.22(c) requires shippers of irradiated reactor fuel to provide physical protection in compliance with NRC requirements or equivalent requirements approved by OHMT.

Because, therefore, the HMTA and the HMR have almost completely occupied the field of radioactive materials transportation safety, State and local requirements in that field are limited, as appropriate, to: (1) Traffic control or restrictions applying to all traffic, (2) designation of alternate preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, and (4) enforcement of consistent requirements or those for which preemption has been waived. Thus, state and local permit requirements for the transportation of radioactive materials generally are inconsistent with the HMTA and the HMR. IR-8 (49 FR 46637), IR-10 (49 FR 46645), IR-11 (49 FR 46647), IR-12 (49 FR 46650), IR-13 (49 FR 46653), IR-15 (49 FR 46660) (all November 27, 1984).

The County's permit system includes extensive and open-ended advance notification and information requirements, including the following:

(c)(2)(D) Proposed date and time of shipments;

(c)(2)(E) Starting point, schedule route, and destinations; place and time of any stops; unscheduled stops prohibited (sic);

(c)(2)(G) Any other information required by the County Executive which is reasonably related to the aforegoing information.

(d)(1)(A) . . . a showing that the radioactive material has been or will be containerized and packaged, and all warning labels affixed to the outer container holding the radioactive material and that the vehicle transporting such material will be operated and equipped in conformity with the regulations of the United States Department of Transportation, the United States Nuclear Regulatory Commission, or any other federal or county agency having jurisdiction, regardless of whether the shipment is being made within, into, or out of Prince George's County (sic) . . . .

Interpretation problems aside, these advance notification and information requirements exceed Federal requirements, create an additional burden or delay and thus are inconsistent with the HMTA and the HMR. IR-2 (44 FR 75566, December 20, 1979); IR-6 (48 FR 760, January 6, 1983); IR-8 (49 FR 46637, November 27, 1984); IR-14 (49 FR 46656, November 27, 1984); IR-15 (49 FR 46660, November 27, 1984); IR-16 (49 FR 20872, May 20, 1985). The requirements in paragraphs (c)(2)(D) and (c)(2)(E) violate the prohibition against disclosure to non-law enforcement local authorities of schedules and itineraries for specific shipments of specified quantities of radioactive materials contained in 10 CFR 73.21 and incorporated by reference in 49 CFR 173.22(c); therefore, they fail the "dual compliance" test and are inconsistent. Also, to the extent that paragraph (d)(1)(A) represents a local packaging requirement, it is inconsistent; state and local governments may not issue packaging requirements that differ from or add to Federal ones. IR-2 (44 FR 75566 at 75568, December 20, 1979).

The County's permit process is further flawed by a three-business day processing period and an unlimited possibility of extending that time period. Section 18-187(d)(4). As indicated in an OHMT policy statement on radioactive materials transportation, 49 CFR Part 177, Appendix A, requirements unnecessarily delaying transportation are inconsistent.

Among other fatal defects in section 18-187 are a provision for virtually unfettered discretion whereby the County may change dates, routes and times for radioactive materials transport (section 18-187(d)(4)); and vague prohibitions against such transport in the absence of findings of adequate emergency response capability (section 18-187(d)(3)) and of transportation "in a manner necessary to protect public health and safety . . ." (Section 18-187(d)(3)). With respect to emergency response, for example, the County neither can shift its own responsibility to carriers, IR-2 (44 FR 75565, December 20, 1979), nor hold carriers hostage to the County's case-by-case determination of its emergency response capabilities. These requirements conflict with the comprehensive OHMT/NRC regulatory system for the transportation of radioactive materials and constitute obstacles to the achievement of the objectives of the HMTA and the HMR. Therefore, I find them to be inconsistent.

Similarly, the open-ended authority to require escorts (section 18-187(d)(4)) is a prohibited obstacle to transportation. In radioactive materials transportation, a state or local requirement identical to or facilitating NRC's requirement for front and rear escorts for certain shipments is consistent, IR-14 (49 FR 46656, November 27, 1984), IR-17 (51 FR 20927, June 9, 1986), but a requirement which goes beyond the NRC's escort provisions is inconsistent with the HMTA and the HMR. IR-11 (49 FR 46647, November 27, 1984); IR-13 (49 FR 46653, November 27, 1984).

Section 18–187(e) requires, as a condition precedent to permit issuance, the posting of a bond sufficient to protect the County from "the cost of cleanup, decontamination, and immediate and residual health costs arising from radiation exposure." The County Executive determines the amount of the bond or waives the bond if the applicant proves it has made adequate provisions for bearing these possible costs. There is no indication that compliance with the motor carrier financial responsibility provisions of 49 CFR Part 387 would be deemed to be "adequate." In any event, indemnification or insurance requirements for transporting radioactive materials differing from, or in addition to, Federal requirements are inconsistent with the HMTA and the HMR. IR–11 (49 FR 46647, November 27, 1984).

In addition to these specific problems, the County's certificate requirement constitutes a routing rule in the form of a permit. As indicated in Appendix A to 49 CFR Part 177, a "routing rule" is:

> . . . any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects . . . .

Some of the classes in section 18–187(c)(1)(A)–(G) are other than highway route controlled quantities and thus are subject to different routing requirements under the HMR than highway route controlled quantities. Subsection (c)(1) fails to make this distinction and thereby imposes the same routing requirements on both highway route controlled quantities and those which are other than highway route controlled quantities. Transporters of other than highway route controlled quantity radioactive materials are subject to the following Federal routing set forth in 49 CFR 177.825(a):

> (a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—
>
> (1) There is only one practicable highway route available, considering operating necessity and safety, or
>
> (2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

The County's permit requirement for both highway route controlled quantity material and other than highway route controlled quantity is an unauthorized attempt by a local government to regulate the transportation of radioactive materials. Routing restrictions for non-highway route controlled quantities of radioactive materials are inconsistent with 49 CFR 177.825(a) unless identical to that section. For highway route controlled quantities, 49 CFR 177.825(b) provides States (but not local governments) with a means of modifying the status of preferred routes, and Maryland has designated preferred routes in accordance with the HMR. The term "preferred route" is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with the Department's guidelines. Maryland's designated preferred routes are:

> U.S. 48–I–70 (Hancock) to West Virginia State Line.
>
> U.S. 301—Delaware State Line to Virginia State Line via William Preston Lane and Nice Memorial Bridges.
>
> J.F. Kennedy Memorial Highway Delaware State Line via JFK Memorial Highway, plus I–95 west of Baltimore City of MD 695 via Key Bridge), I–95 to Capital Beltway and I–95 or I–495 to Virginia State Line.

Of concern to the County are U.S. 301, the Capital Beltway, I–495 and I–95, which run through Prince George's County. The permit requirements of section 18–187 would circumvent the State's designation of U.S. 301 by providing the County with an almost unfettered ability to ban shipments on this State-designated route and thereby usurping the State's authority under 49 CFR 177.825(b); it also is inconsistent with that Federal regulation's requirement that highway route controlled quantity radioactive materials be carried on an Interstate System highway in the absence of a state-designated route. While Prince George's County legitimately may seek to further reduce the County's exposure to the risk inherent in the transportation of radioactive materials, it cannot do so by ignoring the State's designation of preferred highways, nor can it export that risk to its neighboring jurisdictions. Such an approach not only frustrates the equitable distribution of risk which the Federal rule sought to achieve, but also impedes the accomplishment and execution of the HMTA's objective of regulatory uniformity.

The following language of IR–12 (49 FR 46650, November 27, 1984) relating to permits is applicable here:

> By restricting access to highways in St. Lawrence County, the requirement redirects shipments of other than highway route controlled quantity radioactive material into adjoining jurisdictions. In bringing about this result, St. Lawrence County has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If St. Lawrence County could impose such restrictions on the availability of its highways to vehicles engaged in the interstate transportation of radioactive materials, then any local jurisdiction could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA. 49 FR 46652.

Section 18–187(f) provides for a fine of not more than $1,000 for each violation of section 18–187 or the terms of the "Certificate of Emergency Transport." While penalties for violating consistent requirements are themselves consistent (IR–3, 46 FR 18918, March 26, 1981), penalties, such as this one, for violating inconsistent requirements are themselves inconsistent.

Therefore, for all the reasons discussed above, all provisions of section 18–187(c), (d), (e) and (f) are inconsistent with the HMTA and the HMR.

III. Ruling

For the foregoing reasons, I find subsections (b)(2), (c), (d), (e) and (f) of Prince George's County Code section 18–187 inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. app. 1811(a). Subsections 18–187(a)(1), (b)(1), (b)(3) through (7) are consistent with the HMTA and the HMR. Subsection 18–187 (a)(2) is not a requirement within the meaning of the HMTA and therefore is not subject to preemption under the Act.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC on December 18, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR. Doc. 86–29022 Filed 12–31–86; 8:45 am]

BILLING CODE 4910–60–M

federal register

Friday,
January 2, 1987

Part III

Department of Agriculture

Forest Service

Recreation Residence Authorizations; Proposed Policy; Request for Comments

DEPARTMENT OF AGRICULTURE

Forest Service

Recreation Residence Authorizations; Proposed Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Forest Service proposes to adopt revised policies and procedures for administering special-use permits that authorize privately-owned recreation residences on National Forest System lands. These policies and procedures reflect comments received on a proposal published May 23, 1984 (49 FR 21775) and subsequent discussions with permittee representatives. The proposal addresses (1) use of 1978–1982 fees as a base for a 20-year fee cycle with annual indexing, (2) recreation residence appraisal standards, (3) study guidelines for determining continuance of recreation residence permits, and (4) cooperation with permittee representatives in the resolution of appeals relating to recreation residence issues.

In addition, the Forest Service gives notice of its intention to develop several other proposals related to establishing fees for recreation residences.

The intended effect of these proposals is to help resolve the longstanding controversy and permittee concerns over recreation residence fees and to substantially reduce Agency costs of administering recreation residence permits.

DATE: Comments must be received by April 2, 1987.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2720), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

The public may inspect comments received on this proposed policy in the office of the Director, Lands Staff, Room 1010, Rosslyn Plaza East Building, 1621 North Kent, Rosslyn, VA, between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATIOM CONTACT: Ruben Williams, Lands Staff, Forest Service, (703) 235–2253.

SUPPLEMENTARY INFORMATION: The Forest Service manages approximately 15,800 special-use permits that authorize recreation residences at specific sites on National Forest lands. On May 23, 1984, the Agency published for public comment a notice describing proposed changes in the fee determination policy (49 FR 21775). The major changes proposed at that time were to adopt a 20-year fee review cycle instead of the present 5-year cycle and to provide annual adjustment of the fees based on changes in the overall Consumer Price Index.

Agency review of comments received, and as well as discussions with permittee representatives following the May 1984 proposal revealed that a number of permittees were concerned with policies dealing with tenure and security as well as rental fees charged for the sites. Since early 1985 a group of permittee representatives has been working cooperatively with the Forest Service on a plan for resolving the issues, with the result being the expanded proposal described in this notice.

Analysis of Public Responses

The Forest Service received 612 letters, 5,359 forms and 4 petitions for a total of 5,975 responses to the May 23, 1984 proposal. Most of the forms were response questionnaires generated through the joint efforts of the National Forest Recreation Association (NFRA) Homeowners Division and the National Inholders Association (NIA). Responses came from 48 states, the District of Columbia, and Puerto Rico. Almost one-half (47%) were from California, where 42 percent of all National Forest recreation residence permits are issued. Approximately 17 percent were from Oregon and Washington, which accounts for 16 percent of the total recreation residence permits issued by the Forest Service. Other states from which large numbers of responses originated include Arizona (4.7% of the responses), Colorado (3.7%), Idaho (3.5%), Montana (4.1%), Utah (4.4%), and Wyoming (3.1%).

The Agency received an array of comments, centering on the fee cycle, the fee base, the use of Consumer Price Index-Urban (CPI–U), reappraisal, fair market value, and land disposal. A large majority of the responses indicated a belief that the overall proposal was not fair as submitted.

The comments generally reflected permittee concerns with financial security and the fear that escalating fees might someday lead to only the "wealthy" being able to afford summer home sites they now enjoy. A desire for a less complicated and more objective fee system was also consistently expressed. As part of their response to our proposal, the NFRA Homeowners Division and the NIA submitted a fee determination proposal that would reallocate the sum total of existing fair market value fees under a site classification/point system. All sites would be classified and points (up to 12) assigned to reflect significant differences in access and proximity to navigable waters. The fee for each site would depend upon the value of each point and would range between a minimum of about $150 and a maximum of $800.

An Oregon permittee presented the Forest Service a report of a permittee opinion survey prepared by a market research analysis company (Mar%Stat). In conducting its study, the company mailed a 4-page summary outlining three fee options (A, B, & C) to 3,000 permittees. Option A contained the major thrust of the Forest Service proposal (a 20-year fee cycle with CPI fee adjustments). Option B (recommended by the permittee who commissioned the survey) proposed automatic permit renewal, a fee system at a higher rate than Option A (6–8 percent of the appraised site value as opposed to 5 percent now being used), the freezing of fees upon retirement or disability, and payment of damages (including leasehold value) in the event of the Government's decision not to renew a permit. Option C was very similar to the NFRA Homeowners Division/NIA proposal. Some 610 permittees actually completed and returned the survey form. According to this market study, 41 percent favored the "use value" method described in Option C; 30 percent favored Option B; 10 percent favored Option A; and 23 percent did not favor any of the 3 options. Of the total sample, 51 percent (311 permittees) indicated a willingness to pay higher fees in exchange for more security.

The following is a concise summary of the key points of public comments on Forest Service proposed changes in recreation residence fee policy. The items are numbered as in the May 23, 1984, **Federal Register** Notice of the proposal.

Responses To Proposal

Many respondents suggested that the Forest Service provide compensation or credit for stewardship and service work provided by permittees. Some suggested that a permittee board oversee and consent to any changes in fee policies before they become effective. Others suggested providing greater flexibility in the system, getting out of the leasing business, increasing revenues either through charging fees to all Forest patrons, through increasing commercial-use fees, or through creating more recreation residence tracts.

Some respondents indicated special consideration should be given to retirees, disabled persons, and veterans. Others suggested compensations such as allowing full-time residency or reduced

fees similar to the Park Service Golden Years Passport. Other special exemptions suggested were to freeze fees for 10 years and to freeze fees upon permittee retirement or disability with the difference owed the government to be paid upon sale of the property and reissuance of the permit to a new owner.

Item 1: 20-year Review Cycle

The May 1984 proposal would have increased the fee review cycle from 5 years to 20 years. Several respondents disagreed with 20-year reviews indicating that many factors can cause residence values and CPI to fluctuate dramatically within 20 years. Several responses suggested shortening the review cycle to either 5 or 10 years; providing an escape clause to adjust for changes occurring within the 20 years due to natural catastrophe or human impact; and ensuring that leases agreed with the county property appraisal process or California's Proposition 13.

Item 2: 1978–1982 as the Base Period

Under the proposal, the 20-year cycle would begin using fees established during the 1978–1982 period. A number of respondents suggested using earlier years as the base period rather than 1978–1982. These respondents generally felt that the late 1970's were marked by inflated values and inconsistent appraisals. Some suggested using fees established during the next-to-last fee appraisal period plus 50 percent. Some suggested that the Forest Service begin indexing of fees from the present year. Others suggested using the sum total of all fees nationwide with the 1978–1982 base period, and then redistribute the fees under a point system. Several suggested the Forest Supervisor review the fee base year before applying the Consumer Price Index.

Item 3: Annual Indexing

Under the May 1984 proposal, special-use permits would have been amended, as needed, to allow annual indexing. Several respondents preferred adjusting fees to the CPI at 5-year intervals rather than yearly. Some recommended allowing payment to be made in lump sum, rather than annual indexing, with proportionate reimbursement if the lease were broken within 20 years.

Item 4: Consumer Price Index—Urban

The Forest Service proposed making annual adjustments to fees based on changes in the Consumer Price Index-Urban. Most respondents to the use of the CPI–U disapproved of the idea because many of the factors used in the index are not related to land value. Comments noted that land values remained stable or declined while the CPI rose. Respondents felt that using CPI–U would lead to increased appeals and chaos. Some respondents stated that the CPI was inflationary and that fees would become too expensive for retirees and middle- to lower-income permittees whose wages do not correspond to the CPI.

Some respondents suggested that the Forest Service use the average CPI–U over the most recent 20 years; multiply this average CPI–U times the current fee; or use the current lease cost plus CPI without compounding. Others suggested using a yearly percentage of the CPI, such as 50–85 percent, 50–60 percent with a surtax on 10 percent of the adjusted fee, 25 percent, or 2/3 of the CPI. Others suggested using a median or cumulative CPI–U from the base year. Some suggested the Forest Service sample fees periodically to see if land values correspond to the CPI increases; or that the Forest Service follow the Fiscal Year 1985 Appropriations Act, using a maximum fee of $800 based on the next-to-last fee and the CPI. Some comments recommended using the CPI index modified to include a window based on a land value index.

Some respondents suggested alternative indices such as the Gross National Product Deflator, Rental Index, Rental CPI, CPI minus 2 or minus 3 (the Social Security index), Wholesale Price Index, or the "Relative Housing Price Levels". Two alternatives to indices were suggested: (1) Use of average increases in similar property and (2) use of a 2 percent annual inflation rise applied to a fee based on 75 percent of the selling price of the recreation residence.

Item 5: In Certain Cases, Apply CPI–U at 5-Year Intervals

The proposal called for 5-year CPI–U adjustments in cases where an existing term permit could not be amended to institute the 20-year review cycle. Most respondents agreed with this proposal, with some suggesting a modification to ensure that the fees would not increase more than 10 percent a year during the period.

Item 6: Yearly Limit and Deferment of Excess

The May 1984 proposal contained a 10 percent limit on annual adjustments, with the excess (in dollars) to be carried over to future years. Most respondents suggested removing the deferment provision. A few noted that a cap and deferment would not relieve inflated fee problems. Respondents suggested a variety of approaches: Maximum annual increases of 5 percent; 5-year caps of 6 percent, 15 or 20 percent; overall caps of 25 percent; and fee limits of $150, $250, or $300, $800, or administrative costs.

Item 7: Reevaluation Upon Transfer after Midpoint

The May 1984 proposal made provision for a reappraisal upon transfer of the residence to a new owner after midpoint in the fee cycle. Many respondents expressed concern that reappraisal upon sale of a recreation residence after midterm would penalize the selling permittees, deter sale, or create fee inequities among old and new permittees. Some respondents also noted that the policy would not be necessary if the CPI and appraisal method worked correctly. One respondent expressed the concern that appraisals take a long time, and during this time, both the buyer and seller would not know the cost of using the site.

Respondents suggested the cost of reappraisal should be paid by the buyer, the Forest Service, or divided between buyer and seller. Several suggested special exemptions be made for intra-family transfers which would include either no reevaluation, factoring in a sale price of zero, or applying 2–5 percent of land value at the most to the fee. Some recommended that permittees provide the appraisal, or that reevaluations be based on factors other than the CPI–U. Another respondent suggested that fees remain the same upon sale, with no reappraisal.

Item 8: Redetermining Fair Market Value Fees

The Forest Service originally proposed redetermination of base fees at the end of the fee cycle by using (1) land rental comparables, (2) a percent of appraised land value, or (3) the percent of land value changes over the period. Many respondents viewed the appraisal process as inaccurate, subjective, and biased. Several felt that the method does not fully compensate for devaluating factors inherent in the permit system. Some comments indicated that appraisal values are inflated because of the high demand on the scarce private land, a scarcity attributed to the large ownership of public land. In some areas, respondents felt the Forest Service actions of acquiring land have further inflated land values.

Among suggested modifications to the appraisal process were suggestions to use the county assessor's evaluations, or independent or permittee contracted appraisers. Other suggested modifications included providing

reappraisal when the 10 percent limit doubles within the 20-year cycle, establishing a fixed fee, basing fees on lot size, establishing a single fee for a given tract, and providing compensation for additional outside fees (taxes) and for lack of services. A few suggested eliminating the appraisal process. Two alternative methods suggested by respondents were (1) to base fees on administrative costs plus a 15–20 percent profit, or (2) base fees on a percentage of the improvements. Some respondents suggested establishing a permanent site classification system, including factors such as access, use, tenure, seasons, proximity to water, road conditions, public traffic, and available utilities. Many comments indicated fees should be lower for sites having shorter use seasons and for lots away from the waterfront. The NFRA/NIA joint proposal and Option C in the Mars%Stat survey also suggested types of site classification based on value of use.

Item 9: Resolution of Appeals

The proposal provided that outstanding appeals would be resolved based on the merits of each case and within the framework of the proposal changes. In event of appeals of fees, some respondents suggested that the Forest Service use independent arbitration with the cost split between appellants and the Forest Service.

Item 10: 5 Percent of Land Value

In situations where appraisal-established base fees did not exist for the 1978–1982 period, the proposal called for determining the fee by applying 5 percent to the 1982 land value. A number of respondents felt using 5 percent of appraised value for fee redeterminations is too high and does not adequately compensate for regulations, constraints, length of use, and personal property taxes. Some suggested 2–4 percent. However, some suggested applying private sector rental rates of 6 to 8 percent over the 20 years. One comment suggested 10 percent would be more appropriate and that the rental rates should be the same as those arrived at by the joint Forest Service-Bureau of Land Management Fee Task Force for linear rights-of-way.

Item 11: 20-Year Term

Under the proposal, term permits would have been issued for 20-year terms, subject to future use determinations. Although several respondents approved of a 20-year lease term, many suggested lengthening terms from 30 to 100 years, providing automatic renewal, or abolishing lease terms. Most comments were concerned primarily with terminations, stating that longer terms provided false security without greater protection from terminations. Suggested modifications included clarifying guidelines and criteria, terminating permits on an individual basis, no terminations, or providing 20 year's notice with reevaluation of plans 3 years before actual termination.

Item 12: Land Exchanges

The May 1984 proposal provided for greater emphasis to be placed on land exchanges to convey ownership to tracts containing recreation residences. A small number of respondents disapproved of encouraging land exchanges, stating that Forest quality would deteriorate, exchanges cost time and money, and exchanges are usually unsuccessful due to too much red tape. In contrast, some respondents suggested improvements in the exchange process, such as allowing approval by only a majority as opposed to a consensus of permittees; listing areas where preferred lands for exchange are available; and including deed restrictions. Another suggestion was to allow homesteading in place of exchange or sale.

Many respondents recommended selling recreation residence sites with first option to buy going to permittees. Advantages noted were reduced Federal expenses, security for permittees, permittee ability to borrow and assume mortgages, reduced vandalism through yearlong occupancy, increased improvements, or increased tax revenues. These respondents suggested that lots should sell for either fair market value or land value plus an additional fee, that permittees have an option to purchase or hold a 99-year lease, and that the Forest Service should provide restrictions for lot maintenance.

Other respondents suggested how lots should be sold. Some suggested sale of only those lots with low public value or creation of additional public lands to compensate. Some suggested selling lots on a group basis; other respondents preferred lot sales on an individual and voluntary basis. One idea was to turn lots over to the county through exchange, and allow the county to handle sales.

Permittee Consultations

In March and April of 1985, the Forest Service held several meetings in Salt Lake City, Utah, and San Diego, California, with permittee representatives for the purpose of reviewing the public comment on the May 1984 proposal and of seeking an equitable resolution of the permittees' concerns. These discussions led to a plan which the Chief outlined in an April 22, 1985, letter to the vice president of the NFRA Homeowners Division. As described, the plan entailed (1) use of the 1978–1982 fees brought forward with some form of indexing (perhaps CPI–U) under a 20-year fee cycle, (2) identifying and equitably resolving individual problem areas/unique appraisal situations, (3) developing unique methodologies, if needed, for responding to unusual circumstances, and (4) studying/developing a site classification approach to fees. In his letter, the Chief requested further input on the plan from the NFRA Homeowners Division, and offered to work personally with a representative group of permittees to oversee the effort and to work on modifications as needed.

Subsequently, a similar offer was made to the National Inholders Association (NIA). The permittee organizations agreed and in mid-1985 the Chief invited eight (8) permittee representatives (including leadership from the NFRA Homeowners Division and NIA and two individuals not affiliated with any permittee organization) to work cooperatively with him on the plan. The initial meeting with the group was held August 19, 1985, at which time the discussion centered on several key concerns identified by the group. These concerns were (1) establishing a regional appeal review board specifically for decisions affecting recreation residence permittees, (2) lengthening the term of the permit, (3) defining higher public purpose in the case of future use determinations, (4) compensating permittees in the event of termination or nonrenewal of the permit, (5) identifying and reviewing "problem area/unique fee situations", (6) placing a moratorium on termination and nonrenewal of permits, and (7) identifying differences between isolated cabins (those generally originating from trespass situations) and recreation residences (those summer homes situated within tracts or groups established by the Forest Service as part of its recreation management program).

On December 16–18, 1985, the permittee group met with Forest Service representatives and the Chief for the second time to discuss major elements in a revised proposal they had submitted a month earlier. The meeting, together with a third meeting held April 7–8, 1986, resulted in general agreement, subject to review by the Office of the General Counsel and the Office of Management and Budget, on a plan for resolving the permittees' concerns.

The subsequent reviews by Counsel and the Administration have resulted in some minor changes to the agreement, namely; (1) Elimination of the appeal panel originally proposed to provide for involvement of permittee organizations in the resolution of recreation residence appeals, (2) reduction in the time period for the phase-in of the 1987 fee increase from 4 years to 3 years, and (3) raising the "payback" requirement from one-third to one-half of the waived fee amount for those permits under termination notice or nonrenewal that are reissued after review of the decision, reference Forest Service Handbook 2709.11, Chapter 31.2.

Major Elements of Agreement

The major elements of agreement as subsequently modified are briefly summarized below. Some of these elements are incorporated in the proposed policy published as part of this notice. Others require further study or separate Agency action as noted.

1. Base Fees and Indexing

The Agency would use established fees that became effective during the years 1978–1982 as the base for a 20-year fee cycle using changes in the overall Implicit Price Deflator (IPD) for annual adjustments. Base fees would be updated to 1987 by applying the IPD adjustments. These new fees would not be immediately due in full; rather, the fees would be phased in over a 3-year period to provide an adequate, gradual adjustment of fees for permittees. This phase-in policy recognizes the fiscal impact that may occur on the permittee while assuring adequate revenue for managing these Federal lands.

After 1987, the Forest Service would adjust fees annually (where allowed under terms of the special-use permit) by changes in the overall IPD until the end of the 20-year fee cycle. At that time, new appraisals would be required.

2. Index Limitation

The Forest Service agrees to propose and submit for approval an amendment to its Special Uses regulations at 36 CFR Part 251 to limit IPD adjustments after 1987 to a 10-percent increase or decrease in base fees in any 1 year. The amendment would also provide that in the event an annual adjustment exceeded 10 percent, the excess amount would be carried over annually until the IPD adjustment drops below the 10 percent fee increase or decrease level.

3. Appraisals and Fee Determination

The Forest Service agreed to clarify and standardize instructions used in appraising recreation residence sites. Specifically, the Agency will develop standard instructions to and for appraisers to ensure common minimum standards in:

a. Appraisal format.

b. Definition of appraisal terms.

c. Site description checklists to assure complete consideration of forces and factors affecting values.

d. Comparable sales checklists to coordinate consideration of the market evidence with the subject site.

e. Agreements between the appraiser and the authorized Forest Service officer.

f. Assumptions, limiting conditions, and required certifications.

g. Standards of review to which the appraisal report will be subjected. Upon development, the appraisal instructions will be incorporated into FSH 2709.11, chapter 30, and become part of a standard contract form.

4. Annual Rental Rate

The Forest Service is agreeable to continuing to base recreation residence fees on 5 percent of the appraised site value.

5. Term Permit Form

The Forest Service has agreed to work with the permittee group and other interested parties in revising FS Form 2700–18, Term Permit for Recreation Residence. Such revisions will incorporate significant portions of the final recreation residence policy. The following areas are among those that may be considered for inclusion: Fees and indexing; issuance and renewal of permits; termination and nonreissuance; in-lieu sites; and other provisions, including optional permit provisions, governing the permit conditions and rights and restrictions of the permit.

6. Term Permit Renewal

New 20-year term permits will have a renewal clause that provides for reissuance, after the first 10 years, of a new 20-year term permit having the same renewal clause. Reissuance will be subject to a future use determination and updated terms and conditions.

7. Higher Public Purpose

The Forest Service and the members of the permittee group agree that for purposes of future use determination, the phrase "higher public purpose" refers to higher priority use of the site for benefit of the general public that is timely, clearly needed, in public demand, and otherwise could not be made available elsewhere. Consideration of the "higher public purpose" of lands under permit for recreation residences includes roads and public utility easements, public safety considerations, and public recreation needs that may require removal of the recreation residences. Unspecified public needs or uses, such as general Forest use or need for open space alone, do not meet the test of "higher public purposes." Conversion of recreation residence tracts to commercial use, such as a resort or marina, would require a clear and convincing need and greater burden of proof than for other uses. Significant alternatives that the Forest Service should consider are: (1) Combination uses that include recreation residences; (2) adjustment of lot sizes or location of improvements to better accommodate other such uses; and (3) fulfillment of public needs at other sites.

8. Future Use Determinations

This new proposal includes specific guidelines for conducting studies of the potential need for general public use of recreation residence sites.

Future use determinations will be conducted, of course, in accordance with the National Environmental Policy Act (NEPA) standards and requirements. Determinations may be made as a part of National Forest land management planning or separately. The report will be a separate study or a separate appendix to the Forest Plan. Determination reports will include an objective and fully explanatory description and analysis of all relevant data needed to explore in detail the reasonable alternatives.

The following are among the elements to be considered in future use determinations: The feasibility of common, shared, or multiple use that integrates recreation residences with other uses; the feasibility of using other sites to meet the higher public purposes, and for the recreation residences; the potential recreational and financial losses of permittees and others using their improvements as opposed to the benefits to the general public to be gained by nonrenewal of the permits.

9. Nonrenewal Notice

The Forest Service plans to continue to give permittees a minimum advance notice of 10 years in the event of a decision identifying higher public need for a recreation residence site, unless the site has been rendered unsafe by such events as massive earth movement or flooding. In any event, the longest possible notice will be given.

10. In-Lieu Sites

In case of termination or nonrenewal, the Forest Service will use every

reasonable effort to provide other sites upon which permittees may build or relocate their improvements.

11. Adjustment of Fees Upon on Nonrenewal

After notice of nonrenewal is given, the fees for use of recreation residence sites will be reduced to reflect the lower fair market values associated with the limited occupancy.

12. Participation in Appeals

The Forest Service has agreed to work with permittee representatives in each Region that desire to participate in resolution of recreation residence issues appealed to the Regional Forester by other permittees. The Reviewing Officer will consider information submitted by the permittees within the context of the appeals process as provided in 36 CFR 211.18. The Reviewing Officer may exercise his authority to extend time to give the permittees and other parties a reasonable time to submit their information.

13. Base Fee Reviews

The Forest Service will review certain base fees to ensure they are reflective of fair market value. This involves identifying and reviewing appraisals and other data affecting no more than 20 percent of the total recreation residence permits. The Agency will use the following criteria for identifying groups or National Forest areas for review:

a. Permits where the 1978–1982 fees are currently under appeal or the appraisal for 1978–1982 fees has been set aside. For example, under this criterion, the Forest Service is reviewing appraisals at Priest Lake, Idaho, and on the Eldorado National Forest.

b. Permits where appraisals were not conducted and used in establishing fees during the 1978–1982 period.

c. Permits whose fees are not based on an appraisal.

d. Recreation residence groups in an area designated for special management by Congress where land acquisition and scenic easement purchases by the Government appear to have significantly enhanced land (rental) values. Under this criterion, the Forest Service is reviewing fees on the Sawtooth National Recreation Area.

There may be situations other than these identified criteria that should be reviewed. Interested parties are invited to identify additional criteria or unusual appraisal situations or problems as part of their comments on this proposal. The Agency requests that reviewers not identify appraisals or concerns that have already been reviewed and resolved by the Chief through the appeals process.

14. Review of Decisions Not to Renew Permits

The Forest Service is agreeable to conducting supplemental or followup reviews of nonrenewal decisions prior to expiration of the permit to determine if circumstances have changed. Forest Service policy at section 2721.23a of the Forest Service Manual currently provides the following direction:

> The Forest Supervisor may review a termination (nonrenewal) decision at any time before the actual termination. If a review clearly indicates that a particular site is not needed for higher public use, the Forest Supervisor may amend the future use analysis to provide for continuation of the current use.

Recreation residence permittee representatives have proposed making such supplemental reviews mandatory 2–3 years prior to expiration of the authorization to ensure nonrenewal criteria adopted in the final policy is met. (Servicewide, there are currently about 300 recreation residence permits that have been identified for nonrenewal and eventual removal. Most of these actions date from future use decisions made in the 1960's and early 1970's.)

The Forest Service is concerned that making such supplemental reviews mandatory will create an unnecessary burden on the Government by subjecting the reviews to the appeals process. For this reason, the Forest Service is agreeable to implementing such reviews only if the Agency's administrative appeal regulations at 36 CFR 211.18 are revised. The Forest Service, with the assistance of the Joint Permittee Committee, intends to develop and submit for consideration during the next scheduled review of the Secretary of Agriculture's Appeal Regulations, revisions that would expressly exempt followup reviews of nonrenewal decisions from the appeals process. The proposed rule document also will include proposed changes in the Forest Service Directives System necessary to implement the followup reviews.

15. Isolated Cabin Permits

Recreation residence permittee representatives have proposed that the tenure provisions (future use determination requirements, etc.) be extended to certain qualifying "isolated" cabin permits. Although some may be used for recreation purposes, individual "isolated" cabins came into being through a variety of circumstances. For example, some cabins originated through trespass; some were constructed on invalid mining claims; others result from situations where use of buildings was reserved or agreed upon at the time of acquisition by the United States. Others resulted from a variety of individual unique situations: such as, remnants of old towns, dam tender cabins, railroad construction camps, and so forth. Some are used as year-round residences, and others are used as vacation or hunting cabins.

Under existing Forest Service policies, owners of virtually all such "isolated" cabins have been notified that the cabin must be removed by a specified date. Usually, the agreement to remove the cabin by a specified date was a condition for granting the original permit. Unlike recreation residences, there is no provision in law authorizing issuance of term permits for these types of uses. The uses are considered temporary uses and are authorized with annual renewable permits. Forest Officers have no authority to guarantee tenure for longer than the 1-year term of the annual permit. Thus, the agreement on date of removal is on a "not later than" basis. Pursuant to this longstanding policy, hundreds of such cabins have been removed from National Forest lands. About 1,000 are now under permit.

Recreation residence permittee representatives feel that, in some situations, the action taken by the Forest Service to establish a removal date was arbitrary and/or unfair to the cabin owner. For example, cabin owners often feel that if they don't sign and "agree" to Forest Service terms, they risk nonrenewal and loss of their improvements. Permittee representatives also believe that removal should be undertaken only if isolated cabins conflict with a higher public use and that isolation by itself is not sufficient cause for removal. Permittee representatives thus asked that a nation-wide review, similar to the process described for those recreation residences under nonrenewal notice, be undertaken.

The Forest Service intends that "isolated" cabin owners be treated fairly and, thus, is agreeable to working with permittee representatives to identify and review any arbitrary and/or unfair actions. However, this effort would be conducted in accordance with the following conditions:

a. As with review of recreation residences under nonrenewal notice, the Agency will not initiate reviews until after the appeal regulations (36 CFR 211.18) are amended to make any decisions resulting from the review nonappealable.

b. The Agency will not conduct reviews when the existing permits were issued and the removal dates have been established pursuant to one of the following conditions:

(1) In conformance with procedures set forth in the Church-Johnson Act which provided relief for occupants of invalid mining claims.

(2) To resolve a willful trespass.

(3) To resolve good faith trespass situations which now can be resolved by conveying the land to the occupant under authority provided in the Small Tracts Act.

(4) In recognition of situations where the use exists through a deed reservation or agreement reached at the time the United States acquired the property.

In the remaining situations, review may identify situations, such as (1) where the Forest Land Management Plan has found continued cabin use to be acceptable and nonconflicting with public use objectives; (2) where there has been a change in the management needs which led to establishment of the existing removal date; (3) where the cabin is situated in a location where recreation residence use would have been invited and authorized under normal circumstances; (4) where no conflict exists with management needs; or (5) the present cabin owner made a good faith purchase without knowing the particular status of the cabin. The authorized officer may, after review, decide to extend the removal date, retain the existing removal date, or convert the existing permit to a recreation residence permit, in which case, the tenure provisions applying to recreation residences would, in the future, apply.

Permittee representatives will conduct a survey of existing "isolated" cabin permits to determine which will qualify for review. Upon revision of the appeal regulations as noted above, the Forest Service will consult with permittee representatives on specific guidelines for conducting the reviews. Proposed changes in the Forest Service Directives System necessary to implement the reviews will be published along with the proposal to amend the appeal regulations (36 CFR 211.18).

16. Compensation

Many permittees feel very strongly that lack of security for retaining their permit is their greatest problem. The Mar%Stat permittee survey indicates a significant percentage of those permittees responding are willing to pay a higher permit fee for such security. To provide such security, permittee representatives proposed that the Forest Service compensate permittees for the value of the improvements, restoration of the site, and the cost of moving to an alternative site whenever a permit is not renewed. Representatives feel that such compensation is both justified and dictated because: (a) The investment in improvements cannot be depreciated for tax purposes; (b) if a permit is not renewed, they cannot sell their improvements and recover full value; (c) permittees originally were invited on to public land; (d) permits have been administered in a manner which encouraged and sometimes required further investment in improvements; (e) the administration of permits has led many permittees to believe they enjoyed long-term tenure privileges; (f) legislative and administrative philosophy and practice acknowledges the need for increased tenure security; (g) real estate philosophy and practice have changed greatly since permits were established; and (h) the philosophy of tenants' rights in this country has changed greatly since permits were established.

Should term permits be terminated, for other than breach, during the term of the authorization, there is provision in the terms of the permit which would allow the Forest Service to acquire and compensate the owner for the value of the improvements. However, it is the Forest Service's position that statutory authority does not allow compensation after permit expiration. The Forest Service is agreeable to working with permittees in exploring alternative programs of compensation such as an insurance-type fund, or a proposal to seek authority for collecting a fee surcharge that could be used to establish a fund from which compensation could be paid. At this time, however, the Forest Service is not prepared to propose a specific statutory amendment.

The tenure security problem has received a great deal of attention by those persons involved in developing this proposal. Legal opinion obtained by the Joint Permittee Committee does not agree with the Forest Service's position on compensation after permit expiration. Historically, the Forest Service has not terminated permits in mid-term but has utilized nonrenewal permits to end recreation residence use in specific cases. In such cases, the 10-year advance notice of nonremoval that the Forest Service provides is intended to help permittees plan for the remainder of the use and amortize their investment.

Because of the difficulty and complexity of the issue, it has been agreed that resolution cannot be immediately reached. There is agreement that discussion of the compensation issue will continue and that the Forest Service will work with permittee representatives to fully analyze possible methods and attempt to resolve the compensation problem.

17. Transition

Many recreation residence permittees have existing permits whose terms will not end for many years. If after public comment it appears that the preceding proposal should be adopted, permittees with unexpired terms on their permits must decide whether to immediately accept new term permits or wait until the existing permit term ends. For those choosing to accept new permits, it is anticipated that most will receive a 20-year term permit which will be revised to reflect the terms of the proposal. However, individual Forest Supervisors may elect not to grant a full 20-year term where a permit is on tenure or a future use determination study is under way or planned within 5 years.

Implementation

The Forest Service plans the following actions and methods for implementing the proposal, if adopted.

1. Within 30 days of final adoption, Forest Supervisors will notify each permittee of the length of term which will be granted.

2. If the Forest Supervisor decides on a term less than 20 years, the reasons therefore will be stated. Except for permits on tenure, the term must be at least 10 years and cannot be less than the term remaining on the existing permit. If a term less than 20 years is necessary because a future use determination study is under way or planned, the length of term granted should provide for time to complete the study plus 10 years.

3. Those permittees having annual permits or whose term permit ends December 31, 1986, will be offered new term permits on the same basis as though they had an existing term permit.

4. Annual fees for those permittees issued new term permits will be determined in accordance with provisions of the preceding proposal.

5. For those permittees electing to retain their existing permit, fees for 1987 will be determined by multiplying the aggregated IPD index for the number of years since the existing fee was established. For example, the 1987 fee for a permit with a fee of $300, established in 1979, would be $456 ($300 times 1.52). In accordance with the terms of existing permits, the fee established for 1987 would remain

constant until the end of the 5-year fee adjustment period. At the time, the appropriate aggregate IPD index would be applied to redetermine the fee. This methodology would continue until expiration of the term of existing permits, at which time the new term permit would be issued, unless notice of termination or nonrenewal has been given.

6. In accordance with existing procedures there will be no phase in of fees established as set forth in the preceding paragraph.

Request for Public Comment

The proposed recreation residence policy will, upon adoption, be issued as amendments to Forest Service Manual (FSM) Chapter 2720 and Forest Service Handbook (FSH) 2709.11, Special Uses. The proposed revised policy for recreation residences, as it would appear in the Agency's directive system, is set forth at the conclusion of this notice for public review and comment.

The Forest Service will review and consider comments in development of final procedures and policy on recreation residence use. A discussion of public comment received on the proposal will be published in the **Federal Register** along with the text of the final Forest Service Manual and Handbook amendments.

Dated: December 24, 1986.

R. Max Peterson,

Chief.

Proposed Revised Recreation Residence Policy

Note.—The Forest Service uses alphanumeric codes and subject headings to organize the text of direction. Only those sections of the Forest Service Manual and Handbook that would be revised are set out here.

Title 2300—Recreation, Wilderness, and Related Resource Management

2347—Private Recreation Use

This section deals with privately built and owned structures allowed on National Forest land under special-use authorization. These structures are maintained exclusively for the use and enjoyment of holders and their guests. As recreation facilities, they are vacation sites and are not used on a permanent basis. (See FSM 2720 for nonrecreation special uses.)

2347.03—Policy

1. Manage private-use sites in accordance with a basic recreation policy (FSM 2303) that reflects the growing public need for access to all National Forest resources and the facilities thereon.

2. Maintain in place those facilities now occupying National Forest land under special-use authorization that (a) are at locations where the need for a higher public purpose has not been established, (b) do not constitute a hazard to National Forest resources, and (c) do not endanger the health, safety, or well-being of the holder or the public. Phase out all other uses.

3. Deny application for new private facilities except where they replace similar existing facilities.

4. Deny commercial activity at permitted, private-use sites.

5. Require private-use permittees to maintain their sites to protect and restore the natural Forest environment. Do not allow nonconforming facilities to be placed at these sites.

6. Make future use determination studies on private uses of National Forest land to determine the appropriateness of continuing the use. See FSH 2709.11, Special Uses Handbook, for conducting future use determinations.

2347.1—Recreation Residences. (FSM 2721.23 and FSH 2709.11).

1. Administer recreation residence special-use permits to ensure proper use of the site for family recreation purposes.

2. Phase out in a reasonable manner isolated occupancies originally authorized by recreation residence special-use permits (a) to resolve trespass cases, (b) to settle invalid mining claim occupancy cases, or (c) which acknowledged prior ownerships in cases of land acquisition. This does not apply directly to isolated recreation residence use in tracts or groups specifically planned and established for recreation residence purposes.

3. Use every reasonable effort to provide in-lieu sites to permittees having received termination or nonrenewal notice. For this purpose, sites in or adjacent to established tracts may be used, or new tracts may be established at sites not needed in the foreseeable future for a higher public use. In-lieu sites should be comparable to the sites being recovered when possible, but holders cannot be guaranteed that the available sites will be entirely satisfactory. New recreation residence tracts will not be approved for other purposes. (See FSM 2721.23e.)

4. Although a few full-time residences are currently authorized by special-use permit, approve no new such authorizations, except in special situations to provide caretaker or other similar services where there is a demonstrated need, or for some other documented purpose approved by the Forest Supervisor (FSM 2347.12).

5. Continue recreation residences as a valid recreation use of National Forest lands unless need for a higher public use has been documented and established at the same location.

6. Issue 20-year term permits and renew them every 10 years unless otherwise established by a future use determination report.

7. Give at least 10 years written advance notice if permits are not to be renewed at expiration, except when (a) final decision authority does not rest with the Forest Service, (b) there is a breach of the permit, or (c) the site has been rendered unsafe by catastrophic events such as flood, avalanche, or massive earth movement.

2347.11—Preventing Unauthorized Residential Use

In tracts where the determination has been made that the site should remain in National Forest ownership, convert unauthorized residence use into bona fide recreation residence use. Enforce this objective in most tracts by enforcing the terms of the special-use permit. In other situations where a recreation residence has been used as a principal place of residence for many years, consider issuing a new special-use permit or reissuing in the case of transfer or sale of improvements, contingent on a clear understanding that the use will return to a bona fide, vacation-type home.

2347.12—Caretaker Residences

2347.12a—Authority. Authorize caretaker use of a recreation residence with annual permits under the Act of June 4, 1897. Require applicants who currently have term permits to surrender them since yearlong occupancy cannot be authorized under the the Act of March 4, 1915, the Term Permit Act.

2347.12b—Caretaker Residence Use. 1. The Forest Supervisor may authorize caretaker residence in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract(s), and alternate security measures are not feasible or reasonably available. The need for a caretaker residence rarely can be justified where yearlong occupancy is already authorized in the tract.

2. Authorize one residence per recreation residence tract depending on factors such as size and layout of the tract. The affected tract association, or if there is no association, at least 60 percent of the affected holders, must document approval of request for a

caretaker residence. Issue the permit for an existing residence.

3. Require the applicants for caretaker use to document those caretaker services they will provide.

4. Coordinate applications for caretaker residence permits with local Governmental agencies to avoid creating unreasonable demands or burdens for such services as snow plowing, mail delivery, garbage pickup, school bus, or emergency services.

5. Determine the fees for caretaker residences through acceptable appraisal methods. These fees may be more than those charged for recreation residence use of a similar site in the tract.

6. A tract association may own caretaker residences; otherwise, the permit must contain a provision that automatically terminates authorization for yearlong use in case of change in ownership.

7. If a site ceases to be used as a caretaker residence, issue a new term permit for recreation residence use to the permit holder, if qualified, or to the purchaser of the improvements.

Title 2700—Special Uses Management

2721.23—Recreation Residences

This designation includes only those residences that occupy planned, approved tracts or those groups established for recreation residence use. (See FSM 2347 for basic policy on recreation residence use.)

2721.23a—Administration

The following direction relates directly to issuance and administration of special-use permits for recreation residences.

1. Issue special-use permits for recreation residences in the name of one individual or to a husband and wife. Upon reissuance or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.

2. Issue no more than one recreation residence special-use permit to a single family (husband, wife, and dependent children).

3. Do not issue special-use permits for recreation residence use to entities such as commercial enterprises, trusts, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.

4. To help defray costs and provide additional recreation opportunities, incidental rental may be approved for specific periods. Ensure that rental use is solely for recreation purposes and does not change the character of the area or use to a commercial nature.

5. Authorize no more than one dwelling per site. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single site, allow the use to continue in accordance with the authorization. However, correct such deficiencies, if built without prior approval, upon change of ownership or reissuance of the special-use permit.

6. When a recreation residence is included in the settlement of an estate, issue a new special-use permit, updated to reflect policy and procedural changes, to the properly determined heir, if eligible. Prior to estate settlement, issue a permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new permit to the buyer, if eligible.

7. In cases where a tenure decision has been made and use beyond the expiration date will be permitted for a limited period of time, issue a term permit for an appropriate period of time, provided a permit cannot exceed maximum tenure limitations.

8. Issue recreation residence special-use permits for a maximum of 20 years.

a. New permits shall provide for renewal of 20-year permits 10 years before expiration unless termination or nonrenewal has been established.

b. At the end of the first 10 years after initial issuance, offer permittees, in writing, new 20-year permits that also include the provision for renewal at the end of 10 years, unless written notice of termination or nonrenewal has been given.

c. Continue to renew permits in this same manner unless permittees are given notice of nonrenewal or termination.

d. When an approved future use determination report has documented a higher public need for the site, the permit may be issued for between 10 and 20 years, depending on the time of the identified need.

e. If termination or nonrenewal has been established for less than 10 years, term or annual permits may be issued until use of the site(s) for the identified need is ready to begin.

f. Clearly specify the limited tenure in the permits. Notify existing and prospective permittees of the reasons, and reference the applicable future use determination report.

9. To the extent possible, issue all recreation residence special-use permits in a tract, or in logical groups of tracts, for the same term with the same expiration date.

10. The Forest Supervisor or Regional Forester may review termination or nonrenewal decisions at any time, using current Forest Service Manual and Forest Service Handbook policies and guidelines and considering any new or changed conditions. If review indicates that a site or sites will remain needed for higher public use at the termination date, the earlier decision may remain unchanged. If review indicates that a site is no longer needed, or is not needed as soon as estimated, amend the future use analysis report and provide for continuation of the recreation residence use by issuing a new permit.

11. In the event a recreation residence is destroyed or substantially damaged by a catastrophic event such as a flood, avalanche, or massive earth movement, conduct an environmental analysis to determine whether improvements on the site can be safely occupied in the future under Federal and State laws before issuing a permit to rebuild.

Normally, the analysis should be completed within 6 months of such an event. Allow rebuilding if the site can be occupied safely. If rebuilding is not permitted, make every effort to offer in-lieu sites to holders.

However, do not allow rebuilding of sites under tenure notice if the improvements are more then 50 percent destroyed.

12. At the time special-use permits are issued, advise permittees that they must notify the Forest Service if they intend to sell their improvements and they must provide the name and address of the prospective purchaser before finalizing a sale. Insofar as possible, advise a prospective purchaser of the terms and conditions of the special-use permit before the sale is final.

13. Usually, do not stay a fee increase pending completion of an appeal of the fee under the administrative review regulations. Any adjustments resulting from the administrative review will be made through credit, refund, or supplemental billing.

14. Recreation residences are a valid use of National Forest lands, therefore, undertake termination or nonrenewal of the use only for breach of the permit, or when need for higher public use of the site is clearly demonstrated. Recreation residences may represent a substantial investment and have the potential of supporting a large number of recreation person-days per acre compared with other uses. When considering termination or nonrenewal of recreation residence permits for an alternative use, be sure the clear weight of the evidence is on the side of the need for the proposed new use at that location.

Before approval, the Regional Forester should review proposed termination or nonrenewal notices, with supporting documentation and a summary of the public comments, and may modify them.

15. Insert a provision in all recreation residence special-use permits that makes it clear that if, at any time, occupancy becomes residential in nature to the exclusion of a home elsewhere, the special-use permit will be terminated.

2721.23b—Applications.

A new owner shall make application for the authorization to use existing improvements in accordance with 36 CFR 251.54.

2721.23c—Permit Preparation.

(FSH 2709.11. chapter 30)

1. Use form FS-2700-18, Term Special-Use Permit for Recreation Residence, to authorize recreation residences except use form FS-2700-4, Special-Use Permit, when:

a. Temporary use of a terminated or nonrenewed recreation residence is authorized and the term of continued use cannot be predicted.

b. Continuance of the recreation residence use is conditioned on the owner complying with specific Forest Service requirements before a term permit is issued.

c. The improvements are managed by a third party pending settlement of an estate, bankruptcy proceedings, or other legal action.

d. Yearlong occupancy is authorized by the Forest Supervisor, at which time the improvement ceases to be a recreation residence.

2. Include in the special-use permit all authorized improvements associated with recreation residence use, however, do not authorize use of more than the statutory maximum of 5 acres under a term permit. Authorize community or association-owned improvements, such as water systems, by a separate permit (form FS-2700-4). Include the following in all new, reissued, or revised special-use permits:

a. A description of the site, which is the tract name and site (lot) number when these exist.

b. A list of the authorized improvements.

c. A requirement that the recreation residence must be occupied at least 15 days annually. This is the minimum acceptable occupancy of a private recreational facility using National Forest System land year-round.

d. Standard clauses as required in FSH 2709.11, Special Uses Handbook.

2721.23d—Fee Determination (FSH 2709.11. chapter 30)

1. Use a fair market value system in determining annual rental fees for recreation residence sites. Redetermine the base fee at 20-year intervals.

2. Adjust the fee annually by the changes in the Implicit Price Deflator.

3. Use professional appraisal standards in appraising recreation residence sites for fee determination purposes.

4. Where feasible, contract with private fee appraisers to perform the appraisal.

5. Require appraisers to coordinate the assignment closely with affected permit holders by seeking advice, cooperation, and information from the holders and local holder associations.

6. Retain only qualified appraisers. To the extent feasible, use those appraisers most knowledgeable of market conditions within the local area.

7. Before accepting any appraisal, conduct a full review of the appraisal to ensure the instructions have been followed and the assigned values are supported properly.

Forest Service Handbook 2709.11 Special Uses

Chapter 30—Fee Determination

31—Recreation Residence Fees—*31.1—Base Fees and Indexing.* Follow these procedures in determining the base (beginning) fee and subsequent fees under a 20-year cycle.

1. As the initial base, use the fees established between 1978 and 1982. (The first year of the fee cycle will be the first year of the established fee, disregarding any phase-in that may have been provided.) Adjust the full base fee forward by applying the cumulative Implicit Price Deflator (IPD) index, beginning at the first year of the cycle. Use the overall IPD reported by the Bureau of Labor Statistics for the second quarter of the year preceding each fee year. New fees, established in this manner, will be phased in over a 3-year period (1987–1989) at the rate of one-third of the increase each year.

Use Exhibit 1 in determining the appropriate index adjustment.

2. Continue applying the index on an annual basis through the last year of the fee cycle. For term permits that restrict adjustments to 5-year intervals, apply the IPD index adjustments cumulatively at 5-year intervals. At the end of the current 20-year term, or earlier if agreed to by the permittee, revise permits to provide for annual indexing.

3. In those few cases where one or more additional sleeping structures (guest cabins, and so forth) have been added to a single lot, add to the base fee an additional charge equal to 25 percent of the fee established for a single residence use of the site or $100, whichever is greater.

4. In situations where a definite tenure period has been established (that is, the special-use permit will not be renewed upon expiration), freeze the fee 10 years before the expiration date, and waive a portion of the fee each year during the remaining period proportionate to the reduced use period. For example, charge a holder with 9 years use remaining 90 percent of the frozen fee; with 8 years, 80 percent; and so forth (Section 31.2).

5. Reappraise the site toward the end of the 20-year cycle. Beginning in the twenty-first year (the first year of the next fee cycle) (1997 in the case of 1978 fees), put into effect the base fee for the next 20-year cycle by applying 5 percent to the newly determined appraised market value of the site for recreation residence purposes.

EXHIBIT 1.—IPD ADJUSTMENT FACTOR BY YEAR

Base fee year	1979	1980	1981	1982	1983	1984	1985	1986	1987	Overall adjustment
1978	1.101	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.67
1979		1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.52
1980			1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.39
1981				1.067	1.050	1.032	1.038	1.033	1.026	1.27
1982					1.050	1.032	1.038	1.033	1.026	1.19

The IPD factors for fee years 1979–1987 utilizes IPD for the second quarter of the preceding year.

The following two examples illustrate use of this table in determining the 1987 fee:

(1) A fee of $412 that became established in 1982 (first year in the fee cycle) would be adjusted to $490 in 1987 ($412 × 1.19). Because of the 3-year phase, the permittee would be charged $438 for 1987, instead of the full amount.

(2) A 1980 fee of $315 would be adjusted to $438 ($315 x 1.39) with the actual 1987 charge limited to $356.

31.11—Fee Credits. Provide permit holders any unused or remaining credits due them under provisions of the Appropriations Acts for fiscal years 1983 through 1986.

31.2—Fees on Nonrenewal. When permits are placed on tenure, freeze the annual fee at the level of the previous year. This will be referred to as the "base on tenure fee".

The permittee shall pay the fee based on the following structure:

Years remaining	Percent of Base on Tenure Fee
10	100
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

Upon expiration of the termination or nonrenewal (on tenure) notice period, the permittee shall have an option to:

a. Remove the improvements.

b. Release the improvements to the Forest Service.

On expiration of the on tenure period, and if termination or nonrenewal is still valid, the permittee shall return the property to a condition acceptable to the Forest Supervisor with rights of merit appeal.

Use the following fee determination procedures when a review of the termination or nonrenewal decision shows conditions have changed that warrant continuation of the recreation residence permit.

1. If a new 20-year term permit is issued, the Forest Service shall recover one-half of the sum of the year-by-year difference between the "base on tenure fee" and the fee actually paid. This amount shall be collected evenly over a 10-year period.

2. The new fee for the permit shall be the amount specified in item 1 until paid in full, plus the annual index adjusted fee computed as though no tenure existed.

3. If neither item 1 nor 2 apply, and if the occupancy of the subject site is allowed to continue under an on tenure condition, there shall be no recovery of past fees and the new fee shall be determined by:

a. Computation of the fee as if no tenure notice was issued reduced by the appropriate percentage for the number of years of the extension provided (that is, a 6-year tenure period results in a fee equal to 60 percent of the new base on tenure fee).

b. If a site is allowed to continue on tenure past a 10-year period and is returned to a normal permit, the Forest Service shall recover fees as outlined in items 1 and 2, computed for the most recent 10-year period in which the permit was on tenure.

31.3—Appraisals. Use the following process to determine the fair market value of the recreation residence sites.

1. Use appraisals made by professional appraisers for determining the market value of the fee simple interest of the National Forest land underlying the site subject to a special-use permit, but without consideration as to how the authorization would or could affect the fee title of the site.

2. In consultation with affected special-use permit holders, select and appraise typical sites (rather than all individual sites) within groups that have essentially the same or similar value characteristics. Within such groupings, adjust for measurable differences between the sites. (Once properly established, typical lot classifications should rarely change.)

3. Ensure appraised values are based on comparable market sales of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subject sites characteristics. Such characteristics include:

a. Physical differences between subject site and the comparable sales.

b. Legal constraints imposed upon the market by governmental police powers.

c. Economic considerations evident in the local market.

d. Locational considerations of subject site in relation to the market (sales) comparable.

e. Functional usability and utility of the site.

f. Amenities occurring to the site as compared with selected sales comparables.

g. Availability of improvements (such as roads, water systems, and powerlines) provided by nonholder entities, including the United States. (Do not adjust for improvements furnished by holders).

h. Other market forces and factors identified as having a quantifiable affect upon value.

31.31—Appraisers

1. Select fee appraisers who hold a current certification of competence from a nationally recognized professional appraisal organization. In the case of Forest Service appraisers, use those individuals who have received adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence.

2. Require appraisers to sign a standard agreement that states:

a. The approved appraisal format to be used.

b. The approved standard forms to be used.

c. A full, complete, and accurate definition of the appraisal problem.

d. The standards of professional competence, ethics, and practice to which the appraiser shall adhere.

e. Those requirements of the appraisal assignment that may be imposed under (1) statutes, (2) Federal regulations, (3) Forest Service policies and procedures, and (4) situations unique to the given appraisal assignment.

3. Require appraisers to contact affected permittees and offer to meet with them to discuss the assignment, answer questions specific to the assignment, and seek advice, information, and cooperation from the permittees and their local organizations. At such meetings, require that the appraiser give the permittees copies of the appraisal instructions, directions, and requirements. Failure to offer such a meeting with permittees at a location reasonably convenient to the permitted sites will void the appraisal. The appraiser must notify permittees of such a meeting at least 30 days in advance of the meeting. Send notices via U.S. mail to the address used for bills for collection. Use the notice to give the permittees advance information on the appraisal assignment.

31.32—Establishing Recreation Residence Site Value

Upon receipt of the appraisal report, conduct a review of the appraisal in conformance with the standards of the National Association of Review Appraisers.

2. Following review and acceptance of the appraisal, notify affected permittees of Forest Service acceptance of the report. In the notification, inform

permittees that they and other interested parties have 45 days in which to contest the appraisal. Charge only the cost of reproduction on requests for complete copies of the report(s) and supporting documentation.

3. Upon request, provide an opportunity for affected permittees to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service.

a. Provide the permittee-employed appraiser with a copy of the standards used by the appraiser selected by the Forest Service; require the same, full standards, including a signed certification that ensures an understanding of the appraisal instructions and standards.

b. Subject the permittee-furnished appraisal to the same review requirements as the appraisal obtained by the Forest Service.

c. Give full and complete consideration to both appraisals. If the two appraisals disagree in value by more than 10 percent, ask the two appraisers to try and reconcile or reduce their differences. If necessary, seek a third opinion for consideration before determining the fee.

Title 2700—Special Uses Management

2721.23e—Analysis of Recreation Residence Continuance

(FSH 2709.11, channel 40)

Follow these instructions in determining whether recreation residence use may continue at current sites or whether the sites should be converted to a higher public use.

1. Analyze and consider the future use needs of recreation residence sites before renewing the authorizations for new terms. Before issuing a nonrenewal decision, ensure that the action is fully supported by a separate future use determination report conducted within the requirements of the National Environmental Policy Act and Forest Service analysis process. If done as part of the Forest Plan, the report will consist of a separate appendix to the plan.

2. Ensure that continuance of recreation residence uses conforms with the Act of March 4, 1915, authorizing issuance of term special-use permits for summer homes.

3. Base nonrenewal or termination decisions on the extent of the need for higher public use of the site. Higher public use or purpose refers to a higher priority use of the site by the general public that is timely, clearly needed, in public demand, and where other sites to satisfy the need cannot reasonably be made available. In meeting public needs, give consideration to alternatives such as (a) availability of sites other than recreation residence sites to satisfy the public need, (b) feasibility of common, shared, or multiple uses that include recreation residences, and (c) increased feasibility of common or shared use through adjustment of site and tract size, configuration or boundaries, or location of improvements.

4. Coordinate continuance of recreation residence use with decisions contained in the Forest Land and Resource Management Plan. Document this future use study as an appendix to the plan, or as a separate document. Document the future use decision before renewing authorizations for new terms.

5. When permits are terminated or not reissued at expiration, make every reasonable effort to offer holders alternative (in lieu) sites at locations not needed in the foreseeable future for a higher public use (FSM 2347.1, and FSH 2709.11, Sections 41.23b and 41.23d).

6. In the event of a nonrenewal decision, give the holder at least 10 years continued use and identify the specific higher priority public purpose(s) for which the land is being recovered. Allow continued use of the site until such time as conversion to the new use is ready to begin.

2721.23f—Participation In Appeals

1. Notice of any recreation residence appeals that reach the Regional Forester, will be given to permittee representatives, including the National Forest Recreation Association Homeowners Division, who have expressed interest in being involved in the appeal. The purpose is, on a regional basis, to provide an opportunity for the permittee representative to intervene to reduce conflict between holders and the Forest Service. As necessary, specify a Forest Officer to work with the permittees.

2. Consider information submitted by permittee representatives within the context of the appeals process as provided in 36 CFR 211.18.

3. The Reviewing Officers may exercise their authority to extend time to give the permittees and other parties a reasonable time to submit their information, 36 CFR 211.18 (d) (2).

Forest Service Handbook 2709.11—Special Uses Handbook

Chapter 40—Special Uses Administration

41.23—Recreation Residences—41.23a—Future Use Determinations. (FSM 2721.23e). Before renewing special-use permits, analyze the future use of the recreation residence tract.

1. If the sites are not needed for higher public purpose within the next 20 years, document that decision and issue new 20-year term permits.

2. If the sites may be needed for higher public use within 20 years, conduct a future use study to determine whether or not the sites should be recovered for higher public purposes and, if so, when.

3. Document decisions to recover sites for a higher public use in a special-use determination environmental analysis report that is coordinated with the Forest plan but written separately from it.

4. If there is no foreseeable need for the recreation residence tract to remain in public ownership, encourage and facilitate an exchange of the sites (on a tract or group basis) for private lands suitable for National Forest purposes. Give priority to those proposals in which the offered private land would provide equal or greater benefits for the public need.

5. As appropriate, require conditions in National Forest land disposals to ensure the recreation residence use continues in a manner compatible with adjoining or nearby National Forest uses.

41.23b—Future Use Analysis Procedures—1. *Report.* When nonrenewal is anticipated or could be recommended, prepare a detailed report that gives an objective and fully explanatory description and analysis of all relevant data, and any explanatory notes, charts, and maps needed to explore all reasonable alternatives. Follow the environmental analysis process and supplement the report by an action plan.

In developing the report, encourage and solicit information and comments from permittees and other interested parties. Provide them with 45 days to comment on a draft of the future use determination report and the supporting documentation.

To ensure Region-wide uniformity, submit the reports, recommending nonrenewal, including permittee comments, to the Regional Forester for review before the Forest Supervisor approves the nonrenewal.

Provide permittees and interested parties with copies of the final report and decision immediately after the decision date.

Consider the following aspects in the report:

a. *Recreation Use.* Discuss the relationship between the recreation residence use and other present and proposed uses of the site. Thoroughly describe elements of compatibility and

conflict. If there are current or anticipated conflicts, describe the feasibility of other sites to meet public use needs. Develop a full range of alternatives that at a minimum:

(1) Show ways to meet the public recreation needs without significant conflict with recreation residence uses, if possible, and how existing or potential conflicts can or cannot be mitigated.

(2) Examine the feasibility of common, shared, or multiple use that includes the recreation residences. Also examine the feasibility of adjusting site and tract sizes, configurations and boundaries, or relocation of site improvements to better accommodate such use.

(3) Examine the feasibility of alternative sites for general public use.

(4) Show how the current and/or future need for other planned recreation uses outweighs or is outweighed by the benefits of continued recreation residence use.

(5) Compare the potential recreation and financial losses to holders and their guests with the benefits that the public would gain from nonrenewal of the authorization.

b. *Other Resources.* Show in what way recreation residence occupancy is compatible or in conflict with other National Forest resources.

c. *Environmental Impacts.* Discuss the environmental impacts of continued recreation residence use, together with the impacts of any improvements necessary for their continued use, compared with the impacts of any proposed alternative public use.

d. *Health and Safety.* Examine whether the occupancy constitutes a hazard to the health and safety of the general public or the permittees. Explain specifically how and in what manner these hazards will occur and the opportunities for acceptable curative actions. Discuss whether health and safety standards can be met.

e. *Administrative Problems.* Explain if the occupancy creates untenable administrative problems or costs when related to the benefits provided the permittees and the general public, including fees, cultural benefits, barriers to environmentally harmful use, and other amenities or services attributable to the presence of the permittees' improvements.

f. *In-Lieu Site Availability.* Make every reasonable effort to locate and reserve in-lieu sites that could be offered the permit holder for building or relocation of his improvements. Such sites must be nonconflicting locations within or adjacent to the National Forest containing the residences. See FSM 2347.1 and FSM 2721.23e. Appropriate alternatives for consideration are undeveloped lots or sites in, near, or adjacent to established tracts, or new tracts at sites not needed in the foreseeable future for a higher public use. Follow these procedures:

(1) If possible, offer in-lieu sites to holders at the time the termination or nonrenewal notice is given. If sites do not become available until later, offer them then.

(2) Give first priority to identifying and offering in-lieu sites in the same tracts or an expansion of that tract, where feasible.

(3) Following joint inspection of the site by the Forest Service and the permittee, allowing holders at least 90 days in which to accept or reject the offer.

(4) Ensure that holders clearly understand that the offer may not remain available through the entire tenure period.

(5) When holders accept such offers, reserve the offered sites. Do not charge a fee until the holder begins improving the site.

(6) Allow holders accepting offers to continue use of their current sites until the termination date. Inform the holders that they should be prepared to move to the in-lieu site during the 24 months prior to the scheduled occupancy removal, provided a supplemental review of the termination or nonrenewal action has been completed.

(7) Do not offer alternative sites for termination or nonrenewal actions stemming from noncompliance with special-use permit terms.

2. *Nonrenewal Factors.* Support nonrenewal factors by full consideration and documentation of the following specific factors and criteria:

a. The specific intended use or uses and the estimated time and budgetary feasibility of the need.

b. The need for the alternative use and the reason for its priority.

c. The reasons the public need cannot be met at an alternative location.

d. All reasonable alternatives to the conversion, including the possibility of combining or sharing public uses with recreation residence uses; and adjusting or altering lots or location of improvements to better accommodate common or shared uses.

e. The reasons any conflict between the recreation residences and the proposed alternative use cannot be resolved.

f. The need to develop and provide the public use needed in a cost effective manner.

3. *Higher Public Purpose.* Identify and consider whether or not there is clear need for higher priority use of the site that is of benefit to the general public, is timely, in public demand, and where other sites to satisfy the need cannot reasonably be made available. Need and timeliness, for example, can be demonstrated by capacity use of similar nearby facilities.

Examples of higher public purposes include but are not limited to (1) public roads and other public rights-of-way where no reasonable alternatives exist, (2) legally mandated public safety or health requirements, (3) specific types of public recreation needs, (4) habitat requirements for rare or endangered species, and (5) commercial use developments serving National Forest programs, such as authorized resort accommodations, where no reasonable private alternatives exist. Determination of higher public purpose for commercial use must show a clear and convincing need and bear at least as great a burden of proof as those for other uses. Higher public purposes do not include unspecified public needs or uses, such as general Forest use or open space alone.

41.23c—*Nonrenewal Notification.* Provide permittees 10 years or more advance notice of termination or nonrenewal actions except in cases involving breach, or when the site has been rendered legally unsafe by catastrophic events such as avalanche, flooding, or massive earth movement. or where the Forest Service does not have final decision authority. In these exceptions, make an effort to provide as much notice as possible.

Include in a nonrenewal notice:

1. A description of the tenure action and the reasons for the decision. Normally. use the same expiration date for all affected permittees in a particular group or tract.

2. Identification of the Forest plan and future use determination upon which the decision is based.

3. Appeal rights under 36 CFR 211.18.

4. A notice that the permittee should refrain from making costly repairs, improvements, or expenditures. Advise permittee that such expenditures will not be required unless they are necessary to protect public health or safety.

Refer to FSM 2721.23a for procedure when recreation residences are destroyed or substantially destroyed by catastrophic events.

41.23d—*Review of Termination and Nonrenewal Actions.* The Forest Supervisor or the Regional Forester may review termination and nonrenewal actions in process and should consider such reviews when circumstances or Forest Service direction have changed in a manner that could suggest

modification of the original decision (FSM 2721.23a).

1. Decisions resulting from such discretionary reviews are appealable under Administrative Review Regulations.

2. Reviews may be made of all categories of termination and nonrenewal decisions, and at any time up to the termination date.

3. Permittees should be asked to provide input for the reviews.

4. Extension of occupancy should be granted if the site is not immediately needed for higher public use.

41.23e—*Noncompliance.* Give a written notice and provide a reasonable opportunity for a holder to correct special-use permit violations before terminating the use for breach or noncompliance.

Where violations persist causing unacceptable environmental damage or conflicts and acceptable solutions cannot be found, terminate the use in accordance with the permit terms, or if the authorization is near its expiration date, do not renew the authorization upon its expiration. In any case, do not allow violations to continue that are injurious to resources or the public health and safety.

[FR Doc. 86-29409 Filed 12-31-86; 8:45 am]

BILLING CODE 3410-11-M

federal register

Friday
January 2, 1987

Part IV

General Accounting Office

Notice of Public Hearing and Request for Comments on the Nature of the Current Trading System in the Secondary Market for U.S. Government Securities

GENERAL ACCOUNTING OFFICE

Notice of Public Hearing and Request for Comments on the Nature of the Current Trading System in the Secondary Market for U.S. Government Securities

AGENCY: General Accounting Office (GAO).

ACTION: Notice of public hearing and request for comments.

SUMMARY: The General Accounting Office (GAO) is seeking comments on the nature of the current trading system in the secondary market for U.S. government securities. This request is part of a GAO study, mandated in the Government Securities Act of 1986 (Pub. L. 99-571) (Act), that is to include an assessment of whether quotations for government securities and the services of government securities brokers are available on terms that are consistent with the public interest, the protection of investors, and the purposes of the Act. As provided by the Act, the study is being conducted in coordination and consultation with the Board of Governors of the Federal Reserve System, the Treasury Department and the Securities and Exchange Commission. Comments received in writing will be shared with those agencies.

The Act also specifies that GAO and these agencies conduct at least one joint public hearing during the course of the study. Representatives of the government securities market will have an opportunity to discuss their views on the topics covered in more detail in the supplementary information included in this release. The results of that hearing will be merged with the individual responses to this request for comment to form a body of evidence for consideration in GAO's report which is due by April 28, 1987 (6 months after the date of enactment of the Act.)

DATES: Comments must be received by January 23, 1987. The public hearing will be held on February 4, 1987, at 10:00 a.m. (e.s.t.) at the Public Meeting Room (Room IC-30) of the Securities and Exchange Commission in Washington, DC, 450 5th Street NW. Individuals or organizations wishing to present their views at the public hearing should contact the GAO officials listed below by January 16, 1987.

ADDRESS: Please file five copies of your comments with Craig A. Simmons, Senior Associate Director, General Government Division, U.S. General Accounting Office, Room 3862, 441 G Street, NW., Washington, DC 20548. Refer to File No. 233175

All comments will be available for review Monday-Friday, 8:00 a.m. to 4:45 p.m. (e.s.t.), in Washington, DC at GAO's Law Library, Room 7056 and in New York, at GAO's Regional Office, Room 4112, 26 Federal Plaza.

FOR FURTHER INFORMATION CONTACT: Stephen C. Swaim or Paul Zacharias, (202) 452-2833, General Government Division, U.S. General Accounting Office, Federal Reserve Audit Site, Federal Reserve Board Building, Room B-2227, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: This supplementary information section explains the objective, scope, and methodology for the GAO study in light of the legislative mandate and discusses the topics and questions respondent should address. The discussion assumes a basic familiarity with the government securities market and the role of specialized government securities brokers. Additional information about the nature of the government securities market can be found in the references shown in Appendix I, especially GAO's report entitled: "U.S. Treasury Securities: The Market's Structure, Risks, and Regulation" (GAO/GGD-86-80BR, August 20, 1986).

Background

The secondary market for government securities involves trading in Treasury issues (bills, notes, bonds, and zero coupon instruments derived from Treasury securities), various government-guaranteed and government-sponsored enterprise issues, and mortgage-backed securities. The when-issued market and the market for repurchased agreements also involves trading activities similar to those in the secondary market. Each day, hundreds of billions of dollars of government securities are bought and sold in a world-wide, decentralized over-the-counter market, with clearing and settlement typically occurring on the next U.S. business day through U.S. depository institutions located primarily in New York City.

The market's depth and liquidity results in large measure from the activities of marketmaking dealers that compete with each other and stand ready to buy and sell securities for their own account. Investors seeking to buy or sell securities can contact one or more of a large number of dealers who will provide a price at which investors can immediately execute their transactions. While any dealer can act as a marketmaker for certain securities or maturity ranges, 40 primary dealers designated by the Federal Reserve Bank of New York (FRBNY) are expected to serve as marketmakers in a broad range of securities and maturities. In addition, a number of dealers who have made known their desires to become primary dealers, are attempting to demonstrate their marketmaking capability and other qualifications to the FRBNY. As part of these other qualifications, dealers are also expected to be creditworthy and participate actively in Treasury auctions, demonstrate a long-term commitment to the market, and file daily reports on net positions with FRBNY. The number of primary dealers has grown over the years.

Screen Brokers

The activities of specialized brokers, known as screen brokers, are a central feature of the wholesale secondary market trading system for government securities. Of the over $80 billion in average daily transactions reported by primary dealers to FRBNY, about half is effected through screen brokers. Screen brokers provide their customers with fast execution of a high volume of trades. They allow their customers to trade relative large quantities on a blind basis—that is, without revealing their identity. Blind trading is a feature felt by many to contribute greatly to the depth and liquidity of the government securities market.

Screen brokers are for-profit, private firms that operate the equivalent of their own trading system for their customers. Employees (known individually as brokers) of the screen broker firm service the account of particular customers for certain types of securities or certain segments of the maturity spectrum. Generally, an individual broker will handle from one to four accounts depending on the level of business, as the brokering process in an active market can involve almost continuous telephone contact with a customer's trading desk.

All brokers serving the same type of security or maturity category sit so that they can see and talk to each other while at the same time following the activity on the screen in front of them. The brokers insert quotations on the screens reflecting their customers willingness to trade a specified quantity at the quoted price. Only the best bid and ask quotation is shown for an issue, and it is usually posted for a small quantity ($1-10 million). When a bid is "hit" or an offer price is "taken," the screens display the results of the interaction of these brokers as each attempts to satisfy his/her customer's orders.

Currently, seven screen brokers, known as interdealer brokers, restrict

access to their services to a customer base drawn from the 40 primary dealers and other dealers who have stated they aspire to become primary dealers.[1] Though not all exactly the same, there is a considerable amount of overlap in the customer lists of the 7 interdealer brokers. The number of customers handled by interdealer brokers ranges from 35 to 53. Interdealer brokers, who claim an agent relationship with their customers, do not make information on their screens available to parties without access.

The industry practice linking primary dealer status and access to screen brokers has existed since the advent of screen brokering about a decade ago. An increase in the number of aspiring primary dealers with access has corresponded with growth in the number of aspiring primary dealers during 1985 and 1986. Currently, some aspiring dealers with access to one or more of the interdealer broker screens are reporting daily to FRBNY while others are reporting monthly.

Two others screen brokers, often referred to as retail brokers, have established trading systems that include not only primary and aspiring primary dealers, but also other dealers and major nondealer institutional investors as well. Retail brokers actively monitor the credit standing and set limits on the trading activity of these other dealer and investor customers because they execute transactions as principal and must perform should a customer fail. Both retail brokers told GAO they service about 200 customers including the majority of primary and aspiring primary dealers. While retail brokers provide a means for interdealer trading, their business focus is to provide a means for major retail customers to trade with the major dealers and each other. Retail brokers sell the right to view and disseminate the information on their screens to commercial financial quotation systems.

Objective, Scope, and Methodology of GAO Study

In passing the Government Securities Act, the Congress recognized the government securities market as the largest, safest, most efficient, stable and liquid securities market in the world. The Congress also expressed its intent that any regulation not impair the efficient operation of the market, increase the costs of financing the Federal debt, or compromise the execution of monetary policy. To that end, the Congress directed the legislation at identified weaknesses in the market while preserving, to the extent possible, existing relationships. It specified that nothing in the Act was to limit or impair the Federal Reserve Bank of New York's business relationship with primary dealers and those seeking to become primary dealers.

The Congress also sought to understand the complaints of certain dealers who do not have access to interdealer screen broker systems. Those dealers alleged that such limited access systems are inequitable, unnecessarily restrictive, and in conflict with the public policy goal of ensuring the maintenance of a fair market for government securities. These dealers have asserted that the scope of coverage of retail brokers is not adequate to meet their needs and that they need access to the interdealer screens in order to compete fairly in the marketplace. Such arguments were countered by primary dealers who asserted the benefits of the existing arrangements, particularly in light of the primary dealer's significant participation in Treasury auctions and their secondary market activities in a broad range of government maturities.[2]

In recognition of the complexity of the access issue, the Congress included a provision in the Act for GAO to study the issue so that Congress can have sufficient information for it to evaluate the allegations. Section 104 of the Act directs GAO to study the system of trading in the secondary market for government securities. The study is to evaluate the extent and form of availability of price information and brokers services, and whether these aspects of the market are available on terms which are consistent with the public interest, the protection of investors, and the purposes of this title (the Government Securities Act of 1986), which include the maintenance of fair, honest, and liquid markets in such securities.

The principal task of GAO's study is to assess the public policy considerations related to access practices. In addressing this topic, the study will be concerned with both access to the brokers' systems for trading purposes and access to information contained on brokers' screens by government securities dealers or other investors that do not have trading access.

GAO recognizes that in the time allotted for this study it may not be possible to answer all relevant questions. Complicating deliberations on this issue is the fact that regulations required by the Act are being implemented and changes to the clearing, settlement, and funds transfer arrangements that could affect risks in the blind brokering system are also being considered by industry officials and the Federal Reserve System. Nevertheless, we intend to try to reach judgments about the general direction that public policy should follow in seeking as fair and efficient a secondary market as possible, consistent with the control of risks and the ability of the Treasury and Federal Reserve to carry out their debt management and monetary policy functions.

Topics On Which GAO Is Seeking Comment

GAO is soliciting information to identify problems, if any, possible alternative arrangements that might be more desirable, and the consequences—good or bad—that would accompany particular changes in the current system for quotations and broker services. To guide comments, we have grouped questions around three topics: Trading access to broker systems; access to quotation information; and the utility of brokering services and quotation practices in the secondary market.

Because GAO will not attempt to conduct its own quantitative economic studies on the structure of the market or on market trading practices, those commenting are urged to be specific, citing wherever possible, quantitative information in support of their positions. Respondents are also encouraged to bring to GAO's attention any matter pertinent to the inquiry that does not fall within the structure presented below.

Trading Access

GAO has been told by market participants that restrictions on trading access represent screen brokers' business judgments based on such considerations as:

—The desire of their customers to only trade on a blind basis, which necessarily means that they must be assured that customers are creditworthy;

—The broker's need to control risks by dealing only with creditworthy firms with the operational capability to process transactions on time and avoid fails;

[1] Aspiring dealer status is based on the dealer's assertion that it is recognized as such by the FRBNY. The FRBNY will not confirm or deny whether a dealer is an aspiring primary dealer or state whether the firm is submitting daily or monthly reports.

[2] The Department of Justice is conducting an investigation of anti-trust concerns regarding the operations of government securities brokers. GAO's study will not attempt to reach conclusions about the Federal anti-trust implications of how the market is presently organized.

—The need to have customers that all other customers will accept as creditworthy, because letting individual customers restrict their quotations would have an unacceptable negative effect on the speed of trading;
—The oversight and monitoring provided to primary and aspiring primary dealers by the Federal Reserve;
—The desire to maintain a certain level of service quality which is constrained by the present configuration of employees and equipment used by the brokers; and,
—The brokers' desire to deal only with customers who have a volume of business sufficient to pay for services provided.

The relative importance of each of these factors is unclear.

Questions

1. How important is blind brokering for the efficiency and liquidity of the government securities market?

2. What are the costs and benefits of the current system of limited access blind brokering? What alternative arrangements, if any, should be considered? How do their costs and benefits compare with those of the existing system?

3. Of the considerations influencing screen broker decisions on which firms should have access, which do you feel are relied on most heavily and which least heavily? Is this appropriate? Please explain.

4. What are the consequences of current access practices for the liquidity and efficiency of the market and for various market participants? In your answer, please distinguish carefully between types of dealers and investors.

5. What risks are associated with blind brokering? Who bears these risks? Do the risks necessarily increase when the number of dealers trading on the system increases? What alternatives exist to control these risks? Which, if any, of these alternatives provides an acceptable level of risk control at a reasonable cost?

6. For what reasons do you consider it acceptable or unacceptable for brokers to require new customers to first have a business relationship with the FRBNY as a primary dealer or to be an aspiring primary dealer before it will consider the customer's application for access? To what extent, if any, does your answer depend on your perceptions of the FRBNY's business relationship with primary dealers? If it does, what aspects of that relationship are most important?

7. What would be the consequences if the list of dealers with trading access to interdealer screen brokers were to diverge significantly from the list of primary or aspiring primary dealers? Would brokers allowing expanded access lose business? If they did, would the loss of major market participants from the screen brokering system make it harder to sell the public debt or to conduct monetary policy? Would risks in the interdealer market increase significantly? To what extent might any cost of allowing such access be offset by any benefits from greater participation by other dealers in these systems?

8. Under what conditions, if any, should firms who are neither primary nor aspiring primary dealers but who specialize in certain segments of the Treasury, agency, or mortgage-backed securities markets, be able to obtain trading access to the interdealer broker screens for segments of the market in which they specialize? Would greater availability of limited access arrangements for such dealers affect the overall depth and liquidity of these markets? Please explain.

9. The Treasury Department must adopt rules for brokers and dealers, including rules for financial responsibility. Would you expect these rules, and the associated enforcement of them by the appropriate federal regulator, to affect access to interdealer broker trading systems? In answering these questions, what assumptions have you made about whether interdealer brokers are acting as agent or principal?

10. Would development of a netting system for clearing and settling government security trades affect the risks faced by screen brokers and their customers? How, if at all, would you expect such developments to affect access to interdealer broker trading systems?

11. How might actions designed to reduce daylight overdraft exposure now being considered by the Federal Reserve System, affect your assessment of the blind brokering system and access to it?

Access to Quotation Information

Public availability of current price and last sale information is an important element of U.S. securities and commodities laws as they relate to publicly traded equity securities and options and futures contracts. The wide dissemination of such information is regarded as important for investor protection in these markets because it gives investors a reliable, independent source of information with which to formulate investment strategies. Such dissemination may also facilitate price competition.

However, like many other over-the-counter markets such as that in corporate bonds, no such requirements exist in the government securities market. As noted above, interdealer brokers do not make information available to those without trading access. However, subscribers to certain financial reporting services can see the information that is available on retail broker screens.

Questions

1. What types of customers, if any, who cannot trade on interdealer screens should have access to such information? In your answer, please be specific concerning the type of customer and consequences for the market.

2. What would be the benefits and costs of making information from interdealer brokers available to parties without trading access? Would interdealer brokers have the legal right to sell or divulge such information? If so, how should the dissemination costs be paid?

3. Would public dissemination of the information displayed on interdealer broker screens overcome a substantial portion of the concerns about limited trading access? Please explain.

4. Do dealers who are able to view the interdealer screens have an advantage in other markets, such as futures or options exchanges, over participants in these markets who are limited to seeing the retail screens? If such an advantage exists, how is it manifested, how significant is it, and should it continue or be eliminated? Please explain.

5. Is the information on market prices currently collected and published by the Federal Reserve useful? Please explain.

Utility of Brokering Services and Quotation Practices

The previous sections have directed comment toward specific issues associated with access to interdealer broker systems for trading and information purposes. Much of that discussion focused on access issues affecting major market participants. However, for other types of investors, there is a more general question regarding the availability of quotations and whether best execution is obtained through the existing secondary market trading mechanisms.

Questions

1. In the government securities market, how do investors evaluate the terms and conditions on which their trades were executed?

2. Discuss any aspects of broker or dealer practices, not previously mentioned, that might be viewed as inconsistent with the principles of

investor protection and the maintenance of fair, honest, and efficient markets? What, if anything, should be done about these practices? What are the costs and benefits of any such actions?

3. Please describe any characteristics and practices of other markets that are appropriate benchmarks for evaluating the reasonableness of broker service and quotation availability in the government securities market.

Appendix I—References

Hearings

U.S. Congress, House Committee on Banking, Finance and Urban Affairs, Subcommittee on Domestic Monetary Policy, Status of the General Accounting Office's Work Concerning the Government Securities Market. Hearing, 99th Congress, 2nd session. Washington, DC, U.S. Government Printing Office, 1986, (Serial No. 99–103).

U.S. Congress, House Committee on Banking, Finance and Urban Affairs, Subcommittee on Domestic Monetary Policy, Regulation and Supervision of the Government Securities Market. Hearing, 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1985, (Serial No. 99–28).

U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance, Regulating Government Securities Dealers. Hearing, 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1985, (Serial No. 99–38).

U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Securities, Regulation of Government Securities. Hearing, 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1985, (Serial No. 99–161).

Reports

U.S. Congress, Government Securities Act of 1986 together with floor statements and report on H.R. 2032. Washington, DC, Congressional Record, October 6, 1986, p. H9244.

U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs. The Government Securities Act of 1986: report to accompany S. 1416. Washington, DC, U.S. Government Printing Office, 1986, (99th Congress, 2nd session. Senate Report No. 99–426).

U.S. Congress, House Committee on Energy and Commerce, Government Securities Act of 1985: report to accompany H.R. 2032, Washington, DC, U.S. Government Printing Office, 1985, (99th Congress, 1st session. House Report No. 99–258).

U.S. Congress, House Committee on Banking, Finance, and Urban Affairs, Subcommittee on Domestic Monetary Policy. Survey of the Federal Reserve's Supervision of the Treasury Securities Market. Prepared by the General Accounting Office. 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1985. (Committee Print No. 99–2).

U.S. Conress, Senate Committee on Banking, Housing, and Urban Affairs. Report of the Joint Treasury—SEC—Federal Reserve Study of the Government-Related Securities Markets. Washington, DC, U.S. Government Printing Office, 1980, 96th Congress, 2nd session. (Committee Print).

U.S. General Accounting Office, U.S. Government Securities: Dealers' Views on Market Operations and Federal Reserve Oversight (GAO/GGD–86–147FS, September 29, 1986).

U.S. General Accounting Office, U.S. Treasury Securities: The Market's Structure, Risks, and Regulation (GAO/GGD–86–80BR, August 20, 1986).

U.S. General Accounting Office, U.S. Government Securities: Questions About the Federal Reserve's Securities Transfer System (GAO/GGD–87–15BR, October 20, 1986).

U.S. General Accounting Office, Securities Regulation: Securities and Exchange Commission Oversight of Self-Regulation (GAO/GGD–86–83, September 30, 1986).

U.S. General Accounting Office, Securities and Futures: How the Markets Developed and How They Are Regulated (GAO/GGD–86–26, May 15, 1986).

James L. Howard,

Deputy Director, General Government Division.

[FR Doc. 86–29456 Filed 12–31–86; 8:45 am]

BILLING CODE 1610–10–M

federal register

Friday
January 2, 1987

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation (FAR); Withholding Limits; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Withholding Limits

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to Federal Acquisition Regulation (FAR) 52.216-8 through 52.216-12 concerning withholding limits.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 3, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 86-65 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Under cost reimbursement contracts, contracting officers are authorized, with limitations, to make withholdings of allowable cost or fee (depending upon the type of contract) until a reserve has been set aside that is sufficient to protect the Government's interest pending final cost settlement. The reserve amount has been limited to a maximum of $100,000 per contract.

The limitation amount on the reserve was first established in Navy contracts in 1945. It has not been adjusted since, and it is believed to be no longer sufficient to adequately protect the Government's interest in all cases.

This rule proposes to remove the $100,000 limitation on the reserve amount. This should adequately protect the Government's interest and later motivate contractors to complete and closeout contracts.

B. Regulatory Flexibility Act

The proposed revisions to FAR 52.216-8 through 52.216-12 do not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). For example, in Fiscal Year 1985 the Department of Defense awarded only 14 contracts to small business that were of a type that would have created a significant impact on small businesses. Comments are invited.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed changes to FAR 52.216-8 through 52.216-12 do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 19, 1986.

Harry S. Rosinski,

Deputy Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2453(c).

52.216-8 [Amended]

2. Section 52.216-8 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1986)"; by inserting a period in the second sentence of paragraph (b) of the clause following the word "fee" and removing the remainder of the sentence; and by removing all the derivation lines following "(End of Clause)".

52.216-9 [Amended]

3. Section 52.216-9 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1986)"; by inserting a period in the second sentence of paragraph (c) of the clause following the word "fee" and removing the remainder of the sentence; and by removing all the derivation lines following "(End of Clause)".

52.216-10 [Amended]

4. Section 52.216-10 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1986)"; by inserting a period in the fifth sentence of paragraph (c) of the clause following the word "fee" and removing the remainder of the sentence; and by removing all the derivation lines following "(End of Clause)".

52.216-11 [Amended]

5. Section 52.216-11 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1986)"; by inserting a period in the second sentence of paragraph (b) of the clause following the word "Schedule" and removing the remainder of the sentence; and by removing all the derivation lines following "(End of Clause)".

52.216-12 [Amended]

6. Section 52.216-12 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(DEC 1986)"; by inserting a period in the second sentence of paragraph (b) of the clause following the word "Schedule" and removing the remainder of the sentence; and by removing all the derivation lines following "(End of Clause)".

[FR Doc. 86-29392 Filed 12-31-86; 8:45 am]

BILLING CODE 6820-61-M

federal register

Friday
January 2, 1987

Part VI

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for FY 87; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1987; Solicitation of Applications

Notice is hereby given that under the authority contained in section 1480 of the National Agricultural Research, Exension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard project grants for basic studies in certain areas of rangeland research. The total amount expected to be available for this program during fiscal year 1987 is approximately $454,991. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The award of any grant under the Rangeland Research Grants Program is contingent upon the availability of funds.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found at 7 CFR Part 3401 (51 FR 16152, April 30, 1986). These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs; therefore, funds should not be requested for these costs except in the case of Federal laboratories. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended, applies to this program.

How To Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions for this program (7 CFR Part 3401) may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 005, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251–2200, Telephone: (202) 475–5049

What To Submit

An original and nine copies of each proposal submitted under this program are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made. In addition to other required forms and certifications included in the Grant Application Kit, each copy of each proposal must include a Form S&E–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 10 pages (single-spaced) exclusive of required forms, bibliography and vitae of the principal investigators, senior associates and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to the understanding of the proposal.

All copies of each proposal must be mailed in one package. Please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Grant Application Kit and instructions found in 7 CFR Part 3401. If applicable, the research grant proposal must state that the 50 percent non-Federal funding requirement will be met.

Where and When To Submit Grant Applications

Each research grant application must be submitted to:

Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 005, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251–2200

To be considered for funding during fiscal year 1987, *proposals must be received* in the Grants Administrative Management office *by the close of business on March 16, 1987.* One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Specific Areas of Research To Be Supported in Fiscal Year 1987

Standard project grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS–USDA; telephone: (202) 447–2044.

Supplementary Information

For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice has been approved under OMB Document Nos. 0525–0001 or 0524–0022.

Done at Washington, DC, this 24th day of December 1986.

Clare I. Harris,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 86–29418 Filed 12–31–86; 8:45 am]

BILLING CODE 3410-22-M

Reader Aids

Federal Register

Vol. 52, No. 1

Friday, January 2, 1987

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

CFR ISSUANCES 1986
Complete Listing of 1986 Editions and Projected January, 1987 Editions

This list sets out the CFR issuances for the 1986 editions and projects the publication plans for the **January, 1987** quarter. A projected schedule that will include the **April, 1987** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1986-1987 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1-16—January 1
Titles 17-27—April 1
Titles 28-41—July 1
Titles 42-50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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44

45 Parts:
1-199*
200-499
500-1199
1200-End

46 Parts:
1-40
41-69*
70-89
90-139
140-155 (Cover only)
156-165
166-199
200-499*
500-End

47 Parts:
0-19
20-39
40-69
70-79*
80-End

48 Parts:
Ch. 1(1-51)
Ch. 1(52-99)
Ch. 2 (Revised As of Dec. 31, 1986)
Chs. 3-6*
Chs. 7-14*
Chs. 15-End*

49 Parts:
1-99
100-177
178-199
200-399
400-999
1000-1199
1200-End

50 Parts:
1-199*
200-End*

Projected January 1, 1987 editions:

Title

CFR Index

1-2

3 (Compilation)

4

5 Parts:
1-1199
1200-End

6 [Reserved]

7 Parts:
0-45
46-51
52
53-209
210-299
300-399
400-699
700-899
900-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1944
1945-End

8

9 Parts:
1-199
200-End

10 Parts:
0-199
200-399
400-499
500-End

11

12 Parts:
1-199
200-299
300-499
500-End

13

14 Parts:
1-59
60-139
140-199
200-1199
1200-End

15 Parts:
0-299
300-399
400-End

16 Parts:
0-149
150-999
1000-End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1987

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	January 20	February 2	February 17	March 3	April 2
January 5	January 20	February 4	February 19	March 6	April 6
January 6	January 21	February 5	February 20	March 9	April 6
January 7	January 22	February 6	February 23	March 9	April 7
January 8	January 23	February 9	February 23	March 9	April 8
January 9	January 26	February 9	February 23	March 10	April 9
January 12	January 27	February 11	February 26	March 13	April 13
January 13	January 28	February 12	February 27	March 16	April 13
January 14	January 29	February 13	March 2	March 16	April 14
January 15	January 30	February 17	March 2	March 16	April 15
January 16	February 2	February 17	March 2	March 17	April 16
January 20	February 4	February 19	March 6	March 23	April 10
January 21	February 5	February 20	March 9	March 23	April 21
January 22	February 6	February 23	March 9	March 23	April 22
January 23	February 9	February 23	March 9	March 24	April 23
January 26	February 10	February 25	March 12	March 27	April 27
January 27	February 11	February 26	March 13	March 30	April 27
January 28	February 12	February 27	March 16	March 30	April 28
January 29	February 13	March 2	March 16	March 30	April 29
January 30	February 17	March 2	March 16	March 31	April 30