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Thursday
May 11 1989

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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 3 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: May 23; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

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Rules and Regulations

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1206

RIN: 3124-AA06

Open Meetings

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The U.S. Merit Systems Protection Board (the Board) is revising its regulations in this part in plain English. The Board has completed a thorough review of its existing regulations to identify any words or phrases that could be rewritten to be more readily understood by persons who are not practitioners in personnel administration or the law. The regulations published today reflect that review. The revised language is not intended to change the meaning or requirements of existing sections.

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

List of Subjects in 5 CFR Part 1206

Administrative practice and procedure, Board meetings.

Accordingly, the Merit Systems Protection Board revises 5 CFR Part 1206 as follows:

PART 1206—OPEN MEETINGS

Subpart A—Purpose and Policy

Sec.
1206.1 Purpose.
1206.2 Policy.
1206.3 Definitions.

Subpart B—Procedures

1206.4 Notice of meeting.
1206.5 Change in meeting plans after notice.
1206.6 Decision to close meeting.
1206.7 Record of meetings.
1206.8 Providing information to the public.
1206.9 Procedures for expedited closing of meetings.

Subpart C—Conduct of Meetings

1206.11 Meeting place.
1206.12 Role of observers.

Authority: 5 U.S.C. 552b.

Subpart A—Purpose and Policy

§ 1206.1 Purpose.

The purpose of this part is to prescribe the procedures by which the Board will conduct open meetings in accordance with the Government in the Sunshine Act (5 U.S.C. 552b) ("the Act").

§ 1206.2 Policy.

The Board will provide the public with the fullest practicable information regarding its decision-making processes, while protecting individuals' rights and the Board's ability to carry out its responsibilities. Meetings at which the Board members jointly conduct or dispose of official business are presumptively open to the public. The Board will close those meetings in whole or in part only in accordance with the exemptions provided under 5 U.S.C. 552b(c), and only when doing so is in the public interest.

§ 1206.3 Definitions.

The following definitions apply to this part:

(a) "Meeting" means deliberations of at least two Board members that determine or result in the joint conduct of official Board business.

(b) "Member" means one of the members of the Merit Systems Protection Board.

Subpart B—Procedures

§ 1206.4 Notice of meeting.

(a) Notice of a Board meeting will be published in the **Federal Register** at least one week before the meeting. Each notice will include the following information:

(1) The time of the meeting;

(2) The place where the meeting will be held;

(3) The subject and agenda of the meeting;

(4) Whether the meeting is to be open to the public or closed; and

(5) The name and telephone number of a Board official responsible for receiving inquiries regarding the meeting.

(b) The Board, by majority vote, may provide less than one week's notice. When it does so, however, it will provide notice of the meeting at the earliest practicable time.

§ 1206.5 Change in meeting plans after notice.

(a) After notice of a meeting has been published, the Board may change the time or place of the meeting only if it announces the change publicly at the earliest practicable time.

(b) After notice of a meeting has been published, the Board may not change either the subject matter of the meeting or the decision that the meeting will be open to the public or closed unless both of the following conditions are met:

(1) By majority, recorded vote, the Board members determine that Board business requires the change and that no earlier announcement of the change was possible; and

(2) Notice of the change, and of the individual Board members' vote, is published in the **Federal Register** at the earliest practicable time.

§ 1206.6 Decision to close meeting.

(a) *Basis.* The Board, by majority vote, may decide to close a meeting in accordance with the provisions of 5 U.S.C. 552b(c)(1) to 552b(c)(10) when closing the meeting is in the public interest.

(b) *General Counsel certification.* For every meeting that is closed to the public in whole or in part, the General Counsel will certify that closing the meeting is proper, and will state the basis for that opinion.

(c) *Vote.* Within one day after voting to close a meeting, the Board will make publicly available a record reflecting the vote of each member. In addition, within one day after any vote to close a portion or portions of a meeting to the public, the Board will make publicly available a full written explanation of its decision to close the meeting, together with a list naming all persons expected to attend the meeting and identifying their affiliation, unless that disclosure would reveal the information that the meeting was closed to protect.

§ 1206.7 Record of meetings.

(a) *Closed Meeting.* When the Board has decided to close a meeting in whole or in part, it will maintain the following record:

(1) A transcript or recording of the proceeding;

(2) A copy of the General Counsel's certification under § 1205(b) of this part;

(3) A statement from the presiding official specifying the time and place of the meeting and naming the persons present; and

(4) A record (which may be part of the transcript) of all votes and all documents considered at the meeting.

(b) *Open meeting.* Transcripts or other records will be made of all open meetings of the Board. Those records will be made available upon request at a fee representing the Board's actual cost of making them available.

§ 1206.8 Providing information to the public.

Information available to the public under this part will be made available by the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. Individuals or organizations with a special interest in activities of the Board may ask the Office of the Clerk to have them placed on a mailing list for receipt of information available under this part.

§ 1206.9 Procedures for expedited closing of meetings.

Instead of following the procedures described in §§ 1206.4 through 1206.8 of this part, and in §§ 1206.11 and 1206.12, the Board may expedite the closing of its meetings under the following conditions by using the following procedures:

(a) *Finding.* (1) Most regular Board business consists of reviewing initial decisions in cases adjudicated after an opportunity for a hearing has been provided. Based on a review of this circumstance, the legislative history of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Government in the Sunshine Act (5 U.S.C. 552b), and the Board's regulations at 5 CFR Part 1201, the Board finds that a majority of its meetings may properly be closed to the public under 5 U.S.C. 552b(c)(10) and 552b(d)(4).

(2) Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be closed under these procedures include meetings held to consider the following: Petitions for review or cases that have been or may be reopened under 5 CFR 1201.114 through 1201.117; proposals to take action against administrative law judges under 5 CFR 1201.131 through 1201.136; and actions brought by the Special Counsel under 5 CFR 1201.129.

(b) *Announcement.* The Board will announce publicly, at the earliest practicable time, the time, place, and subject matter of meetings or portions of meetings that are closed under this provision.

(c) *Procedure for closing meetings under this section.* At the beginning of a meeting or portion of a meeting that is to be closed under this section, the Board may, by recorded vote of two of its members, decide to close the meeting or a portion of it to public observation. The Board may take this action, however, only after it receives a certification by the General Counsel under § 1206.6(b) of this part.

(d) *Record Availability.* When the Board has closed a meeting or portion of a meeting under this paragraph, it will make the following available as soon as practicable:

(1) A written record reflecting the vote of each participating member of the Board with respect to closing the meeting; and

(2) The General Counsel certification under § 1206.6(b).

Subpart C—Conduct of Meetings

§ 1206.11 Meeting place.

The Board will hold open meetings in meeting rooms designated in the public announcements of those meetings. Whenever the number of observers is greater than can be accommodated in the designated meeting room, however, it will make alternative facilities available to the extent possible.

§ 1206.12 Role of observers.

The public may attend open meetings for the sole purpose of observation. Observers may not participate in the meetings unless they are expressly invited to do so. They also may not create distractions that interfere with the conduct and disposition of Board business, and they may be asked to leave if they do so. Observers of meetings that are partially closed must leave the meeting room when they are asked to do so.

Robert E. Taylor,

Clerk of the Board.

Date: May 8, 1989.

[FR Doc. 89-11306 Filed 5-10-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 50; Doc. No. 6660S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, for the purpose of amending claim for indemnity section of the Sunflower Seed Endorsement to add a quality adjustment based on seed damage. The intended effect of this rule is to provide a quality adjustment feature based on seed damage not presently included in the endorsement.

DATES: This rule is effective May 11, 1989. Comments should be received by July 10, 1989.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372

which rquires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In reviewing the sunflower seed crop insurance policies for conformity between the FCIC policy and the reinsured (MPCI) policies, it was determined that the MPCI policies contained a quality adjustment which was under consideration for inclusion in the crop insurance program, but had not yet been adopted. Since this quality adjustment mistakenly was included in publication of the MPCI policies, John Marshall, Manager, FCIC, has determined that in order to provide uniform services to all sunflower producers who are insured under the Federal Crop Insurance Program, it is necessary to include provisions for a quality adjustment feature based on seed damage in the FCIC endorsement.

Since policies currently in effect do not include these quality adjustment provisions, good cause is shown for making this rule effective upon publication in the **Federal Register** without provision for prior notice and comment. FCIC is soliciting public comment for 60 days after the publication of the rule, and will schedule a review of this rule as soon as possible after the 60-day period in order to consider any amendment which may be made necessary by the comments received.

Written comments, data, and opinions on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Sunflower seed endorsement.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and subsequent crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.124 is amended by revising subsection 7.b.(2) to read as follows:

§ 401.124 [Amended]

* * * * *

7. *Claim for Indemnity.*

* * * * *

b. * * *

(2) Mature production will be adjusted for quality when, due to insurable causes, the insured sunflower seed crop grades below the following:

	Oil type	Non-oil type
Test weight	Less than 25 pounds	Less than 22 pounds.
Damaged kernels	More than 10% total	More than 5% total

Sunflowers grading below these standards will be adjusted by:

(a) dividing the value per pound by the price per pound of No. 2 sunflowers; and

(b) multiplying the result by the number of pounds of insured sunflowers.

The applicable price for No. 2 sunflowers will be the local market price on the earlier of the day the loss is adjusted or the day the sunflowers are sold.

* * * * *

Done in Washington, DC, on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11360 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 19; Doc. No. 6809S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by: (1) Deleting a subsection which provides that insurance is not available on land located between any body of water and a primary flood control structure; (2) amending a subsection to clarify that acreage on which a crop has not been planted and harvested in at least one of the three previous crop years is insurable if that land has been in a soil conserving legume or is considered "cropland" by the Agricultural Stabilization and Conservation Service (ASCS); and (3) providing a definition for "cropland." The intended effect of this rule is to equalize the insurance offer on land described in (1) above since flood risk is many times included in the rating formula and establishing a specific cause of loss on such land is often difficult, and to clarify that land planted in a soil conserving legume as being the same land ASCS recognizes as cropland.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this section is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2)

certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to make the insurance offer available on land described as being between a body of water and a primary flood control structure, since flood risk is many times included in the rating formula, and establishing a specific cause of loss on such land is often difficult and to clarify that, for insurance purposes, land planted in a soil conserving legume is considered the same land ASCS recognizes as cropland.

On Monday, January 23, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 3048, proposing to amend the General Crop Insurance Regulations (7 CFR Part 401) by: (1) Deleting a subsection which provides that insurance is not available on land located between any body of water and a primary flood control structure; (2) amending another subsection to clarify that acreage on which a crop has not been planted and harvested in at least one of the three previous crop years is insurable if that land has been in a soil conserving legume or is considered "cropland" by the Agricultural Stabilization and Conservation Service (ASCS); and (3) providing a definition for "cropland."

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

In order to provide all insureds with the same degree of insurance protection, FCIC: (1) Deletes subsection 1.b.(5) (52 FR 28448), which provides that insurance is not available on land located between any body of water and a primary flood control structure, because establishing a specific cause of loss on such land is often difficult; (2) amends subsection 2.e.(11) (52 FR 28448), to clarify that acreage on which a crop has not been planted and harvested in at least one of the three previous crop years is insurable if that land has been in a soil conserving legume or is considered "cropland" by the Agricultural Stabilization and Conservation Service (ASCS) because ASCS uses cropland acres as a basis for program payments and it is inappropriate for FCIC to deny insurance on land recognized by ASCS for program payment purposes; and (3) provides a definition for "cropland" in subsection 17 of the policy.

Therefore, FCIC herewith adopts the proposed rule published at 53 FR 3048 as a final rule without change.

List of Subjects in 7 CFR Part 401

General crop insurance regulations.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.8(d), subsection 1.b., is amended by removing clause (5) and redesignating clauses (6) through (9) as (5) through (8), respectively.

§ 401.8 [Amended]

3. 7 CFR401.8(d), subsection 2.3., clause (11), is revised to read as follows:

2. *Crop, acreage, and share insured.*

* * * * *

(e) * * *

(11) on which a crop has not been planted and harvested in at least one of the three previous crop years unless it is determined the acreage has been in a soil conserving legume or unless the acreage meets the definition of Agricultural Stabilization and Conservation Service (ASCS) "cropland" acreage; or

* * * * *

4. 7 CFR 401.8(d), subsection 17 is amended by redesignating present paragraphs f. through r. as g. through s. respectively, and by inserting a new paragraph f. to read as follows:

17. *Meaning of Terms.*

* * * * *

f. *"Cropland"* means any acreage considered by ASCS for program payment purposes.

Done in Washington, DC on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11358 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 425

[Amdt. No. 1; Doc. No. 6799S]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. FCIC also undertook a review of these regulations at this time for need, currency, clarity, and effectiveness. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

EFFECTIVE DATE: June 12, 1989.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The Peanut Crop Insurance Regulations (7 CFR Part 425) have been reviewed in their entirety under the procedures established in Departmental Regulation 1512-1 with respect to the need, currency, clarity, and effectiveness of these regulations. The new sunset review date established for these regulations is April 1, 1994.

John Marshall, Manager, FCIC (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in:

(a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Peanut Crop Insurance Regulations (7 CFR Part 425), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their peanut crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders. FCIC therefore believes that the status quo should be maintained until a determination is made on the good experience discount provisions.

Accordingly, FCIC herein amends the Peanut Crop Insurance Regulations (7 CFR Part 425) to allow a continuation of the good experience discount provision through the 1991 crop year.

On Wednesday, March 8, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 9830, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the proposed rule published at 54 FR 9830 as a final rule without change.

List of Subjects in 7 CFR Part 425

Crop insurance, Peanuts.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1990 and succeeding crop years, in the following instances:

PART 425—[AMENDED]

1. The authority citation for 7 CFR Part 425 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 7(d) of the Peanut Crop Insurance Regulations (7 CFR 425.7) is amended by revising subsection 5.c.(1) to read as follows:

§ 425.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11374 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 435

[Amdt. No. 1; Doc. No. 6832S]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

EFFECTIVE DATE: June 12, 1989.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989. These regulations are currently under review under the procedures established by Departmental Regulations 1512-1 and FCIC will issue a determination as to the need, currency, clarity, and effectiveness of these regulations on or before August 1, 1989.

John Marshall, Manager, FCIC (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their tobacco crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders. FCIC therefore believes that the status quo should be maintained until a determination is made on the good experience discount provisions.

Accordingly, FCIC herein amends the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435) to allow a continuation of the good experience discount provision through the 1991 crop year.

On Wednesday, March 8, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 9832, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the proposed rule published at 54 FR 9832 as a final rule without change.

List of Subjects in 7 CFR Part 435

Crop insurance, Tobacco (quota plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1990 and succeeding crop years, in the following instances:

PART 435—[AMENDED]

1. The authority citation for 7 CFR Part 435 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 7(d) of the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR 435.7) is amended by revising subsection 5.c.(1) to read as follows:

§ 435.7 The application and policy.

* * * * *

(d) * * *.

5. *Annual Premium.*

* * * * *

c. * * *.

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11373 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 443

[Amdt. No. 1; Doc. No. 6836S]

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

EFFECTIVE DATE: June 12, 1989.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1990.

John Marshall, Manager, FCIC (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1983 crop year under the terms and conditions contained in their hybrid seed crop insurance policy for 1984. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1989 crop year.

The FCIC Board of Directors directed that a study be made of the entire premium reduction for good experience issue as it might apply to all policyholders. FCIC therefore believes

that the status quo should be maintained until a determination is made on the good experience discount provisions.

Accordingly, FCIC herein amends the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443) to allow a continuation of the good experience discount provision through the 1991 crop year.

On Wednesday, March 8, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 9835, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1989 crop year expiration to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the proposed rule published at 54 FR 9835 as a final rule without change.

List of Subjects in 7 CFR Part 443

Crop insurance, Hybrid seed.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1990 and succeeding crop years, in the following instances:

PART 443—[AMENDED]

1. The authority citation for 7 CFR Part 443 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 7(d) of the Hybrid Seed Crop Insurance Regulations (7 CFR 443.7) is amended by revising subsection 5.c.(1) to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

5. *Annual Premium.*

* * * * *

c. * * *

(1) No premium reduction will be retained after the 1991 crop year;

* * * * *

Done in Washington, DC on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11359 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 25895; Amdt. No. 350]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on May 1, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

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

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 350 EFFECTIVE DATE, JUNE 1, 1989

FROM	TO	MEA
§95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART		
LAIRD, IL FIX	THORR, IL FIX	2500
THORR, IL FIX	PAPPI, IL FIX	*2500
*1900 - MOCA		
§95.6009 VOR FEDERAL AIRWAY 9 IS AMENDED TO READ IN PART		
ST LOUIS, MO VORTAC	CAPITAL, IL VORTAC	2700
§95.6011 VOR FEDERAL AIRWAY 11 IS AMENDED TO READ IN PART		
SCOTO, IN FIX	INDIANAPOLIS, IN VORTAC	*2900
*2200 - MOCA		
§95.6026 VOR FEDERAL AIRWAY 26 IS AMENDED TO READ IN PART		
FARMINGTON, MN VORTAC	EAU CLAIRE, WI VORTAC	3000
§95.6071 VOR FEDERAL AIRWAY 71 IS AMENDED TO READ IN PART		
MONROE, LA VORTAC	EL DORADO, AR VORTAC	2100
HARRISON, AR VOR/DME	RASON, MO FIX	3200
RASON, MO FIX	SPRINGFIELD, MO VORTAC	3000
BUTLER, MO VORTAC	TOPEKA, KS VORTAC	3100
§95.6094 VOR FEDERAL AIRWAY 94 IS AMENDED TO READ IN PART		
ELM GROVE, LA VOR/DME	*WETER, LA FIX	2400
*3000 - MRA		
WETER, LA FIX	MONROE, LA VORTAC	*2400
*1800 - MOCA		
§95.6116 VOR FEDERAL AIRWAY 116 IS AMENDED TO READ IN PART		
MACON, MO VORTAC	QUINCY, IL VORTAC	*2700
*2100 - MOCA		
§95.6144 VOR FEDERAL AIRWAY 144 IS AMENDED TO READ IN PART		
LINDEN, VA VORTAC	BLUES, VA FIX	5000
§95.6159 VOR FEDERAL AIRWAY 159 IS AMENDED TO READ IN PART		
SIOUX CITY, IA VORTAC	OBERT, NE FIX	*4500
*2700 - MOCA		
§95.6178 VOR FEDERAL AIRWAY 178 IS AMENDED TO READ IN PART		
CAPE GIRARDEAU, MO VOR/DME	CUNNINGHAM, KY VORTAC	2400
CUNNINGHAM, KY VORTAC	CENTRAL CITY, KY VORTAC	2600
§95.6191 VOR FEDERAL AIRWAY 191 IS AMENDED TO READ IN PART		
NEWTT, IL FIX	BOJAK, IL FIX	3500
§95.6208 VOR FEDERAL AIRWAY 208 IS AMENDED TO READ IN PART		
PEACH SPRINGS, AZ VORTAC	GRAND CANYON, AZ VOR/DME	10000
GRAND CANYON, AZ VOR/DME	TUBA CITY, AZ VORTAC	9500
TUBA CITY, AZ VORTAC	PAGE, AZ VOR/DME	9000
§95.6275 VOR FEDERAL AIRWAY 275 IS AMENDED TO DELETE		
CINCINNATI, KY VORTAC VIA W ALTER.	RICHMOND, IN VORTAC VIA W ALTER.	2800
RICHMOND, IN VORTAC VIA W ALTER.	DAYTON, OH VOR/DME VIA W ALTER.	2900
§95.6298 VOR FEDERAL AIRWAY 298 IS AMENDED TO READ IN PART		
LAMON, ID FIX	*QUIRT, WY FIX	15000
*14100 - MCA QUIRT FIX, W BND		
QUIRT, WY FIX	DUNOIR, WY VOR/DME	12000
§95.6330 VOR FEDERAL AIRWAY 330 IS AMENDED TO READ IN PART		
JACKSON, WY VOR/DME	DUNOIR, WY VOR/DME	13000

FROM	TO	MEA
§95.6465 VOR FEDERAL AIRWAY 465 IS AMENDED TO READ IN PART		
JACKSON, WY VOR/DME	DUNOIR, WY VOR/DME	13000
§95.6493 VOR FEDERAL AIRWAY 493 IS AMENDED TO READ IN PART		
MENOM'NEE, MI VOR/DME	RHINELANDER, WI VORTAC	3500

FROM	TO	MEA
§95.6517 VOR FEDERAL AIRWAY 517 IS AMENDED BY ADDING		
CINCINNATI, KY VORTAC	RICHMOND, IN VORTAC	2800
RICHMOND, IN VORTAC	DAYTON, OH VOR/DME	2900
§95.6520 VOR FEDERAL AIRWAY 520 IS AMENDED TO READ IN PART		
DUBOIS, ID VORTAC	*JACKSON, WY VOR/DME	15000
*14300 - MCA JACKSON VOR/DME, W.BND.		

FROM	TO	MEA	MAA
§95.7018 JET ROUTE NO. 18			
	IS AMENDED TO READ IN PART		
ST JOSEPH, MO VORTAC	MOLINE, IL VORTAC	18000	35000
MOLINE, IL VORTAC	JOLIET, IL VORTAC	18000	35000
§95.7019 JET ROUTE NO. 19			
	IS AMENDED BY ADDING		
ST LOUIS, MO VORTAC	ROBERTS, IL VORTAC	18000	35000
ROBERTS, IL VORTAC	NORTHBROOK, IL VORTAC	18000	35000
§95.7035 JET ROUTE NO. 35			
	IS AMENDED TO READ IN PART		
CAPITAL, IL VORTAC	PONTIAC, IL VORTAC	18000	31000
PONTIAC, IL VORTAC	JOLIET, IL VORTAC	18000	35000
§95.7055 JET ROUTE NO. 55			
	IS AMENDED TO READ IN PART		
KENNEBUNK, ME VORTAC	PRESQUE ISLE, ME VORTAC	19000	45000
§95.7071 JET ROUTE NO. 71			
	IS AMENDED TO READ IN PART		
CENTRALIA, IL VORTAC	ROBERTS, IL VORTAC	18000	35000
ROBERTS, IL VORTAC	NORTHBROOK, IL VORTAC	18000	35000
§95.7073 JET ROUTE NO. 73			
	IS AMENDED TO READ IN PART		
TERRE HAUTE, IN VORTAC	DANVILLE, IL VORTAC	18000	35000
DANVILLE, IL VORTAC	NORTHBROOK, IL VORTAC	18000	35000
§95.7087 JET ROUTE NO. 87			
	IS AMENDED TO READ IN PART		
KIRKSVILLE, MO VORTAC	MOLINE, IL VORTAC	18000	35000
MOLINE, IL VORTAC	JOLIET, IL VORTAC	18000	35000
§95.7096 JET ROUTE NO. 96			

FROM	TO	MEA	MAA
§95.7096 JET ROUTE NO. 96—Continued			
	IS AMENDED TO READ IN PART		
KIRKSVILLE, MO VORTAC	PEORIA, IL VORTAC	18000	35000
PEORIA, IL VORTAC	JOLIET, IL VORTAC	18000	35000
§95.7101 JET ROUTE NO. 101			
	IS AMENDED TO READ IN PART		
CAPITAL, IL VORTAC	PONTIAC, IL VORTAC	18000	31000
PONTIAC, IL VORTAC	JOLIET, IL VORTAC	18000	35000
§95.7110 JET ROUTE NO. 110			
	IS AMENDED TO READ IN PART		
BELLAIRE, OH VORTAC	KIPPI, PA FIX	18000	45000
KIPPI, PA FIX	COYLE, NJ VORTAC	22000	45000
§95.7174 JET ROUTE NO. 174			
	IS AMENDED TO READ IN PART		
SNOW HILL, MD VORTAC	WARNN, NJ FIX	18000	33000
WARNN, NJ FIX	HAMPTON, NY VORTAC	18000	33000
§95.7223 JET ROUTE NO. 223			
	IS AMENDED TO READ IN PART		
LA GUARDIA, NY VOR/DME	CORDS, NY FIX	18000	25000
CORDS, NY FIX	ELMIRA, NY VOR/DME	18000	45000
§95.7232 JET ROUTE NO. 232			
	IS ADDED TO READ		
KIRKSVILLE, MO VORTAC	MOLINE, IL VORTAC	18000	35000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-208			
IS AMENDED BY ADDING			
PEACH SPRINGS, AZ VORTAC	GRAND CANYON, AZ VOR/DME	57	PEACH SPRINGS

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-18		
	IS AMENDED BY ADDING		
MOLINE, IL VORTAC	JOLIET, IL VORTAC	45	MOLINE
	IS AMENDED TO DELETE		
ST JOSEPH, MO VORTAC	BRADFORD, IL VORTAC	75	ST JOSEPH
	IS AMENDED BY ADDING		
ROBERTS, IL VORTAC	NORTHBROOK, IL VORTAC	40	ROBERTS
	J-55		
	IS AMENDED BY ADDING		
BOSTON, MA VORTAC	KENNEBUNK, ME VORTAC	38	BOSTON
	J-71		
	IS AMENDED BY ADDING		
CENTRALIA, IL VORTAC	ROBERTS, IL VORTAC	98	CENTRALIA
ROBERTS, IL VORTAC	NORTHBROOK, IL VORTAC	40	ROBERTS
	J-73		
	IS AMENDED TO READ IN PART		
DANVILLE, IL VORTAC	NORTHBROOK, IL VORTAC	50	DANVILLE
	J-87		
	IS AMENDED BY ADDING		
MOLINE, IL VORTAC	JOLIET, IL VORTAC	45	MOLINE

[FR Doc. 89-11294 Filed 5-10-89; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89-58]

Unique Bill of Lading Identifier

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: By a final rule published as T.D. 88-69 in the **Federal Register** on October 26, 1988 (53 FR 43197), section 4.7a, Customs Regulations (19 CFR 4.7a), was amended to require that each bill of lading accompanying a shipment of cargo carried by vessel be identified by a unique identifier containing not more than 16 characters, the first four of which must consist of a Standard Carrier Alpha Code (SCAC) assigned to and specifically identifying each carrier or other issuer of bills of lading. The remaining 12 characters could be either alpha or numeric, but when both were used the alpha characters had to be placed either in the first or last positions and not commingled with the numeric characters.

This document amends § 4.7a, as amended by T.D. 88-69, so as to effectively give the carrier or other issuer the option of commingling the alpha and numeric characters. The amendment also makes clear Customs policy that in cases of errors, in particular transpositions and duplications resulting from the commingling, the trade will be responsible for reconciling any such discrepancies between manifests and entries, except in a Customs post-audit process.

EFFECTIVE DATE: This amendment is effective March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Eula Walden, Office of Automated Commercial Systems, (202) 566-6012.

SUPPLEMENTARY INFORMATION:

Background

By a final rule published as T.D. 88-69 in the **Federal Register** on October 26, 1988 (53 FR 43197), § 4.7a, Customs Regulations (19 CFR 4.7a), was amended to require that each bill of lading accompanying a shipment of cargo carried by vessel be identified by a unique identifier containing not more than 16 characters. This identifier will serve to distinguish that particular bill of lading from other bills of lading issued by that carrier or issuer and from bills of lading issued by others.

The unique identifier is designed to enable the Customs Automated Commercial System (ACS) to more accurately track the progress of cargo from its arrival to its release. The identifier will, however, be required whether or not the carrier or other issuer of the bill is currently participating in ACS. This identifier must be used on any document which requires a bill of lading number.

As amended by T.D. 88-69, § 4.7a requires the use of the Standard Carrier Alpha Code (SCAC) for the first four characters of the identifier. The remaining 12 characters of the identifier could be either alpha or numeric, with the alpha characters grouped either in the first or last positions. Commingling of the alpha and numeric characters was thus not permitted in the final rule published in T.D. 88-69.

It has, however, now been determined that it is not technically necessary to have this non-commingling requirement. By affording the option to commingle the alpha and numeric characters, if desired, carriers and other issuers may more easily employ their own numbering systems for purposes of complying with the unique bill of lading identifier requirement.

Accordingly, Customs processing of the unique bill of lading identifier will simply be limited to checking the validity of the SCAC code and ensuring that the bill of lading identifier has not been duplicated within the 3-year period. If these requirements are met, the identifier will be accepted into the manifest database. The trade will be responsible for correcting discrepancies, such as duplications and transpositions, which occur between manifests and entries. Customs will not perform any such reconciliation except as part of a post-audit review process. Consequently, in view of the above, § 4.7a(c)(2)(iii) is being amended to reflect these changes.

Inapplicability of Public Notice Provision

As the amendment in effect provides an optional method for issuing unique bill of lading identifiers, and affords greater flexibility in their issuance which was desired by many commenters in the initial rulemaking, a notice of proposed rulemaking and delayed effective date is considered unnecessary under the Administrative Procedure Act, 5 U.S.C. 553.

Executive Order 12291

The document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory impact analysis is required.

Inapplicability of Regulatory Flexibility Act

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

Paperwork Reduction Act

The amendment is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The collection of information contained in this final regulation has already been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515-0142. The estimated average burden associated with the collection of information in this final rule is 6 minutes. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for U.S. Customs Service.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Carriers, Manifests, Vessels, Bill of Lading.

Amendment

This document amends Part 4, Customs Regulations (19 CFR Part 4), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general and specific authority citations for Part 4 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

* * * * *

Section 4.7a also issued under 19 U.S.C. 1431, 1439, 1465, 1498, 1584, 46 U.S.C. App. 674.

* * * * *

2. Section 4.7a(c)(2)(iii) is revised to read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* * * *

(2) * * *

(iii) All bills of lading, whether issued by a carrier, freight forwarder, or other issuer, shall contain a unique identifier consisting of up to 16 characters in length. The unique bill of lading number will be composed of two elements. The first element will be the first four characters consisting of the carrier or issuer's four digit Standard Carrier Alpha Code (SCAC) assigned to the carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes, applicable supplements thereto and reissues thereof. The second element may be up to 12 characters in length and may be either alpha and/or numeric. The unique identifier shall not be used by the carrier, freight forwarder or issuer for another bill of lading for a period of 3 years after issuance. Customs processing of the unique identifier will be limited to checking the validity of the Standard Carrier Alpha Codes (SCAC) and ensuring that the identifier has not been duplicated within a 3-year period. Carriers and broker/importers will be responsible for reconciliation of discrepancies between manifests and entries. Customs will not perform any reconciliation except in a post-audit process.

* * * * *

William von Rabb,

Commissioner of Customs.

Approved: May 5, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-11270 Filed 5-10-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Pesticide Monitoring Improvements Act

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new authority delegated by the Assistant Secretary for Health to the Commissioner of Food and Drugs. The authority being added is under sections 4702, 4703, and 4704 of the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401-1403).

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In a memorandum dated February 28, 1989, the Acting Secretary of Health and Human Services delegated to the Assistant Secretary for Health certain authorities vested in the Secretary under sections 4702, 4703, and 4704 of the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401-1403), excluding the authority to submit reports to Congress. In a subsequent memorandum, dated March 17, 1989, the Assistant Secretary for Health redelegated to the Commissioner of Food and Drugs all of the authorities delegated to the Assistant Secretary by the Secretary. The delegated authorities concern establishing a data management system to monitor pesticide residues in foods, entering into cooperative agreements with other countries to obtain information on pesticides used on foods exported to the United States, and preparing a long-range research plan for developing pesticide analytical methods. FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) by adding a new paragraph (a)(30) to incorporate this delegation.

The authorities may be redelegated. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*, 3701 *et seq.*, 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921, 12591.

2. Section 5.10 is amended by adding a new paragraph (a)(30) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(30) Functions vested in the Secretary under sections 4702, 4703, and 4704 of the Pesticide Monitoring Improvements Act of 1988 (21 U.S.C. 1401-1403) which relate to pesticide monitoring and enforcement information, foreign pesticide information, and pesticide analytical methods. The delegation excludes the authority to submit reports to Congress.

* * * * *

Dated: May 5, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-11303 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 86F-0508]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food and additive regulations to provide for the safe use of *n*-methylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food. This action responds to a petition filed by Rohm and Haas Co.

DATES: Effective May 11, 1989; written objections and requests for a hearing by June 12, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3351), FDA announced that a food additive petition (FAP 7B3979) had been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that the food additive regulations be amended to provide for the safe use of

n-methylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of methylglutarimide/acrylic copolymers is safe, and that a new regulation, § 177.1060 *n*-Alkylglutarimide/acrylic copolymers, should be added to 21 CFR Part 177 to authorize the use of the additive. The permitted uses of *n*-methylglutarimide/acrylic copolymers are listed in this regulation.

As part of its review of the petition, FDA considered the potential environmental impact from increased usage of vinyl chloride homo- and copolymers resulting from the use of *n*-methylglutarimide/acrylic copolymer as a polymer modifier. FDA initially concluded that there could be a significant increase in the use of vinyl chloride homo- and copolymers to package food from this use. (In a separate action, the agency has decided to prepare an environmental impact statement to assess the environmental impact of significant increases in use of vinly chloride polymers (November 22, 1988; 53 FR 47264).) Therefore, FDA is establishing a limit in the regulation to preclude use of the additive with vinyl chloride homo- and copolymers, pending further resolution of the environmental impact issues.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 12, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any paticular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. New § 177.1060 is added to Subpart B to read as follows:

§ 177.1060 n-Alkylglutarimide/acrylic copolymers.

n-Alkylglutarimide/acrylic copolymers identified in this section may be safely used as articles or components of articles intended for use in contact with food subject to provisions of this section and Part 174 of this chapter.

(a) *Identity.* For the purpose of this section, *n*-alkylglutarimide/acrylic copolymers are copolymers obtained by reaction of substances permitted by § 177.1010(a) (1), (2), and (3) with the following substance: Monomethylamine (CAS Reg. No. 74–89–5), to form *n*-methylglutarimide/acrylic copolymers.

(b) *Adjuvants.* The copolymers identified in paragraph (a) of this section may contain adjuvant substances required in their production. The optional adjuvant substances required in the production of the basic polymer may include substances permitted for such use by applicable regulations, as set forth in Part 174 of this chapter.

(c) *Specifications.* Maximum nitrogen content of the copolymer determined by micro-Kjeldahl analysis, shall not exceed 8 percent.

(d) *Limitations.* (1) The *n*-alkylglutarimide/acrylic copolymers in the finished form in which they shall contact food, when extracted with the solvent or solvents characterizing the type of food and under the conditions of time and temperature described in Tables 1 and 2 of § 176.170(c) of this chapter, shall yield extractives not to exceed the limitations of § 177.1010(b) of this chapter, when prepared as strips, as described in § 177.1010(c)(2) of this chapter.

(2) The *n*-alkylglutarimide/acrylic copolymers shall not be used as polymer modifiers in vinyl chloride homo- or copolymers.

(e) *Conditions of use.* The *n*-alkylglutarimide/acrylic copolymers are used as articles or components of articles (other than articles composed of vinyl chloride homo- or copolymers) intended for use in contact with all foods except beverages containing more than 8 percent alcohol under conditions of use D, E, F, and G as described in Table 1 of § 176.170(c) of this chapter.

Dated: April 28, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–11302 Filed 5–10–89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 436 AND 455

[Docket No. 89N-0052]

Antibiotic Drugs; Vancomycin Hydrochloride for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride for injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: June 12, 1989; comments, notice of participation, and request for hearing by June 12, 1989; data, information, and analyses to justify a hearing by July 10, 1989.

ADDRESS: Written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride for injection. the agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Parts 436 and 455 to provide for the inclusion of accepted standards for the product.

Environmental Impact

The has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively has a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective June 12, 1989. However, interested persons may, on or before June 12, 1989, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before June 12, 1989, a written notice of participation and request for hearing, and (2) on or before July 10, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions unde this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Parts 436 and 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436 and 455 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 436.366 is added to Subpart F to read as follows:

§ 436.366 High-performance liquid chromatography assay for determining chromatographic purity of vancomycin.

(a) *Apparatus.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers or preferably 280 nanometers;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) A 25-centimeter analytical column having an inside diameter of 4.6 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles; 5 micrometers in diameter.

(b) *Reagents.*—(1) *0.2 percent triethylammonium phosphate buffer.* To 2,000 milliliters of distilled water, either add 4 milliliters of triethylamine or 4 grams of triethylammonium chloride. Adjust the pH to 3.2 with phosphoric acid.

(2) *Sample solvents.* (i) Vancomycin hydrochloride: Mobile Phase A.

(ii) Vancomycin base: 5 milliliters Mobile Phase A; add 0.1*N* HCl dropwise with swirling until sample dissolves: dilute to volume with Mobile Phase A.

(c) *Mobile Phases*—(1) *Mobile Phase A.* Add 70 milliliters of acetonitrile and 10 milliliters of tetrahydrofuran to 920 milliliters of 0.2 percent triethylammonium phosphate buffer and mix well. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase, briefly, just prior to its introduction into the chromatographic pumping system.

(2) *Mobile Phase B.* Add 290 milliliters of acetonitrile and 10 milliliters of tetrahydofuran to 700 milliliters of 0.2 percent triethylammonium phosphate buffer and mix well. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase, briefly, just prior to its introduction into the chromatographic pumping system.

(d) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of about 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the main peak (Vancomycin B) that is at least 50 percent of scale. The run time is 30 minutes per injection and the gradient conditions are as follows: (0, 12, 12.5, 8, 0, 2)

Time (minutes)	Mobile phase A (percent)	Mobile phase B (percent)	Gradient condition
0	100	0	Initial conditions.
12	100	0	Isocratic region.
20	0	100	Linear ramp.
22	0	100	Isocratic region.
23	100	0	Return to initial.
30	100	0	Reequilibration.

(e) *Preparation of resolution and sample solutions*—(1) *Resolution solution.* Prepare a solution of vancomycin hydrochloride reference standard in water containing 0.5 milligram per milliliter. Heat at 65 °C for 24 hours and allow to cool. This procedure generates two desamido-vancomycin isomers. The first desamido isomer elutes during the isocratic period and before the vancomycin B peak; the second desamido isomer elutes during the gradient ramp and is used to demonstrate the effective performance of this stage.

(2) *Sample preparation.* In a volumetric flask either dissolve a representative sample or dilute a representative portion with sample solvent to give a sample preparation containing approximately 10 milligrams per milliliter. Pipet 2 milliliters of this sample solution into a separate 50-milliliter volumetric flask and dilute to volume with sample solvent to give a diluted sample preparation containing approximately 0.4 milligram per milliliter.

(f) *Procedure.* Optimize chromatographic conditions under isocratic conditions by equilibrating the system while pumping 100 percent mobile phase A through the column. Inject 20 microliters of the resolution solution onto the column and record the chromatogram. Adjust the acetonitrile concentration of mobile phase A as needed to provide a retention time for vancomycin B of 7.5 to 10.5 minutes. Use the resolution solution to perform the system suitability tests. The elution order is resolution compound 1, vancomycin B, resolution compound 2. Return the system to the initial gradient operating conditions. Separately inject 20 milliliters of each diluted (0.4 milligram per milliliter) and concentrated (10 milligrams per milliliter) sample solution onto the column and record each chromatogram.

(g) *System suitability test.* Using the resolution solution described in paragraph (e)(1) of this section, test the performance of the chromatographic system as follows:

(1) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point that is 10 percent of the vancomycin B peak height from the baseline, as follows:

$$A_s = \frac{a+b}{2a}$$

where:

a=Horizontal distance from point of ascent to point of maximum peak height; and

b=Horizontal distance from point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not less than 0.8 and not more than 1.8.

(2) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in § 436.216(c)(2) calculate the reduced plate height (h_r) for the vancomycin B peak as follows:

$$h_r = \frac{(L)\,(10{,}000)}{(n)\,(d_p)}$$

where:

L=Length of the column in centimeters;

n=Number of theoretical plates; and

d_p=Average diameter of the particles in the column in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 40 for the vancomycin B peak in the resolution solution.

(3) *Resolution.* The resolution (R) between the vancomycin B peak and the peak for resolution compound 1 is not less than 3.0. Resolution compound 2 is eluted between 3 and 6 months after the start of the period when the percentage of mobile phase B is increasing from 0 percent to 100 percent.

(4) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R in percent) of five replicate injections of the resolution solution is calculated as described in § 436.216(c)(4) is satisfactory if it is not more than 2.0 percent.

(5) *Capacity factor (k).* Calculate the capacity factor (k) for vancomycin B as follows:

$$k = \frac{t_r - t_m}{t_m}$$

where:

t_r=Retention time of solute; and

t_m=Retention time of solvent or unretained substance, calculated as follows:

$$t_m = \frac{(3.1416)(D^2)(L)(0.75)}{4F}$$

where:

D=Column diameter in centimeters;

L=Column length in centimeters;

0.75=Average total column porosity; and

F=Flow rate in milliliters per minute.

The capacity factor (k) for vancomycin B is satisfactory if it is not less than 2.6 and not more than 3.3.

When the system suitability requirements have been met, then proceed as described in paragraph (f) of this section. Alternate chromatographic conditions are acceptable provided that the system suitability parameters are met. However, the sample preparation described in paragraph (e)(2) of this section should not be changed.

(h) *Calculations.* (1) Calculate the percentage of vancomycin B in the specimen as follows:

$$\text{Percentage of vancomycin B} = \frac{A_B}{A_{Total}} \times 100 \text{ percent}$$

where:

A_B=Area of the vancomycin B peak in the dilute (0.4 milligram per milliliter) sample solution; and

A_{Total}=Area of the vancomycin B peak in the dilute (0.4 milligram per milliliter) solution+[Area of the total related substances peaks (exclude the area of the vancomycin B peak) in the concentrated solution (10 milligrams per milliliter) divided by 25].

(2) Calculate the percentage of each other peak as follows:

$$\text{Percentage of related substance } (i) = \frac{[A_{i/25}]}{A_{Total}} \times 100 \text{ percent}$$

where:

A_i=Area of any given peak, other than the main peak in the concentrated solution (10 milligrams per milliliter); and

A_{Total}=Area of the vancomycin B peak in the dilute (0.4 milligram per milliliter) solution+[Area of the total related substances peaks (exclude the area of the vancomycin B peak) in the concentrated solution (10 milligrams per milliliter) divided by 25].

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 455 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10

4. Section 455.285 is added to Subpart C to consist of a section heading to read as follows:

§ 455.285 Vancomycin hydrochloride injectable dosage forms.

5. Section 455.285b is added to Subpart C to read as follows:

§ 455.285b Vancomycin hydrochloride for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Vancomycin hydrochloride for injection is a dry mixture of vancomycin hydrochloride and a suitable stabilizing agent. It contains not less than 925 micrograms of vancomycin

per milligram, calculated on an anhydrous basis. Its vancomycin content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of vancomycin that it is represented to contain. It contains not less than 88 percent vancomycin factor B. It contains not more than 4 percent of any individual vancomycin related factor. It is sterile. It is nonpyrogenic. Its moisture content is not more than 5 percent. The pH of an aqueous solution containing 50 milligrams per milliliter is not less than 2.5 and not more than 4.5. Its heavy metals content is not more than 30 parts per million. It gives a positive identity test. The vancomycin hydrochloride used conforms to the standards prescribed by § 455.85(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Request for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The vancomycin hydrochloride used in making the batch for potency, moisture, pH, factor A content, and identity.

(B) The batch for vancomycin potency, vancomycin content, chromatographic purity, sterility, pyrogens, moisture, pH, heavy metals, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The vancomycin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Test and methods of assay*—(1) *Vancomycin potency and content.* Determine both micrograms of vancomycin per milligram of sample and milligrams of vancomycin per container. Proceed as directed in § 435.105 of this chapter, preparing the sample solution as follows:

(i) *Preparation of sample solution.* Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(i) (A) and (B) of this section.

(A) *Micrograms of vancomycin per milligram.* Dissolve an accurately weighed sample of approximately 30 milligrams in sufficient distilled water to obtain a stock solution of 1 milligram per milliliter. Further dilute an aliquot of the stock solution with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4) to the reference concentration of 10.0 micrograms of vancomycin per milliliter (estimated).

(B) *Milligrams of vancomycin per container.* Reconstitute as directed in the labeling. Using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of vancomycin content in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4) to the reference concentration of 10.0 micrograms of vancomycin per milliliter (estimated).

(2) *Chromatographic purity.* Proceed as directed in § 436.366 of this chapter. The relative amount of vancomycin B is not less than 88 percent and the relative amount of any related substance is not more than 4 percent.

(3) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use sterile distilled water in lieu of diluting fluid A.

(4) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 5 milligrams of vancomycin per milliliter.

(5) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(6) *pH.* Proceed as directed in § 436.202 of this chapter, using a solution containing 50 milligrams per milliliter.

(7) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(8) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 0.5 percent potassium bromide disc preparation as described in paragraph (b)(1) of that section.

Dated: May 3, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-11244 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 20]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Custodial Care

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule revises DoD 6010.8-R (32 CFR Part 199) which implements the Civilian Health and Medical Program of the Uniformed Services as pertains to the custodial care provisions. This amendment permits reimbursement for custodial conditions for which medically necessary acute hospital care is required. It also extends coverage for custodial patients for medical supplies, durable medical equipment and limited physician visits when otherwise covered within existing Program requirements. These changes will result in eliminating duplicative controls on custodial care, as well as better meet the basic medical needs of patients with a custodial condition.

EFFECTIVE DATE: This amendment is retroactively effective to October 1, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, Office of Program Development, OCHAMPUS, telephone (303) 361-4014.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Background

On December 11, 1987, we published a proposed rule to allow reimbursement for custodial conditions for which medically necessary acute hospital care is required. This amendment reiterates the proposed rule, further delineating that only acute-care hospitals are impacted, as diagnosis-related groups are not in use for long-term hospitals. Additionally, this amendment extends coverage for custodial patients for medical supplies, durable medical equipment and limited physician visits when otherwise covered within existing Program requirements.

This amendment is being adopted for two reasons—because of implementation of a DRG-based (diagnosis-related group) payment system for CHAMPUS inpatient hospital admissions occurring on or after October 1, 1987 (published in FR Doc. 87-19684, September 1, 1987) and to

clarify the position of the Department of Defense with respect to a court decision which held the custodial care provision unsupportable in cases involving medically necessary inpatient hospital care on the basis that there was no distinction between the terms domiciliary and custodial. In this background section, we clarify the distinction between custodial and domiciliary care through a historical overview of Congressional changes to the Program.

The 1956 legislation which initially authorized civilian health care for military dependents, Pub. L. 84–569, did not contain an exclusion of custodial care. Rather, benefits were more limited. The law excluded domiciliary care and the treatment of nervous and mental disorders, chronic diseases and elective medical and surgical treatments. Power was vested in the Secretary of Defense, after consultation with the then Secretary of Health, Education and Welfare (currently Health and Human Services), to grant exceptions to these exclusions for up to 12 months of treatment in special and unusual cases. Care in civilian facilities was also generally limited to inpatient treatment for active duty dependents.

The express purpose of the changes enacted by the Military Medical Benefits Amendments of 1966 was to "provide improved benefits for military families along the line of those provided other citizens over the (preceding) decade." Consistent with this intent, the 1966 amendment eliminated the exclusion of the treatment of chronic diseases, representing a significant program expansion. This expansion was tempered, however, by the newly adopted exclusion of custodial care, an exclusion which was also consistent with other public and private health care plans. The custodial care exclusion was intended as a limitation on the expansion of benefits represented in part by the inclusion of the treatment of chronic diseases as a benefit.

One of the stated purposes of the 1966 amendment was to ensure that the Department of Defense retained sufficient administrative flexibility to tailor the Program's benefit package to meet the determined needs of the Uniformed Services. Thus, broad discretion was granted to the Secretary of Defense in the management and direction of the civil health benefits program.

In developing the 1966 amendments, Congress looked to the Federal Employees Health Benefits Program for guidance in the development of the benefits package. The history of the Program's development (Military Medical Benefits Act of 1966, report dated March 31, 1966, Explanation of the Amendment—Purpose of the Bill) states in part:

> The bill would improve the level of benefits provided by eliminating the specific listing in the law of the types of care permitted and substituting therefor authority to provide hospital care up to the level of the highest option of the Government-wide plan covering the larger number of civilian employees under the Federal Employees' Health Benefits Act. The Department of Defense would have the authority to contract for care subject only to the limitation that the benefits provided could not exceed the high option of the most popular Government-wide civilian program. The bill further provides that benefits shall not be less than those provided under such civilian high option programs on July 1, 1966.

Thus, the bill gives the Department of Defense the flexibility to improve benefits in the future as health benefits expanded for other Government personnel and, at the same time, provides a floor on benefits so that they could not be reduced in the future by arbitrary administrative directive.

The legislative history goes on to specify that the types of care intended for the various beneficiaries are to be modeled after the high-option Blue Cross-Blue Shield plan available to Federal civilian employees. In January 1966, the contract between the U.S. Civil Service Commission and National Blue Cross and Blue Shield Associations defined custodial care as follows:

> "Custodial Care" is the provision of room and board—with or without routine nursing care, training and personal hygiene and other forms of self-care, or supervisory care by a doctor—for a person who is mentally or physically disabled as a result of retarded development or body infirmity and who is not under specific medical, surgical, or psychiatric treatment to reduce his disability and to enable him to live outside an institution providing custodial care.

The Government-Wide Service Benefit Plan brochure published by the U.S. Civil Service Commission in January 1966 defined custodial care with substantially the same language. It also amplified that language with some additional explanation of the custodial care exclusion:

> Custodial care, which is the provision of room and board—with or without routine nursing care, training in personal hygiene and other forms of self-care, or supervisory care by a doctor—for a person who is mentally or physically disabled as a result of retarded development or body infirmity and who is not under specific medical, surgical, or psychiatric treatment to reduce his disability to the extent necessary to enable him to live outside an institution providing medical care. This exclusion applies even when the care is provided by a hospital. However, if confinement in a hospital is required because of a concurrent condition (whether related or not) which does require medical or surgical treatment by a doctor, the difference between the normally allowable hospital expenses and the customary charge for custodial care will be considered as allowable expenses.

In 1970, the brochure definition was modified by deleting the last sentence which allowed for an exception for patients needing medical or surgical treatment by a physician.

Initially, the term domiciliary care was defined to encompass the concept of custodial care. In its early implementation of the 1966 amendments, the Department of Defense derived its definition of custodial care from the one used by the Social Security Administration's Medicare program. A number of custodial care determinations were reviewed under that definition.

Between 1966 and 1974, CHAMPUS came under increasing Congressional scrutiny and criticism directed at escalating Program costs and administrative inefficiencies. A major review was undertaken in 1975–1977 to more consistently enforce the intent of Congress as expressed in the law and to establish a better designed, more uniform program which would be more akin to a contract of insurance and provide a greater degree of control over all program elements. The review culminated in issuance of the comprehensive Department of Defense regulation for the operation and management of CHAMPUS.

The provisions of the law relating to custodial care and domiciliary care were examined as a part of the comprehensive review initiated in 1975. Based upon the legislative history discussed above, it was determined that these terms actually represent separate concepts and that new definitions were required.

In seeking a new definition, Program administrators looked to the Federal Employee Health Benefits Program (FEHBP). The definition sought had to be easily understood by beneficiaries and providers and had to be workable for the routine processing of claims. The FEHBP provided a reasonable alternative source and was compatible with the original intent of Congress in enacting the 1966 amendments. The definition of custodial care ultimately adopted was derived from that source and is consistent with the concepts developed in that Program.

The current custodial care definition has been in effect since 1977. It is briefly described as care rendered to a patient (1) who is disabled mentally or physically and such disability is expected to continue and be prolonged;

and (2) who requires a protected, monitored, or controlled environment; and (3) who requires assistance in the essentials of daily living; and (4) who is not under active and specific treatment that will reduce the disability to the extent necessary to function outside of a controlled environment. Once a custodial care determination is made, CHAMPUS benefits are limited to one hour of skilled nursing care per day, prescription drugs and medical supplies for their administration. CHAMPUS benefits may be extended for otherwise covered services related to a medically necessary admission to an acute care hospital only if hospitalization is required for treatment of a condition other than the one for which custodial care is being received (e.g., a broken leg as a result of a fall) or if there is an acute exacerbation of the condition for which custodial care is being received that requires active inpatient treatment.

As shown in this historical review, the CHAMPUS custodial care provisions have traditionally acted as benefit limitations to help contain costs in a Program that has had essentially no limits on medically necessary care and has very favorable cost-sharing provisions. Once a custodial care determination was made, the Program offered only limited benefits for the custodial condition. Other third-party plans have controls, absent in CHAMPUS, to contain excessive costs that might otherwise occur with a chronic, long-term illness. These controls consist of limits on the number of days of hospitalization or limits on physician or nursing visits. Some have substantial deductibles and cost-sharing for inpatient care, and most have either a dollar or visit limit on other care.

On May 15, 1987, the United States Court of Appeals for the District of Columbia Circuit, *Barnett* v. *Weinberger*, 818 F. 2d 953 (DC Cir. 1987), in reversing a district court decision, held the CHAMPUS regulation invalid insofar as it purports to treat medically-necessary patient care obtainable only in a hospital as excluded custodial care. The Court stated the specific issue before it to be "whether the regulations characterizing medically-essential hospital services as excluded 'custodial care' comport with the statutory provision on that subject." The Court held, after analyses of the legislative history and relevant case law, "that the challenged CHAMPUS regulation, as written or applied, is invalid insofar as it purports to treat medically necessary patient care obtainable only in a hospital as 'excluded custodial care.' "

In reaching the foregoing conclusion, the Court relied heavily upon an analysis of the relevant legislative history. The original 1956 legislation excluded domiciliary care, but not custodial care. The Court found significant the original concept of domiciliary care as not excluding hospitalization which is medically essential because it "sheds important light upon the meaning of 'custodial care' when the latter was inserted into the exclusionary section in 1966." The Court noted that the 1966 amendments were characterized generally as benefit enhancements. Based upon its understanding of the legislative history, the Court concluded that "it would be highly anomalous to suppose that by this language (excluding 'custodial care') Congress designed an exclusion of necessary medical services from basic CHAMPUS benefits."

The Department of Defense does not agree with the rationale of the Court in this regard. For other reasons, it has chosen not to appeal or seek other relief from the decision as it applied in that particular case. The Court stated that the broad-gauged reading of the statutory exclusion of custodial care is antithetical to the general statutory purpose of enhancing benefits. We do not believe, however, that the Court gave a true picture of the context of the custodial care exclusion. As is clear from the historical discussion above, the 1956 Dependents' Medical Care Act contained an exclusion of domiciliary care. It did not specifically exclude custodial care. Rather, it excluded all care for chronic conditions, a much broader exclusionary concept than that of custodial care. This fact was not discussed by the Court. It has significance because it gives a better picture of the basis for the custodial care exclusion in the 1966 amendment. In 1966, Congress removed the exclusion for care for chronic conditions and substituted the exclusion of custodial care. Contrary to the Court's conclusion that the custodial care exclusion did not enlarge the existing exclusion of domiciliary care, what in reality was occurring was that Congress had removed a major exclusion of necessary medical services for those with chronic medical conditions. Under the 1956 law these conditions were not covered at all, irrespective of how medically essential the care was. The custodial care provision was substituted for this exclusion. For this reason, we disagree with the Court's conclusion that Congress did not intend to exclude necessary medical service from basic CHAMPUS benefits in excluding custodial care. If the Court's conclusion were correct, there would have been no need for Congress to add the exclusion for custodial care. Congress simply could have removed the exclusion related to chronic conditions. When seen in this context, the custodial care exclusion, as interpreted by the Department in 1977, represents a significant enhancement of benefits over the 1956 law which excluded all care for chronic conditions. Nor do we agree with the Court's characterizing domiciliary care and custodial care as essentially synonymous terms. The domiciliary care exclusion predates by several years the custodial care provision and was contemporaneous with the exclusion of care for chronic conditions. Obviously, when Congress expanded benefits by deleting the exclusion of care for chronic conditions and added the exclusion for custodial care, something in addition to the pre-existing exclusion of domiciliary care was intended. The custodial care exclusion was included to temper the major expansion of benefits which the deletion of the exclusion of care for chronic conditions represented.

However, because the ruling of the Court closely coincides with the implementation of DRGs, we are taking advantage of this change on custodial care to clarify our position regarding the decision of the Court. With the implementation of DRGs for hospitals on October 1, 1987, the custodial care provision represents a duplicative control on inpatient care in acute-care hospitals. Other provisions of the Regulation exist to help ensure the responsible expenditure of public funds. For example, the Regulation requires that the medical environment in which the services are performed be at the level adequate to provide the required care. Services and supplies related to inpatient stays in hospitals or other authorized institutions above the appropriate level required to provide the necessary medical care will continue to be excluded. These controls are expected to effectively control utilization.

The change clarifies the distinction between custodial and domiciliary care. It provides coverage for medical supplies and durable medical equipment for the custodial patient when otherwise covered within existing Program requirements. This final rule also provides coverage for a limited number of physician visits once the patient has been determined custodial to permit patient monitoring as appropriate. These provisions are considered cost-effective in that availability of medical supplies

and durable medical equipment, together with coverage for limited physician involvement, may preclude an acute exacerbation of the custodial condition which might otherwise lead to the need for active inpatient treatment.

The effective date is October 1, 1987, to coincide with the implementation of the rule on DRGs. Further revision of the custodial definition may be considered following evaluation of the expanded Home Health Care Demonstration (published in FR Doc. 88–12539, June 3, 1988) which has been extended through fiscal year 1990 by the Defense Appropriation Act, FY 1989.

II. Discussion of Comments

We received one comment, and that was from a DoD component. The commenter felt that this change represented a significant increase in CHAMPUS benefits and might result in substantial increases in overall costs. The commenter recommended that legislation be sought to overturn or reverse the Court decision. We share the concerns of the commenter, especially in this climate of severe budget and resource limitations, but feel this approach, when combined with implementation of diagnosis-related groups, will have an appreciable affect on cost-containment. We will monitor this area to see if additional controls become necessary.

III. Regulatory Impact

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

This final rule will have the impact of enhancing the scope of the CHAMPUS benefit for medically necessary inpatient care. It distinguishes between the terms custodial and domiciliary and provides an historical overview to mirror the Congressional intent concerning the CHAMPUS range of benefits. The final rule adds coverage for custodial patients in the form of medical supplies, durable medical equipment and limited physician visits when existing Program requirements are met. It will not involve any significant additional administrative burden on CHAMPUS beneficiaries or providers of medical care.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199, is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086: 5 U.S.C. 301.

2. Section 199.2(b) is amended by revising the notes following the existing definition of "custodial care" and "domiciliary care" to read as follows:

§ 199.2 Definitions.

* * * * *

(b) *Specific definitions.*

* * * * *

Custodial care. * * *

Note: The determination of custodial care in no way implies that the care being rendered is not required by the patient; it only means that it is the kind of care that is not covered under CHAMPUS. A program of physical and mental rehabilitation which is designed to reduce a disability is not custodial care as long as the objective of the program is a reduced level of care.

* * * * *

Domiciliary care. * * *

Note: The terms "domiciliary" and "custodial care" represent separate concepts and are not interchangeable. Domiciliary care is not covered under either the CHAMPUS Basic Program or the Program for the Handicapped (PFTH).

* * * * *

3. Section 199.4 is amended by revising paragraphs (e)(12)(ii), (e)(12)(iii), and (g)(7) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(12) * * *

(ii) *Benefits available in connection with a custodial care case.* CHAMPUS benefits are not available for services related to a custodial care case, with the following specific exceptions:

(A) *Prescription drugs and medicines, medical supplies and durable medical equipment.* Benefits are payable for otherwise covered prescription drugs and medicines, medical supplies and durable medical equipment.

(B) *Nursing services, limited.* Recognizing that even though the care being received is determined primarily to be custodial, an occasional specific skilled nursing service may be required. When it is determined such skilled nursing services are needed, benefits may be extended for one hour of nursing care per day.

(C) *Physician services, limited.* Recognizing that even though the care being received is determined primarily to be custodial, occasional physician monitoring may be required to maintain the patient's condition. When it is determined that a patient is receiving custodial care, benefits may be extended for up to twelve physician visits per calendar year for the custodial condition (not to exceed one per month).

Note: CHAMPUS benefits may be extended for additional physician visits related to the treatment of a condition other than the condition for which the patient is receiving custodial care (an example is a broken leg as a result of a fall).

(D) *Payment for prescription drugs, medical supplies, durable medical equipment and limited skilled nursing and physician services does not affect custodial care determination.* The fact that CHAMPUS extends benefits for prescription drugs, medical supplies, durable medical equipment, and limited skilled nursing and physician services in no way affects the custodial care determination if the case otherwise falls within the definition of custodial care.

(iii) *Exception to custodial care exclusion, admission to a hospital.* CHAMPUS benefits may be extended for otherwise covered services or supplies directly related to a medically necessary admission to an acute care general or special hospital (as defined in paragraph (b)(4)(i), section 199.6 of this part), if the care is at the appropriate level and meets other requirements of this Regulation.

* * * * *

(g) * * *

(7) *Custodial care.* Custodial care except as otherwise specifically provided in paragraphs (e)(12) (ii), (iii), and (iv) of this section.

* * * * *

4. Section 199.5 is amended by revising paragraph (j)(3) to read as follows:

§ 199.5 Program for the Handicapped (PFTH).

* * * * *

(j) * * *

(3) *Homemaker, sitter or companion services.* Homemaker, sitter or companion services are not covered.

* * * * *

May 4, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–11273 Filed 5–10–89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3566-1]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This notice approves a revision to the Colorado State Implementation Plan (SIP) submitted on November 17, 1988, by the Governor of Colorado. The revisions include amendments to Colorado Regulation No. 1 to exempt the destruction of missiles under the Intermediate-Range Nuclear Forces (INF) Treaty from meeting the opacity limits. Other amendments were also submitted on November 17, 1988, including revisions to Colorado Regulations No. 3, No. 11, No. 13 and the Common Provisions Regulation, which are addressed in other **Federal Register** Notices. The submittal provides for the destruction of missiles under the INF Treaty at the Pueblo Army Depot by static firing. The opacity standard cannot be met by this operation, and the submittal exempts the missile destruction from these standards. The opacity requirements are not necessary to enforce compliance with the permit which has been issued to ensure that the ambient air quality will be at acceptable levels.

DATES: This action will be effective on July 10, 1989, unless notice is received by June 12, 1989, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m., and 4:00 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460^Z.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 294-1773, (FTS) 564-1773.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1987, the United States and the Soviet Union signed the Intermediate-Range Nuclear Forces (INF) Treaty to eliminate intermediate-range and shorter-range Pershing missile systems. The treaty provides specific methods, procedures, and timeframes for destroying the missiles once the treaty enters into force.

The Army completed an Environmental Assessment (EA) in February 1988, pursuant to the provisions of the National Environmental Policy Act, on the potential environmental effects of eliminating the missiles. The EA was submitted to the United States Senate for information during the treaty ratification process. The EA discussed destruction methods of static firing and open burning in the State of Colorado. The document concludes with a finding of no significant impact but points out the need for environmental permits. Pueblo Army Depot Activity is the only site evaluated in the EA for the elimination process in Colorado.

To ensure compliance with the mandates of the treaty and state and federal environmental regulations, the Army has been consulting with the Office of the Governor, the State Department of Health, and the EPA. During meetings of April 6-7, 1988, with Colorado Department of Health officials, the Army was advised to submit a rulemaking petition to exempt the Pershing elimination activity from the state opacity limit for the reason stated below:

> Air emissions from the static firing of Pershing rocket motors are emitted directly into the ambient air and therefore cannot be mitigated.

The amended Regulation No. 1, Section II.A.9 (new section) would exempt emissions from the static firing of missiles at Pueblo Army Depot Activity for a period not to exceed 36 months from the first day of missile destruction unless otherwise mandated by amendment to the treaty or the state air permit.

In accordance with the Intermediate-Range Nuclear Forces Treaty as ratified, the Pueblo Army Depot submitted an application for an air pollution emission permit to dispose of Pershing rocket motors. On May 31, 1988, the Division observed from the test static firing of one Pershing rocket motor that the opacity of the plume from this activity would exceed the standard of 20% set forth in the Air Quality Control Commission's Regulation No. 1. The Pueblo Army Depot, in order to obtain a permit for the destruction of the remaining rocket motors, must obtain a waiver from the above opacity standard, or the permit will be denied. This waiver would be necessary due to the fact that there are no presently available methods to reduce opacity to compliance levels for this source.

The State adopted section II.A.9. in order to exempt the static firing of intermediate range and shorter range Pershing Missile systems from the opacity limits contained in Regulation No. 1, so long as such static firing results in emissions less than 250 tons per year of any one pollutant, adequate monitoring is conducted, and air pollutants are not emitted in dangerous quantities.

The opacity requirements are found in Regulation 1, section II.A. and are primarily designed to ensure that standard smokestack type sources of air pollution are well controlled. While opacity requirements are generally appropriate for the control of both stack and fugitive emissions, the State is not, in this case, relying on the application of emission control systems for which opacity is an indication of proper operation.

Although exempted under Regulation 1 for opacity requirements, the State must issue a permit for the missile destruction under Colorado Regulation No. 3 before destruction of the missiles may commence. This permit cannot be issued unless the State determines through air quality dispersion modeling that the National Ambient Air Quality Standards, which protect against health and other effects, are met. This permit was issued on November 3, 1988, and restricts the number and time of the missle burns.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective (60 days from publication).

Final Action

EPA hereby approves the Colorado amendment to Colorado Regulation No.

1 to exempt the destruction of missiles under the Intermediate-Range Nuclear Forces (INF) Treaty from meeting the opacity limits. To ensure protection of the NAAQS, however, the State must issue a permit for the missile destruction under Regulation 3 before destruction of the missiles may commence. This permit cannot be issued unless the State determines through air quality dispersion modeling that the National Ambient Air Quality Standards which protect against health and other effects are met. This permit was issued on November 3, 1988, and restricts the number and times of the missile burns.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Date: April 14, 1989.

Jack W. McGraw,

Acting Regional Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

Subpart G—Colorado

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(48) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(48) On November 17, 1988, the Governor submitted an amendment to Colorado Regulation No. 1 to exempt the destruction of missiles under the Intermediate-Range Nuclear Forces (INF) Treaty from meeting the opacity limits.

(i) Incorporation by reference.

(A) Regulation No. 1, section II.A.9., opacity requirement exemption, adopted September 15, 1988, effective October 30, 1988.

[FR Doc. 89–10575 Filed 5–10–89; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 54, No. 90
Thursday May 11, 1989

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 49; Doc. No. 6677S]

General Crop Insurance Regulations; Safflower Seed Crop Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to: (1) Amend the Safflower Endorsement with respect to cancellation and termination dates and the dates which contract changes must be on file in the service offices in California and, (2) to review these regulations under the procedures of Department Regulation 1512-1 for the purpose of establishing a new sunset review date. The intended effect of this proposed rule is to provide cancellation, termination, and filing dates appropriate to the California safflower crop and to establish a new sunset review date.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than June 12, 1989, to be sure of considerations.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. These regulations have been reviewed under the procedures established by Departmental Regulations 1512-1 as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations in the Safflower Endorsement is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The present safflower crop insurance cancellation and termination date is April 15 for all states and the contract change date is the previous December 31. Safflower plantings in California are generally done in January or February and are growing and well established by April 15.

In order to provide that contract changes are filed timely before the sales period begins, and allow an appropriate amount of time for applications to be accepted before the end of the sales period, it is necessary to change the sales closing date to February 15 and to change the date by which contract changes are to be filed in the service office in California to the previous November 30. Since the sales closing date is almost always the same date as the cancellation and termination date, the changing of the sales closing date will require that the cancellation and termination date in California also be changed to February 15.

FCIC invites written public comment on this proposed rule for 30 days after its publication in the **Federal Register.** Comments should be submitted to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC. All written comments received pursuant to this proposed rule will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Safflower endorsement.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C.1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Safflower Seed Crop Insurance Regulations (7 CFR 401.123) are amended by revising subsections 8 and 9 to read as follows:

§ 401.123 Safflower seed crop endorsement.

* * * * *

8. Cancellation and Termination Date

The cancellation and termination date for California is February 15. For all other states, the cancellation and termination date is April 15.

9. Contract Changes

Contract changes will be available at your service office by December 31, prior to the cancellation date for counties with an April

15 cancellation date and by November 30 prior to the cancellation date for all other counties.

* * * * *

Done in Washington, DC on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11379 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 20; Doc. No. 6749S]

General Crop Insurance Regulations; Tobacco (Guaranteed Plan) Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by adding a new § 401.129, Tobacco (Guaranteed Plan) Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on tobacco in an endorsement to the general crop insurance policy.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than June 12, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.129, the Tocacco (Guaranteed Plan) Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring tobacco.

Upon publication of 7 CFR 401.129 as a final rule, the provisions for insuring tobacco contained therein will supersede those provisions contained in 7 CFR Part 436, the Tobacco (Guaranteed Plan) Crop Insurance Regulations, effective with the beginning of the 1990 crop year. The present policy contained in 7 CFR Part 436 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR Part 436 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Tobacco (Guaranteed Plan) Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring tobacco under the guaranteed plan as follows:

1. Subsection 1.—Add a provision indicating that tobacco destroyed to comply with other U.S. Department of Agriculture programs will not be insured.

This provision was added to prevent insurance from attaching to the crop intended for eventual destruction to comply with other U.S. Department of Agriculture programs.

2. Subsection 3.—The good experience discount has been extended to coincide with the Board of Directors recommendations.

3. Subsection 4.—Change language to indicate that insurance begins and ends on an individual unit or partial unit basis.

This change was made to avoid the practice of delaying the planting of the last unit until after the final planting date so as to prevent insurance from attaching.

Change the end of insurance period for type 31 tobacco to February 28 for consistency between policies.

4. Subsection 5.—Unit provisions are now included in the endorsement.

5. Subsection 7.—Add language stating production commingled between farm serial number units will be prorated.

Clarify language to indicate that if appraisals for uninsured causes are made in conjunction with other appraisals, we will count the entire uninsured appraisal.

6. Subsection 10.—Clarify the term "Harvest" to define procedure in those cases when the crop reaches harvested stage and the insured does not intend to market the crop.

Add language to provide a method for establishing a value for grades of tobacco which, after delivery to the market, do not sell.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Tobacco (guaranteed plan) endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new § 401.129, Tobacco (Guaranteed Plan) Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.129 Tobacco (guaranteed plan) endorsement.

The provisions of the Tobacco (Guaranteed Plan) Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Tobacco (Guaranteed Plan) Endorsement

1. Insured Crop and Acreage

a. The crop insured will be any of the following tobacco types and elect which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured	*Fired Cured*
Type 11A	Type 21
Type 11B	Type 22
Type 12	Type 23
Type 13	Burley
Type 14	Type 31
Maryland	Dark Air
Type 32	Type 35
Cigar Filler	Type 36
Type 41	Type 37
Type 42	Cigar Binder
Type 44	Type 51
Cigar Wrapper	Type 52
Type 61	Type 54
	Type 55

b. In addition to the acreage not insurable under section 2 of the general crop insurance policy, we do not insure any acreage:

(1) on which the tobacco was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

(2) planted to tobacco of a discount variety under provisions of the tobacco price support program.

2. Causes of Loss

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

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are expcepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

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

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1985 crop year under the terms of the experience table contained in the guaranteed tobacco policy in effect for the 1986 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

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

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;

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

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions of section 7 of the general crop insurance policy the following will apply:

Insurance attaches on each unit or part of a unit when the tobacco is planted (see subsection 10(e) of this section) and ends at the earliest of:

a. Total destruction of the tobacco;
b. Weighing-in at the tobacco warehouse;
c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);
d. Final adjustment of a loss; or
e. On the following dates of the crop year:

(1) Types 11 and 12 ..... November 30;
(2) Type 13 ..... October 31;
(3) Type 14 ..... October 15;
(4) Types 31 and 36 ..... February 28;
(5) Types 21, 35 and 37 ..... March 15;
(6) Types 22 and 23 ..... April 15;
(7) Type 32 ..... May 15;
(8) All other types ..... April 30.

5. Unit Division

a. In lieu of subsection 17.q. of the general crop insurance policy, a unit will be defined as all of the insurable acreage in the county, of the tobacco type you elect to insure, at the time insurance first attaches (1) in which you have an insured share on the date of planting for the crop year and (2) which is identifed by a single ASCS Farm Serial Number at the time insurance first attaches under this endorsement for the crop year.

b. We may reject or modify an ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will be prorated by us.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy; the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of each field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

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

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 7.b. of this section);

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

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the market price per pound; and

(b) Multiplying that result by the number of pounds of such damaged harvested tobacco.

(c) If due to insurable causes there is no market price available for the grade being adjusted, the production to count will be reduced 20% for each grade that the production falls below the lowest marketable grade with a market price (see subsection 10.d.(2) of this section).

(2) All harvested tobacco production which is not damaged by insurable causes and cannot be sold in the current market year will be considered production to count.

(3) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be allowed:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(4) Appraised production to be counted will include:

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

(b) Not less than 35 percent of the guarantee for all unharvested acreage;

(c) Unharvested production on harvested acreage; and

(d) Potential production lost due to uninsured cause and to failure to follow recognized good tobacco farming practices.

(5) We may appraise any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed without our consent at not less than the guarantee.

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

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us; or

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

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

(8) No replanting payment will be made under this endorsement.

8. Cancellation and Termination Dates

State and county	Cancellation and Termination Dates
Alabama; Florida; Georgia; South Carolina; and Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina, and all North Carolina counties east thereof.	March 31.
All other North Carolina Counties and all other states.	April 15.

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of Terms

a. "Average value per pound" means the total value of all harvested production from the unit divided by the harvested pounds and may include the value of any harvested production which is not sold.

b. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed with the intent of marketing.

d. "Market price" (1) For types, 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program (if for any crop year price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested); and

(2) For types 32, 41, 51, 52, and 61 means the season average price for the applicable type of tobacco, (such price will be the season average price for the current crop year for any unit or part thereof which is harvested) and may be established by including the value of sold and unsold production.

e. "Planting" means transplanting the tobacco plant from the bed into the field.

Done in Washington, DC on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11363 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 454

[Amdt. No. 2; Doc. No. 6682S]

Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 454), effective for the 1990 and succeeding crop years, to: (1) Amend the Fresh Market Tomato Crop Insurance Regulations with respect to changing the end of the insurance period and the required date for submitting a notice of loss, to a later date to coincide with fresh market tomato production practices in California; (2) include California in the cancellation and termination dates provision; and, (3) review these regulations under the procedures of Department Regulation 1512-1 for the purpose of establishing a new sunset review date. The intended effect of this proposed rule is to provide a corrected end of insurance period, change the date for notice of loss and intent to file a claim, add California to the cancellation and termination dates provision, and establish a new sunset review date for these regulations.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than June 12, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. These regulations have been reviewed under the procedures established by Departmental Regulations 1512-1 as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations is February 1, 1994.

John Marshall, Manager, FCIC (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Board of Directors recently authorized the expansion into California of fresh market tomato crop insurance under a guaranteed production plan. The present production practices for that crop in California are different from other areas where such insurance is offered. This necessitates changes in the present policy to accommodate this expansion.

The present end of insurance period affecting California is September 20. At that time, tomatoes have not yet reached the same stage as other states. For this reason, the date for the end of insurance should be later. A similar rationale is applicable to the date for filing notice of probable loss and intent to make a claim on a unit, and to the cancellation and termination date in the policy.

FCIC is proposing, for California only, to change the end of insurance period from September 20 to November 20; the date for filing notice of loss and intent to file a claim from September 20 to November 20; and, include California under the cancellation and termination date provision. FCIC further proposes to remove the word "Pennsylvania" from the cancellation and termination date provision and substitute the words "all other states", because this applies to all states where crop insurance on this crop is offered.

FCIC invites written public comment on this proposed rule for 30 days after its publication in the **Federal Register.** Comments should be submitted to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC. All written comments received pursuant to this proposed rule will be available for public inspection and copying at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 454

Crop insurance, Fresh market tomato (Guaranteed production plan).

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 454), proposed to be effective for the 1990 and succeeding crop years, in the following instances:

PART 454—[AMENDED]

1. The authority citation for 7 CFR Part 454 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Policy (7 CFR 454.7(d)) is amended by revising subsections 7(g), 8(a)(3) and 15(d) to read as follows:

§ 454.7 Application and policy.

* * * * *

(d) * * *

7. * * *

* * * * *

g. November 20 of the crop year in California and September 20 in all other states.

* * * * *

8. * * *

a. * * *

(3) * * *

(e) November 20 of the crop year in California and September 20 in all other states.

* * * * *

15. * * *

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California, Florida, Georgia, and South Carolina.	February 15.
All other states	April 15.

Done in Washington, DC, on May 2, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-11357 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Part 1900

Adverse Decisions and Administrative Appeals

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulation to provide for a review of a hearing officer's decision when the decision is based on a clear misinterpretation or error of law or regulation. The need for this action is to further address public comments received under an earlier proposed rule. The major effect will be to establish an Agency review of a hearing officer's decision in exceptional cases.

DATE: Written comments must be received on or before July 10, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Gleason, Deputy Director, National Appeals Staff, Farmers Home Administration, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 756-7008.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost 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.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that this action, consisting only of changes in functions of Agency personnel, does not constitute a major federal action significantly affecting the quality of human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Programs Affected

These changes affect the following FmHA Programs as listed in the catalog of Federal Domestic Assistance.

10.404 Emergency Loans.
10.405 Farm Labor Housing Loans and Grants.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low Income Housing Loans.
10.411 Rural Housing Site Loans.
10.414 Resource Conservation and Development Loans.
10.415 Rural Rental Housing Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants.
10.418 Water and Waste Disposal Systems for Rural Committees.
10.419 Watershed Protection and Flood Prevention Loans.
10.420 Rural Self-Help Housing Technical Assistance.
10.421 Indian Tribes and Tribal Corporation Loans.
10.422 Business and Industrial Loans.
10.423 Community Facility Loans.
10.427 Rural Rental Assistance Payments.
10.428 Economic Emergency Loans.
10.433 Housing Preservation Grants.
10.434 Nonprofit National Corporation Loan and Grant Program.
10.437 Rural Development Loan Fund.
10.438 Intermediary Relending Program.

Intergovernmental Consultation

This activity affects all FmHA financial assistance programs. The activity of conducting an administrative appeal is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultations with State and local officials. Those FmHA financial assistance programs subject to intergovernmental consultation are cited in 7 CFR Part 3015, Subpart V.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have significant economic impact on a substantial number of small businesses because the cost of conducting administrative appeals is sustained by the Agency.

Discussion of Proposed Rule

July 12, 1988 FmHA published a final rule in the **Federal Register** (53 FR 26400–26413) regarding Adverse Decisions and Administrative Appeals. In the discussion of comments, four respondents, all FmHA employees, suggested amendments to allow a decision maker to appeal a hearing officer's decision to overrule a denial of assistance. The Agency recognizes that a hearing officer may issue a decision based on a misinterpretation or error of law or regulations. In these circumstances, a procedure is needed to review such a decision and revise or rescind it, if implementation of the decision would result in unauthorized assistance. The Agency does not see this as a commonplace occurrence and wishes to restrict this avenue of review to only those cases where it can be clearly shown a misinterpretation of law or regulation has taken place; not cases where a decision maker is merely dissatisfied with a particular ruling. Accordingly, we are limiting this review to requests initiated by the State Director or appropriate Assistant Administrator.

List of Subjects in 7 CFR Part 1900

Appeals, Credit, Loan programs-housing and community development.

Therefore, as proposed, Part 1900, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; CFR 2.23; 7 CFR 2.70.

Subpart B—Adverse Decisions and Administrative Appeals

2. Section 1900.57 is amended by revising paragraphs (i) and (j) to read as follows:

§ 1900.57 Hearing rules.

* * * * *

(i) If the initial decision is reversed, the hearing officer will inform the appellant, original decision maker, the appropriate Assistant Administrator, and any other official servicing the account, by letter of the decision, the reason for it, and what action will be taken.

(j) If the initial decision is upheld or modified but not reversed, the hearing officer will inform the appellant by letter of the decision giving specific reasons, with a copy to the decision maker, the appropriate Assistant Administrator, and any other official servicing the account. Normally the hearing officer's decision letter will be similar to FmHA Guide Letter 1900–B–1. For appeals involving the denial of farmer program primary loan servicing programs, the hearing officer's decision letter will be sent by certified mail with a return receipt to the initial decision maker.

3. Section 1900.61 is added and reads as follows:

§ 1900.61 Review of hearing officer's decision on request of State Director or the appropriate Assistant Administrator.

(a) In extradordinary circumstances, when the decision of a hearing officer appears to be based on a clear misinterpretation or error of law or regulation, or appears to be otherwise clearly erroneous, the State Director or appropriate Assistant Administrator may request review of the decision of a hearing officer by the Director, National Appeals Staff.

(b) Review under this section may be requested only by the State Director with the concurrence of the appropriate program Assistant Administrator, or directly by the program Assistant Administrator. The review request must be made by the State Director to the appropriate program Assistant Administrator within 10 working days after the date on which the hearing officer mails the decision to the appellant, the decision maker and the appropriate Assistant Administrator.

(1) If the appropriate program Assistant Administrator does not concur with the State Director's request for a review of the hearing officer's decision, the Assistant Administrator will return the request to the State Director with instructions to implement the hearing officer's decision. This action by the Assistant Administrator will be within 10 working days of receipt of the request from the State Director.

(2) If the appropriate program Assistant Administrator concurs with the State Director's request for a review of the hearing officer's decision, the Assistant Administrator will forward the request to the Director, National Appeals Staff, within 10 working days of receipt from the State Director.

(3) If a program Assistant Administrator makes a request directly (i.e., without a State Director's request) to the Director, National Appeals Staff, the request must be made within 10 working days after the date on which the hearing officer mails the decision to the appellant and decision-maker.

(4) A copy of the request for review of the hearing officer's decision by the State Director and/or program Assistant Administrator will be sent by the Director, National Appeals Staff, to the appellant for his/her review. The appellant must respond to the Director, National Appeals Staff within 15 working days of receipt by the appellant. A copy of the appellant's response will be sent to the appropriate Assistant Administrator.

(c) The review by the Director, National Appeals Staff, will consist of a review of the hearing record and testimony, case file, State Director and/or Assistant Administrator arguments, the appellant's response to those arguments, and pertinent FmHA laws and regulations, policies and procedures.

(d) The Director, National Appeals Staff, will complete the review within 10 working days from receipt of the appellant's response to the request for a review.

(e) A review under this section will operate to delay the implementation of the decision by the hearing officer until the final decision of the Director, National Appeals Staff. The entire delay should not exceed 45 working days from the decision by the hearing officer.

Date: April 7, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–11279 Filed 5–10–89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-52-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require modification of the escape slides and slide/rafts by installing a cable retainer and cover flap. This proposal is prompted by a report of an escape slide and a slide/raft that failed to properly deploy during tests by the manufacturer. This failure was caused by the pack release cable catching on the girt bar lifter mechanism on the door. This condition, if not corrected, could lead to failure of the escape slide/raft to properly deploy, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane.

DATE: Comments must be received no later than July 3, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-52-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, or from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM-120S; telephone (206) 431-1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-52-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During functional testing of escape slides and slide/rafts installed on Boeing Model 757 series airplanes, performed by Boeing, there were two reported instances where the pack release cable caught on the girt bar lifter mechanism. The pack release cable formed a loop at the edge of the girt and this loop caught on the girt bar lifter mechanism, causing the escape slide to deploy improperly when the door was opened in the emergency mode. The slide would not have been usable in an evacuation.

The FAA has reviewed and approved Air Cruisers Service Bulletin 105-25-28, Revision 2, dated March 28, 1989, which contains instructions for modifying the escape slide, and Air Cruisers Service Bulletin 105-25-29, dated March 2, 1989, which contains instructions for modifying the slide/raft, by installing a cable retainer and cable flap. (Air Cruisers Company is the manufacturer of the slide and the slide/raft.) The cable retainer and cable flap will eliminate the possibility that a loop in the pack release cable will hang up on the girt bar lifter.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of a cable retainer and cover flap in accordance with the service bulletins previously described.

There are approximately 196 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The parts necessary for the modifications are available at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $71,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

1. The authority citation for Part 349 continues to read as follows:

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, equipped with Air Cruisers escape slides having the part numbers listed in Air Cruisers Service Bulletin 105-25-28, Revision 2, dated March 28, 1989, and with Air Cruisers slide/rafts having the part numbers listed in Air Cruisers Service Bulletin 105-25-29, dated March 2, 1989, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To ensure that the escape slides or slide/rafts deploy properly, accomplish the following:

A. Install a cable retainer and cover flap, in accordance with Air Cruisers Service Bulletin 105-25-28, Revision 2, dated March 28, 1989, or Air Cruisers Service Bulletin 105-25-29, dated March 2, 1989, as applicable.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, or Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 3, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-11295 Filed 5-10-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Withdrawal of Proposed Amendment to the Bank Secrecy Act Regulations Providing for Notice to Customers of Anti-Structuring Provision by Financial Institutions

AGENCY: Departmental Offices, Treasury.

ACTION: Withdrawal of regulatory proposal.

SUMMARY: On March 11, 1988, Treasury published an Advance Notice of Proposed Rulemaking concerning a proposal to require financial institutions to give notice to their customers of the prohibition on structuring in 31 U.S.C. 5324 (53 FR 7948). After analysis of the comments received in response to the Advance Notice, and further study and review of this proposal, Treasury has decided to withdraw it formally from consideration at this time.

DATE: The withdrawal is effective May 11, 1989.

ADDRESS: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury Room 4320, 1500 Pennsylvania Avenue NW., Washngton, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: On March 11, 1988, Treasury published an Advance Notice of Proposed Rulemaking concerning a proposal to require financial institutions to give notice to their customers of the prohibition on structuring in 31 U.S.C. 5324 (53 FR 7948). Treasury sought comments on, and alternatives to, five specific notice approaches. These approaches were: (1) Putting up a short notice prescribed by Treasury conspicuously at every location in the financial institution where customers may conduct cash transactions; (2) requiring that a short Treasury form notice be handed to any person conducting currency transactions over a specified amount (*e.g.*, $1000 or $3000); (3) requiring that all deposit slips be imprinted with a short notice prescribed by Treasury of the provisions of Section 5324 and that a person making a currency deposit over a certain amount ($1000 or $3000)) sign the back of the deposit slip in acknowledgment of reading such notice; (4) mailing a Treasury form notice to all customers by a certain date and to all new customers upon the opening of an account; and (5) requiring that a short Treasury form notice of the provisions of section 5324 be included periodically, *e.g.*, quarterly, in all customers' monthly account statements, and upon opening a new account.

After review of the comments received on this proposal and further legal analysis of the possible law enforcement need for the proposal, Treasury has decided not to proceed with the proposal. Treasury's position continues to be that the law and legislative history are clear on this issue, that is, that the government need only prove that a criminal defendant had actual knowledge of the currency reporting requirements and the specific intent to evade them; the government need not prove that the defendant had knowledge of the structuring prohibitions. Therefore, Treasury is withdrawing this proposal from further consideration at this time.

Dated: April 28, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-11377 Filed 5-10-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD31

Loan Guaranty; Lenders Appraisal Processing Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations (38 CFR Part 36) to implement a system for delegating to certain lenders, the review of appraisal reports and the determination of reasonable value of properties to be purchased with VA guaranteed loans. These regulations are being promulgated in accordance with the Veterans Home Loan Program Improvements and Property Rehabilitation Act of 1987.

DATES: Comments must be received on or before June 12, 1989. Comments will be available for public inspection until June 20, 1989. The VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, Department of Veterans Affairs,

810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address between the hours 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until June 20, 1989.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Burke, Assistant Director for Construction and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-2691.

SUPPLEMENTARY INFORMATION: Currently the reasonable value of a property being purchased with a VA guaranteed loan is determined by the VA. Appraisals are performed by independent appraisers who are designated by each VA Regional Office as "fee appraisers". The appraisal is than submitted to the appropriate regional office for a determination of reasonable value and issuance of a Certificate of Reasonable Value. The reasonable value of a property must be determined in order to comply with 38 U.S.C. 1810(B)(5) which states that a VA guaranteed loan cannot exceed the reasonable value of the property securing the loan as determined by the VA. Public Law 100-198, the Veterans Home Loan Program Improvements and Property Rehabilitation Act of 1987, added a subsection (f) to 38 U.S.C. 1831 which allows lenders to determine a property's reasonable value on behalf of the VA. The law requires that lenders granted this authority must be those that already have authority to process VA loans on the "automatic" basis under section 1802(d) of 38 U.S.C. The law also requires that the procedures and standards for the Secretary to authorize lender determinations of reasonable value shall be set forth in regulations. The law further mandates that, in exercising this authority, the VA must assign a sufficient number of personnel to carry out an appraisal review system to monitor the making of appraisals by appraisers, and the effectiveness and efficiency of the determinations of value by lenders.

Automatic processing of VA guaranteed loans means that lenders originate, underwrite and close loans without the VA's prior-approval. The loan is not submitted to VA until closed and the evidence of guaranty is requested. Section 1802(d) of Title 38 identifies two categories of lenders that may process loans automatically. They are (1) entities such as banks, savings and loans, and mortgage and loan companies that are subject to examination by an agency of the United States or of any State and (2) lenders approved by the VA pursuant to standards established by the VA. Lenders that are in either of the two categories will now be eligible to request authority to review appraisals and determine the reasonable value of properties to be purchased with VA guaranteed loans. Appraisals will still be performed by VA designated fee-appraisers who will continue to be assigned on a rotation basis to each case by VA. These proposed regulations set forth the criteria for designation as a Lender Appraisal Processing Program (LAPP) lender.

The lender's authority to process cases under LAPP is delegated at the discretion of the VA and the recipient of such authority has special responsibilities which include, but are not restricted to: ensuring that staff review appraisers review appraisal reports utilizing recognized appraisal techniques; making prudent and sound determinations of reasonable value; and ensuring that the property condition meets VA minimum property requirements and is otherwise acceptable security for a VA guaranteed loan. In closing the loan on the automatic basis, after determining the reasonable value and property-related conditions, lenders must know what is and what is not an eligible loan; i.e., one meeting established underwriting standards, eligibility, and entitlement requirements.

Lenders seeking designation as a LAPP leader will be required to have on staff a review appraiser who may also be an underwriter. This individual will be a full-time member of the lender's permanent staff and may not be employed by, or perform services for, any other mortgage. The staff review appraiser must be able to demonstrate a knowledge of, and the ability to apply, the industry accepted principles, methods, practices and techniques of appraising real property. Experience demonstrating knowledge of general realty practice and principles as they relate to real property valuation, skill in collecting and assembling data and the ability to prepare clear and concise reports are all required. Also required will be the ability to review the work of others and to recognize deviations from accepted appraisal principles and practices, errors in computations and unjustifiable and unsupportable conclusions. Experience under the Department of Housing and Urban Development's direct endorsement program is helpful, since the VA program will be similar, but is not automatically qualifying. The lender's staff reviewer may be located in a branch office except that when the VA approved automatic underwriter is also the VA approved review appraiser, that individual must be located at the home office or an approved regional office of the lender. A certification will be required either on the Uniform Residential Appraisal Report (URAR) or attached to it as to the staff review appraiser's personal review of the appraisal report and his/her findings. Exact language for the certification is contained in the proposed regulations.

Lenders meeting the requirements of the proposed regulations will be approved to make reasonable value determinations for a one-year probationary period. It is proposed that during the probationary period the first 15 cases processed under LAPP be submitted to VA when processed to the point where the lender staff reviewer has made reasonable value recommendations. VA personnel will then make a complete review of those cases and, if the lender's review, reasonable value recommendation, and determination of other conditions specific to the case (i.e., repair requirements) are acceptable, a Certificate of Reasonable Value will be issued. The loan may then be closed on the automatic basis provided it meets all other VA requirements. After submission of the first 15 cases, if acceptable performance has been demonstrated, lenders will be able to make the reasonable value determinations and close loans automatically without issuance by VA of a Certificate of Reasonable Value. For the remainder of the probationary period detailed reviews will be performed by VA staff to determine the adequacy, appropriateness and overall quality of the lender's determinations. Under the new program, lenders will be responsible for notifying both the veteran-borrower and VA of the reasonable value determination and for providing each with a copy of the appraisal report. The original of the appraisal report and all related documentation will be included in the request for loan guaranty. Lender's staff review appraisers will not have the authority to adjust the fee appraisers' value recommendations upward or to remove or adjust repair recommendations costing more than a dollar amount of percentage specified by the local VA office of jurisdiction.

Appeals of fee appraisers' value recommendations or lenders' reasonable value determinations will be processed by the VA. The procedures for submitting appeals will be the same as for cases in which a Certificate of Reasonable Value has been issued by VA.

These proposed regulations also include the criteria for withdrawal of a lender's authority to review appraisals and determine reasonable value. The criteria include withdrawal of authority: when the basic eligibility requirements are no longer met; when it is shown that the lender's determinations are not made in accordance with requirements and procedures contained in VA regulations, guidelines or in applicable laws; or when there is sufficient information of adequate evidence to support reasonable belief that a particular unacceptable act, practice or performance has occurred. Such acts, practices or performance include, but are not restricted to: demonstrated technical incompetence (i.e., conduct demonstrating insufficient knowledge of industry accepted appraisal principles, techniques and practices or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements) or substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or a number of series of errors that, considered individually, may not significantly impact the determination of reasonable value, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner). Withdrawal of the authority to determine rasonable value will be made upon proper notice and provision of the right to appeal the decision of the VA.

Fraudulent or criminal conduct under the Lender Appraisal Processing Program will be subject to Government nonprocurement suspension and debarment actions that are contained in 38 CFR Part 44.

Upon publication of final regulations the VA will also publish separately the detailed procedures for lenders submitting loans under the new program. It is contemplated that in the beginning of the program, lenders' authority will be limited to the determination of reasonable value on properties that qualify as existing construction. Existing construction cases are defined by the VA as: (1) Previously owner occupied, regardless of the age or date construction was completed, provided the property meets the VA Minimum Property Requirements (MPRs) for existing construction, (2) not previously occupied, provided construction was completed in all respects one (1) year or more prior to the date of the appraisal request and meets VA MPR for existing construction; (3) not previously occupied, construction is less than one (1) year old and is fully complete except for customer preference items (e.g., interior finishes, appliances, equipment) and those exterior improvements for which the VA office allows onsite escrows *and* the property is enrolled in a ten-year insurance-backed warranty plan that has been accepted by the VA. Manufactured (mobile), and multi-family (two or more units) homes will be excluded. A test program in selected areas, for proposed construction cases is under active consideration. Specific comments are invited as to implementation of such a test. Proposed construction cases may be included at a future date after the test results have been analyzed.

The Secretary hereby certifies that these proposed regulations, if promulgated, will not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. Pub. L. 100–198 requirs that the standards and procedures for the VA program of lender determinations of reasonable value be established in the appropriate regulations. This program will not cause lenders to significantly change their practices since such review of appraisals is now accomplished for conventional loans and most Federal Housing Administration (FHA) insured loans. Lenders that make VA guaranteed loans also make conventional and FHA insured loans. The main impact will be on the time involved in processing a VA guaranteed loan. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geograhic regions; nor will they have other 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.

Paperwork Reduction Act

Section 36.4344 of this regulation contains an information collection requirement. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on this proposed information collection requirement should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

(The Catalog of Federal Domestic Assistance Program Numbers is 64.114.)

These regulations are proposed under authority granted the Secretary by sections 210(c), 1810 and 1831 and 1820 of Title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: April 12, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended by adding § 36.4344 to read as follows:

§ 36.4344 Lenders independent appraisal review system.

(a) *Delegation under automatic authority of lender authority to review appraisals and determine reasonable value.* (1) To be eligible for delegation of authority to review appraisals and determine the reasonable value of properties to be purchased with VA guaranteed loans, a lender must:

(i) Have automatic processing authority under 38 U.S.C. 1802(d), and

(ii) Have in its employ one or more staff review appraisers acceptable to the Secretary.

(2) To qualify as a staff review appraiser an applicant must be a full-time member of the lender's permanent staff and may not be employed by, or perform services for, any other mortgagee. Five years of experience demonstrating a knowledge of, and the ability to apply, industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property within a prescribed area is necessary to qualify as a staff review appraiser. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principles, practices, and techniques, errors in computations, and unjustifiable and unsupportable conclusions.

(3) Lenders that meet the requirements of 38 U.S.C. 1802(d) and have a VA-approved staff review appraiser will be authorized to review appraisals and make reasonable value determinations on properties that will be the security for VA guaranteed loans. The lender's authorization will be subject to a one-year probationary period. During the probation period the first 15 reasonable value determinations made by the staff reveiw appraiser will be submitted to VA along with the lender's staff review appraiser's reasonable value recommendation, prior to loan closing. The reasonable value recommendation will be reviewed by the appropriate field facility personnel, and if the lender's processing is determined acceptable, a Certificate of Reasonable Value will be issued by VA. Such a loan may than be closed automatically if it meets all other requirements of the VA. If a lender's first 15 cases processed under this authority are found to be acceptable by VA the lender will be allowed to process subsequent loans without prior submission to VA and without the issuance of a Certificate of Reasonable Value. The 15 case review requirement may be expanded by a regional office, if acceptable performance has not been demonstrated. Thereafter, routine review will be made by VA staff, based upon quality control procedures prescribed by the Chief Benefits Director, of cases closed where the lender has made the determination of reasonable value. Such reviews will be made on a random sampling or performance related basis.

(4) The following certifications are required to be either placed on, or attached to, each Uniform Residential Appraisal Report (URAR), Freddie Mac Form 70/Fannie Mae Form 1004 reviewed by the staff appraiser. If the certification is stamped on the URAR It will read:

On *(date)*, I personally reviewed this appraisal report and I concurred in the findings and recommendations of the fee appraiser, who was assigned by the VA regional office.

(Signature of Staff Review Appraiser)

or, if the certification is attached to the URAR:

I certify that on *(Date)*, I personally reviewed this appraisal report and I concurred in the recommendations and findings of the fee appraiser who was assigned to *(VA Case)* by the VA regional office.

(Signature of Staff Review Appraiser)

(b) *VA minimum property requirements.* Lenders are responsible for determining that the property meets VA minimum property requirements. VA offices will issue local instructions regarding the lender's ability to adjust, remove, or alter the fee appraiser's or fee compliance inspector's recommendations for VA minimum property requirements. Condominiums, planned-unit developments and leasehold estates must have been determined acceptable by the VA, or in the cases of condominiums or planned-unit developments by the Department of Housing and Urban Development or the Department of Agriculture under the VA's reciprocal agreement with those agencies, before the lender can process a case under this authority.

(c) *Adjustment of reasonable value determination.* Lenders do not have authority to increase the fee appraiser's estimated market value indicated in the Reconciliation Section of the appraisal report. Lenders may decrease the estimated market value if such adjustment is warranted and supported, and the staff review appraiser clearly justifies such adjustment in writing on the appraisal report form. Such comments, adjustments, corrections, etc., must be made in a contrasting color and be clearly legible and initialed and dated by the staff review appraiser.

(d) *Notification.* It will be the responsibility of the lender to notify the veteran borrower in writing of the determination of reasonable value and related conditions specific to the property at the time the determination is made. Any delay must be documented. Any delay beyond two (2) working days without reasonable extenuating circumstances will not be acceptable. The original appraisal report, and related appraisal documentation, and a copy of the reasonable value determination notification to the veteran will be submitted to the VA with the request for loan guaranty.

(e) *Appeals.* All appeals of fee appraisers' value recommendations or lenders' reasonable value determinations, along with the lenders' recommendations, if any, must be submitted to the VA for processing and final decision.

(f) *Affiliations.* A lender affiliated with a real estate firm, builder, land developer or escrow agent as a subsidiary, division, or investment may not use this authority for any cases involving the affiliate unless the lender demonstrates that (1) the lender and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences; and (2) the lender has developed, will implement, or has implemented an effective self-policing or quality control system to assure, to the extent possible, that its activities do not deviate form high standards of integrity and will be agreeable to furnishing pertinent evidence of independent operation and of such a system to the VA on demand. Under the lender appraisal processing program, the lender's quality control or self-policing system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(g) *Withdrawal of lender authority.* The authority for a lender to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A lender's authority to make reasonable value determinations shall be withdrawn when the lender no longer meets the established basic requirements for granting the authority. Such authority may also be withdrawn when it can be shown that the lender's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is sufficient information or adequate evidence or support

reasonable VA belief that a particular unacceptable act, practice, or performance by the lender or the lender's staff has occurred. Such acts, practices or performance include, but are not restricted to: demonstrated technical incompetence (i.e., conduct demonstrating insufficient knowledge of industry accepted appraisal principles, techniques and practices or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); and/or substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner).

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for lender authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the lender's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. The lender will be provided an opportunity for a hearing before the Loan Guaranty Officer in order to present evidence that the action is not warranted. In the event of an immediate withdrawal the lender will be afforded a hearing within three (3) business days of a request for such a hearing. The Loan Guaranty Officer will make a recommendation to the Facility Director who shall make the determination as to the action to be taken. The lender will be informed in writing of the decision.

(2) If the withdrawal takes place, the lender has the right to appeal the decision to the Chief Benefits Director. In the event of an appeal the Chief Benefits Director will review all relevant material concerning the matter and make a determination that shall constitute final agency action.

(3) Withdrawal of authority will require the lender to request a determination of reasonable value by the VA. This will require a VA staff review of the appraisal report and subsequent issuance of a Certificate of Reasonable Value which will then be used by the lender to close loans on either the prior VA approval or automatic basis.

(Authority: 38 U.S.C. 1831)

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BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 201 and 203

[Docket No. R-126]

RIN 2133-AA20

Procedures Relating to the Conduct of Certain Hearings Under the Merchant Marine Act

AGENCY: Maritime Administration, DOT.

ACTION: Proposed rule.

SUMMARY: MARAD is proposing a new part to its regulations that would supplement current Rules of Practice and Procedure, 46 CFR 201 *et seq.* and deal specifically with two statutorily required hearings, conducted pursuant to the Merchant Marine Act, 1936, as amended. The proposed rule would enable MARAD to render more timely decisions by providing alternatives in appropriate circumstances to the conduct of full evidentiary hearings. This proposed rule also specifies criteria for standing and the right to intervene in these hearings. Additionally, MARAD proposes to amend §201.1 of 46 CFR 201 to reflect the new procedures and ensure all interested parties are put on notice of the changes.

DATE: Comments on the proposed rule must be received on or before June 26, 1989.

ADDRESS: Send the original and two copies of comments to the Secretary, Maritime Administration/Maritime Subsidy Board, U.S. Department of Transportation, Room 7300, 400 Seventh Street SW., Washington, DC 20590. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Murray A. Bloom, Chief, Division of Maritime Aids, Office of Chief Counsel, at the above address, or call (202) 366-5320.

SUPPLEMENTARY INFORMATION:

Background

1. The Merchant Marine Act, 1936

Sections 605(c) and 805(a) of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1175(c) and 1223(a), collectively, (the "Act") mandate that a hearing be conducted prior to approval of applications for operating-differential subsidy ("ODS") authorized by the Act. The Act is administered by the Maritime Administration/ Maritime Subsidy Board (collectively "MARAD") under authority delegated by the secretary of Transportation (49 CFR 1.66-1.67).

Section 605(c) provides that no ODS contracts can be made with respect to vessels whose contemplated operations would be in addition to an existing essential service provided by citizens of the United States unless, after a "proper hearing of all parties," certain specified determinations are made. These determinations are that

> * * * the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of * * * [the] * * * Act additional vessels should be operated . . . [in such service].

This section also provides for a compulsory public hearing, after notice to all vessel operators in a particular service, before an ODS contract can be made for a vessel intended to be operated

> * * * in an essential service served by two or more citizens of the United States with vessels of United States registry * * *

where it is determined that the effect of such a contract would unduly advantage or be unduly prejudicial as between citizens of the United States. In such a situation the contract can be made only where it is determined following the public hearing

> * * * that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry.

The provisions in section 605(c) concerning hearing requirements apply equally to amendments to existing contracts. Thus, for example, an ODS operator receiving subsidy for a specified number of vessels pursuant to its ODS contract, may still be subject to the hearing requirements of section 605(c) should it wish to increase the total number of subsidized vessels or include vessels of a significantly different type in its current service. *See, Sea-Land* v. *Kreps*, 566 F.2d 763, 767 (D.C. Cir. 1977).

Section 805(a) concerns the operations of vessels in the domestic trades by an ODS operator either directly or through affiliates. Two issues reviewed under

section 805(a) are whether grant of the application would (1) result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (2) be prejudicial to the objects and policy of the act. Under this provision, "[e]very person, firm or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors." Any party to the hearing may address the "objects and policy" issue, but only a person "operating exclusively in the coastwise or intercoastal service" may oppose the application on the ground of "unfair competition" to such a person. *See, e.g., States Steamship Co.*, 5 SRR 1111, 1126–27 and n.17 (SOC 1965).

2. Procedural Considerations

MARAD's current Rules of Practice and Procedure, 46 CFR Part 201 *et seq.* govern hearings before both the Maritime Administration and the Maritime Subsidy Board (46 CFR 201.1). These rules are to be "construed to secure the just, speedy and inexpensive determination of every proceeding with full protection for the rights of all parties therein." (*Id.*)

MARAD believes that a supplement to the current rules would enable more efficient and effective accomplishment of this purpose. The proposed procedures are intended to increase the degree of flexibility available to MARAD in structuring these proceedings. An assumption of the proposed procedures is that questions of law applicable to a specific set of facts are not highlighted by the evidentiary process, but rather are better clarified by pleadings and, in some situations, oral argument. *National Air Carrier Association* v. *CAB*, 436 F.2d 185, 194 (D.C. Cir. 1970).

In proposing these procedures, MARAD is mindful of the various requirements that must be accommodated in the hearing process employed. The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, (the "APA") specifies hearing procedures applicable "* * * in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). Courts have generally interpreted this provision to mean that the APA hearing requirements attach only where the requirement for a hearing is provided for in a separate underlying statute. *See, e.g., Philadelphia Newspaper, Inc.* v. *NRC*, 727 F.2d 1195 (D.C. Cir. 1984); *Gallagher and Ascher Co.* v. *Simon, 687 F.2d. 1067 (7th Cir. 1982); State of Colorado* v. *Veterans Administration*, 602 F.2d 926 (10th Cir. 1979), *cert. denied* 444 U.S. 1014 (1980). Some courts have held the APA hearing requirements to apply, even in the absence of language in the underlying statute specifying that the hearing must be conducted "on the record." *See Steadman* v. *Sec*, 450 U.S. 91, 96 n.13 (1981). The form of the hearing is generally dependent on the substantive nature of the hearing Congress intended to provide in the underlying statute. *City of West Chicago* v. *N.R.C.*, 701 F.2d 632 (7th Cir. 1983); *Buttrey* v. *United States*, 690 F.2d 1170 (5th Cir. 1982), *cert. denied* 461 U.S. 927 (1983). In promulgating these procedures MARAD is not determining that an "on the record" hearing (as that phrase is used in the APA and in cases construing it) is strictly required, or required in some situations, under the Act for Section 605(c) and 805(a) applications.

MARAD is proposing hearing procedures that adhere to the fundamental concepts of administrative due process. Consistent with this approach, MARAD is proposing procedures which satisfy due process requirements for notice, comment and a statement of reasons for its decisions. *York* v. *Secretary of the Treasury*, 774 F.2d 417 (10th Cir. 1985).

MARAD is also proposing to employ alternative hearing procedures where the essential facts are not in dispute and where, as a result, MARAD's decision will turn primarily on issues of law, policy or discretion. *General Motors Corp.* v. *FERC*, 656 F.2d 791 (D.C. Cir. 1981); *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956). Further, MARAD also is proposing to establish a threshold requirement intended to assist it in determining beforehand the nature and scope of the hearing, *Citizens for Allegan County* v. *F.P.C.* 414 F.2d 1125 (D.C. Cir. 1969); *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198 (1980); *see also Weinberger* v. *Hynson, Wescott & Dunning, Inc.*, 412 U.S. 609 (1973). These procedures will further the primary purpose of the evidentiary phase of the hearing process, namely the development of a record for the determination of the basic factual issues in dispute. *See, Minnesota* v. *N.R.C.*, 602 F.2d 412, 416–17 (D.C. Cir. 1979).

3. Experience Under Sections 605(c) and 805(a)

Since passage of the 1936 Act, MARAD has conducted numerous proceedings under sections 605(c) and 805(a) involving the full panoply of procedural techniques provided in 46 CFR Part 201 *et seq.*

Many of the applications involving complex and hotly contested issues have required several years to reach conclusion.[1] Congress itself has noted the seemingly interminable length and cost of these hearings.[2] MARAD has on occasion used alternative procedures. In Docket No. S–605, MARAD held a one day hearing with the consent of the parties participating. In Docket No. S–437/438, MARAD held that a show cause procedure in appropriate circumstances was a valid method of resolving issues arising under section 605(c) and in Docket Nos. S–813, and S–807/822, MARAD assigned a member of the Maritime Subsidy Board to hear evidence in an application under Section 605(c).

While a general reservation is provided in 46 CFR 201.9 allowing for waiver of the normal procedures, no specific provisions exist for alternative procedures. The proposed procedures will fill that gap. They do not represent a radical departure from prior practice but an attempt to provide guidelines governing selection of appropriate hearing procedures as opposed to the ad hoc determinations made previously. They do represent an attempt at according all parties that "speedy" determination of rights intended in MARAD's current Rules of Practice and Procedure, 46 CFR 201.1 and in the APA, section 556.

The proposed procedures also reflect recent developments. On May 12, 1987, MARAD consolidated under section 211 of the Act previously determined trade routes into eight essential trade routes. (52 FR 17879). This redesignation did not address changes in contractual subsidized operations. Operators were invited to apply for amended subsidized service, (Docket No. R–112, 52 FR 17884), for which applications hearings would then be provided, if appropriate.

In American Transport Lines, Inc. v. *Burnley*, No. 87–2390 (D.D.C. Mar. 22, 1988), the court granted standing in a section 605(c) application to an operator competing on the same trade route as the applicants, but providing service to the same ports only by intermodal service. MARAD's prior precedent has been to permit standing only to those companies providing direct service by U.S.-flag vessels in the trade in question. *Lykes Bros. Steamship Co., Inc.*, 16 SRR 465, 470 (MSB 1975).

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[1] Cf., e.g., Docket Nos. S–514, *et al.*, S–543, S–724, S–749.

[2] H.R. Rep. No. 91–1073, 91st Cong., 2d Sess. (1970), 42, accompanying H.R. 15424 (later enacted as the Merchant Marine Act of 1970 (P.L. 91–469)).

As a result of the decision in *American Transport Lines*, MARAD announced by **Federal Register** Notice of May 13, 1988 (53 FR 17134) its intent to consider a change in policy governing proceedings under section 605(c) (Docket S-829). A number of operators submitted comments in that docket and those coments will be incorporated in this rulemaking docket.

The proposed procedures recognize, as a result of the *American Transport* case, and as a result of MARAD's study of trade patterns under section 211, standing in regard to service provided by intermodal operations. However, such an operator must still meet a threshold burden as described in the proposed procedures.

Base on case precedent, standing will be granted only to a U.S.-flag vessel operator, and only when and to such extent the operator provides an existing service, or has firm and definite plans to provide a service by a showing that its vessels operate in the same trade or on the same trade route as that proposed by the applicant and with which the specific proposed service would be competitive. Although an intervenor need not call the same specific proposed ports by direct vessel calls, the intervenor must demonstrate competition by intermodal service for cargo moving through ports in the service proposed by the applicant.

MARAD undertakes to apply the most efficient and effective means of hearing available for each new application it receives. To this end, MARAD proposes two distinct alternative proceedings.

The first alternative would involve matters of significant complex factual issues and anticipated submission of extensive evidence. As has been the usual custom of MARAD, this application would probably be referred to an administrative law judge for hearing in accordance with existing procedures in 46 CFR Part 201. For example, an application under section 605(c), for a new twenty-year subsidy contract, if such a contract was to be awarded, involving substantial additional service and contested by parties having standing to assert a right to a section 605(c) hearing, would probably follow existing procedures. The second alternative involves a Show Cause Proceeding where the pleadings disclose no material factual issues in dispute or such issues can be resolved based on available information subject to official notice. An example under this alternative would be an application for a short term subsidy (e.g., three years or less), involving additional service and a limited trade area. Because of the many variable circumstances surrounding each subsidy application, the foregoing examples are only provided as guidance in the hearing selection process.

The Administration may, in its discretion, direct further hearing or the submission of briefs on legal issues, or hold oral argument under any of the alternative proceedings. One or more members of the Administration may conduct an oral or evidentiary hearing. A member who is not present at the hearing may participate in the decision where the hearing and an oral argument, if any, have been stenographically reported. This type of proceeding would be appropriate when a timely decision appears to be critically important.

Section by Section Analysis of Part 203

Section 1: Scope of Rules

The proposed procedures are intended to apply to hearings mandated by sections 605(c) and 805(a) of the Act. They supplement the Administration's existing Rules of Practice and Procedure in 46 CFR Part 201 and shall not be construed as inconsistent with that part.

Section 2: Applications

This section states the basic minimum information which MARAD believes essential in order for it to properly evaluate an application within the scope of the proposed procedures. Generally, the information requirements apply for applications under both sections 605(c) and 805(a). This section also provides for **Federal Register** notice for all applications involving a statutorily mandated hearing, and allows for the filing of comments by any person.

Section 3: Opposition to Applications

By requiring the simultaneous filing of a petition for leave to intervene and an answer, this section is intended to accomplish two primary purposes. First, the petition for leave to intervene is intended to enable MARAD to determine whether, under existing precedent, the filing party has standing to oppose the application. By requiring the simultaneous filing of an answer, it is anticipated that both time and administrative expenses may be reduced.

Subsections (b) and (d) specify the criteria applicable to granting standing to oppose an application, and are consistent with past practice and existing precedent. The Board has in the past granted standing to oppose an application to existing US-flag operators with competitive service, *See, e.g., Lykes Bros. Steamship Co.,—ODS Renewal*, 18 SRR 1389 (MSB, 1978), and to those having "firm and definite" plans to enter a service for which an applicant is seeking an ODS contract or an amendment to its existing ODS contract. *Delta Steamship Lines, Inc.*, 17 SRR 1369 (MSB, 1977); *See Sea-Land Service, Inc.* v. *Conner*, 418 F.2d 1142, 1147 (D.C. Cir. 1969). Such "firm and definite" plans must be demonstrated by concrete steps taken in preparation to initiating the service.

Section 4: Replies

This section provides for a reply by the applicant to answers which have been filed by persons purporting to have the requisit standing. No provision is made for further pleading.

Decisions on the grant or denial of standing are final administration actions and may be directly appealed to the Secretary of Transportation under the rules applicable to such actions.

Section 5: Hearings

This section provides guidelines for determining the type of hearing to be granted by MARAD. The procedures outlined are intended to expedite MARAD's decisional process by allowing for less than full evidentiary proceedings, when appropriate. Separation of functions shall be provided for as set out in section 554 of the APA. A new provision incorporated in the proposed rule involves the use of Show Cause proceedings. As contemplated, a Show Cause Proceeding would be initiated (1) where the pleadings disclose no material factual issues in dispute, or (2) such issues are susceptible to resolution on the basis of information that is properly subject to official notice.

Another provision involves the use of a hearing before less than all members of the Administration. Any member absent from the hearing may participate in the consideration and decision in which the record has been prepared in accordance with 46 CFR 201.147 and oral argument, if any, is stenographically reported. This follows the long recognized principle that due process is satisfied even if a member is absent during the taking of evidence and oral argument when there is a complete record available to all members on which to base their decision. *Anniston Mfg. Co.* v. Davis, 301 U.S. 337 (1937); *Porter & Dietsch, Inc.*, v. *F.T.C.*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Gearhart & Otis, Inc.* v. *S.E.C.*, 348 F.2d 798, *reh'g denied* (D.C. Cir. 1965). *See* 3 K. Davis, "Administrative Law Treatise" sec. 17:2 (2d ed. 1980).

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local government, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant because it may be expected to generate significant public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary. Moveover, the Maritime Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

This rulemaking does not significantly effect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

This proposed rulemaking does not contain any additional collection of information which would require approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects

46 CFR Part 201

Administrative practice and procedure.

46 CFR Part 203

Administrative practice and procedure, Maritime carriers.

Accordingly, 46 CFR Part 201 is proposed to be amended as follows:

PART 201—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 201 has been revised to read as Follows:

Authority: 29 FR 14475, Oct. 22, 1964; 29 FR 15374, Nov. 17, 1964, unless otherwise noted.

2. Section 201.1 is proposed to be revised as follows:

§ 201.1 Scope of Rules.

The regulations in this part govern practice and procedure before the Maritime Administration and Maritime Subsidy Board (as described in 49 CFR 1.66 and 1.67), hereinafter referred to collectively as the "Administration", under the Merchant Marine Act, 1920, as amended, Merchant Marine Act, 1936, as amended, Merchant Ship Sale Act, 1946, Administrative Procedures Act, and related Acts. In addition certain proceedings under sections 605 (c) and 805 (a) of the Merchant Marine Act, as amended, shall be conducted in accordance with Part 203 of this title except as may be provided otherwise by the Administration. The Regulations in this part shall be construed to secure the just, speedy, and inexpensive determination of every proceeding with full protection for the rights of all parties therein.

46 CFR Part 203 is proposed to be added to read as follows:

PART 203—PROCEDURES RELATING TO CONDUCT OF CERTAIN HEARINGS UNDER THE MERCHANT MARINE ACT, 1936, AS AMENDED

Sec.
203.1 Scope of rules.
203.2 Applications.
203.3 Opposition to applications.
203.4 Replies.
203.5 Hearings.
203.6 Hearings before one or more members.

Authority: Sections 204(b), 605(c) and 805(a), Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1114(b), 1175(c) and 1223(a)).

§ 203.1 Scope of rules.

(a) The provisions of this part apply, according to their terms, to applciations which involve statutorily mandated hearings under sections 605(c) and 805(a) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1175(c), 1223(a)), hereinafter referred to as the "Act", conducted by the Maritime Administrator or Maritime Subsidy Board of the Maritime Administration, hereinafter referred to collectively as the "Administration".

(b) The provisions of this part are to be construed consistently with the Administration Rules of Practice and Procedure in 46 CFR Part 201. If this part and 46 CFR Part 201 conflict, this part shall govern.

§ 203.2 Applications.

(a) Notice of all applications subject to this part shall be published in the **Federal Register**, in accordance with the provisions of 46 CFR 201.72.

(b) All applications shall specify, at a minimum, full details of the existing or proposed new or amended service, to include the trade or trade route upon which the vessel is operated or proposed to be operated, the U.S. and/or foreign ports served or to be served, the number and type of vessels currently operated in the trade or trade route, the number and type of vessels propsoed to be operated in the trade or trade route, the frequency of sailings and port calls and the nature and extent of U.S.-flag and any foreign-flag competition.

§ 203.3 Opposition to applications.

(a) *Required documents.* A person seeking to oppose an application shall file with the Secretary of the Administration, and concurrently serve upon the applicant, a petition for leave to intervene, together with an answer, within the time period specified in the **Federal Register** notice of the application.

(b) *Petition for leave to intervene.* The petition for leave to intervene shall specify the basis upon which such person asserts standing to be heard, and shall set forth with particularity:

(1) The number and type of U.S.-flag vessels currently operated by the person seeking intervention in the trade or trade route to which the application pertains.

(2) The frequency of sailings of vessels operated by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(3) The specific ports of call conducted by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(4) If applicable, specific information detailing firm and definite plans for the inauguration of a new service, including, as appropriate, approval by the board of directors or general partners, membership in applicable conference agreements, office openings or the retention of agents in the proposed service area, acquisition of vessels and related equipment, subsidy applications, applications for any needed government approvals or advertisement for the proposed service.

(5) Such other information as the person seeking intervention believes should be considered in a determination of such person's standing to be heard.

(c) *Answer.* (1) The answer shall be simultaneously filed with the petition for leave to intervene and shall specify the basis upon which such person asserts

the application should be denied or granted subject to modifications.

(2) The answer shall set forth with particularity:

(i) The ground upon which opposition is based;

(ii) The factual matters which such person believes must be determined by the Administration;

(iii) The legal matters which such person believes must be determined by the Administration;

(iv) Such person's position and basis therefor, for each factual and legal matter raised; and

(v) The precise nexus between each factual and legal matter raised and the decision of the Administration.

(d) *Right to intervene and standing to oppose applications.* (1) Standing to oppose applications under sections 605(c) and 805(a) will not be granted to other than operators of U.S.-flag vessels, and only to the extent, as demonstrated by the petition for leave to intervene, that such person provides an existing service, or that such person has firm and definite plans to provide a service, by a showing that its vessels operate in the same trade or on the same trade route as that proposed by the applicant and so operate in a manner competitive with the specific service proposed by the applicant. Although persons seeking intervention need not call the same specific ports proposed by the applicant by direct vessel calls, any filing in opposition to an application shall demonstrate that such person competes by intermodal service for cargo moving through ports in the service proposed by the applicant. The burden of demonstrating substantial competition between the vessels of the person seeking intervention and those of the applicant will be with the person seeking such intervention.

(2) Further, standing to oppose applications under section 805(a) will be granted to "interested parties" with regard to the "objects and policy" issue, but only those "operating exclusively in the coastwise or intercoastal service" may be permitted to intervene on the "unfair competition" issue.

§ 203.4 Replies.

Within ten (10) days after the date for filing answers the applicant may file a reply specifically addressed to the issues raised in the answers and to oppose the grant of standing to any petitioner for leave to intervene.

§ 203.5 Hearings.

(a) If upon review of the application, answers, and petitions to intervene, the Administration determines that the proceeding involves disputed issues of material fact which cannot be resolved on the basis of available information subject to official notice, or that the case is anticipated to involve the submission of extensive evidence, or the Administration determines that it is otherwise appropriate, the Administration may issue an order referring the case to an Administrative Law Judge for hearing. Such hearing shall be conducted in accordance with the procedures set out in 46 CFR Part 201. The Administration may resolve issues of intervention and standing in such order or refer such issues to the Administrative Law Judge.

(b) If upon review of the application, answers, and petitions to intervene the Administration determines that the proceeding does not involve disputed issues of material fact or that if such facts exist they can be resolved on the basis of available information subject to official notice, and if the case is not anticipated to involve the submission of extensive evidence, the Administration may determine to handle the matter by show-cause proceeding. In that event it will issue a decision setting out its tentative conclusions on all of the matters of fact and law at issue in the proceeding. A Notice summarizing such decision shall be published in the Federal Register in accordance with 46 CFR 201.72. Interested persons may file comments within 30 days of the date of service of the tentative decision and responses to such comments shall be filed within ten days thereafter unless a shorter or longer period is provided by the Administration for such comments and answers.

(c) The Administration may, in its discretion, direct the holding of hearings, the submission of briefs on legal issues, and/or the holding of oral argument before the Administration prior to issuing its final decision on the proceeding.

§ 203.6 Hearings before one or more members.

If an oral or evidentiary hearing is to be conducted, the Maritime Administration, or the Maritime Subsidy Board or one or more of its members may conduct such hearing. A member who is not present at the hearing may participate in the consideration and the decision of the case where the hearing and oral argument, if held, has been stenographically reported.

Date: May 8, 1989.

By Order of the Maritime Administrator/Maritime Subsidy Board.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 89-11350 Filed 5-10-89; 8:45 am]

BILLING CODE 4910-81-M

Notices

Federal Register
Vol. 54, No. 90
Thursday, May 11, 1989

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.

UNITED STATES COURTS ADMINISTRATIVE OFFICE

Fees and Costs

AGENCY: Administrative Office of the United States Courts.

ACTION: Amendment to the Fee schedules for the United States Courts of Appeals, District, and Bankruptcy Courts published in the United States Code at 28 U.S.C. 1913, 1914, and 1930 respectively.

SUMMARY: This notice is to inform all interested parties that each clerk of court, whose fee schedules are set by the Judicial Conference of the United States under the authority of 28 U.S.C. 1913, 1914, and 1930, will assess a fee for the handling of all funds deposited in noncriminal proceedings with the court and held in interest bearing accounts or instruments pursuant to 28 U.S.C. 2041 and Rule 67 of the Federal Rules of Civil Procedure. The fee will be equal to the first 45 days income earned on each deposit into the court's registry.

EFFECTIVE DATE: June 12, 1989.

ADDRESS: Direct any inquiries to: Assistant Accounting Officer, Accounting Branch, Financial Management Division, Administrative Office of the United States Courts, 1120 Vermont Avenue NW., Washington, DC 20544.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 28 U.S.C. 2041, all moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court is deposited into the U.S. Treasury or other designated financial institutions in the name and to the credit of the court. These monies are commonly referred to as "registry funds". Under Rule 67 of the Federal Rules of Civil Procedure funds may be placed into interest bearing accounts or instruments during the pendency of a case or proceeding.

The Judicial Conference of the United States, at its meeting in September 1988, authorized an amendment to the miscellaneous fee schedules for the appellate, district, and bankruptcy courts. The amendment authorizes clerks to assess a fee of up to three percent, not exceeding the interest earned, for the handling of registry funds, in accordance with a detailed schedule issued by the Director of the Administrative Office of the U.S. Courts. The Director has been given the discretion to exempt certain items from fees and to impose a fee at any lower level should he deem it appropriate.

The Judiciary Appropriation Act for Fiscal Year 1989 (Pub.L. 100–459) established a special fund in the U.S. Treasury for the fees imposed for handling registry funds, which will be available for use by the Judiciary.

The Director of the Administrative Office commissioned a study of financial institutions and state court systems to determine how similar funds held in custodial or trust accounts by those organizations are handled and the amount and manner in which fees (if any) are assessed. These studies in addition to a similar study of court fees in general conducted by the Conference of State Court Administrators in 1986, and a study of Judiciary fee bills enacted since 1853 serve as support for the establishment of this fee and the methodology employed in its application.

Application

The fee will be assessed on all registry fund investments in non-criminal proceedings as follows:

For new accounts, *i.e.* those investments made on or after the effective date of the fee, the fee will be equal to the first 45 days of income earned on the account. Each subsequent deposit of new principal into the registry, in the same case or proceeding in which other deposits have been made, will be subject to the fee. However, reinvestment of previously deposited principal will not be subject to the fee.

For existing accounts, *i.e.* those investments held by the court on the day prior to the effective date of the fee, a fee will be assessed equal to the first 45 days of income earned on such existing accounts, beginning 30 days after the effective date of the fee. As discussed above, subsequent deposits of new principal in the same account will be subject to the fee. Subsequent reinvestment of existing deposits will not be subject to the fee.

The fee will apply only once to each sum deposited regardless of the length of the time actually held in the registry and will not exceed the income actually earned on the account.

The fee does not apply in the District Courts of Guam, Northern Mariana Islands, the Virgin Islands, the United States Claims Court or other courts whose fees are not set under the statutes cited above.

The fee will be deducted at the time the income is credited to the account.

As with other miscellaneous fees authorized under 28 U.S.C. 1913, 1914, and 1930, this fee may be taxed as costs by the court pursuant to 28 U.S.C. 1920. In cases where the U.S. Government is a party to the action underlying the registry investment, the funds initially withheld in payment of the registry fee may be restored to the United States upon application filed with the court by the United States Attorney or other Government counsel.

The 45 day period scheduled herein is subject to review and adjustment from time to time by the Director of the Administrative Office.

L. Ralph Mecham,
Director.

[FR Doc. 89–11327 Filed 5–10–89; 8:45 am]
BILLING CODE 2210-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 5, 1989.

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, extension, 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.

Revision

- Agricultural Stabilization and Conservation Service

Application for Disaster Credit, Record of Production and Yield, Certification of Crop Insurance, Application for 1988 Disaster Benefits
ASCS-574, ASCS-658, CCC-440, CCC-441
On occasion
Farms; 7,200,000 responses; 2,250,000 hours; not applicable under 3504(h)
Raymond K. Aldrich, (202) 447-6688.

Extension

- National Agricultural Statistics Service

Field Crop Objective Yield Surveys
None
Annually
Farms; 20,409 responses; 6,158 hours; not applicable under 3504(h)
Larry Gambrell, (202) 447-7737.

New Collection

- Forest Service

Green River Recreation Study
None
One-time survey
Individuals or households; 3,500 responses; 875 hours; not applicable under 3504(h)
Glenn M. Stubbs, (801) 784-3445.

- Animal and Plant Health Inspection Service

ADC Guarding Dog Program Questionnaire
None
Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 85 responses; 42 hours; not applicable under 3504(h)
Dr. Jeffery Green, (208) 374-5306.

- Forest Service

Landownership Adjustments (36 CFR 254, Subpart A—Land Exchanges)
None
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or ogranizations; 254 responses; 508 hours; not applicable under 3504(h)
Jim Dear, (703) 235-2493.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 89-11325 Filed 5-10-89; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Hard Red Winter Wheat; Protein Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Beginning May 15, 1989, the Federal Grain Inspection Service (FGIS) will implement an updated calibration for near infrared reflectance (NIR) instruments for Hard Red Winter wheat protein determinations.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA, FGIS, Resources Management Division, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454; telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: An updated Hard Red Winter (HRW) calibration for NIR instruments will be implemented for protein determinations. The calibration was developed with the assistance of the USDA Agricultural Research Service Instrumentation Research Laboratory and the Agricultural Marketing Service, Commodity Scientific Support Division, Statistics Branch. New NIR values for the national standard reference samples will be issued for the entire set of 10 samples. The samples are used to detect instrument drift and keep the NIR's aligned with the Kjeldahl laboratory at the FGIS Technical Center in Kansas City.

Beginning Monday, May 15, 1989, the new calibration will be implemented in FGIS field offices and the official agencies in their circuits in the following sequence:

1. Wichita, KS; Moscow, ID.
2. Kansas City, MO; St. Louis, MO; Omaha, NE.
3. Grand Forks, ND; Duluth and Minneapolis, MN.
4. Beaumont, Corpus Christi, Galveston, Pasadena, and Plainview, TX; Belle Chasse, Destrehan, and Lutcher, LA.
5. Olympia, WA; Portland, OR; and Sacramento, CA.

A technical review of the new calibration indicates that the effect on the national system should be minimal. However, the precise impact of the new calibration at any given location cannot be accurately predicted.

To ensure that the HRW calibration reflects the new varieties being grown by producers and is, therefore, as precise as possible, FGIS updates the calibration annually using a five-year rollover of data.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 8, 1989.

D. R. Galliart,
Acting Administrator.
[FR Doc. 89-11324 Filed 5-10-89; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Environmental Impact Statement for the Proposed Beartrack Gold Mining Project on the Cobalt District of the Salmon National Forest, Lemhi County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft environmental impact statement (DEIS) for a Plan of Operation submitted by Meridian Minerals Company, for an open-pit gold mine, 13 miles west of Salmon Idaho, on the Cobalt Ranger District, Salmon National Forest, Lemhi County County, Idaho. The agency is inviting comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that is occurring on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by June 15, 1989.

ADDRESS: Direct comments and suggestions concerning the scope of the analysis to Forest Supervisor, Salmon National Forest, P.O. Box 729, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and DEIS to Tom Buchta, Project Coordinator, Salmon Supervisor Office, P.O. Box 729, Salmon, Idaho 83467, telephone 1-208-756-2215.

SUPPLEMENTARY INFORMATION: The Forest Service received a Conceptual Plan of Operations from Meridian Minerals Company on March 24, 1989, for a gold mining and processing operation located within the boundaries

of the Salmon National Forest in Lemhi County, Idaho. Meridian proposes to construct an open pit mine, heap waste rock disposal and associated facilities to develop their disseminated gold ore deposits in the Salmon River Mountains near the historic mining area of Leesburg, Idaho. Approximately 25 million tons of ore and 50 million tons of waste rock are expected to be excavated over the 7 year life of the mine. Meridian anticipates a workforce of 100 persons during construction and 100 to 150 persons during the operation of the mine.

Some of the issues and alternative to be analyzed in the environmental impact statement include various alternative locations for the mining structures, impacts to surface and ground water, cultural-historic resources, reclamation of the site, effects on wildlife, and the social and economic impacts on local communities. Further defining of issues, concerns, opportunities and alternative will occur through scoping with other Federal, State and local agencies, and with interested individuals and organizations. Contacts with these other groups will be through the news media, by letter or personal contact. A public meeting is tentatively scheduled to be held on May 1, 1989, at 7:00 p.m. at the Salmon Valley Center in Salmon, Idaho.

John E. Burns, Forest Supervisor of the Salmon National Forest, Salmon, Idaho, is the responsible official for the action. The Forest Service is the lead agency.

The draft environmental impact statement is expected to be ready for review by February 1990, and the final environmental impact statement is expected in July 1990.

Dan W. Baird,

Acting Forest Supervisor.

Date: May 2, 1989.

[FR Doc. 89-11332 Filed 5-10-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOIC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Marine Mammals: Application for a Commercial Fisheries Exemption

Form Number: None

Type of Request: New collection—Expedited review

Burden: 6,190 respondents; 1,547 reporting hours; average hours per response—.25 hours

Needs and Uses: Commercial fishermen who participate in fisheries which NOAA has identified as having frequent or occasional takings of marine mammals must obtain an exemption for such takings. Without such an exemption the Marine Mammal Act prohibits participation in those fisheries

Affected Public: Individuals or households or households, business or other for-profit, and small businesses or organizations

Frequency: Annually

Respondent's Obligation: Mandatory

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. The application form is printed below.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 4, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-22-M

COMMERCIAL FISHERIES EXEMPTION REGISTRATION FORM

IF YOU ARE A VESSEL OWNER, OR THE OWNER'S AUTHORIZED REPRESENTATIVE, AND WILL BE FISHING IN ONE OF THE FISHERIES LISTED ON PAGE 3, YOU MUST COMPLETE THIS REGISTRATION FORM, MAIL IT WITH A CHECK OR MONEY ORDER IN THE AMOUNT OF $30.00 PER VESSEL AND RECEIVE A VALID EXEMPTION CERTIFICATE AND DECAL.

IF YOU ARE A VESSEL OWNER OR A FISHERMAN AND YOU WILL NOT BE FISHING IN ANY FISHERY LISTED ON PAGE 3, YOU DO NOT NEED TO COMPLETE THIS FORM. HOWEVER, YOU MUST READ THE ENCLOSED BROCHURE, AS ALL FISHERMEN ARE SUBJECT TO THE TERMS OF THE MARINE MAMMAL PROTECTION ACT AND MUST MINIMIZE THEIR INTERACTION WITH MARINE MAMMALS.

IF YOU ARE AN OWNER OF GEAR USED IN SET GILLNET, TRAP, BEACH SEINE, RANCH AND PEN FISHERIES AND WILL BE FISHING IN ONE OF THE FISHERIES LISTED ON PAGE 3, YOU MUST COMPLETE THIS REGISTRATION FORM, MAIL IT WITH A CHECK OR MONEY ORDER IN THE AMOUNT OF $30.00 AND RECEIVE AN EXEMPTION CERTIFICATE.

A COMPLETED REGISTRATION FORM AND CHECK OR MONEY ORDER PAYABLE TO NOAA, NATIONAL MARINE FISHERIES SERVICE, MUST BE FORWARDED TO ONE OF THE OFFICES LISTED ON PAGE 2 TO RECEIVE YOUR VALID EXEMPTION AND DECAL.

TEAR OFF AND RETURN PAGE 1 OF THIS FORM IN ORDER TO RECEIVE YOUR VALID EXEMPTION CERTIFICATE AND DECAL. KEEP PAGE 2. IT IS YOUR RECEIPT OF REGISTRATION.

VESSEL NAME _____ VESSEL LENGTH (FT) _____

HOME PORT OF VESSEL _____

STATE REGISTRATION NO. _____ CG DOCUMENTATION NO. _____

STATE COMMERCIAL VESSEL LICENSE NO. _____ TRIBAL PLAQUE NO. _____

NAME OF VESSEL OWNER(S) _____

CORPORATE NAME IF VESSEL IS OWNED BY CORPORATION _____

PERMANENT ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE NUMBER (AREA CODE) _____ NUMBER _____

MAILING ADDRESS FOR RECEIPT OF EXEMPTION IF DIFFERENT FROM PERMANENT ADDRESS _____

CITY _____ STATE _____ ZIP _____

NAME & ADDRESS OF OPERATOR (IF DIFFERENT FROM OWNER) _____

_____

_____

IDENTIFY BY NUMBER, ALL FISHERIES LISTED ON PAGE 3 IN WHICH THE ABOVE NAMED VESSEL WILL PARTICIPATE FROM JULY 21, 1989 THROUGH DECEMBER 31, 1990

LIST THE NUMBER(S) HERE: ____ ____ ____ ____ ____ ____ ____ ____ ____ ____ ____ ____ ____ ____ ____

ESTIMATED NUMBER OF TRIPS FROM PORT FOR EACH FISHERY: _____

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF THE ABOVE NAMED VESSEL OR THAT I AM AUTHORIZED TO REGISTER FOR THIS EXEMPTION ON BEHALF OF THE OWNER, THAT I HAVE REVIEWED ALL INFORMATION CONTAINED ON THIS DOCUMENT, AND THAT IT IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____ _____

SIGNATURE DATE

IF THIS REGISTRATION FORM IS SIGNED BY A PERSON OTHER THAN THE OWNER OF THE ABOVE NAMED VESSEL, PLEASE COMPLETE THE FOLLOWING:

NAME _____

PERMANENT ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE NUMBER (AREA CODE) _____ NUMBER _____

A SEPARATE REGISTRATION FORM FOR EACH VESSEL IS REQUIRED. ADDITIONAL FORMS CAN BE OBTAINED FROM ANY OF THE OFFICES LISTED ON PAGE 2.

FORWARD A COMPLETED REGISTRATION FORM TO ONE OF THE OFFICES LISTED BELOW.

Northeast Region
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

Southeast Region
National Marine Fisheries Service
9550 Koger Blvd.
St. Petersburg, FL 33702

Southwest Region
National Marine Fisheries Service
300 South Ferry St.
Terminal Island, CA 90731-7451

Northwest Region
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802

Office of Protected Resources
National Marine Fisheries Service
1335 East West Highway
Silver Spring, MD 20910

COMMERCIAL FISHERIES EXEMPTION REGISTRATION FORM

KEEP THIS PAGE FOR YOUR RECORDS. IT IS YOUR RECEIPT OF REGISTRATION FOR AN EXEMPTION CERTIFICATE. A COPY OF THIS RECEIPT MUST BE ON BOARD EACH VESSEL. A DECAL AND EXEMPTION CERTIFICATE WILL BE MAILED TO YOU UPON RECEIPT OF THE COMPLETED REGISTRATION FORM.

VESSEL NAME _____ VESSEL LENGTH (FT) _____

HOME PORT OF VESSEL _____

STATE REGISTRATION NO. _____ CG DOCUMENTATION NO. _____

STATE COMMERCIAL VESSEL LICENSE NO. _____ TRIBAL PLAQUE NO. _____

NAME OF VESSEL OWNER(S) _____

CORPORATE NAME IF VESSEL IS OWNED BY CORPORATION _____

PERMANENT ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE NUMBER (AREA CODE) _____ NUMBER _____

MAILING ADDRESS FOR RECEIPT OF EXEMPTION IF DIFFERENT FROM PERMANENT ADDRESS _____

CITY _____ STATE _____ ZIP _____

NAME & ADDRESS OF OPERATOR (IF DIFFERENT FROM OWNER) _____

_____

_____

IDENTIFY BY NUMBER, ALL FISHERIES LISTED ON PAGE 3 IN WHICH THE ABOVE NAMED VESSEL WILL PARTICIPATE FROM JULY 21, 1989 THROUGH DECEMBER 31, 1990

LIST THE NUMBER(S) HERE: _____

ESTIMATED NUMBER OF TRIPS FROM PORT FOR EACH FISHERY: _____

I HEREBY CERTIFY UNDER PENALTY OF PERJURY, THAT I AM THE OWNER OF THE ABOVE NAMED VESSEL OR THAT I AM AUTHORIZED TO REGISTER FOR THIS EXEMPTION ON BEHALF OF THE OWNER, THAT I HAVE REVIEWED ALL INFORMATION CONTAINED ON THIS DOCUMENT, AND THAT IT IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____ _____
SIGNATURE DATE

IF THIS REGISTRATION FORM IS SIGNED BY A PERSON OTHER THAN THE OWNER OF THE ABOVE NAMED VESSEL, PLEASE COMPLETE THE FOLLOWING:

NAME _____

PERMANENT ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE NUMBER (AREA CODE) _____ NUMBER _____

I PLAN TO PARTICIPATE IN THE FOLLOWING FISHERY (FISHERIES) FROM JULY 21, 1989 THROUGH DECEMBER 31, 1990.

Category I Commercial Fisheries in the Atlantic Ocean

TRAWL FISHERY

1. Southern New England, Mid-Atlantic Foreign mackerel

GILLNET FISHERIES

2. Gulf of Maine groundfish/mackerel

Category II Commercial Fisheries in the Atlantic Ocean and Gulf of Mexico

TRAWL FISHERIES

3. Southern New England, Mid-Atlantic offshore squid
4. Southern New England, Mid-Atlantic, Atlantic mackerel

LONGLINE

5. Atlantic Ocean and Gulf of Mexico tuna, shark, swordfish

Category I Commercial Fisheries in the Pacific Ocean

GILLNET FISHERIES SALMONIDS

6. AK Prince William Sound drift gillnet
7. AK Prince William Sound set gillnet
8. AK Peninsula drift gillnet
9. WA marine set gillnet in Areas, 4, 4A, and 4B
10. WA, OR Lower Columbia River Region, Willipa Bay, Grays Harbor (includes rivers, estuaries, etc.) drift gillnet

GILLNET FISHERIES OTHER FINFISH

11. WA, OR, CA thresher shark, swordfish drift gillnet
12. CA California halibut - set gillnet
13. CA angel shark - set gillnet

TRAWL FISHERIES GROUNDFISH

14. AK Bering Sea/Gulf of Alaska

Category II Commercial Fisheries in the Pacific Ocean

GILLNET FISHERIES SALMONIDS

15. AK Southeast Alaska drift gillnet
16. AK Yakutat - set gillnet
17. AK Cook Inlet - set and drift gillnet
18. AK Kodiak - set gillnet
19. AK Peninsula - set gillnet
20. AK Bristol Bay - set and drift gillnet
21. WA Puget Sound Region, Hood Canal, Straits of Juan de Fuca (includes rivers, estuaries, etc.) - set and drift gillnet
22. WA coastal river gillnet
23. CA Klamath River gillnet

GILLNET FISHERIES OTHER FINFISH

24. AK gillnets
25. CA gillnets for white sea bass, yellow tail, soupfin shark, white croaker, bonito/flying fish

PURSE-SEINE FISHERIES SALMON

26. AK South Unimak (False Pass and Unimak Pass)

TROLL FISHERIES

27. AK salmon
28. WA, OR, CA salmon

ROUND HAUL (seine and lampara), BEACH SEINE, AND THROW NET FISHERIES

29. CA herring purse-seine
30. CA anchovy, mackerel, tuna purse-seine
31. CA sardine purse-seine
32. CA squid purse-seine

LONG LINE/SET LINE FISHERIES

SABLEFISH

33. AK Prince William Sound
34. AK Southern Bering Sea

POT, RING NET, AND TRAP FISHERIES

35. AK metlakatla fish trap

DIP NET FISHERIES

36. CA squid

AQUACULTURE, RANCH PENS

37. WA, OR salmon net pens
38. OR salmon ranch

Public reporting burden for this collection of information is estimated to average 15 minutes per response per year to register for an exemption. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, F/PR, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

[FR Doc. 89-11170 Filed 5-10-89; 8:45 am]
BILLING CODE 3510-22-C.

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On April 6, 1989, the Department of Commerce published the final results of its antidumping duty administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covered various periods from April 1, 1981 through February 29, 1989.

After publication of our final results of antidumping duty administrative review, we received comments from Matsushita alleging ministerial errors. We have corrected the ministerial errors and have amended the final results of administrative review for Matsushita for the period April 1, 1983 through August 18, 1983.

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 13917) the final results of antidumping duty administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. After publication of our final results of antidumping duty administrative review, we received comments from Matsushita alleging ministerial errors. We have corrected the ministerial errors and have amended the final results of review for Matsushita.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988, which amends section 735 of the Tariff Act of 1930, authorizes Commerce to establish procedures for the correction of ministerial errors in final determinations. Congress has defined the term "ministerial error" to include errors in addition, subtraction, or other arithmetic functions, or clerical errors resulting from inaccurate copying, duplication, or the like.

Ministerial Errors

We have corrected the following ministerial errors in our margin calculations for Matsushita for the period April 1, 1983 through August 18, 1983:

1. Double-counting of Panasonic Corporation's servicing expense in the calculation of U.S. price, due to a computer programming error.
2. Double-counting of Panasonic Hawaii's commission expense in the calculation of U.S. price, due to a computer programming error.
3. Incorrect use of a total sales figure, rather than a unit amount, in the calculation of the forgiven amount of U.S. commodity tax for Panasonic Industrial Corporation.

Amended Final Results of Review

We have amended the final results of review as follows:

Manufacturer	Time period	Previous margin (in percent)	Amended margin (in percent)
Matsushita	4/1/83-8/18/83	0.85	0.82

Timothy N. Bergan,

Acting Assistance Secretary for Import Administration.

Date: May 3, 1989.

[FR Doc. 89-11268 Filed 5-10-89; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision

Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons

Section 301.5(e)(4) of the regulations requires the denial of applicatioins that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 87-118. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Double-Crystal X-Ray Diffractometer, Model 300. *Manufacturer:* Bede Scientific Instruments Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* November 30, 1988.

Docket Number: 88-052. *Applicant:* University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. *Instrument:* Nuclear Magnetic Resonance (NMR) Spectrometer. *Manufacturer:* Bruker Analytik GmbH, West Germany. *Date of Denial Without Prejudice to Resubmission:* December 12, 1988.

Docket Number: 88-134. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* Laser System, Model HY400/HD-300. *Manufacturer:* Lumonics, Inc., Canada. *Date of Denial Without Prejudice to Resubmission:* November 1, 1988.

Docket Number: 88-164. *Applicant:* University of California, San Diego, La Jolla, CA 92093-0109. *Instrument:* Magnetic Inductance Eye-Tracking System. *Manufacturer:* John Mason, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* December 16, 1988.

Docket Number: 88-192. *Applicant:* Children's Hospital Research Foundation, Columbus, OH 43205. *Instrument:* Light Element Gas Source Isotope Ratio Mass Spectrometer, Model Delta E. *Manufacturer:* Finnigan MAT, West Germany. *Date of Denial Without Prejudice to Resubmission:* December 16, 1988.

Docket Number: 88-194. *Applicant:* Utah State University, Logan, Utah 84322-8300. *Instrument:* Rapid Kinetics

Accessory and Stopped Flow Attachments for Spectrometer. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* December 16, 1988.

Docket Number: 88-196. *Applicant:* University of Tulsa, Tulsa, OK 74104. *Instrument:* Scanning Electron Microscope, Model S-2300-2. *Manufacturer:* Hitachi, Japan. *Date of Denial Without Prejudice to Resubmission:* December 16, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-11269 Filed 5-10-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Announcement of Workshop for Users and Implementors of Integrated Services Digital Network

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Computer Systems Laboratory (NCSL) at the National Institute of Standards and Technology (NIST) announces the Sixth North American ISDN Users' Forum (NIU-FORUM). The NIU-FORUM will be sponsored and held in conjunction with The Association of Data Communications Users (ADCU) National Conference. Issues related to the use and implementation of Integrated Services Digital Network (ISDN) technology will be discussed. The NIU-FORUM was formed in 1988 under the auspices of NIST to create a strong user voice in the implementation of ISDN and to ensure that the emerging ISDN services meet users' application needs.

DATES: The Sixth North American ISDN Users' Forum (NIU-FORUM) will be held at The Boston Marriott Copley Place, Boston, Massachusetts, June 14-16, 1989. An ISDN tutorial will be conducted for the Users the afternoon of June 13. This FORUM will consist of joint workshops for the Users (IUW) and Implementors (IIW). The IUW will continue work identifying, defining, and prioritizing user applications of ISDN. The IIW will continue defining implementation agreements for ISDN and will sponsor multivendor demonstrations and trials. Manufacturuers and service providers are invited to participate in this workshop.

ADDRESS: To obtain registration forms for the workshops, companies may contact: ISDN Workshops, Attn: Kim Brashears, National Institute of Standards and Technology, Building 223, Room B364, Gaithersburg, MD 20899, Telephone: (301) 975-4853.

Upon receipt of the completed registration form, additional registration information will then be mailed to the registrant. A NIST representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION CONTACT: Dawn Hoffman (301) 975-2937.

SUPPLEMENTARY INFORMATION: A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: May 5, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-11351 Filed 5-10-89; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

May 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: May 12, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

Inasmuch as the consultation period for Category 345 expired on March 1, 1989, the United States Government has decided to establish a twelve-month limit on Category 345 for the period January 1, 1989 through December 31, 1989.

The United States remains committed to finding a solution concerning Category 345. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 4883, published on January 31, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 5, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 12, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 345, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989, in excess of 183,296 dozen.[1]

Imports charged to Category 345 in Group II for the period January 1, 1988 through December 31, 1988 shall be charged against the level of restraint for Group II to the extent of any unfilled balance.

Textile products in Category 345 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-11383 Filed 5-10-89; 8:45 am]

BILLING CODE 3510-DR-M

[1]The limit has not been adjusted to account for any imports exported after December 31, 1988.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: June 1 and 2, 1989.

Time: 0900-1700 hours, June 1, 1989; 0900-1700 hours, June 2, 1989.

Place: To be determined.

Agenda: The Army Science Board 1989 Summer Study (Technology Subpanel) on Maintaining State-of-the-Art in the Army Command and Control System will meet to review current Army efforts in Artifical Intelligence (AI) research and development. 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 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-11330 Filed 5-10-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command.

ACTION: Invitation to comment on tender of service change on carrier set-off of excess costs incurred by the Government to complete movement of personal property shipments, and to state carrier responsibility for movement of shipments erroneously shipped by the carrier/agent. This is a rewrite of the item published in the **Federal Register** on February 21, 1989.

SUMMARY: The ITGBL Rate Solicitation addresses set off action for excess costs incurred by the Government to complete movement of a shipment. However, the subject is not presently addressed in the DOD 4500.34R, Appendix A, Tender of Service.

Therefore, it is proposed to add the following italicized requirement to Appendix A, Para 14:

14. *Through Responsibility.*

a. All shipments tendered to me will be moved under my responsibility from origin to destination, including joint carriage with duly certified and/or approved carriers who are participants in this tender.

b. As part of my through responsibility, I understand that if, through my fault or that of my agent, I ship the wrong property or all or a portion of a shipment is sent to the wrong destination, I will be responsible for the return of the erroneous shipment and movement of the correct property to the member's destination at my expense. Movement will be by an expedited method *if the member is in need of the property. I will coordinate member need and method of movement with the destination ITO prior to shipment.*

c. *I understand that I will not be liable for movement costs for shipments released in error by a contractor, ITO or owner or owner's agent.*

d. *Further, if I am unable to perform in such a manner as to complete the through movement of a shipment in a timely manner, the government may take possession of the property and complete movement. I understand that I will be liable for all additional costs incurred by the government which are excess to those costs which would have been incurred by me or my agent if I had maintained total through movement of the shipment.*

DATE: Submit written comments by 15 May 89 to: Headquarters, Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT-PPQ-0, Falls Church, VA 22041-5050

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer with the Federal Register

May 1, 1989.

[FR Doc. 89-11337 Filed 5-10-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Alternative Futures Task Force will meet June 7, 1989 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to begin analysis of matters as defined in the terms of reference. The entire agenda for the meeting will consist of discussions of the full range of current political and military developments within the Soviet Union and the Warsaw Pact, drawing on sensitive intelligence sources and discussing possible U.S. policies as a response to and in light of those developments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: May 8, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-11289 Filed 5-10-89; 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 Determining the Impact of Directed Energy Weapons on Navy Warfare Mission Areas will meet June 1-2, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on June 1 and 2, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the impact of Directed Energy Weapons on Navy warfare mission areas. The agenda will include briefings and discussions on current and projected capabilities and requirements related to the various warfare areas. 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 non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be

concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4488.

Date: May 8, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-11290 Filed 5-10-89; 8:45 am]

BILLING CODE 3810-AE-M

Exclusive Patent License; QE Technology, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant exclusive patent license; QE Technology, Inc.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to QE Technology, Inc., a revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent No. 3,992,683, entitled, "Optically Pumped Collision Laser in HG at 546.1 NM," issued November 16, 1976; inventors: Nicholas I. Djeu and Ralph L. Burnham.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (202) 696-4001.

May 8, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-11291 Filed 5-10-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA: 84.214]

Migrant Education Even Start Program, Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: This program provides Federal assistance to eligible State educational agencies (SEAs) or consortia of SEAs in cooperation with local educational agencies for the Federal share of the cost of providing model family-centered education projects to help migratory children and their parents become full partners in the children's education, to assist children in reaching their full potential as learners, and to provide literacy training for their parents.

Deadline for Transmittal of Applications: July 14, 1989.

Deadline for Intergovernmental Review: September 12, 1989.

Applications Available: May 11, 1989.

Available Funds: $444,600.

Estimated Range of Awards: $50,000 to $148,200.

Estimated Average Size of Awards: $74,100.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, and 85; and (b) The regulations governing the Migrant Education Even Start program, as proposed to be codified in 34 CFR Part 212 (53 FR 51530), subject to the anticipated changes discussed in this notice.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on December 21, 1988 (53 FR 51530), as modified by the information provided in this notice. Otherwise, the Department will be unable to award the State grants prior to the beginning of the 1989-1990 school year.

The Secretary received only two comments on the NPRM, and the Secretary expects to make changes in the final regulations based on these comments. One change is expected to be the eligibility of formerly migratory children alongside currently migratory children in a Migrant Education Even Start project, if space is available. Further, the Secretary expects to distribute the maximum number of points (20) possible under the criterion in § 212.21(e) (Promise as a model) among the three paragraphs as follows; § 212.21(e)(1)—(9 points), § 212.21(e)(2)—(9 points), and § 212.21(e)(3)—(2 points). In addition, 34 CFR 75.708, which would apply to the Migrant Education Even Start program by virtue of proposed § 212.56(a)(3), provides that recipients of discretionary grants may not subgrant program funds. Because the Secretary anticipates that some SEAs may want to enter into working agreements with LEAs to permit operation of Even Start projects at the LEA level (as is done in the migrant education formula grant program), and in view of the Secretary's broad authority under section 1053(a) of the Act to administer the Migrant Education Even Start program in a manner consistent with the Act's purposes, the Secretary expects final regulations to permit the subgranting of program funds provided the funds are used as the SEA's approved project application specifies.

Applications should be based on the NPRM and these expected changes. The Secretary does not anticipate making any further substantive changes in the final regulations. However, should any additional substantive changes be made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Mr. Joseph P. Bertoglio, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202-6135. Telephone: (202) 732-4758.

Program Authority: 20 U.S.C. 2741-2749, 2831.

Dated: May 5, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary Secondary Education.

[FR Doc. 89-11276 Filed 5-10-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics (ACES).

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: June 1-2, 1989.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education

Statistics, 555 New Jersey Avenue, NW. Room 400J, Washington, DC 20208-5574, Telephone: (202) 357-6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 94-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Confidentiality Issues for Data Tape Releases
- IPEDS—Early Release of Data
- NCES Publication Release Policy
- International Education Statistics Program
- NCES' Fellowship Programs
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208-5574.

Date: May 5, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-11305 Filed 5-10-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1277-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1277-000]

May 2, 1989.

Take notice that on April 27, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1277-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Pacific Resources Company (Union), a producer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated March 7, 1989, under its Rate Schedule PT, it proposes to transport up to 30,000 dekatherms (dt) per day equivalent of natural gas for Union. Panhandle states that it would transport the gas from various receipt points on its system in Colorado, and deliver such gas, less fuel used and unaccounted for line loss, to Amoco's Wattenberg plant inlet and the CIG-Amoco Watkins Junction in Adams County, Colorado.

Panhandle advises that service under § 284.223(a) commenced March 9, 1989, as reported in Docket No. ST89-3004. Panhandle further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: June 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP89-1282-000]

May 4, 1989.

Take notice that on April 28, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1282-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Oxy USA, Inc. (Oxy), a producer, under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated April 10, 1989, it would transport natural gas for Oxy from points of receipt located offshore Louisiana and in the states of Louisiana, Mississippi and Texas to points of delivery interconnecting with United Gas Pipe Line Company at (1) Vinton, Calcasieu Parish, Louisiana and (2) Lirette, Terrebonne Parish, Louisiana and with Louisiana Intrastate Gas Pipeline at Beckwith Creek, Calcasieu Parish, Louisiana. Tennessee indicates that the ultimate delivery point of the natural gas would be in the state of Louisiana. Tennessee states that the peak day, average day and annual volumes that would be transported for Oxy would be 50,000 dekatherms, 50,000 dekatherms and 18,250,000 dekatherms respectively.

Tennessee indicates that it commenced the transportation of natural gas for Oxy on April 11, 1989, as reported in Docket No. ST89-3100-000, for a 120-day period pursuant to § 284.223(a) of the Regulations (18 CFR 284.223(a)).

Comment date: June 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-1279-000]

May 4, 1989.

Take notice that on April 27, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1279-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for the account of Boise Cascade Corporation (Boise Cascade), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 30,000 MMBtu of natural gas on a peak day, 13,000 MMBtu on an average day and 4,750,000 MMBtu on an annual basis for Boise Cascade. Northwest states that it would perform the transportation service for Boise Cascade under Northwest's Rate Schedule TI-1 for a primary term continuing until Febraury 10, 1990, and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from any transportation receipt point on its system to any transportation delivery point on its system.

It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3079-000. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: June 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Great Lakes Gas Transmission Company

[Docket NO. CP89-1251-000]

May 4, 1989.

Take notice that on April 20, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1251-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide transportation of natural gas on a firm basis for Northridge Petroleum Marketing, Inc. (Northridge), a Canadian supplier, for a ten-year period, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Great Lakes states that Northridge has requested that Great Lakes transport up to 15,000 Mcf per day (Mcfd) effective the first day of the month following the later of October 31, 1989, and the date Great Lakes advises Northridge that all satisfactory authorizations deemed necessary or required by Great Lakes to provide the service have been obtained. The transportation will be from a point where the facilities of Great Lakes interconnect with those of TransCanada Pipelines Limited (TransCanada) on the International Boundary at Emerson, Manitoba (Emerson Receipt Point), to an existing point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company (MichCon), located at Belle River Mills, Michigan (Belle River Mills Delivery Point). It is stated that MichCon will transport the Northridge volumes for redelivery to St. Clair Pipeline,[1] which will transport the volumes to Union Gas Limited (Union), a Canadian gas distribution company, the primary purchaser of the gas.

According to Great Lakes, Union is purchasing the volumes on a firm basis from Northridge, and Northridge has advised Great Lakes that Union will take title to the subject volumes upon delivery of the gas into its pipeline system. It is further stated that volumes not purchased by Union may be purchased by LOUTEX Energy, Inc. (LOUTEX), a U.S. natural gas marketer, from Northridge. For such volumes, title will transfer at the Emerson Interconnection.

To implement the arrangements, Great Lakes entered into a Transportation Service Agreement (Agreement) dated March 3, 1989, which provides, *inter alia*, for a term of ten years. In addition, to the Belle River Mills Delivery Point, the contractual arrangements provide that Northridge may have the volumes delivered at (1) an existing point of interconnection between the facilities of Great Lakes and Northern Natural Gas Company, a Division of Enron Corp. (Northern), located at Carlton, Minnesota (Carlton Delivery Point); (2) existing points of interconnection between the facilities of Great Lakes and ANR located at (i) Fortune Lake, Michigan and (ii) at Farwell, Michigan; and (3) an existing point of delivery between the facilities of Great Lakes and TransCanada located on the International Boundary at St. Clair, Michigan. Great Lakes further states that upon written request of Northridge to Great Lakes, the date for commencement of service may be delayed to not later than January 1, 1990. The Agreement also provides that, by mutual agreement of the parties, overrun volumes may be transported from time to time. It is stated that no new facilities are required to provide the proposed service for Northridge.

The agreement provides for a monthly Demand-1 charge of $2.04 per Mcf of contract quantity and a Demand-2 charge of $.06705 multiplied by one-twelfth of the annual contract quantity. Great Lakes states that these demand charges represent the demand components of the Base Tariff Rates of Rate Schedule T-15 of Great Lakes' FERC Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes' Eastern Zone. It is further stated that the Agreement also provides for a commodity charge of (1) $.23921 per Mcf for volumes received for redelivery at the Farwell, Belle River Mills and St. Clair Delivery Points; and (2) $.15195 per Mcf for volumes received for redelivery at the Fortune Lake Delivery Point; and (3) $.07551 per Mcf for volumes received for redelivery at the Carlton Delivery Point. These commodity charges, according to Great Lakes, represent the commodity components, respectively, of (1) Rate Schedule T-15, (2) the transportation component of Rate Schedule CQ-2, and (3) Rate Schedule T-5, of Great Lakes' FERC Gas Tariff; under which volumes of gas are received by Great Lakes at the Emerson Receipt Point, transported, and redelivered, respectively, in Great Lakes' Eastern, Central and Western Zones.

Great Lakes states that it is possible that, although not very likely, on a few days during the period April 1st through October 31st of a contract year, Great Lakes might be unable to transport the entire contract quantity, due to capacity limitation on its system. In this event, Great Lakes states that Northridge is entitled to a credit against the monthly demand charges.

It is stated that the volumes to be transported hereunder are expected to be imported (and exported, if sold to Union) by Northridge, pursuant to a long-term authorization that will be sought by Northridge from the Department of Energy (DOE). Further, other valid authorizations may be utilized, such as the authorizations granted in DOE/ERA Docket Nos. 87-44-NG and 87-57-NG, to Northridge Petroleum Marketing U.S., Inc., a wholly-owned U.S. subsidiary of Northridge. Transportation of the subject volumes by ANR or Northern is expected to be performed under the authorization of Part 284 of the Commission's Regulations. Great Lakes states that Northridge will seek corresponding authorizations from the appropriate Canadian governmental authorities for the export and reimport of these volumes.

Comment date: May 25, 1989 in accordance with Standard Paragraph F at the end of the notice.

5. Midwestern Gas Transmission

[Docket No. CP89-1270-000]

May 4, 1989.

Take notice that on April 26, 1989, Midwestern Gas Transmission Company (Midwestern), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-1270-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the maximum daily quantity of natural gas sold to the City of Morgantown, Kentucky (Morgantown), to serve new industrial customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern proposes to increase its sales to Morgantown from 776 dt equivalent per day to 1,800 dt equivalent per day in order to accommodate the growth of Morgantown's market. It is stated that Midwestern is selling gas to Morgantown pursuant to an agreement dated July 5, 1985, and that the proposed

[1] Great Lakes states that in the event the construction of the St. Clair pipeline is not complete when the subject service commences, either (i) MichCon will deliver the volumes to Panhandle Eastern Pipeline Company (Panhandle), or (ii) Great Lakes will deliver the volumes to ANR Pipeline Company (ANR) at the Fortune Lake or Farwell Delivery Points for redelivery to Panhandle; Panhandle will redeliver the volumes to Union at a point where the facilities of each interconnect near Detroit, Michigan.

increase is reflected in an amended agreement dated March 9, 1989. It is asserted that Midwestern has sufficient gas supply for the increased sales. It is further asserted that the only facility required to implement the increased service would be a new meter, and Morgantown would reimburse Midwestern for the installation cost. It is explained that the sale would continue to be made on a firm basis under Midwestern's Rate Schedule SR-1, with the currently effective rate charged.

Comment date: May 25, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corporation

[Docket No. CP89-1264-000]

May 4, 1989.

Take notice that on April 24, 1989, Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-1264-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 1.0 mile of 30-inch pipeline on its mainline crossing of the Mississippi River and appurtenant facilities in Point Coupee and West Feliciana Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TETCO states that its present mainline crossings of the Mississippi River consist of two 30-inch pipelines, Lines 14 and 18, both of which are situated in trenches in the river's bed. It is stated that monitoring of the river bottom in the vicinity of the two lines over the past two years has indicated extensive scouring immediately downstream of the two lines. It is further stated that sever scouring during the period from May 1987 to February 1989 has washed out large quantities of dirt downstream of Lines 14 and 18 resulting in a scour area approaching 500 feet in width and ranging from 10 feet to 40 feet in depth. In addition, it is stated that on the upstream side of Line 14, a hole of the same width but of depth ranging from 8 to 18 feet has also been washed away. The effect has been to leave an underwater hill with Line 14 in the middle. TETCO asserts that when the river returns to normal flow stages this Spring and additional scouring occurs, the hill could be washed away exposing the line to the forces of the river. Due to the potential vulnerability of Line 14 and to a lesser extent Line 18, TETCO proposes to construct an additional river crossing. TETCO states that the existing crossing would remain in service until deterioration of the river bed necessitated taking the crossing out of service. In addition, it is stated that the proposed crossing would be installed using the directional boring method which would allow the crossing to be located well below the riverbed and unaffected by scouring. TETCO states that Lines 14 and 18 are located on its principal main transmission lines from the supply area to its market areas. The additional crossing will help ensure the continued safe and reliable operation of its main pipeline system.

Comment date: May 25, 1989 in accordance with Standard Paragraph F at the end of this notice.

7. National Fuel Gas Supply Corporation

[Docket No. CP89-1195-000]

May 4, 1989.

Take notice that on April 11, 1989, National Fuel Gas Suply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York, 14230, filed in Docket No. CP89-1195-000 an application, supplemented April 26, 1989, pursuant to section 7(b) of the Natural Gas Act and the Commission's Regulations for permission and approval to abandon sales service to its affiliate, National Fuel Gas Distribution Corporation (Distribution) and abandon by transfer to Distribution certain facilities located in Pennsylvania and New York interconnecting directly with Distribution used to provide the service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel indicates that National Fuel and Distribution have executed an assignment agreement dated April 24, 1989, by which National Fuel assigns to Distribution various metering, regulating and associated facilities and the rights to various contracts inasmuch as they relate to assigned facilities. National Fuel states that Distribution would pay National Fuel the net book value of those facilities, currently 1.881 million dollars.

National Fuel states that the proposed abandonment would enable it to realign its facilities and services in a manner to resolve potential conflicts between state and Federal regulation over its local purchase meters and services rendered through those facilities.

Comment date: May 25, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11256 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-161-000]

ANR Pipeline Co.; Proposed Changes in F.E.R.C. Gas Tariff

May 5, 1989.

Take notice that on May 1, 1989, ANR Pipeline Company (ANR) tendered for filing, proposed changes in its F.E.R.C. Gas Tariff, Original Volume No. 1, Original Volume No. 1-A and Original Volume No. 2, to become effective June 1, 1989. ANR's filing effectuates a rate increase which is designed to recover ANR's overall cost of service, developed by utilizing a base period for the twelve months ended January 31, 1989, adjusted for known and measurable changes through the end of the test period, October 31, 1989. The filed for non-gas cost of service is approximately $36 million more than the non-gas cost of service which underlies ANR's final rates proposed in the Stipulation and Agreement in Docket No. RP86-169, *et al* filed on December 30, 1988, currently pending before the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11257 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-165-000, and TM89-2-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on May 2, 1989, pursuant to section 4 of the Natural Gas Act, the Commission's September 30, 1988, August 12, 1988, November 4, 1988, December 28, 1988, and March 3, 1989, orders in this docket, and section 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Third Revised Sheet Nos. 44, 45 and 160A
Second Revised Sheet Nos. 47, 49, 160B, 160C, 160D, 160E and 160G
Orignial Sheet Nos. 49A, 49B, 49C, and 160I
First Revised Sheet Nos. 160F and 160H
Fourth Revised Sheet No. 40

The proposed effective date of these sheets is May 1, 1989. CNG states that the purpose of this filing is to change its take-or-pay pass-through provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11258 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-33-000]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 5, 1989.

Take notice that on May 1, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of an Annual Adjustment in Rates, effective July 1, 1989, for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states it submitted primary tariff sheets which do not reflect collection of its Account 191 surcharge, and result in rates that are $7.8995 per dth less than those rates proposed under the alternative tariff sheets, and a net decrease of $0.2993 per dth in the gas cost component as compared with the gas cost component established through El Paso's Quarterly Adjustment at Docket No. TQ89-3-33-000, effective April 1, 1989. Said rates reflect an increase of $0.0635 per dth from those rates filed on March 31, 1989, at Docket No. RP89-132-000. El Paso states that it is currently involved in settlement discussions regarding several proceedings pending before the Commission including in particular, El Paso's proposed Gas Inventory Charge ("GIC") mechanism. El Paso has proposed to collect the Account 191 balance through a direct billing mechanism upon the Commission's approval and El Paso's acceptance of the GIC, as reaffirmed in the Commission's April 27, 1989 order at Docket Nos. CP88-184-000 and RP88-185-000. As a transitional measure, El Paso requested that waiver be granted until the implementation of the GIC proposal, subject to a reexamination of a need for waiver at the time of El Paso's next scheduled Quarterly Adjustment to be effective October 1, 1989, and subject further to El Paso's right to reinstate collection of the surcharge if the Commission's order has conditions unacceptable to El Paso and the GIC is not implemented by El Paso.

El Paso states that in the event the Commission denies its request for waiver of the Account 191 surcharge, El Paso also tendered certain alternative tariff sheets in compliance with its PGA provisions which reflect a net decrease of $0.2993 in the gas cost component of El Paso's jurisdiction sales rates as compared with the gas cost component in El Paso's Quarterly Adjustment at Docket No. TQ89-3-33-000, effective April 1, 1989, and a surcharge increase of $7.8995. Said rates reflect an increase of $7.9630 per dth above those rates filed on March 31, 1989, at Docket No. RP89-132-000.

Copies of the filing were served upon El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 25, 1989. Protests will be consideed by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR. Doc. 89-11259 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-26-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

May 5, 1989.

Take notice that on April 28, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing First Revised Sheet Nos. 171 and 172 to be a part of its FERC Gas Tariff, Third Volume No. 1. The proposed effective date of the revised tariff sheets is June 1, 1989. The purposes of this filing are to revise Natural's March 30, 1989 filing under Docket No. RP89-131-000 for (1) Colorado Interstate Gas Company's (CIG) April 17, 1989 compliance filing under Docket No. RP89-98-000; and (2) CIG's March 31, 1989 Order No. 500 filing to flow through additional take-or-pay and contract reformation costs (transition costs) to Natural filed under Docket No. RP89-133-000.

Natural requests any waivers of the Commission's Regulations as are necessary to allow the tendered tariff sheets to become effective June 1, 1989. A copy of the filing was mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 89-11260 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-59-000]

Northern Natural Gas Co., Division of Enron Corp.; Alaskan Natural Gas Transportation System (ANGTS) Semi-Annual Rate Adjustment

May 5, 1989.

Take notice that on April 28, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Federal Energy Regulatory Commission (Commission) its regularly scheduled semi-annual ANGTS rate adjustment, including the following tariff sheets, to be effective July 1, 1989, pursuant to Northern's F.E.R.C. Gas Tariff:

Third Revised Volume No. 1

Fifty-Second Revised Sheet No. 4a
Seventy-First Revised Sheet No. 4b
Thirty-Ninth Revised Sheet No. 4b.1
Ninth Revised Sheet No. 4g.2

Original Volume No. 2

Seventy-Eighth Revised Sheet No. 1c

In this filing, it is stated that, Northern Border Pipeline's estimated transportation costs for Northern Natural for 1989 have increased causing an increase in Northern's rates. Therefore, Northern is required to change its rates pursuant to paragraph 21.4 of its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Paragraph 4.4 of its F.E.R.C. Gas Tariff, Original Volume No. 2.

The Company states that copies of the filing have been mailed to each of its gas utility customers, transportation customers, and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11261 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-73-003]

Pelican Interstate Gas System; Compliance Filing

May 5, 1989.

Take notice that on April 28, 1989, Pelican Interstate Gas System (Pelican) filed First Revised Sheet Nos. 52 and 53 to its FERC Gas Tariff, Original Volume No. 1.

Pelican states that those tariff sheets are filed in compliance with the Commission's orders of March 31, 1989. Pelican states that it revised section 3.2 of Rate Schedule ITS to eliminate the provision for a lottery when more than one valid request is received on the same day.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC., 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988). All such motions or protests should be filed or or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available to public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11262 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

May 5, 1989.

Take notice that on May 1, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Fifty-Third Revised Sheet No. 4 to its FERC Gas

Tariff, First Revised Volume No. 1. South Georgia states that the tariff sheet and supporting information are being filed with a proposed effective date of July 1, 1989, pursuant to the Purchased Gas Cost Adjustment clause to its FERC Gas Tariff and Section 154.305 of the Commission's Regulations.

South Georgia states that the Current Adjustment reflects a revenue increase of approximately $140,000 in jurisdictional revenues resulting from an increase of 133.3¢ per MMBtu in the D-1 component of South Georgia's rates, an increase of 4.8¢ per MMBtu in the D-2 component for the G-1/I-1 Rate Schedules and a decrease of 36.3¢ per MMBtu in the commodity component.

South Georgia state that the Surcharge Adjustment is 6.81¢ per MMBtu and is based on a three-year amortization of the balance of South Georgia's Account No. 191 as of February 28, 1989.

Copies of South Georgia's filing were served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure §§ 385.211 and 385.214). All such motions or protests should be filed on or before May 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11263 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-154-000 and TM89-6-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 26, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, certain revised tariff sheets.

Texas Eastern states that the purpose of this filing is to (1) track modifications made by United Gas Pipe Line Company (United) on November 30, 1988 in Docket No. RP88-264, and (2) to establish the procedures pursuant to which Texas Eastern will recover a portion of United's take-or-pay charges as proposed by United in Docket No. RP89-138 on March 31, 1989.

(1) Texas Eastern Docket No. RP88-80 Relating to United Docket No. RP88-264

Texas Eastern states that on November 30, 1988, United filed tariff sheets in Docket Nos. RP88-27 and RP88-264 reflecting a revised fixed Take-or-Pay Charge to be billion in addition to United's currently effective rates pursuant to the Commission's Order dated October 31, 1988. United revised their Fixed Take-or-Pay Charge under Docket No. RP88-264 to reflect only the inclusion of costs attributable to binding agreements entered into before September 30, 1988 and the crediting of any unused take-or-pay credits arising from United's Docket No. RP85-209 against that customer's liability under Docket No. RP88-264. Pursuant to the allocation methodology proposed by United, United will now bill and recover from Texas Eastern an aggregate principal amount of $1,619,139, which includes a predetermined carrying charge, by means of a monthly charge of $62,275 for a 26-month period commencing November 1, 1988.

Texas Eastern states that Second Substitute Third Revised Sheet Nos. 52 through 55 are being revised solely to track modifications made by United on November 30, 1988 in Docket No. RP88-264. The aforementioned sheets set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover United's take-or-pay charges billed to Texas Eastern in United's Docket No. RP88-264. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which includes a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix B of the filing.

(2) Texas Eastern Docket No. RP88-80 Relating to United Docket No. RP89-138

Texas Eastern states that on March 31, 1989 United filed tariff sheets in Docket No. RP89-138 to recover an additional take-or-pay charge to be billed in addition to United's currently effective take-or-pay charges under Docket Nos. RP88-27 and RP88-264. United's tariff sheets filed March 31 incorporate a fixed take-or-pay charge designed to recover 50% of the jurisdictional portion of United's take-or-pay buy-out and buy-down costs which United has either actually paid or has become obligated to pay on or before March 31, 1989. Pursuant to the allocation methodology proposed by United, United will bill and recover from Texas Eastern an aggregate principal amount of $22,102,650, which includes a predetermined carrying charge, by means of a monthly charge of $1,052,507 for a 21-month period beginning April 1, 1989.

Texas Eastern states that on April 14, 1989, it filed a motion to protest United's March 31, 1989 filing on the basis that (a) United's allocation methodology is flawed, (b) United's valuation of its take-or-pay settlements is neither accurate nor substantiated, and (c) United's tariff is ambiguous regarding the procedures for adjusting the Commission approved interest rate collected on United's take-or-pay costs. A copy of Texas Eastern's motion is attached in Appendix C of the filing. Nevertheless, if the Commission elects to permit United to implement these additional charges, Texas Eastern must establish promptly the procedures to recover these additional costs charged by United.

Texas Eastern states that Fourth Revised Sheet Nos. 52 through 55 and Fifth Revised Sheet Nos. 482 and 483 are being filed solely to establish procedures pursuant to which Texas Eastern will recover additional take-or-pay charges billed Texas Eastern by United as proposed in United's March 31, 1989 filing in Docket No. RP89-138. Fourth Revised Sheet Nos. 52 through 55 set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover United's take-or-pay charges billed to Texas Eastern in United's Docket No. RP89-138. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which includes a predetermined carrying charge) each Texas Eastern customer will be require to pay are set forth under Appendix D of the filing.

Texas Eastern states that in tracking United's methodology, it has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods, to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent

with the methodology used and approved by the Commission in Texas Eastern's previous filings.

Texas Eastern states that if at any time United is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from United in the above proceedings.

The proposed effective dates of the tariff sheets are as listed in Appendix A, attached to the filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11264 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 5, 1989.

Take notice that Trunkline Gas Company (Trunkline) on May 1, 1989 tendered for filing certain revised tariff sheets which reflect an increase in rates. Trunkline requests an effective date of June 1, 1989.

Trunkline states these tariff sheets implement a general decrease in revenues from that sought in its prior rate case filing, Docket No. RP88-180-000 of approximately $9.0 million. Trunkline stated that the primary reason for the filing of these revised tariff sheets is to adjust Trunkline's rates for sales and transportation services to bring the revenues to be derived therefrom into line with total costs and projected levels of service to sales and transportation customers. Trunkline noted that in traditional cost areas, management efficiency and cost control have reduced operating expenses from prior periods.

Trunkline states it included as its Primary Revised Tariff Sheets, seasonal rates for all services and one-part demand rates for firm services. Recent pronouncements have encouraged Trunkline in the belief that the Commission may well be prepared to recognize that two-part demand charges—particularly in the fact of customer opposition—are an unwise approach which, in any event, is not consistent with seasonal rate structures, such as are contained herein. The Company firmly believes that this is a preferable rate structure, and that the Natural Gas Act protects the Company's right to make such rates effective.

Nonetheless, out of deference to the Commission's previous adherence to two-part demand rates, the Company states it also included as Alternate Revised Tariff Sheets seasonal rates for all services and two-part demand charges for firm services. In the event the Commission determines not to accept Trunkline's proposed Primary Tariff Sheets, then the Company must ask that the Alternate Tariff Sheets be accepted for filing and permitted to become effective.

Trunkline states the seasonal basis for its rates is the second initiative included in this filing. As contemplated by the Commission's regulations, these rates will serve to ration capacity during times of peak use, to maximize throughput and to reflect underlying variations in costs associated with service during the winter and non-winter seasons.

Trunkline stated that the accompanying Statement of Nature, Reason and Basis for the Proposed Change in Rates accompanying its filing outlines the various factors which have given rise to the rate adjustments for sales services and transportation services to which this section 4 filing applies.

Trunkline stated that the filing reflects representative projected throughput volume levels for its sales and transportation services.

Copies of this notice and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11265 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-157-000]

Valley Gas Transmission, Inc.; Proposed Changes In FERC Gas Tariff

May 5, 1989.

Take notice that on May 1, 1989, Valley Gas Transmission, Inc. (Valley), Suite 700, 1301 McKinney Street, Houston, TX 77010, tendered for filing pursuant to section 4 of the Natural Gas Act the following tariff sheets to be included in its FERC Gas Tariff:

Original Volume No. 1

Forty-first Revised Sheet No. 2A
Fourth Revised Sheet No. 176
Third Revised Sheet Nos. 177 through 180
Second Revised Sheet No. 180A and 180B
First Revised Sheet No. 180C

Original Volume No. 2

Fourteenth Revised Sheet No. 10

Valley states that the tendered tariff sheets reflect (1) an increase in Valley's volumetric transportation rate from $.2173 to $.2355 per Mcf, and (2) the elimination of Valley's Purchased Gas Adjustment (PGA) provision from its tariff, inasmuch as Valley is no longer making any sales or purchasing any gas. Valley states that the proposed rate increase is based on actual experience for the twelve months ended December 31, 1988, as adjusted for changes known and measurable through September 30, 1989.

Valley requests an effective date of June 1, 1989, for the filed tariff sheets, and states that copies of this filing were served on all of its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

May 12, 1989. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11266 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-49-000]

Williston Basin Interstate Pipeline Co.; Out-of-Cycle Purchased Gas Adjustment Filing

May 5, 1989.

Take notice that on May 1, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing an out-of-cycle Purchased Gas Adjustment Filing (PGA) pursuant to 18 CFR, 154.301, *et seq.* of the Commission's Regulations and section 21 of its FERC Gas Tariff (First Revised Voume No. 1), Williston Basin filed revisions to the following tariff sheets:

First Revised Volume No. 1

Second Substitute Sixteenth Revised Sheet No. 10
Third Revised Sheet No. 98A

Original Volume No. 1-A

Second Substitute Twelfth Revised Sheet No. 11
Second Substitute Fifteenth Revised Sheet No. 12
Second Substitute Sixth Revised Sheet No. 97A

Original Volume No. 1-B

Second Substitute Fifth Revised Sheet No. 10
Second Substitute Fifth Revised Sheet No. 11

Original Volume No. 2

Second Substitute Eighteenth Revised Sheet No. 10
Second Substitute Tenth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is June 1, 1989.

Williston Basin states that this filing reflects its implementation of NGPA pricing for company owned production and the discontinuation of cost of service pricing concurrent with the effectiveness of rates in Docket No. RP89-34-000.

Williston Basin respectfully requests that the Commission accept for filing Second Substitute Sixteenth Revised Sheet No. 10 (First Revised Volume No. 1) and Second Substitute Eighteenth Revised Sheet No. 10 (Original Volume No. 2) which effectuate an 11.686 cents per dkt decrease in the base non-gas commodity portion of Rate Schedules G-1, SGS-1, E-1 and X-1, as compared to that contained in the Company's January 30, 1989 compliance filing in Docket No. RP89-34-001, and reflect the discontinuance of cost of service pricing for company owned production and the implementation of NGPA pricing. In addition, the referenced tariff sheets provide for a decrease in the total gas commodity charge of 83.706 cents per dkt as compared to the total gas commodity charge included in Williston Basin's March 31, 1989 PGA filing in Docket No. TQ98-3-49-000. Please refer to Attachment B and Schedule D-1 for schedules in support of these calculations.

Williston Basin states that it also submitted for filing Third Revised Sheet No. 98A (First Revised Volume No. 1), a revision to its PGA tariff to reflect the referenced change in pricing of company owned production.

Williston Basin states that the balance of the tariff sheets submitted reflect a decrease of 1.720 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's March 31, 1989 filing in Docket No. TQ89-3-49-000. Such decrease in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas and fuel reimbursement percentage reflected in the instant filing.

Williston Basin states that the instant filing also serves as its' notice of intent to make interim collections on those wells listed on Attachment C of the filing, pursuant to 18 CFR 273.202(d) of the Commission's Regulations. Williston Basin has filed applications with the appropriate jurisdictional agencies for determinations of eligibility under the NGPA.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-11267 Filed 5-10-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-823-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-823-DR), dated April 23, 1989, and related determinations.

DATED: May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated April 23, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1989: Panola and Smith Counties for Individual Assistance. Houston County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-11319 Filed 5-10-89; 8:45 am]

BILLING CODE 6718-02-M

Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of offer to assist insurers in underwriting flood insurance using the standard flood insurance policy.

SUMMARY: The Federal Insurance Administration is publishing in this Notice the Financial Assistance/Subsidy Arrangement for 1989-1990 governing the duties and obligations of insurers participating in the Write-Your-Own Program (WYO) of the National Flood Insurance Program (NFIP). The

Financial Assistance, Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim with what is set out as Appendix A to 44 CFR Part 62 and is republished for information and convenience.

This Notice relates to the final rule which was published in the **Federal Register** on April 25, 1985, page 16236, as amended by the final rule which was published in the **Federal Register** on April 28, 1988, page 15208, regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. In 1985, a copy of the offer to participate in the Arrangement was incorporated in a final rule and, this year, as in the years since, a copy of the offer is being published as a Notice.

DATE: The offer is effective May 11, 1989. The Financial Assistance/Subsidy Arrangement is effective with respect to flood insurance policies written under the Arrangement with an effective date of October 1, 1989, and later.

SUPPLEMENTARY INFORMATION: By way of background, the Federal Insurance Administration, working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures. The Statistical Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, as amended, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, as amended, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, Rollover Procedures and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1989–90.

Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1989.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on file with the Administrator by November 16, 1989.

4. If (1), (2) or (3) above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptances of this offer to: FEMA, Attn: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Offer to Provide Financial Assistance

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128, Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp., p. 329), E.O. 12127, dated March 31, 1979 (3 CFR 1979 Comp., p. 376), Delegation of Authority to Federal Insurance Administrator, subject to all regulations promulgated thereunder and, to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, hereinafter referred to as the "Administrator", offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a state in which such private sector insurance company is licensed to engage in the business of property insurance.

Financial Assistance/Subsidy Arrangement

Purpose: To assist the company in underwriting flood insurance using the standard flood insurance policy.

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1989.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those

Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including

1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards

The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;
1.2 Endorsement Processing—7 days;
1.3 Cancellation Processing—15 days;
1.4 Correspondence, Simple and/or Status Inquiries—7 days;
1.5 Correspondence, Complex Inquiries—20 days;
1.6 Supply, Materials, and Manual Requests—7 days;
1.7 Claims Draft Processing—7 days from completion of file examination;
1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.
1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, not calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance.

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied

Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to 14.0% of the Company's written premium on the policies covered by this Arrangement as the basic commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

Additionally, the Company shall be entitled to 0.1% of the Company's written premium on the policies covered by this Arrangement for each 1% growth in the Company's policies in force on September 30 of this Arrangement Year, reduced by 80% of the number of policies scheduled for transfer to the Company during this Arrangement Year pursuant to the Company's request under the NFIP Rollover Procedures, over the policies in force on September 30 of the prior Arrangement Year; the additional commission allowance calculated under this provision is limited to a maximum of 3%. The Company may withhold 15% of the Company's written premium during this Arrangement Year with an adjustment up or down, depending upon policy growth, being made at the end of this Arrangement Year.

In the case where the Company had no policies in force on September 30 of the prior Arrangement Year, the Company shall be entitled to withhold 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance, with no adjustment at the end of this Arrangement Year.

Nothing in Article III, Section B, can be used as a means of increasing a Company's commission allowance by transferring business from one company to another company within a company group or by the merger or acquisition of another company. Payments of any additional commission allowance or refund of any excess commission allowance will be in accordance with the WYO Accounting Procedures Manual.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Acccounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel, FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) require the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, FIA may require the transfer of data as shown in section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, section C.; the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the

subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissable as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation , shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination, shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this ____ day of _____, 1989.

_____

Company

by _____

_____

(Title)

The United States of America

Federal Emergency Management Agency
by _____

(Title)

Notice of Acceptance for Federal Emergency Management Agency, Federal Insurance Administration; Financial Assistance/Subsidy Arrangement (Arrangement)

Whereas, In 1989, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter, the Arrangement).

Whereas, The above cited Arrangement, as published in and reprinted from the Federal Register, does not provide sufficient space to type in the name of the company.

Whereas, The Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the Federal Register does not provide sufficient space to type in a list of companies.

Therefore, The parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the Federal Register under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company(ies) listed is (are) duly licensed to engage in the business of property insurance:

_____
_____
_____
_____
_____
_____
_____
_____

In witness, whereof, the parties hereto have accepted the Arrangement on this _____ day of _____, _____.

The United States of America
Federal Emergency Management Agency
By: _____
Title: _____
By: _____
Title: _____

EXHIBIT A—FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40
CWP	70
$0.01 to $200.00	70
$200.01 to $400.00	90
$400.01 to $600.00	110
$600.01 to $800.00	130
$800.01 to $1,000.00	150
$1,000.01 to $1,500.00	180

EXHIBIT A—FEE SCHEDULE—Continued

Range (by covered loss)	Fee
$1,500.01 to $2,000.00	200
$2,000.01 to $2,500.00	220
$2,500.01 to $3,000.00	240
$3,000.01 to $3,500.00	260
$3,500.01 to $4,000.00	280
$4,000.01 to $4,500.00	300
$4,500.01 to $5,000.00	320
$5,000.01 to $6,000.00	350
$6,000.01 to $7,000.00	370
$7,000.01 to $8,000.00	380
$8,000.01 to $9,000.00	400
$9,000.01 to $10,000.00	420
$10,000.01 to $15,000.00	460
$15,000.01 to $20,000.00	490
$20,000.01 to $25,000.00	520
$25,000.01 to $30,000.00	550
$30,000.01 to $35,000.00	580
$35,000.01 to $40,000.00	610
$40,000.01 to $45,000.00	640
$45,000.01 to $50,000.00	670
$50,000.01 to $75,000.00	800
$75,000.01 to $100,000.00	950
$100,000.01 to $125,000.00	1,100
$125,000.01 to $150,000.00	1,250
$150,000.01 to $175,000.00	1,400
$175,000.01 to $200,000.00	1,550
$200,000.01 to limits	1,700

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amount of insurance purchased.

Dated: May 8, 1989.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89-11318 Filed 5-10-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL RESERVE SYSTEM

First Wachovia Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 31, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Wachovia Corporation*, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of First Bank and Trust Company, Fayetteville, Georgia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Fannin Bancshares, Inc.*, Blue Ridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Fannin County, Blue Ridge, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Farmington Bancorp, Inc.*, Farmington, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Farmington, Farmington, Illinois.

2. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of First National Bank of Cudahy, Cudahy, Wisconsin.

3. *U.S. Financial—Illinois, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Federated Bancorp, Inc., Onarga, Illinois, and thereby indirectly acquire Federated Bank, Onarga, Illinois. Comments on this application must be received by May 26, 1989.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Capital Corporation*, Overland Park, Kansas; to become a bank holding company by acquiring 99.03 percent of the voting shares of The Citizens National Bank of Fort Scott, Fort Scott, Kansas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sumitomo Bank, Limited*, Osaka, Japan; to acquire 13.73 percent of the voting shares of CPB, Inc., Honolulu,

Hawaii, and thereby indirectly acquire Central Pacific Bank, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, May 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-11309 Filed 5-10-89; 8:45 am]

BILLING CODE 6210-01-M

Gilman Investment Co., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gilman Investment Co.*, Montezuma, Iowa; to engage *de novo* in making and servicing commercial, agricultural, real estate and installment loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Boatmen's Bancshares, Inc.*, St. Louis, Missouri; to engage *de novo* through its subsidiary, Boatmen's Community Development Corporation, St. Louis, Missouri, in community development pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the states of Missouri, Illinois, and Tennessee, or any other geographic areas in the U.S. which are now or hereafter served by Applicant's banking subsidiaries.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation*, Spokane, Washington; to engage *de novo* through its subsidiary, W.T. Investment Advisory, Inc., Spokane, Washington, in acting as an investment advisor to the extent of providing portfolio investment advice to any person, serving as an investment advisor to a registered investment company and providing financial advice to state and local government, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in the State of Nevada.

Board of Governors of the Federal Reserve System, May 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-11310 Filed 5-10-89; 8:45 am]

BILLING CODE 6210-01-M

Daniel L. Goodwin; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 255.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Daniel L. Goodwin*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of Bellwood Bancorporation, Inc., Bellwood, Illinois, and thereby indirectly acquire Bank of Bellwood, Bellwood, Illinois, and First National Bank of Wheaton, Wheaton, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Henry McCaslin, Jr.*, Rosedale, Mississippi; to acquire an additional 17.3 percent of Rosedale First National Corporation, Rosedale, Mississippi, for a total of 33.7 percent, and thereby indirectly acquire First National Bank of Rosedale, Rosedale, Mississippi.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *William Monke*, and Monke Farm & Cattle Co., Nickerson, Nebraska, to acquire an additional 2.30 percent for a total of 20.38 percent; Willard Heyne, Fremont, Nebraska, to acquire an additional 2.30 percent for a total of 20.38 percent; and Wendell Bruner, Fremont, Nebraska, to acquire an additional 2.30 percent for a total of 20.38 percent of the voting shares of American Banc Corporation, Fremont, Nebraska, and thereby indirectly acquire American National Bank of Fremont, Fremont, Nebraska.

2. *Bruce B. Morgan*, Kansas City, Missouri; to acquire 50 percent; and Donne McCoy, Shawnee, Kansas, to acquire 50 percent of the voting shares of Polo Bancshares, Inc., Polo, Missouri, and thereby indirectly acquire Farmers Bank of Polo, Polo, Missouri.

Board of Governors of the Federal Reserve System, May 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-11311 Filed 5-10-89; 8:45 am]

BILLING CODE 6210-01-M

Johnson International Bancorp, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 255.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Johnson International Bancorp, Ltd.*, Racine, Wisconsin; to become a bank holding company by acquiring approximately 54 percent of the voting shares of Biltmore Bank Corp., Phoenix, Arizona, and thereby indirectly acquire Biltmore National Bank, Phoenix, Arizona.

In connection with this application, Applicant also proposes to retain Johnson Asset Management, Inc., Milwaukee, Wisconsin, and continue to engage in providing portfolio investment advice to any other person pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-11312 Filed 5-10-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041789 AND 042889

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Oak Industries Inc.	89-1448	04/17/89
Chip Supply, Inc.		
Chip Supply, Inc.		
Kelso Investment Associates III, L.P.	89-1468	04/17/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041789 AND 042889—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Blackstone Capital Partners & W. Perella Partners, L.P.		
Wickes Furniture		
Kelso Investment Associates III, L.P.	89-1477	04/17/89
Wasserstein, Perella Partners, L.P.		
Wickes Furniture		
Fabricas Lucia	89-1479	04/17/89
GGvA Holding Corp.		
GGvA Holding Corp.		
The Fulcrum III Limited Partnership	89-1480	04/17/89
GGvA Holding Corp.		
GGvA Holding Corp.		
The Second Fulcrum III Limited Partnership	89-1481	04/17/89
GGvA Holding Corp.		
GGvA Holding Corp.		
Ernest Wulliger	89-1482	04/17/89
GGvA Holding Corp.		
GGvA Holding Corp.		
Masco Corporation	89-1378	04/18/89
StarMark, Inc.		
StarMark, Inc.		
Cilluffo Associates, L.P.	89-1412	04/18/89
Amdura Corporation		
Amdura Corporation		
Apache Corporation	89-1451	04/18/89
Morgan Stanley Group Inc.		
Natural Gas Clearinghouse, Inc.		
Canadian Pacific Limited	89-1459	04/18/89
Tyco Laboratories, Inc.		
Superior Stainless, Inc.		
CIGNA Corp.	89-1471	04/18/89
TOTAL Compangie Francaise des Petroles		
Total Minatome Corporation		
Jostens, Inc	89-1483	04/18/89
Education Systems Corporation		
Education Systems Corporation		
BET Public Limited Company	89-1494	04/18/89
Ernest M. Ash		
Arcade Cleaning Contractors, Inc.		
BET Public Limited Company	89-1499	04/18/89
Imre J. Rosenthal		
Arcade Cleaning Contractors Inc.		
Cooperative Zuivelvereniging Campina b.a.	89-1500	04/18/89
Ridgeview Processing Ltd.		
Ridgeview Processing Ltd.		
Anthony J. Saragusa and Michael J. Saragusa	89-1374	04/19/89
Lone Star Company		
Lone Star Company		
Thermo Electron Corporation	89-1387	04/19/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041789 AND 042889—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Milton Roy Company		
Laboratory Control Division		
Robert J. Tomsich	89-1396	04/19/89
North American Ventures, Inc.		
Butler International, Inc.		
General Electric Company	89-1431	04/19/89
Joint Venture Corporation to be formed		
Joint Venture Corporation to be formed		
Corning Glass Works	89-1437	04/19/89
Enseco Incorporated		
Enseco Incorporated		
Robert Bosch Industrietreuhand KG	89-1461	04/19/89
BG Automotive Motors Inc.		
BG Automotive Motors Inc.		
Donald H. Gales	89-1486	04/19/89
Merrill Lynch & Co., Inc.		
MVE Holding Corp., c/o Lovejoy Industries		
Louis J. Appell Residuary Trust	89-1504	04/19/89
General Electric Company		
NBC Subsidiary (KNBR-AM), Inc.		
Kenneth R. Thomson, c/o The Thomson Company, Inc	89-1445	04/20/89
Kenneth R. Thomson, c/o The Thomson Company, Inc.		
Thomson Newspapers Limited		
Kenneth R. Thomson, c/o The Thomson Company, Inc	89-1446	04/20/89
Kenneth R. Thomson, c/o The Thomson Company, Inc.		
The Thomson Corporation		
Services Etudes Organisation S.A	89-1476	04/20/89
Boase Massimi Pollitt PLC		
Boase Massimi Pollitt PLC		
John W. Kluge, c/o Image Investors Co	89-1488	04/20/89
Image Entertainment, Inc.		
Image Entertainment, Inc.		
CIBA-GEIGY Limited	89-0315	04/21/89
Ohaus Corporation		
Ohaus Corporation		
Roy O. Martin Lumber Company, Inc	89-1243	04/21/89
Texaco, Inc.		
VanPly, Inc.		
Storage Technology Corporation	89-1360	04/21/89
Aspen Peripherals Corp.		
Aspen Peripherals Corp.		
J. Baker, Inc	89-1415	04/21/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041789 AND 042889—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Ames Department Stores, Inc.		
Zayre Central Corp., Zayre New England Corp., Zayre		
PepsiCo, Inc	89-1427	04/21/89
Pepsi-Cola Bottling Company of Reading		
Pepsi-Cola Bottling Company of Reading		
Golder, Thomas, Cressey Fund III Limited Partnership	89-1438	04/21/89
Eleanor S. Jones		
Haddon Craftsmen, Inc.		
Alco Standard Corporation	89-1490	04/21/89
Barry Taylor		
Taylor Made Office Systems, Inc.		
MAI plc	89-1517	04/21/89
International City Holdings PLC		
MKI Investments Inc.		
Loews Corporation	89-1520	04/21/89
Cliffs Drilling Company		
Cliffs Drilling Company		
General Electric Company	89-1522	04/21/89
Transamerica Corporation		
Transamerica Automotive Finance Corporation		
Manville Corporation	89-1526	04/21/89
Royal Dutch Petroleum Company		
Shell Oil Company		
JMB Group Trust V	89-1537	04/21/89
Madonna Road Plaza Partners		
Madonna Plaza Associates		
Northern Star Holdings Limited	89-1543	04/21/89
Giant Group, Ltd.		
Barris Industries, Inc.		
Robert E. Bridges	89-1548	04/21/89
Oil Associates, Limited Partnership		
Alliance Mortgage Company		
Alco Standard Corporation	89-1407	04/25/89
Tiernay Metals, Inc.		
Tiernay Turbines, Inc.		
Primus Healthcare, Inc., a Delaware Corporation	89-1443	04/25/89
Medical Properties, Inc. a Maryland Corporation		
Medical Properties, Inc. a Maryland Corporation		
Kirby Exploration Company, Inc	89-1489	04/25/89
Howard H. Brent		
Brent Towing Company		
Kirby Exploration Company, Inc	89-1505	04/25/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041789 AND 042889—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Edwin Lea Brent		
Brent Towing Company		
Holderbank Financiere Glaris Ltd	89-1359	04/26/89
Box-Crow Cement Company		
Box-Crow Cement Company		
Equity Holdings Limited	89-1416	04/26/89
J.P. Industries, Inc.		
J.P. Industries, Inc.		
Total Compagnie Francaise des Petroles	89-1420	04/26/89
Truman Arnold Companies		
Truman Arnold Companies		
CRH plc	89-1452	04/26/89
Hanson PLC		
Superlite Builders Supply		
James A. Blasdell	89-1453	04/26/89
Hanson PLC		
Superlite Builders Supply		
Philip Morris Companies, Inc	89-1454	04/26/89
Dairyman's Cooperative Creamery Association		
Central Valley Dairy Products		
Imperial Chemical Industries, PLC	89-1457	04/26/89
Richard S. Hawes, III		
K-S-H, Inc.		
Westfield Holdings Limited	89-1458	04/26/89
Giant Group, Ltd.		
Barris Industries, Inc.		
Claude V. Offray, Jr., c/o C.M. Offray & Sons, Inc	89-1464	04/26/89
Thackeray Corporation		
Lion Ribbon Company Inc.		
Cairn Energy plc	89-1466	04/26/89
Pearson plc		
Lignum Oil Company		
St. Luke Hospital, Inc	89-1524	04/26/89
The Salvation Army assets of William Booth Memorial Hospital		
Alexander R. Hackle	89-1532	04/26/89
Martin Marietta Corporation		
Martin Marietta Aluminum Properties, Inc.		
Hitachi, Ltd	89-1404	04/27/89
National Semiconductor Corporation		
National Advanced Systems Corporation		
Hitachi Corporation	89-1405	04/27/89
Newco		
Newco		
General Motors Corporation	89-1429	04/27/89
Newco		
Newco		
Forum Retirement Communities II, L.P	89-1495	04/27/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 041789 AND 042889—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN number	Date terminated
Forum Retirement Partners, L.P.		
The Forum at the Crossing		
Forum Retirement Communities II, L.P.	89-1496	04/27/89
Forum Group, Inc.		
The Remington Club at Rancho Bernardo		
Forum Group, Inc.	89-1497	04/27/89
Forum Retirement Communities II, L.P.		
Forwood Manor		
Forum Group, Inc.	89-1498	04/27/89
Forum Retirement Partners, L.P.		
The Forum at the Crossing		
Kanaiyalal J. Hathi	89-1514	04/27/89
The LTV Corporation		
AM General Corporation and Amland Corporation		
The Elder-Beerman Stores Corporation	89-1516	04/27/89
Brown Group, Inc.		
Meis Stores Division of Etage, Inc.		
Policemen and Firemen Retirement System of Detroit	89-1539	04/27/89
Income Opportunity Realty Trust		
Income Opportunity Realty Trust		
George D. Lilly	89-1506	04/28/89
Knight-Ridder, Inc.		
Knight-Ridder Broadcasting, Inc.		
Fedders Corporation	89-1527	04/28/89
NYCOR, Inc.		
Rotorex Corporation		
Citicorp	89-1536	04/28/89
Intercontinental Affiliates		
SH Leasing, Inc. & DC-9NY-I, Inc.		
Blue Shield of California	89-1550	04/28/89
Plan Investment Fund, Inc.		
Plan Investment Fund, Inc.		
United Newspapers public limited company	89-1557	04/28/89
Dalton Communications, Inc.		
GPI Corporation		
General Electric Company	89-1563	04/28/89
Goldome		
Goldome Savings Bank		

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-11326 Filed 5-10-89; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Small Business Competitiveness Demonstration Program; Plan for Expansion in Targeted Industry Categories

AGENCY: Office of Small and Disadvantaged Business Utilization, GSA.

ACTION: Notice.

SUMMARY: This notice invites public comment on GSA's proposed plan to expand small business participation in 10 industry categories pursuant to Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656.

DATES: Comments are due in writing on or before June 12, 1989.

ADDRESS: Comments should be addressed to Mirinda Jackson, General Services Administration, Office of Small and Disadvantaged Business Utilization, Room 6029, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mirinda Jackson at (202) 566-1021.

SUPPLEMENTARY INFORMATION: Among other things, Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. GSA has been identified as a participant in the demonstration program.

For purposes of expansion portion of the demonstration program, GSA has targeted the following industries:

Description	Product/service code
(1) Maintenance and repair of misc. equipment.	J099
(2) ADP systems development and programming.	R302
(3) Software development/ADP System analysis.	R306
(4) ADP services	R399
(5) Administrative support services	R699
(6) Contract procurement and acquisition support services.	R707
(7) Pest control agents and disinfectant	6840
(8) Office devices and accessories	7520
(9) Books and pamphlets	7610
(10) Paper and paper board	9310

GSA's Plan to Expand Small Business Participation in 10 Industry Categories.

GSA has 12 Business Service Centers located in major metropolitan cities, which were established to assist and promote small businesses, as well as other concerns interested in doing business with GSA and other Government agencies. GSA plans to increase small business participation in the 10 industry categories selected through its outreach efforts, which include the following:

—Participating in procurement conferences, seminars, workshops, etc. sponsored by various members of congress, tate and local Governments, Chamber of Commerce and trade organizations.

—Working closely with the Small Business Administration, Minority Business Development Agency, Department of Defense and the remaining agencies participating in the Demonstration Program.

—Counseling business persons interested in doing business with GSA and other Government agencies.

Dated: May 5, 1989

John F. Wynn, Jr.,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89-11333 Filed 5-10-89; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: June 8-9, 1989.

Place: Bookcliff Room, Grand Junction Hilton, 743 Horizon Drive, Grand Junction, Colorado 81506.

Time and Type of Meeting: Open: 8:30 a.m.-4:30 p.m., June 8; Open: 8:30 a.m.-12 noon, June 9.

Contact Person: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, Bldg. 1, Room 3071, D-37, 1600 Clifton Road NE., Atlanta, Georgia 30333. *Telephone:* Commercial: (404) 639-2376, FTS: 236-2376.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; reports from MHRAC subcommittees; discussion of work-related diseases and injuries of western miners; a report on the fourth round of surveillance of coal miners; a report on oil shale health data; and a review of mining projects proposed for fiscal year 1990.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: May 5, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-11285 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-19-M

Portable Self-Recording Flow Meter in the Investigation of Occupational Airways Disorders; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Meeting on Portable Self Recording Flow Meter in the Investigation of Occupational Airways Disorders.

Date: May 31, 1989.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Time: 1:00 p.m.-3:00 p.m.

Status: Open to the public, limited only by space available.

Purpose: To review the project entitled, "Portable Self Recording Flow Meter in the Investigation of Occupational Airways Disorders".

Additional information may be obtained from: Edward L. Petsonk, M.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888. *Telephone:* Commercial: (303) 291-4223; FTS: 923-4223.

Dated: May 5, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-11286 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 89P-0105]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to H.P. Hood, Inc., to market test a product designated "light sour cream, reduced fat and calories" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0119.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to H.P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 9 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) milk and skim milk replace some of the cream. The product meets all requirements of the standard with the exception of these deviations.

The name of the product is "light sour cream, reduced fat and calories." The principal display panel of the label includes the statement "1/3 less calories and 50% less fat than regular sour cream." The product complies with reduced calorie labeling requirements in 21 CFR 105.66 (d). In accordance with FDA's current views, reduced fat food labeling is applicable in that there is a 50 percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9 and a comparison of the calorie and fat content of the test product with Hood's standardized sour cream.

This permit provides for the temporary marketing of 775,000 quarts of the test product. The product will be distributed in the states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

The test product is to be manufactured at H.P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 9, 1989.

Dated: May 1, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-11245 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 89E-0122 and 89E-0123]

Determination of Regulatory Review Period for Purposes of Patent Extension; Eulexin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for eulexin and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce,

for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product Eulexin (flutamide) which is indicated for use in combination with luteinizing hormone releasing hormone (LHRH) agonistic analogues (such as leuprolide acetate) for the treatment of metastatic prostatic carcinoma (state D_2). To achieve the benefit of the adjunctive therapy with Eulexin, treatment must be started simultaneously using both drugs. Subsequent to this approval, the Patent and Trademark Office received two alternative patent term restoration applications for Eulexin from the Shering-Plough Corp. One was for U.S. Patent No. 4,472, 382 and the other covered U.S. Patent No. 4,329,364. The Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 20, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, flutamide, represented the first permitted commercial marketing or use of the active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Eulexin is 6,359 days. Of this time, 3,317 days occurred during the testing phase of the regulatory review period, while 3,042 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 2, 1971. FDA has verified the applicant's claim that the investigational new drug application (IND) for Eulexin became effective on September 2, 1971.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 30, 1980. The applicant claims that the new drug application (NDA) for Eulexin (NDA 18-554) was initially submitted on September 26, 1980. However, FDA records indicate that the application was not received until September 30, 1980.

3. *The date the application was approved:* January 27, 1989. FDA has verified the applicant's claim that NDA 18-554 was approved on January 27, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension under U.S. Patent No. 4,329,364 and requests 500 days of patent extension under U.S. Patent No. 4,472,382, which constitutes the maximum allowable period of patent extension under that patent.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 10, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 7, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-11246 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-89-2000]

Memorandum of Understanding to Promote Coordination Between the Food and Drug Administration and the Administration for Children, Youth, and Families, Office of Human Development Services

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA's Center for Food Safety and Applied Nutrition and the Head Start Bureau, Administration for Children, Youth, and Families, Office of Human Development, to achieve greater effectiveness in assuring that feeding programs in Head Start centers conform with Federal food safety and sanitation recommendations.

DATE: The agreement became effective April 11, 1989.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is

publishing notice of this memorandum of understanding.

Dated: May 3, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

I. Purpose

The purpose of this Memorandum of Understanding is to promote coordination between the Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration (FDA), and the Head Start Bureau (HSB), Administration for Children, Youth and Families (ACYF) in order to achieve greater effectiveness in asssuring that feeding programs in Head Start centers conform with Federal food safety and sanitation recommendations.

II. Background and Authorities

The Head Start Program was authorized by the Economic Opportunity Act of 1966 and subsequently by the Head Start Act of 1981 (Section 635 et seq. of the Omnibus Reconciliation Act of 1981, Pub L. 97-35). Its mandate is to help break the cycle of poverty by providing preschool children from low income families with a comprehensive program to meet their educational, social, health, nutritional, emotional and psychological needs. It provides for the direct participation of parents in the development and overall program direction at the local level.

FDA, under the Public Health Service Act (Pub. L. 78-410) and the Economy Act (31 U.S.C. 1535), is responsible for assisting local, State and Federal agencies that are responsible for food protection and sanitation in commercial and institutional food establishments. This responsibility includes helping these agencies to protect the consumer at the point of service at congregate sites, such as Head Start locations.

III. Substance of Agreement

A. Pursuant to this agreement ACYF, through its Head Start Bureau, will:

1. Collaborate with FDA-CFSAN in the planning or selection and dissemination of publications related to food protection and sanitation for Head Start program center personnel.

2. Consult with FDA-CFSAN in the development of educational programs in food protection and sanitation for parents and staff.

3. Share with FDA information and reports related to illness statistics for Head Start centers and for research and demonstration grants and projects designed to improve food services to children and families

4. Cooperate with FDA-CFSAN in the development of other initiatives related to food protection and sanitation for low income families as deemed necessary.

B. Pursuant to this agreement, FDA will:

1. Share information as necessary to support special ACYUF-HSB grants and projects designed to improve food protection and sanitation and related services to children and families.

2. Provide technical assistance on food protection and sanitation to the ACYF-HSB's National and Regional Offices for their State associations and Head Start grantees.

3. Identify FDA Regional food program specialists who can recommend State and local agency personnel responsible for food service sanitation activities to serve as resources to local Head Start program managers.

4. Identify training facilities available to regional, State and local Head Start programs.

5. Provide assistance in mobilizing State and local resources in food protection and sanitation for meeting the specific needs of Head Start programs.

6. Provide a channel of communication for distribution of technical assistance materials on food protection and sanitation.

7. Cooperate with ACYF-HSB in the development of other initiatives to enhance food protection and sanitation in Head Start centers.

IV. Programming, Budgeting and Reimbursement Arrangements

This Memorandum of Understanding is not a fiscal or funds-obligating document. Any joint endeavors involving reimbursement or transfer of funds between the parties to this agreement will be handled in accordance with prescribed financial procedures and will be the subject of subsidiary agreements that shall be effected in writing by representatives of both parties to this agreement.

V. Public Affairs Press Liaison

Releases to the press, public announcements and communication with the Congress concerning joint programs can be made by either party to this agreement following coordination by representative of each party. Credit will be given to ACYF and FDA interests as appropriate.

VI. Amendments and Review

This agreement will be reviewed periodically, but not less than annually. It may be subject to reconsideration at such other time as may be required and as agreed to by the parties to this agreement.

VII. Liaison Officers

For ACYF: Charles A. Jones, Program Specialist, Head Start Bureau, P.O. Box. 1182, Washington, DC 20013, (202) 755-7944.

For FDA: Robert F. Hendrickson, Assistant Director for Training and Information Systems, Retail Food Protection Branch (HFF-342), Division of Cooperative Programs, Office of Compliance, 200 'C' Street, SW., Washington, DC 20204, (202) 485-0140.

VIII. Period of Agreement

This agreement, when accepted by both parties, will be effective indefinitely. It may be modified by mutual consent or it may be terminated by either party upon a thirty (30) day advance written notice to the other.

Date: April 11, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs, Food and Drug Administration.

Date: February 1, 1989.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Date: March 3, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 89-11247 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-89-8000]

Memorandum of Understanding Between the Food and Drug Administration and the Extension Service, U.S. Department of Agriculture

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Department of Health and Human Services, is providing notice of a memorandum of understanding (MOU) between FDA and the Extension Service (ES), U.S. Department of Agriculture. The purpose of this MOU is to promote cooperative efforts by the ES and FDA to educate and inform the U.S. population in the basics of food safety, nutrition, and veterinary medicine. This MOU defines in general terms the basis on which the agencies will cooperate and coordinate their respective and complementary programs as a means of achieving their common goals. Improved coordination is expected to enhance the dispensing of information to facilitate each agency's outreach.

DATE: The agreement became effective February 16, 1989.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovenmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: May 5, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Extension Service Department of Agriculture and the Food and Drug Administration Department of Health and Human Services

I. Purpose

The Purpose of this Memorandum of Understanding is to promote cooperative efforts by the Extension Service (ES), U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (DHHS) (referred to collectively as "the agencies") to educate and inform the U.S. population in the basics of food safety, nutrition, and veterinary medicine. This Memorandum of Understanding defines in general terms the basis on which the agencies will cooperate and coordinate their respective and complementary programs as a means of achieving their common goals. Improved coordination is expected to enhance the dispensing of information to facilitate each agency outreach.

II. Background and Authorities

The Extension Service engages in Extension work pursuant to the Smith Lever Act, as amended (7 U.S.C. 341-349), to aid in diffusing among the people of the United States useful and practical information and education on subjects relating to agriculture and home economics.

The ES, through its partnership with the Cooperative Extension System, delivers educational programs in the subject matter areas of nutrition, food safety, and veterinary medicine. A network of trained professionals in every State and 3,150 counties in the United States interprets research-based information for audiences whom they reach through personal contact, media, and other means. The ES provides the essential linkage to the community where its professional staffs both assess needs and provide education and information to the clientele. The ES staff also provides valuable insights and can provide useful feedback from the public for identifying nutrition, food, and veterinary medicine issues that deserve more attention through research and educational materials development.

Five key functions performed by the Extension System include: (1) Providing leadership in adapting and applying research and technology; (2) anticipating and responding to critical national issues affecting farmers, agribusiness, community leaders, families, and young people; (3) mobilizing local and national resources to respond to natural disasters and catastrophes; (4) initiating targeted educational programs for effective and timely implementation of Federal regulations and policies; and (5) developing a cadre of volunteers prepared to serve the Nation, the States, and local communities.

The Food and Drug Administration has the responsibility for protecting the public health by insuring that foods are safe, pure, and wholesome; human and veterinary drugs, medical devices and biological products are safe and effective; cosmetics are safe; that exposure to radiation is minimized; and that all of these products are honestly and informatively labeled.

To accomplish its mission, FDA works to prevent problems that would expose the public to hazards; monitors the marketplace to ensure compliance with relevant laws and regulations; corrects identified problems at every stage in the development and distribution of products; and exchanges information with the public, industry, Congress and other interested parties.

FDA has 35 Consumer Affairs Officers (CAOs) located in 29 major cities throughout the country. CAOs conduct educational programs and activities for the general public, colleges and universities, and health-related professionals in FDA's areas of responsibility.

Thus there is the common goal in ES and FDA of educating the public on the safety and nutritional value of the food supply.

Each Agency maintains essential linkages at the local community level where the professional staffs both assess needs and provide education and information to the clientele. The Agencies can also provide valuable insights and useful feedback from the public for valuable insights and useful feedback from the public for identifying food and nutrition information issues that deserve more attention through research and materials development.

III. Responsibilities of Agencies

Pursuant to this agreement, the Food and Drug Administration and the Extension Service will:

1. Inform appropriate personnel of the purpose and intent of this Memorandum of Understanding.
2. Assign appropriate staff to serve as liaisons on matters concerned with developing, exchanging, and sharing educational materials, information pieces, and other major Agency activities in the areas of food safety, nutrition, and veterinary medicine.
3. Disseminate Agency information on meetings and educational programs of mutual interest.
4. Provide for periodic discussions between agencies to coordinate efforts in areas of mutual concerns or to plan for new and/or improved procedures and programs for implementation.
5. Facilitate coordination of conferences, seminars and briefings on food safety, human nutrition and veterinary medicine issues.
6. Promote cooperation of staff at all levels of the Cooperative Extension System.

IV. Programming, Budgeting, and Reimbursement Arrangements

This Memorandum of Understanding is not a fiscal or funds-obligating document. Any joint endeavors involving reimbursement or transfer of funds between the parties to this agreement will be handled in accordance with prescribed financial procedures and will be the subject of subsidiary agreements that shall be effected in writing by representatives of both parties to this agreement.

V. Amendments and Review

This Memorandum of Understanding may be amended at any time by mutual written consent of the parties of this Memorandum of Understanding. The Memorandum of Understanding will be reviewed periodically but not less than annually. It may be subject to reconsideration at such other times as may be required and as agreed to by representatives of both parties.

VI. Terms of the Agreement

This agreement will become effective upon the signature of both approving officials of the respective agencies entering into this agreement.

The terms of this agreement will remain in effect until terminated by:

1. Mutual agremeent, or
2. 30-day written notice to the other agency.

Approved and accepted for the Extension Service U.S. Department of Agriculture

Myron D. Johnsrud,

Administrator, Extension Service.

Date: February 16, 1989.

Approved and Accepted for the Food and Drug Administration

Frank E. Young,

Commissioner of Food and Drugs.

Date: December 14, 1988.

[FR Doc. 89-11304 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Organ Transplant Act; Grants for Organ Procurement Organizations

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administraton (HRSA), announces that Fiscal Year (FY) 1989 funds are available for grants for assistance for Organ Procurement Organizations (OPOs). The grants are

authorized by sections 371 and 374 of the Public Health Service (PHS) Act.

DATE: To receive consideration, grant applications (PHS Form 5161-1, HHS Form 424) must be received by the close of business 60 days from the date of this notice. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information, should be directed to Mr. Remy Aronoff, Chief, Analysis and Operations Branch, Division of Organ Transplantation, Parklawn Building, Room 9A-22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-7577. Requests for grant application kits and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice should be made in writing to Mr. Waddell Avery, Grants Management Officer, Bureau of Maternal and Child Health and Resources Development, Parklawn Building, Room 11A-22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1440. Applicants for grants for OPOs will use Form PHS 5161-1 with revised fact sheet HHS Form 424, approved under OMB Control Numbers 0348-0040, 6348-0043, 0348-0044 and 0937-0189. The original and two copies of the completed application must be submitted to Mr. Avery.

SUPPLEMENTARY INFORMATION:

Background

The National Organ Transplant Act, Pub. L. 98-507, amended the PHS Act to authorize the establishment of a program of grants for the planning, establishment, initial operation and expansion of Organ Procurement Organizations (OPOs).

Sections 371 and 374 of the PHS Act state that in awarding OPO grants the Secretary shall:

1. Take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act.
2. Give special consideration to applications which cover geographical areas which are not adequately served by existing OPOs.
3. Give priority to any applicant which has a formal agreement of cooperation with all the transplant centers in its proposed service area.
4. Give special consideration to organizations which meet the requirements of a qualified OPO as defined in section 371(b) of the PHS Act before the enactment of Pub. L. 98-507.
5. Give special consideration to applications that contain innovative methods for accomplishing the priorities and objectives of the OPO grant program.

Program Objectives

The principal purpose of the grant program is to increase the availability of donor organs in this country by improving the overall organ procurement system. The Task Force on Organ Transplantation recommended that the program emphasize the need to increase substantially the number of organ donors and to encourage innovations which could be readily duplicated for national application.

Types of Grants

To accomplish the above objectives, the Secretary will award grants consistent with the statute as specified in this Notice.

In the previous three years of the OPO grant program three types of grants were awarded: planning, initial operation and expansion. The objectives of those types of grants have been substantially accomplished. This year, highest priority will be given to applications for the following activities:

1. Increasing the minority population's knowledge of organ donation and transplantation and its responsiveness to the request process. Such projects could include but are not limited to, minority clergy education, development of techniques for approaching potential minority donor families, and expanding the range of methods for educating the minority community in organ donation and transplantation.
2. Refining and validating known methods for estimating the potential donor pool.
3. Developing organ procurement organization/hospital liaison programs to train hospital personnel in making the organ donation request, particularly in urban hospital trauma centers with sizable minority populations.
4. Designing and implementing education programs directed to neurosurgical specialists. These programs could include but are not limited to, brain death declaration relating to organ donation, the family consent process, and interaction with organ procurement organizations. Activities in this area now being conducted by the United Network for Organ Sharing should be considered by applicants when developing their methodologies.

Availability of Funds

Approximately $500,000 is available for grants to OPOs. Each grant will be for a period of one year and will not exceed $75,000. Limiting the award level will permit the Department to provide assistance to a larger number of organizations.

Eligible Applicants

Nonprofit entities that have been designated by the Health Care Financing Administration as OPOs under section 1138(b) of the Social Security Act may apply for these grants.

Grant applications will be evaluated by an objective review committee according to the following criteria:

—The consistency with the program objectives and priorities;
—The adequacy of the method(s) proposed to carry out the project;
—The appropriateness of the work plan and schedule for organizing and completing the project;
—The capability of the organization to complete the project as proposed;
—The adequacy of supporting documentation justifying the proposal;
—The reasonableness of the budget;
—The qualifications of the project director and staff; and
—The plan to continue beyond the grant period the activity or activities initiated under this grant including plans to secure other funding sources.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, Subpart Q. The three separate sets of cost principles prescribed for recipients of grants for OPOs are: OMB Circular A-21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; and OMB Circular A-122 for nonprofit organizations.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

Executive Order 12372

Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow the SPOC's instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

(The OMB Catalogue of Federal Domestic Assistance Number for this program is 13.134)

Date: March 23, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-11300 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement and Proposed Project Specifications, Review Criteria, Funding Preference and Funding Priorities for Grants for Podiatric Primary Care Residency Training Programs

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Podiatric Primary Care Residency Training Programs are now being accepted under the authority of section 788(e) of the Public Health Service Act and invites comments on the proposed project specifications, review criteria, funding preference and funding priorities described below. Section 788(e) was added by the Health Professions Reauthorization Act of 1988 (Title VI of Pub. L. 100-607, the Health Omnibus Program Extension Act).

Section 788(e) authorizes the award of grants to accredited schools of podiatric medicine and public and nonprofit private hospitals to meet the costs of projects to: (1) Plan and implement projects in primary care training for podiatric physicians in approved or provisionally approved residency training programs; and (2) provide financial assistance in meeting costs of supporting trainees who participate in such programs and who plan to specialize in primary care.

As noted above, the authorizing legislation limits eligibility to residency programs that are approved or provisionally approved. The Council on Podiatric Medical Education (CPME). the recognized accrediting body for podiatric medicine, uses the term "candidate status" in lieu of "provisional approval". For the purposes of this program "candidate status" will be accepted as meeting the statutory requirement for "provisional approval".

Although the law specifies that projects in primary care are to be supported, at this time CPME does not recognize a primary care specialty. However, a significant primary care emphasis can be introduced through the existing Rotating Podiatric Residency. Applicants to this program, who are planning to initiate a new residency program are expected to apply to CPME for candidate status for a Rotating Podiatric Residency Program. Grants will only be awarded to applicants that can demonstrate the attainment of candidate status by September 1, 1989. The application submitted for Federal funding must demonstrate, through responses to the proposed program specifications, that an adequate emphasis will be placed on podiatric primary care.

Approximately $575,000 has been appropriated for awards in Fiscal Year 1989. It is anticipated that 12-15 projects will receive funding.

Proposed Project Specifications

The following are proposed project specifications which each project is expected to have:

a. A probject director who is employed by the grantee institution and has completed at least one year of podiatric residency training and has at least one year of clinical teaching experience.

b. An appropriate administrative and organizational plan and appropriate faculty, staff and facility resources for the achievement of stated objectives.

c. A systematic evaluation of the educational program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met.

d. Use of ambulatory care settings where podiatric primary care is practiced and where an adequate portion of the clinical training is conducted.

e. A curriculum which:

1. Is appropriate for the academic level of the trainees and the specific length and nature of the educational program;

2. Supplements any practical (including clinical) experiences with related educational activities; and

3. Includes:

A minimum of 20 percent of curriculum time devoted to supervised instruction in ambulatory clinical settings; Instruction in behavorial sciences and the development of psychosocial skills and topics; and

A supervised clinical experience in a family medicine or general internal medicine ambulatory care setting.

f. A sufficient number of residents to provide an adequate collegial environment for the educational program and to enhance cost-efficiency.

g. An adequate number of qualified faculty with training and experience in podiatric medicine, and behavioral sciences and liaison faculty in related program areas for the number of residents in the program. The faculty in the program are expected to engage in periodic faculty development activities to improve their teaching skills.

h. Adequate facilities for the provision of the educational activities and, in particular, have ambulatory care space sufficient to provide an adequate clinical experience for the residents.

i. A sufficent number of patients with a variety of health care needs to provide the residents with a broad clinical experience.

Proposed Review Criteria

Approval of all applications will be used on an analysis of the following factors:

(1) The degree to which the proposed project provides for the project specifications;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;

(3) The degree to which the proposed training program emphasizes podiatric primary care and

(4) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preference—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special consideration—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed Funding Preference

Applications that propose to start a new podiatric primary care residency program with a minimum of three new residency positions will be placed ahead of other approved applications in the funding order. The intent of this preference is to encourage projects that will ameliorate the current serious shortage of podiatric residency positions.

Proposed Funding Priorities

In determining the order of funding of approved applications, it is proposed to give priority to:

(1) Applications which demonstrate an affiliation with a college of podiatric medicine that will serve to enrich the educational experience of participating residents. The meaningful participation of a college of podiatric medicine in podiatric residency training will provide access to educational resources (e.g., curriculum, faculty participation and faculty development opportunities) that should improve the quality of educational experience offered to residents.

(2) Applications which demonstrate a realistic plan for the recruitment of underrepresented minorities (i.e., Black, Hispanic and American/Alaskan Native) into the program. These population groups continue to be underrepresented in the podiatric profession and have insufficient access to podiatric primary care. Their representation in podiatric primary care practices should be increased to ensure equitable opportunities to a career in podiatric medicine and equal access to foot care services.

(3) Applications which meet at least two of the following curriculum initiatives;

(a) Applications proposing to develop and implement curricula concerning ambulatory and inpatient care of those with HIV infection-related diseases. Health professionals are increasingly required to provide a wide range of services to HIV infection-related persons. However, widespread organized curricula offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

(b) Applications which are innovative in their educational approaches to quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance risk management in the continuum of the health professions educational process.

(c) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities. The population 65 years of age and over will increase about 2 percent a year between now and 2020 (compared to an increase of less than 1 percent for younger persons). The oldest old (85-plus) segment of the population will experience the most rapid growth before 2000. The younger old (65–74) segment will increase fastest between 2000 and 2020. The older population will require expansion of a wide range of health services, including preventive, primary, long-term, hospice, and rehabilitation care. However, health providers lack adequate training needed to care for this aging population. The proposed funding priority is designed to provide increased emphasis on geriatrics training for all health professions trainees in the continuum of their training.

Interested persons are invited to comment on the proposed project specifications, review criteria, funding preference and funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before June 12, 1989 will be considered before the final project specifications, review criteria, funding preference, and funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final project specifications, review criteria, funding preference and funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays, (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials, questions regarding grants policy and completed applications should be directed to: Grants Management Office (D31), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6960.

If additional programmatic information is needed, please contract: Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6950.

The application deadline date is June 26, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

The application form PHS 6025–1, HRSA Competing Training Grant Application (OMB 0915–0060) and supplemental instructions for this program have been submitted for OMB approval.

This program will be listed at 13.181 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 13, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–11301 Filed 5–10–89; 8:45 am]

BILLING CODE 4160–15–M

Indian Health Service

Availability of Funds for Loan Repayment Program for Health Professions Education Loans

AGENCY: Indian Health Service.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) announces that $2,000,000 in Fiscal Year (FY) 1989 grant funds is available for the repayment of health professions educational loans in return for full-time clinical service in the IHS. Funding for

this program is provided by Pub. L. 100–446, Interior Appropriation Act for FY 1989, enacted September 27, 1988. Through this notice, the IHS invites potential applicants to request an application for participation in the Loan Repayment Program. The IHS estimates that approximately 100 loan repayment awards may be awarded with this funding.

DATES: Applications for this program will be accepted through September 30, 1989. Awards will be made from June 12, 1989 through September 30, 1989. The highest priorities in funding will be for qualified practitioners of the priority specialties (general surgery, obstetrics/gynecology, orthopedic surgery, ophthalmology, otorhinolaryngology/otolaryngology, anesthesiology, radiology, psychiatry) and other qualified physicians and qualified registered nurses who agree to go to Tier I sites. Qualified physicians and registered nurses who agree to go to Tier II sites will receive the next priority, followed by qualified physicians and registered nurses who agree to go to Tier III sites and qualified members of other professions (optometry, pharmacy, dentistry, etc.), as funds are available.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications received after the announced closing date will not be considered for funding.

ADDRESS: Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: Health Manpower Support Branch, Indian Health Service, Rm. 6A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, PH: 301/443–4243.

FOR FURTHER INFORMATION CONTACT: Darrell Pratt. Telephone 301/443–4243. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Funding for the IHS Loan Repayment Program was included in Pub. L. 100–446, Interior Appropriation Act for FY 1989, enacted September 27, 1988, which states in pertinent part:

* * * of the funds provided, $2,000,000 shall be used to carry out a loan repayment program under which Federal, State, and commercial-type educational loans for physicians and other health professionals will be repaid at a rate not to exceed $25,000 per year of obligated service in return for full-time clinical service in the Indian Health Service. Each individual participating in this program must sign and submit to the Secretary a written contract to accept repayment of educational loans and to serve for the applicable period of service in the Indian Health Service.

This program is intended to address potential problems the IHS is facing with regard to future staffing shortages. Only individuals who are or will be in full-time clinical practice as Federal employees in the IHS (whether at IHS facilities or assigned to tribal programs) may participate in this loan repayment program. Employees of tribal organizations contracting with the IHS under the Indian Self Determination Act, Pub. L. 93–638, as amended by Pub. L. 100–472, and employees of urban Indian organizations contracting with the IHS under Title V of the Indian Health Care Improvement Act, Pub. L. 94–437, may not participate.

Applicants may sign agreements with the Secretary for two or three years. In return for the service required by the contract, the IHS will repay health professions educational loans for tuition and reasonable educational and living expenses in amounts up to $25,000 per year for each year of contracted service.

Participants will be required to fulfill their contract service agreements through full-time clinical practice at a designated priority site. The IHS will designate these sites annually. In general, they are sites characterized by physical, cultural, and professional isolation, with histories of frequent staff turnover. Sites may be IHS facilities or facilities operated by tribal contractors to which the IHS employee may be assigned.

There are several separate, but not necessarily exclusive, groups of priority sites. These are for the priority medical specialties, other medical specialties, nursing and other health professions. Program participants may match to any available and appropriate vacancy to complete their obligation. A listing of the priority sites for each profession will be found in the Program application packet.

For physicians and other health professionals, except registered nurses, who contract to serve in a designated site, the IHS will repay health professions educational loans for tuition and reasonable educational and living expenses as follows:

—For a three-year contract, the IHS will repay outstanding loans of up to $25,000 per contract year, or a total of $75,000 for the contract period, not to exceed the total amount of outstanding qualified loans.

—For a two-year contract, the IHS will repay outstanding loans of up to $20,000 per contract year or a total of $40,000 for the contract period, not to exceed the total amount of outstanding qualified loans. The $20,000 amount is 80 percent (80%) of the $25,000 amount which would otherwise be available for repayment through this program. The loan repayment for a two-year service commitment is restricted as an incentive for program participants to make service commitments of three years.

For registered nurses who contract to serve in a designated priority site, the IHS will repay health professions educational loans for tuition and reasonable educational and living expenses at the $25,000 per year rate for a two-year contract. The IHS faces a severe registered nurse shortage. It is hoped that this allowance will attract sufficient registered nurses to the IHS to alleviate this shortage.

The IHS has separated its priority sites into three tiers. The tiers have the following meanings:

Tier I: The most needy sites. These sites are characterized by geographic and cultural isolation and rapid staff turnover.

Tier II: Somewhat less needy sites. The isolation and turnover factors do not have the same effect as they do for Tier I sites.

Tier III: All sites not designated as Tier I or Tier II.

The first priorities in making awards in this program will be given to qualified physicians (M.D. or D.O.) practitioners of the priority specialties who agree to serve in appropriate positions and other qualified physicians and registered nurses who agree to serve at Tier I sites. If funds are available after awards are made to the highest priority group, qualified physicians and registered nurses who agree to serve at Tier II sites will be funded. If funds are available after the first and second priority groups are accepted into the program, qualified physicians and registered nurses who agree to go to Tier III sites, and other health professionals, will be funded.

Any individual who enters this Program and satisfactorily completes his/her obligated period of service may, if funds are available, apply to extend the contract on a year-by-year or a multi-year basis, as determined by the IHS, at the $25,000 per year rate. The maximum amount to be funded in this

manner may not exceed the total of the individual's outstanding qualified loans.

For FY 1989, the Director of IHS has determined that physicians and registered nurses will receive priority in funding for the Loan Repayment Program. Applications will be accepted from all professions during the application period and individuals will be matched to sites. However, professionals other than physicians and registered nurses will not be funded until it is clear that funds will remain after physicians in the priority specialties and physicians and registered nurses who match to Tier I and Tier II sites have been funded. The priorities for funding participants in the Program are as follows:

1. Physicians who are certified in or eligible to sit for the certifying examination of the following specialty boards: general surgery, obstetrics/gynecology, orthopedic surgery, ophthalmology, otorhinolaryngology/otolaryngology, anesthesiology, radiology and psychiatry.
2. Physicians in other specialties.
3. Registered nurses.
4. Other health professionals.
5. Physicians or nurses in their final year of training.

The specialties listed in number 1 above are required to permit the IHS to fulfill its responsibilities to provide a full range of health care.

Applicants must:

A. Meet one of the following requirements.

1. Be enrolled as a full-time student in the final year of a course of study or program leading to a degree in a health profession in an accredited school in a State. (The term "State" includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); or

2. Be enrolled in an approved graduate training program in a health profession; or

3. Have a degree in allopathic or osteopathic medicine and have completed an approved post-graduate training program and have a current and valid license to practice medicine in a State; or

4. Have a degree in another health profession and have a current and valid license or certificate, as necessary for the profession, to practice that profession in a State; and

B. Be eligible for appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the IHS; and

C. Submit an application to participate in the Loan Repayment Program; and

D. Sign and submit to the Secretary, at the time of the submission of such application, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Director.

Selections among qualified applicants will be based upon consideration of the following factors:

—Length of current employment in the IHS (employees with the greatest length of service will receive higher consideration);

—Agreement to serve for three years, as opposed to two years;

—Post-graduate training in a specialty or profession most needed by the IHS;

—Board eligibility or certification by start of service (medical);

—A former IHS employee with experience in a priority site;

—A former National Health Service Corps (NHSC) Scholarship Program participant, with experience in an IHS or NHSC site, who has or will complete the service obligation on or before September 30, 1989;

—Experience in a post-residency practice in a primary care Health Manpower Shortage Area (HMSA); and/or

—References from persons having direct knowledge of the applicant's professional capability.

Any individual who owes an obligation for health professional service to the Federal Government or to a State or other entity under an agreement with such State or other entity is ineligible for the Loan Repayment Program unless such an obligation will be completely satisfied prior to the beginning of service under this program in the year that an application is made for this program.

This program is not subject to review under Executive Order 12372.

The *Catalog of Federal Domestic Assistance* number is 13.164.

Everett R. Rhoades,

Assistant Surgeon General Director.

Date. April 4, 1989.

[FR Doc. 89-11299 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Office of the Assistant Secretary for Health; Delegation of Authority to the Administrator Health Resources and Services Administration

Notice is hereby given that in furtherance of the delegation of authority of January 27, 1989, from the Secretary of Health and Human Services, to the Assistant Secretary of Health, the Assistant Secretary for Health has redelegated the authorities delegated to him under section 254 of Pub. L. 100-607, as amended hereafter, pertaining to continuing education for health care providers, to the Administrator, Health Resources and Services Administration. The delegation excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, or appoint members to an advisory committee.

Redelegation

The authority may be redelegated.

Effective Date

This delegation became effective on April 28, 1989.

James O. Mason,

Assistant Secretary for Health.

Date: April 28, 1989.

[FR Doc. 89-11249 Filed 5-10-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1975; FR-2648]

Applications for Fiscal Year 1989 Funds for Public Housing Resident Management Technical Assistance

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

ACTION: Notice.

SUMMARY: Section 122 of the Housing and Community Development Act of 1987 authorizes the Secretary to provide assistance to resident councils and resident management corporations to fund certain activities related to the resident management of public housing. This Notice provides instructions for developing and processing applications for the funding of these activities.

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Walter R. Preysnar, Project Management

Division, Office of Public Housing, Department of Housing and Urban Development, Room 4122, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-7970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0120. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20 that states as part of its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] * * * to promote formation and development of resident management entities." (Sec. 20(a).) Under section (20)(f)(1):

> The Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entitites, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

Under section 20(f)(2), such financial assistance may not exceed $100,000 with respect to any public housing project, and subsection (f)(3) limits the assistance, to the extent funds are available under section 14 of the 1937 Act (Comprehensive Improvement Assistance Program), to $2.5 million in each of the fiscal years 1988 and 1989.

On September 7, 1988, HUD published a final rule implementing section 20 of the 1937 Act. That rule sets forth, among other things, the policies, procedures, and requirements for resident management of public housing. See 53 FR 34676. In an "Overview" of the rule, HUD explained that

> Section 20 establishes a new program of resident management of public housing. Under the program, resident councils that represent residents of a public housing project or projects may approve the formation of a resident management corporation. A qualifying resident management corporation may enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibiltiies of the PHA and the corporation with respect to the public housing project involved. The program provides PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.
>
> Resident management corporations may retain any income that they generate in excess of estimated revenues for the project. Retained amounts may be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.
>
> The program contains special provisions governing HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain non-statutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project.

Funding

To aid in the implementation of the rule, financial assistance is being made available to Resident Management Corporations (RMCs) or Resident Councils (RCs) that submit applications in response to this Notice that are approved for funding of technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

In FY 1988, technical assistance grants totalling $2.5 million were awarded to 27 Public Housing Agencies (PHAs)/RMCs/RCs to fund activities associated with resident management. For FY 1989, another $2.5 million is available for this purpose (with the statutory limitation that not more than $100,000 may be approved with respect to any public housing project). Grant awards will be made via a Technical Assistance Grant (TAG) which will define the legal framework for the relationship between HUD and an RMC/RC for the proposed activities approved for funding. The TAG will contain all applicable requirements which must be complied with in the conduct of activities approved for funding, including administrative requirements such as progress reports, a final report, and a final audit. All necessary materals regarding the TAG will be furnished at a later date.

This Notice

This Notice contains definitions of a "Project", "Resident Council (RC)", "Resident Management", and "Resident Management Corporation (RMC)" that are drawn from 24 CFR Part 964. Also detailed in this Notice are those activities that are eligible for funding, including expenditures related to the establishment of an RMC and costs assoicated with ensuring the viability and sound operation of an RMC. The Notice also gives examples of activities that are not eligible for funding. The application process and the factors that HUD will use in evaluating all applications are spelled out in sections 6 and 7, respectively.

Section 8 describes the selection and approval procedures, along with the role that the Regional and Field Offices will play in the process, and section 9 states that an RMC must spend the funds received within two years of the award of the grant. Sections 10 and 11 indicate that HUD Headquarters will notify Congress and the PHAs, respectively, of action taken on an RMC's application. Section 12 advises that RMC's selected for funding will be issued additional instructions regarding program implementation. In section 13, the due date is given of each step in the processing schedule.

1. *Definitions.*

In accordance with 24 CFR Part 964, the following definitions apply:

a. *Project.* Includes any of the following that meet the requirements of Part 964:

(i) One or more contiguous buildings.

(ii) An area of contiguous row houses.

(iii) Scattered site buildings.

b. *Resident Council (RC).* An incorporated or unincorporated nonprofit organization or association that meets *each* of the following requirements:

(i) It must be representatives of the tenants it purports to represent.

(ii) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents.

(iii) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(iv) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

c. *Resident Management.* The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA.

d. *Resident Management Corporation (RMC).* The entity that proposes to enter into, or enters into, a management contract with a PHA that meets the requirements of Subpart C of 24 CFR Part 964. The corporation must have *each* of the following characteristics:

(i) It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

(ii) It may be established by more than one tenant organization or resident council, as long as each such organization or council (A) approves the establishment of the corporation and (B) has representation on the Board of Directors of the corporation.

(iii) It must have an elected Board of Directors.

(iv) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(v) Its voting members must be tenants of the project or projects it manages.

(vi) It must be approved by the resident council. If there is no council, a majority of the households of the projects must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

The RMC may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of a resident council as defined in paragraph (b) of this section.

2. *Eligibility.* Only organizations that meet the definition of an RC/RMC set forth in paragraphs (b) and (d) of section (1) will be eligible for funding under this Notice, as follows:

(a) Any newly formed or existing RC/RMC, including any RC formed for the specific purpose of submitting an application for the determination of feasibility of resident management in any project(s), provided such RC remains in existence for at least the term required to make the feasibility determination.

(b) RCs/RMCs selected for funding in FY 1988 that received less than the statutory maximum of $100,000 per project may apply for an additional grant not to exceed the total statutory maximum; they may receive consideration for up to the additional amount based on the same evaluation factors applied to other applicants. No special considerations will be given. Projects which were awarded the maximum amount of $100,000 in FY 1988 are not eligible to apply.

(c) A resident council which represents more than one project may apply on behalf of some or all of the projects it represents. In such a case, an individual project represented by that council may not apply for technical assistance funding for the same activities that are included in the application submitted by the larger organization.

3. *Eligible Activities.* There are a variety of activities which may be funded and carried out by an eligible RC/RMC.

Examples include any combination of, but are not limited to, the following:

a. Determining the feasibility of resident management by an RMC of a specific project or projects. Note: By law, an RC *must* hire a qualified public housing management specialist that can provide needed training and other support to assist in developing the capabilities for resident management and that can perform related duties as may be agreed to in connection with the daily operations of a project.

b. Training of residents in duties directly related to the day-to-day management operations of a project(s) and community organization, Board development, and leadership training.

c. If resident management is determined to be feasible, funds may be used to assist in the actual creation of the RMC, such as:

(i) Consulting and legal assistance to incorporate the RMC;

(ii) Preparing by-laws and drafting a corporate charter;

(iii) Developing performance standards and assessment procedures to measure the success of the RMC;

(iv) Assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance; and

(v) Assessing potential management functions or tasks that the RMC might undertake.

d. Implementation of activities by an RMC capable of performing management functions associated with the operation and maintenance of the public housing project. Examples of eligible activities, in addition to those cited in paragraphs (a), (b), and (c) of this section, are—

(i) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;

(ii) Developing and implementing a long-range planning system;

(iii) Assistance in developing and negotiating management contracts and related contract monitoring and management procedures;

(iv) Designing and implementing personnel policies, performance standards for measuring staff productivity, policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, management information systems, occupancy, and any other recognized functional responsibility relating to property management in general and public housing management in particular; and

(v) Identifying the social support needs of residents and securing of such support, e.g., health clinics, day care, security, etc.

e. Development of economic initiatives to further increase the self-sufficiency of a resident management corporation and of residents. Such activities may include:

(i) Preparation of market studies, management plans, or plans for a proposed economic development activity;

(ii) Legal assistance in establishing a business entity; and

(iii) Development of co-op food stores, janitorial and maintenance service firms, etc.

f. Administrative costs necessary for the implementation of activities outlined in paragraphs (a) through (e) of this section are eligible costs and must clearly support activities related to the goal of resident management. Eligible items or activities include, but are not limited to, the following:

(i) Salaries and consulting fees related to the eligible activities above:

(ii) Telephone, telegraph, printing, and sundry and nondwelling equipment such as office supplies and furniture; and

(iii) Approved travel specifically related to activities for the development and implementation of resident management, including conference fees for individual RC/RMC staff or Board members, as appropriate.

4. *Ineligible Activities.* Ineligible items or activities include, but are not limited to, the following:

(a) Entertainment, including associated costs such as food and beverages;

(b) Purchase of land or buildings or any improvements to land or buildings;

(c) Activities not directly related to resident management, e.g., lead-based paint testing and abatement, operating capital for economic development activities; and

(d) Purchase of any vehicle (car, van, etc.) or any other property having a useful life of more than one year and an acquisition cost of $300 or more per unit unless approved by HUD.

5. *Actions Preceding Application Submission.* Consistent with this Notice, HUD may direct a PHA to notify its existing RC(s) and RMC(s) of this funding opportunity. It is important that residents be advised that, even in the absence of an RC or RMC, the opportunity exists to establish an RC. If no RC or RMC exists for any of the projects, HUD may direct a PHA to post this Notice in a prominent location within the PHA's main office as well as in each project office.

6. *Application Development and Submission.* The RC/RMC shall prepare and submit the application(s) directly to HUD.

a. *Preparation.* All applications *must* contain the following information in the order listed below:

(i) *Name and address of the RC/RMC.* A copy of the RC's/RMC's organizational documents, *i.e.*, charter, articles of incorporation (if incorporated), and by-laws. Name and phone number of contact person, in the event further information or clarification is needed during the application review process.

(ii) *Name, address and phone number* of the Public Housing Agency (PHA) responsible for the project(s) to which inquiries may be addressed concerning this application.

(iii) *A narrative statement* of the proposed activities, along with an explanation of how the funds will be used, if approved, to determine the feasibility of resident management and to promote the formation and development or implementation and operation of resident management entities; timeframes for completion of proposed activities; a description of the project financial accounting procedures that are available to ensure funds are properly spent, or a description of plans to develop such procedures; staffing plans; and, if applicable, an explanation of how the proposed activities will enhance the management effectiveness or the scope of functions managed by an RMC.

(iv) *Amount of funds requested*, the name of the project(s) for which the funds are proposed to be used, the number of units, a brief description of the project occupancy type (family or elderly), the number of buildings, housing type (high-rise, low-rise, walk-up, etc.), and the physical condition of the project (interior/exterior).

(v) *A budget* with supporting justification and documentation in the form outlined in Appendix A of this Notice. Budget forms HUD-52825 may be obtained from the appropriate PHA or HUD Field or Regional Office.

(vi) *The application* must be signed by an individual who is authorized to act for the RC/RMC and must include a resolution from the RC/RMC stating that it agrees to comply with the terms and conditions as established under this program and under 24 CFR Part 964. (See Appendix B for a sample of a resolution.)

(vii) *The applicant* must specifically address each of the factors in the order listed in section 7 of this Notice.

In addition to the above information, the RC/RMC may obtain a letter of support from the PHA indicating to what extent it supports the proposed activities. Also, the RC/RMC is encouraged to include an indication of support by project residents (e.g., RC/RMC Board resolution, copies of minutes, letters, etc.), the neighboring community, local public or private groups, including local government activities relating to resident management or economic development initiatives in support of resident management, and evidence of the extent of local public or private sector resources committed to the program. Letters of support or other evidence of such support should be included with the application. Any indication of such support is not mandatory, but will be considered in reviewing applications received for funding.

b. *Submission.* The application(s) including the Budget must be submitted in an original plus one copy on 8½" x 11" paper to HUD Headquarters, Office of Public Housing, Room 4204, 451 Seventh Street SW., Washington, DC 20410. The deadline for receipt of application(s) is June 30, 1989, 5:15 p.m., Eastern Standard Time, at the above Headquarters address. Additionally, one copy of the application must be submitted to the appropriate HUD Regional and Field Offices. For purposes of determining timely receipt of the application, the original submitted to Headquarters shall govern. Hand-delivered application(s) must be in Headquarters by the deadline or will not be considered. Mailed applications will be accepted if postmarked on or before the deadline *and* mailed by registered, certified or Post Office Express Mail. Applications delivered by private courier services such as Federal Express, DHL, Purolator, etc., will be considered hand-delivered and must be in the Headquarters Office by the date and time specified above. (Approved by the Office of Management and Budget under control number 2577-0120.)

7. *Evaluation Factors.* Each of the following rating factors will be considered by HUD in evaluating an application for funding: (An applicant can receive up to 100 points.)

(a) The probable effectiveness of the proposal in meeting the needs of the RC/RMC and accomplishing its overall objectives for resident management, taking into consideration such factors as physical condition location, and future plans for rehabilitation or demolition. (0–30 points.)

(b) The amount of experience in community organization and the success of the RC/RMC organization in promoting tenant participation in meeting the social services and other needs of the project residents. In the case of newly formed organizations, the experience and success of individual Board members will be evaluated. (0–30 points.)

(c) Evidence of support by residents of the projects(s) for the activities being proposed (e.g., RC or RMC Board resolution. (0–15 Points.)

(d) Evidence that the RC/RMC has the support of local government officials, the PHA, and other community organizations, including private sector groups. (0–15 Points.)

(e) Capability of handling financial resources (demonstrated through previous experience, adequate financial control procedures, etc.) or an explanation of how such capability will be obtained. [0–10 points]

8. *Selection and Approval Procedures.* The procedures to be used will include the Regional and Field Offices concurrently reviewing and evaluating the applications in accordance with the evaluation factors contained in section 7 of this Notice, to provide a statement indicating the strengths or weaknesses for each evaluation factor. Additionally, the Regional Office will submit to Headquarters recommendations on all of the applications submitted for funding, addressing (A) the level of funding based on the type of activity being proposed by RCs/RMCs, (B) a statement on the physical condition of the project(s), (C) other pertinent

information on the project(s) where activities are being proposed, and (D) a total score.

HUD Headquarters will also review, evaluate and score each application based on the evaluation criteria in section 7 of this Notice. HUD Headquarters will then rank all applications, factoring in the rating scores received from the Regional and Field Offices, and will fund applications in the order of their final ranking by Headquarters until the funds are exhausted. HUD will retain copies of the applications that are not selected for funding.

9. *Deadline for using funds.* An RC/RMC selected to participate in the program must expend all funds within two years from the date a technical assistance grant is executed.

10. *Congressional Notification and Transmittal of Approval or Disapproval letters.* HUD Headquarters will be responsible for preparing the Congressional Notifications as well as the RC/RMC approval or disapproval letters.

11. *PHA Notification.* HUD Headquarters will send a notification to PHAs, as appropriate, listing the applications received and the applications selected for funding.

12. *Implementation.* Additional instructions regarding program implementation will be issued to RCs/RMCs that are selected for funding.

13. *Processing Schedule.*

Steps	Due/date
RCs/RMCs submit Applications & Budget to Headquarters and Field Offices	6-30-89
FO submits recommendations to RO	7-21-89
RO/FO submits recommendation to Headquarters	8-11-89
Headquarters makes final selections	9-01-89
Congressional Notification/Transmittal of Approval or Disapproval Letters	9-04-89
PHA Notification	9-08-89

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The collection of information requirements contained in this Notice has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and has been assigned OMB control number 2577-0120. Section 6 of this Notice has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN, NOTICE—APPLICATIONS FOR FISCAL YEAR 1989 FUNDS FOR PUBLIC HOUSING RESIDENT MANAGEMENT TECHNICAL ASSISTANCE

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application development and submission	6 (Entirety)	150	1	150	16	2,400

Date: May 5, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

SAMPLE

Appendix A

OMB No. 2577-0044 Form Approved

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

COMPREHENSIVE ASSESSMENT/PROGRAM BUDGET

PART I - SUMMARY

PAGE 1 OF 2

NAME OF PHA	LOCALITY (City/County and State)	ACC NUMBER	MODERNIZATION PROJECT NUMBER	FEDERAL FISCAL YEAR	☒ ORIGINAL ☐ REVISION (Give Number)
USA Housing Authority	Anywhere, Virginia	A-1234	VA-30-903	1989	

LINE NO.	SUMMARY BY DEVELOPMENT ACCOUNT	INDIVIDUAL PROJECT NO. VA-30-1	INDIVIDUAL PROJECT NO.	INDIVIDUAL PROJECT NO.	INDIVIDUAL PROJECT NO.	INDIVIDUAL PROJECT NO.	TOTAL FUNDS REQUESTED	HUD-APPROVED FUNDS
1	~~TOTAL OPERATING FUNDS PROVIDED BY PHA~~	$	$	$	$	$		
2	1408 Management Improvements							
3	1410 Administration	59,328						
4	~~1415 Liquidated Damages~~							
5	1430 Fees and Costs	40,000						
6	~~1440 Site Acquisition~~							
7	~~1450 Site Improvement~~							
8	~~1460 Dwelling Structures~~							
9	~~1465.1 Dwelling Equipment—Nonexpendable~~							
10	~~1470 Nondwelling Structures~~							
11	1475 Nondwelling Equipment	672						
12	~~1495.1 Relocation Costs~~							
13	MAXIMUM MODERNIZATION COST *(Sum of Lines 2 through 12)*	$100,000	$	$	$	$	$	$
14	TOTAL MODERNIZATION PROGRAM COST *(Line 1 + Line 13)*	$100,000	$	$	$	$	$	$
15	~~AMOUNT OF LINES 3 AND 5 RELATED TO PLANNING COSTS~~						$	$
16	~~TOTAL PLANNING AND MANAGEMENT IMPROVEMENT COSTS~~ *(Line 15 + Line 2)*							
17	~~AMOUNT OF LINE 13 RELATED TO PHYSICAL IMPROVEMENTS~~ *(Line 13 - Line 16)*						$	$
18	~~LINE 18 ÷ LINE 17 (Not to exceed 10%)~~						%	%
19	~~ANNUAL COST SAVINGS~~							

The PHA will not be allowed to participate in the Comprehensive Improvement Assistance Program unless this form is completed and filed as required by existing regulation.	SIGNATURE OF EXECUTIVE DIRECTOR OR DESIGNEE	DATE	SIGNATURE OF FIELD OFFICE DIRECTOR	DATE

HUD-52825 (6-82) Part I

NAME OF PHA

COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM
COMPREHENSIVE ASSESSMENT/PROGRAM BUDGET
PART II - SUPPORTING PAGES

PAGE 2 OF 2

WORK ITEM NUMBER (1)	DEVELOPMENT ACCOUNT NUMBER (2)	ASSESSMENT OF NEED (3)	DESCRIPTION OF PROPOSED/APPROVED ACTION (4)	INDIVIDUAL PROJECT NUMBER (5)	TOTAL FUNDS REQUESTED (6)	HUD-APPROVED FUNDS (7)
M- 89-1	1410.1	Nontechnical Salaries a. Existing staff is insufficient to determine social services needs. b. Existing staff is insufficient to determine the feasibility of establishing a Resident Management Corporation.	a. Hire a staff person to coordinate the identification of social services needs and to secure supportive services to address those needs. b. Hire a Housing Management Specialist to determine the feasibility of establishing a Resident Management Corporation (RMC).	VA-30-1	51,500 22,500 29,000	
M- 89-2	1410.4	Legal Expense Legal assistance is necessary to incorporate the RMC.	Hire an attorney on an as needed basis to process the incorporation of the RMC, if determined feasible.	VA-30-1	7,000	
M- 89-3	1410.10	Travel Information and training is necessary for the successful implementation of the program.	a. Travel to the State-Wide Conference on Social Services in Virginia 1 person for 3 days @$110 per diem. b. Travel to HUD sponsored training on RMCs 3 persons for 2 days @$83 per diem.	VA-30-1	828 330 498	
M- 89-4	1430.2	Consultant Fees The existing financial management system is inadequate.	Hire a consultant to design and implement a financial management system.	VA-30-1	40,000	
M- 89-5	1475.9	Nondwelling Equipment-Expendable Office furniture needed for new staff.	Purchase two desk and chairs for staff identified in M-89-1.	VA-30-1	672	

HUD-52825 (6-82)

BILLING CODE 4210-33-C

Appendix B—Resolution of Agreement to Comply With HUD Terms and Conditions for Technical Assistance

Whereas, the (name of resident council or resident management corporation) is applying for technical assistance funds from the Department of Housing and Urban Development (HUD) to further its objectives in representing the residents of the (name of project).

And Whereas, the undersigned, as the governing body of the (name of RC or RMC) representing the residents of the said project have voted to adopt, and do adopt, as evidenced by their signatures affixed hereunder, the following resolution.

Resolved, that the (name of resident council or resident management corporation) agrees to comply with all terms and conditions expressed in HUD's Notice announcing applications for technical assistance, applicable provisions of 24 CFR Part 964, Resident Management in Public Housing, provisions of any technical assistance grant agreement entered into with HUD, and any other stipulations made by HUD and agreed to in writing by a duly authorized representative of this organization pertaining to the technical assistance provided by HUD.

Witnesseth:

(signature)

(typed name)
(signature)

(typed name)

[FR Doc. 89-11308 Filed 5-10-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-920-09-4120-02]

Availability of Draft Data Adequacy Standards for Green River-Hams Fork Coal Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Data Adequacy Standards for Green River-Hams Fork Region and 30-Day Public Comment Period.

SUMMARY: Proposed Data Adequacy Standards for the Green River-Hams Fork Coal region are available upon request beginning May 12, 1989. The public is invited to comment on the proposed standards.

DATES: To receive consideration, public comments on the Draft Data Adequacy Standards must be received by Monday, June 12, 1989. Comments should be submitted to Betsy Daniel at the address shown below.

ADDRESS: Copies of the Draft Data Adequacy Standards may be obtained from the Public Room of the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Betsy Daniel at (FTS) 776-1787 or (303) 236-1787.

SUPPLEMENTARY INFORMATION: The Draft Data Adequacy Standards contain recommended levels of data to be acquired prior to the competitive leasing of federal coal tracts, whether coal is leased in response to application or by the regional leasing process. Data standards are proposed for geology, paleontology, soils, water, vegetation, wildlife, air, cultural resources, socioeconomics, and land-use disciplines within the Green River-Hams Fork region.

The proposed standards were prepared by a multidisciplinary task force composed of Bureau of Land Management (BLM) resource specialists. The task force was authorized by the Green River-Hams Fork Regional Coal Team (RCT) at its October 9, 1987, meeting. By decision of the Secretary (dated February 21, 1986), the Department of Interior has directed that each coal region prepare Data Adequacy Standards to guide the coal leasing process in that region.

The RCT welcomes comments on any aspect of these standards. Public comments received will be considered during preparation of final Data Adequacy Standards. The final standards will be presented for approval at the next RCT meeting, planned for June 27, 1989.

Jenny L. Saunders,
Acting State Director.

Date: May 4, 1989.

[FR Doc. 89-11323 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-84-M

[MT-920-09-4111-11; MTM 70913]

Proposed Reinstatement of Terminated Oil and Gas Lease; Garfield County, Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 70913, Garfield County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 2, 1989.

June A. Bailey,
Chief, Leasing Unit.

[FR Doc. 89-11340 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-09-4214-10; GP9-213; OR-11159]

Termination of Proposed Withdrawal and Reservation of Land; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination.

SUMMARY: This notice will correct errors in the land description in the Termination of Proposed Withdrawal and Reservation of Land published in the **Federal Register** on November 17, 1987.

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

In FR Doc. 87-26473, published at page 43950 in the issue of Tuesday, November 17, 1987, make the following corrections:

On page 43950, the thirteenth line of the land description under Bachelor Butte Recreation Area which reads "sec. 19, lot 4, N½NE¼ and NE¼NW¼;" is hereby corrected to read "sec. 19, lot 1, N½NE¼ and NE¼NW¼;"

On page 43951, the second line of the land description under Todd Lake Recreation Area which reads "sec. 7, SE¼SW¼ and S½SE¼" is hereby corrected to read "sec. 8, SE¼SW¼ and S½SE¼".

Dated: May 3, 1989.

B. LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-11341 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-33-M

[NM 940-08-4111-15, NM NM 53226]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Judy Harris petitioned for reinstate of oil and gas lease NM NM 53226 covering the following described lands located in:

T. 2 S., R. 28 E., NMPM,
Sec. 19: Losts 1-4, E½, E½W½; 20: All; 30: E½; 31: Lots 3, 4, E½SW¼, SE¼; 34: All; 35: All.

Containing 3,179.28 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. The Lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500 administrative fee has been made.

Reinstatement of the lease will be effective as of the date of termination, August 1, 1988.

Date: May 2, 1989.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 89-11375 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-84-M

[CA-060-09-4320-10]

California Desert District Grazing Advisory Board Meeting

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579, Title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Thursday, June 8, 1989 from 10:00 a.m. to 4:00 p.m. in the Board Room, Barstow Fire District Headquarters, 861 Barstow Road, Barstow, California 92311.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—Range Management Perspectives by Resource Area
—Interim and Wilderness Management
—Riparian Management
—Desert Plan Amendment Discussion

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District Office, 1695 Spruce Street, Riverside, California 92507, and will be available there for public inspection during regular business hours—7:45 a.m. to 4:30 p.m. (PDT)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, California Desert District Office, Larry Morgan, 1695 Spruce Street, Riverside, California 92507, (714) 351-6402.

Dated: May 5, 1989.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 89-11338 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-40-M

[ID-942-09-4730-12]

Filing of Plats of Survey; Idaho

The plats of survey of the following described land, were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., May 2, 1989.

The plat representing the dependent resurvey of portions of the west and north boundaries, subdivisional lines, and meanders of the left bank of the Payette River; the subdivision of certain sections and the survey of lot 10, in section 18, T. 8 N., R. 3 E., Boise Meridian, Idaho, Group 737, was accepted April 4, 1989.

The plat representing the dependent resurvey of portions of the south and north boundaries, subdivisional lines and the 1885 meanders of the left bank of the Snake River in section 3; the subdivision of certain sections and the survey of the present left bank of the Snake River in sections 3 and 4, T. 8 S., R. 13 E., Boise Meridian, Idaho, Group 672, was accepted April 10, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

May 2, 1989.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-11339 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Mines

Advisory Committee on Mining and Mineral Resources Research; Meeting.

The Advisory Committee on Mining and Mineral Resources Research will meet from 8:00 a.m. to 5:00 p.m. (or completion of business) on Wednesday, June 7, 1989, in the Secretary's Conference Room (Room 5160), U.S. Department of the Interior, 18th and C Streets NW., Washington DC 20240.

The proposed agenda is:

1. Welcome and charge to the Committee by the Secretary of the Interior.
2. Approval of the minutes of the meeting of November 17, 1988.
3. Presentation by the National Stone Association (NSA) on the cooperative quarrying curriculum with the University of Missouri-Rolla, and NSA's desire to initiate similar programs with other mineral institutes.
4. Status of 1989 legislation affecting the Mineral Institutes program.
5. Status of 1989 grants.
6. Status of final regulations.
7. Discussion concerning generic mineral technology centers:
   Report on proposal to establish a strategic and critical minerals center.
   Mechanism to establish new centers and to phase-out or consolidate existing centers
   Establishment of a procedure for the review of existing generic centers.
8. Establishment of a procedure for the review of mineral institute eligibility.
9. New business.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome.

In order to assure admittance to the building, visitors who expect to attend should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street NW., Washington DC 20241, phone (202) 634-1328, no later than noon, Tuesday, June 6.

Dated: May 8, 1989.

John D. Morgan,

Acting Director.

[FR Doc. 89-11298 Filed 5-10-89; 8:45 am]

BILLING CODE 4310-53-M

Minerals Management Service

Development Operations Coordination Document; Conquest Exploration Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conquest Exploration Company has submitted a DOCD describing the

activities it proposes to conduct on Lease OCS–G 5192, Block 115, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fresh Water City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 28, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 1, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–11342 Filed 5–10–89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-252]

Certain Heavy-Duty Mobile Scrap Shears; Judicial Remand and Reopening of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that in response to a mandate issued by the U.S. Court of Appeals for the Federal Circuit ("the Federal Circuit") on March 14, 1989, the U.S. International Trade Commission hereby reopens the above-captioned investigation for further proceedings in accordance with the Federal Circuit's instructions. The Commission also has issued an order and opinion providing specific instructions for adjudication of the issues presented as a result of the remand, the issuance of an initial determination ("ID") by an administrative law judge, and final disposition of the investigation by the Commission.

DATE: The effective date for reopening of the subject investigation is May 11, 1989. The administrative deadlines for issuance and final disposition of the ID are provided in the Commission Opinion accompanying the Commission Order.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1061.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337–TA–252 originally was conducted in 1986 and 1987 to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (1982 and Supp. IV 1986)) in the importation or sale of certain heavy-duty mobile scrap shears from the United Kingdom. The imported shears were accused of infringing all 22 claims of U.S. Letters Patent 4,519,135 ("the '135 patent"). The complainant was LaBounty Manufacturing Co., Inc. ("LaBounty"), sole licensee of the '135 patent. The following firms were named as respondents: (1) The Dudley Shearing Machine Manufacturing Co., Ltd. ("Dudley"), the British manufacturer of the accused scrap shears; and (2) Dudley Shearing Inc. ("Dudley"), its U.S. subsidiary. *See* 51 FR 27261 (July 30, 1986).

The investigation was terminated 6 months after it was instituted, when the Commission determined not to review an initial determination ("ID") granting Dudley's motion for a summary determination on the issue of infringement. The ID held that Dudley's shears did not infringe the patent claims in controversy (and thus had not been imported or sold in violation of section 337). *See* Order No. 21 (Dec. 24, 1987); 52 FR 3501 (Feb. 4, 1987).

LaBounty appealed to the Federal Circuit. On March 14, 1989, the Federal Circuit issued a mandate concerning the Commission's determination of no infringement. The mandate and the accompanying opinion affirmed the Commision's determination in part, vacated it in part, and remanded certain issues to the Commission for additional findings in accordance with the Federal Circuit's opinion. *See LaBounty Manufacturing, Inc.* v. *United States International Trade Commission,* Appeal Nos. 87–1258 and 87–1525, Slip Op. (Feb. 21, 1989) and Mandate (Mar. 14, 1989).

In response to the Federal Circuit's mandate, the investigation will be reopened upon publication of this notice in the **Federal Register.** In addition, the Commission has issued an order and opinion providing for adjudication of the specific issues cited by the Federal Circuit and the issue of whether the importation or sale of the accused shears violates section 337 as amended (19 U.S.C. 1337 (1982), *as amended* by section 1342 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 and 1212–1216 (1988)).

Public inspection

Copies of the following documents will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m. Monday through Friday) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Docket Section, Room 112, Washington, DC 20436, telephone 202–252–1000: the Commission Order, the accompanying Commission Opinion, the Federal Circuit's mandate and opinion, Order No. 21 (the determination vacated in part by the Federal Circuit), the '135 patent, and all other nonconfidential documents filed in connection with the subject investigation after publication of

this notice. Copies of all nonconfidential documents on the record of the original investigation are in storage but will be retrieved for inspection upon request. Such requests should be directed to the following person, orally or in writing, at least 2 whole business days before the planned date of inspection: Ms. Ruby Dionne, Docket Section Chief, Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Docket Section, Room 112, Washington, DC 20436, telephone 202-252-1799.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

Kenneth R. Mason,

Secretary.

Issued: May 1, 1989.

[FR Doc. 89-11250 Filed 5-10-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-405 (Final)]

Sewn Cloth Headwear From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China of sewn cloth headwear,[2] provided for in subheadings 6114.20.00, 6114.30.30, 6204.23.00, 6204.29.20, 6204.29.40, 6209.90.30, 6209.90.40, 6211.32.00, 6211.33.00, 6211.42.00, 6211.43, 6211.49.00, 6502.00.20-6502.00.90, inclusive; 6504.00.30-6504.00.90, inclusive; and 6505.90 (except 6505.90.30 and 6505.90.40) of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 8, 1988, following a preliminary determination by the Department of Commerce that imports of sewn cloth headwear from the People's Republic of China were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 6, 1988 (53 FR 49247). The hearing was held in Washington, DC, on March 29, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 1, 1989. The views of the Commission are contained in USITC Publication 2183 (May 1989), entitled "Sewn Cloth Headwear from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-405 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 3, 1989.

[FR Doc. 89-11251 Filed 5-10-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-288]

Certain Straight Knife Cloth Cutting Machines; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Chuan Neng Enterprises Co., Ltd., John E. Fox, Inc. and New and Used Equipment Co.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 1, 1989.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202-252-1805.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 28, 1989.

[FR Doc. 89-11252 Filed 5-10-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

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[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] The headwear subject to this investigation includes hats, caps, visors, and other headwear, all the foregoing made for knitted or woven fabrics of vegetable fibers (including cotton, flax, and ramie), or manmade fibers, and/or of blends thereof, and assembled from two or more cut pieces of fabric and then sewed. The subject headwear was formerly provided for in items 702.0600, 702.0800, 702.1200, 702.1400, 702.2000, 702.3200, 703.0540, 703.0550, 703.0560, 703.1000, 703.1640, 703.1650, and under various items in part 6F of schedule 3 of the *Tariff Schedules of the United States Annotated* (*TSUSA*).

ACTION: Notice.

SUMMARY: The Commission is proposing to calculate the weights for the three major composition categories of the materials and supplies component of the all-inclusive index of railroad costs using data supplied only by the large railroads which currently supply actual price data and weights within the three major categories (as opposed to all Class I railroads). No other revisions are proposed.

DATES: Notices of intent to file comments are due May 26, 1989. A revised service list will be issued shortly thereafter. A copy of all comments and replies must be served on each party appearing on that revised list. Comments must be filed by June 26, 1989. Replies are due 30 days thereafter.

ADDRESS: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275–7354; Robert C. Hasek, (202) 275–0938 (TDD for hearing impaired (202) 275–1721).

SUPPLEMENTARY INFORMATION: On January 2, 1985 the Commission served a decision (Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 50 FR. 87, January 2, 1985) which adopted the all-inclusive index currently used to calculate the quarterly Rail Cost Adjustment Factor (RCAF). That index includes a materials and supplies component which is calculated using a market basket of railroad purchases. That market basket consists of three major composition categories: (1) Forest products, (2) metal products and (3) other products. A total of thirty-eight individual items are included in the three composition categories. The seven largest Class I railroads provide price data for the individual items and the internal weights within each of the three composition categories. Internal weights are the expenditure for each item shown as a percentage of total expenditures for all items in a given composition category. All Class I line-haul railroads provide data for weighting the three composition categories into a single materials and supplies index.

On July 27, 1988 the Association of American Railroads petitioned to use data supplied only by the seven largest Class I railroads (as opposed to all Class I Railroads) in the calculation of the materials and supplies index component.

The Commission is proposing that the methodology for calculating the materials and supplies component of the index be revised to use data supplied only by the seven large railroads which currently supply prices for individual items. Other Class I line-haul railroads would no longer be required to furnish materials and supplies data. No other aspects of the indexing methodology are proposed to be changed.

Comments are requested on the acceptability of the proposed change and its effect on the materials and supplies component, the total index and the RCAF.

Assistance for the hearing impaired is available through TDD Services at (202) 275–1721.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: May 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–11353 Filed 5–10–89; 8:45 am]

BILLING CODE 7035-01-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for improving the quality of Law School Civil Clinical Programs (LSCCP). The Corporation may distribute up to fifteen (15) one-time non-recurring grants to geographically dispersed law schools of varying sizes. Each grant will be for 12 months. Applicants may request funding of up to $75,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) (42 U.S.C. 2996e(a)(1)(B)) of the Legal Services Corporation Act of 1974, as amended. Each applicant is required to guarantee that a substantial portion (more than 50 percent) of the total funding for its LSCCP will come from non-Federal sources and that federally funded assets and projects will not be counted as part of any in-kind services.

Proposals for grants will be solicited from all law schools that are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit appropriate documentation of eligibility.

DATE: Grant proposals must be received by the Office of Field Services on or before June 16, 1989. Grant awards will be announced by July 1989.

ADDRESSES: Office of Field Services, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Mr. Charles T. Moses, III, Associate Director, Office of Field Services, (202) 863–1837.

SUPPLEMENTARY INFORMATION: Congress has recognized LSC support of clinical education by earmarking specific funds for law school clinical grants. This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs that address the civil legal needs of poor persons. This expanison may include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects that provide services to underserved segments of the population (e.g, Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources.

All proposals will be reviewed to ensure that each is responsive to the minimum requirements set forth in this solicitation. Final selection of grantees will be made by the President of LSC, following submission of non-binding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

I. Definition of Service Delivery and Student Training Objectives (10–20%)

A clear description of proposed clinic objectives, both with respect to the increase of basic legal services to the local client eligible population and to the training of law students. Specific objectives such as the plans for an increase in the number of students trained or eligible clients served are encouraged.

II. Clear Project Design Necessary to Fulfill the Clinic Objectives (20–30%)

A. A clear description of proposed clinic structure and activities intended to increase basic legal services to the

local client-eligible population in an effective and economical manner.

B. Evidence that the proposed clinic provides for high quality education and training of students in the necessary areas of the law and is equipped to deliver high quality legal services in a cost-effective manner.

III. Management Structure Required to Fulfill the Objectives (20–30%)

A. Evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic. This is especially so with regards to the provision of appropriate levels of student supervision by faculty members, clinic staff attorneys, or private *pro bono* practitioners.

B. A clear and concise evaluation plan to examine whether clinic objectives have been attained.

IV. Community Support (10–20%)

A. It is highly recommended that the law school clinic applicants explain how proposed activities and services complement the local providers' service priorities. The extent to which a cooperative effort exists between an area's courts and the corresponding area's law school clinics should be included. Letters or other evidence of support by these courts for the proposed clinic may be attached where appropriate. Law school clinic proposals that are supported by the local courts are encouraged.

B. Support by the private bar that results in increased attorney participation in the law school clinic program is also encouraged by LSC and should be specifically encouraged by each applicant.

V. University Commitment/Outside Funding (10–20%)

A. The grant applicant should show the degree to which the institution's regular budget is currently allocated to its clinical education program and to its clinical activities. Evidence that such budgetary support levels will be *maintained* during and beyond the term of the grant is also needed. The viability of the civil clinic beyond the term of the grant must be specifically addressed.

B. Each applicant should demonstrate that the applicant plans to make an adequate in-kind contribution. In order to maximize delivery of legal services, indirect administrative costs may not be paid LSC grant funds.

Note: Federally-funded assets and projects cannot be counted as an in-kind contributions.

C. A budget that is adequate to support clinic educational and basic service delivery activities and that is based on costs that are reasonable in relation to the duration and objectives of the proposed clinic.

To ensure nationwide participation and geographic distribution, OFS has created seven administrative regions to be used solely for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion and the Corporation's desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be chosen from each of the following seven regions:

Region 1:

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Rhode Island
Vermont

Region 2:

Delaware
District of Columbia
Kentucky
Maryland
North Carolina
Virginia
West Virginia

Region 3:

Alabama
Arkansas
Florida
Georgia
Louisiana
Mississippi
North Carolina
South Carolina
Tennessee

Region 4:

Illinois
Indiana
Michigan
Ohio
Pennsylvania

Region 5:

Colorado
Kansas
Missouri
New Mexico
Oklahoma
Texas

Region 6:

Alaska
Idaho
Iowa
Minnesota
Montana
Nebraska
North Dakota
Oregon
South Dakota
Washington
Wisconsin
Wyoming

Region 7:

Arizona
California
Hawaii
Nevada
Utah
Micronesia
Guam

Maureen R. Bozell,
Corporation Secretary.

[FR Doc. 89–11288 Filed 5–10–89; 8:45 am]
BILLING CODE 7050–01–M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Meeting

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100–460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee, no later than May 14, 1990.

This notice announces a meeting and public hearing of the commission.

Meeting

Time: 4:00 p.m., May 24, 1989
Place: Giant City Lodge, Giant City State Park, Makanda, Illinois 62958, *Phone:* (618) 457–4921
Status: Open Meeting

Public Hearing

Time: 10:30 a.m., May 25, 1989
Place: Shawnee Community College, College Road, Ullin, Illinois 62992, *Phone:* (618) 634–2242.

Status: Public Oral and Written Testimony Accepted.

Contact: Ann Sartwell Phone (901) 753-1400.

Date: May 4, 1989.

Ronald Register

Administrative Services Director.

[FR Doc. 89-11331 Filed 5-10-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL CAPITAL PLANNING COMMISSION

Guidelines and Submissions Requirements for Antennas on Federal Property in the National Capital Region

AGENCY: National Capital Planning Commission.

ACTION: Amendments to guidelines and submission requirements.

SUMMARY: On January 7, 1988, the National Capital Planning Commission (NCPC) adopted guidelines and submission requirements for the installation of microwave antennas on Federal sites in the National Capital Region. During the year in which those guidelines were in effect, proposals for a number of large antennas of other types on Federal sites, because of their size and visual character, raised further issues of adverse effects on the scenic character of the Nation's Capital. The amended guidelines adopted by the Commission on April 6, 1989, permit Federal agencies to install certain classes of antennas "as a matter of right," without submission to the Commission. The amendment delegates to the Executive Director limited authority to approve antennas consistent with approved master plans. The amendment also makes changes in the general design criteria to clarify their applicability to both rooftop and ground-level antenna installations and to further the objective of unobrusiveness in installations.

DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert E. Gresham, Assistant Executive Director for Operations, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576 or by telephone at 202/724-0206..

Reginald W. Griffith,

Executive Director.

The National Capital Planning Commission (Commission) finds that certain antennas, such as microwave (terrestrial and satellite earth station) and large yagi and whip antennas, may adversely impact the aesthetics of the National Capital Region (NCR) and the health and welfare of its population. Therefore, in order to minimize the visual impacts of such antennas on the landscape, skyline, and scenic character of the Nation's Capital, and on the general appearance of Federal facilities, and to protect the public from any potential adverse radio frequency biological effects from transmitting antennas, the Commission is providing the following Guidelines and Submission Requirements to be used by Federal agencies in the NCR in the preparation and submission of plans for antenna installations. (The NCR includes Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties, and the independent cities within the outer boundaries thereof in Virginia; and the District of Columbia.)

A. Prior to the installation of any antenna(s) on Federal property in the NCR, except as noted in section A.1, below, Federal agencies shall submit (pursuant to section 5 of the National Capital Planning Act of 1952, as amended; D.C. Code, 1981 edition, section 5-432, in the District of Columbia; and, as appropriate, section 4 of the International Center Act of 1968, as amended) such installation proposal to the Commission for review and comment. Approval by the Commission of such installation will normally be limited to five years. This time period may be increased to 10 years at the Commission's discretion where the proposed antenna(s) will not have adverse impacts on the Monumental Core [1] and surrounding lands, designated Historic Districts, and hearby residential areas.

1. Exceptions

The following types of antenna installations may be made without referral to the Commission, provided that there are no existing antennas on the affected building or site:

a. Up to two ultra high frequency-very high frequency television and/or frequency modulation radio receiving antennas with the boom or any active element not exceeding eight feet in length and the mounted vertical dimension (from the point on the ground or building at which the antenna is mounted to the highest point of any active element, tower, mast, pole, or related support element) not exceeding 12 feet;

b. A super high frequency antenna with the active element not exceeding three feet in any dimension and the mounted vertical dimension not exceeding 12 feet;

c. Up to two whip antennas not exceeding two and one half inches in diameter and a mounted dimension (vertically and laterally, for antennas that include two or more prongs or attachments) of 12 feet in any direction;

d. An antenna of any type, except a transmitting microwave antenna, entirely enclosed within an existing building (including the penthouse portion of a building); and

e. A temporary antenna to be mounted on a building, the ground, or a vehicle for a period not to exceed 14 days (60 days in cases involving Federal law enforcement and national security matters), provided the temporary placement does not alter the site or building and that all necessary safety precautions are observed in the temporary placement.

2. Specific Submission Requirements

The following materials shall be submitted with each antenna installation proposal:

a. Statement of need, including justification for the size of the antenna, justification for multiple antenna installations, and other appropriate data regarding the particular installation consistent with security limitations.

b. Description of any existing antennas located on the affected building and/or site of a proposed antenna and their functional relationship to the proposed antenna, if any, including, where the existing antennas are under control of the Federal agency proposing the new installation, a discussion of the need for any existing antennas that are proposed to remain.

c. Site plan and building elevations (for antennas mounted on a building) showing the form, dimensions, and location of the proposed antenna(s), any existing-to-remain antennas, and proposed screening elements.

d. Construction drawings showing the proposed method of installation.

e. Description of the texture and color of antenna materials to be used.

f. Screening plan, where appropriate, including proposed materials, color and texture of screening elements for rooftop and ground-level installations and, for ground-level installations only, the number, species, and sizes of trees and shrubs to be used as a screen.

[1] The Monumental Core includes the Mall, Ellipse and White House Grounds, Washington Monument Grounds, East and West Potomac Parks Federal Triangle, Northwest Rectangle Federal office area, Southwest Federal office area, Arlington National Cemetery, Lady Bird Johnson Park, and the Pentagon.

g. Sight line studies of the proposed installation and alternatives considered illustrating the extent to which the proposed antenna(s) will be visible from the surrounding streets, public open spaces, and nearby residential areas.

h. Description of alternatives considered to meet the tele-communication needs of the submitting agency.

3. General Criteria Applying to Antenna Installations

The following general criteria should guide the design, and will be applied in the Commission's review, of antenna installation proposals:

a. Consistent with technical communications requirements, rooftop antennas should be installed at the lowest possible elevation above the roofline, set back as far as possible from all edges of the roof, and screened to the extent practicable from any public views in cases in which screening designs compatible with the architectural character of the affected building can be developed (see Section D, below). Ground-level antennas should be sited in locations that minimize public views, installed at the lowest possible elevation above grade, and screened to the extent practicable by landscaping or other screening elements.

b. Materials used in the construction of antennas and their mountings should not be bright, shiny, or reflective and should be of a color that blends with the surrounding building materials or landscape.

c. Any masts or towers should be non-combustible, corrosion resistant or corrosion protected, and protected against electrolytic action.

d. All antennas should be adequately grounded to protect against a direct lightning strike.

4. Review by the Executive Director

The Commission delegates to the Executive Director the function of approving proposals for antenna installations, except microwave transmitting antennas, that are:

a. Located on a reservation or site for which the Commission has submitted its report and recommendations on a current master plan;

b. Consistent with the recommendations of the Commission on the land use and circulation plan elements of the master plan; and

c. Determined by the Executive Director to:

i. Have no adverse impact on the environment;

ii. Have no visual impact on properties beyond the boundaries of the Federal reservation or site; and

iii. Meet the general criteria of Section A.3 of these Guidelines and Submission Requirements.

5. Review Schedule and Process

Agencies proposing antenna installations shall make submissions to the Commission (including submissions that may be handled by the Executive Director under delegated authority) in accordance with established monthly deadlines available from the Commission staff. Submission deadlines are normally approximately 30 days in advance of the scheduled Commission meeting at which a particular proposal will be considered by the Commission. The Commission staff will notify the sponsoring agency of the schedule for review and any need for participation in the presentation of the submission to the Commission at the scheduled meeting. Notification of the Commission action on a submission will be provided by letter to the sponsoring agency immediately following such action.

B. Federal agencies may request an extension of the approval prior to expiration of the original approval. The request should be accompanied by a certification that:

1. The original installation is structurally sound and continues to meet all the submission requirements;

2. Clearly establishes the continued need for the installation; and

3. Technological advances have not offered any alternatives that permit the elimination of the antenna or reduction in its size to minimize the visual impacts.

Any antenna installation that does not receive recertification by the Commission should be dismantled and removed as soon as possible after the expiration of the commission's approval period.

C. To the extent possible, Federal agencies should anticipate the need for antennas on all new buildings and design such buildings in such a fashion as to screen the needed antennas in a manner appropriate to the design of each building.

D. Rooftop antennas on existing Federal buildings or ground-level installations in the NCR should be designed and installed in a manner that minimizes or eliminates their visual impacts on adjacent properties, including public rights-of-way and nearby residential areas. Where appropriate to the character of a building, retrofitting to screen antennas not accommodated in original building designs and plans should be considered. Various architectural solutions are possible for retro-fitting buildings to screen antenna installations. The architectural style, orientation, available rooftop space, and structural character of a building, as well as the heights of neighboring buildings, are all important considerations in the retro-fit option selected. A variety of materials, including plastic, fiberglass, and glass can be used to screen or obscure antennas. Any materials that do not block the passage of the radio frequency signals are suitable as a screen.

E. Reasonable precautions are necessary in locating and operating transmitting antennas, because of potential adverse radio frequency biological effects. In light of the numerous variables regarding power and frequency levels for each installation, electromagnetic radiation impacts will have to be evaluated on a site specific basis taking into account any existing nearby emission sources. All submissions to the Commission for a transmitting antenna should be accompanied by an environmental assessment. The environmental assessment shall include, among other considerations, an estimate of the electromagnetic radiation levels at 10, 50, 100, 500, 1,000 and 2,000 feet from the installation in milliwatts per square centimeter and the safeguards proposed to protect the public from any potential adverse biological effects. A manufacturer's certification as to electromagnetic radiation at the above distances and a statement by the sponsoring agency that the proposed antenna installation meets all American National Standards Institute (ANSI) time averaged radio frequency exposure standards should be made part of the environmental assessment. The Commission will continue to seek state-of-the-art information on health and human safety issues and shall apply that information and resulting awareness of issues in reviewing and approving antenna installations.

F. All agencies responsible for antenna installations existing at the time of ther adoption of these Guidelines are required to apply for approval of all such installations in accordance with the provisions of section 5 of these requirements, as applicable, within five years after the adoption of these Guidelines and Submission Requirements.

G. These Guidelines are general in nature and convey the spirit of the concerns regarding potential adverse visual and/or bio-effect impacts to be mitigated. Each installation is a special case, and the appropriateness of the

solutions selected to reduce the visual impacts will, in large measure, be determined by the particular location or locations chosen for the installation and the architectural character of the building. These Guidelines provide general criteria to be applied on a case-by-case basis. They are intended to—apply to any existing antennas that are moved or relocated to another location on the Federal facility. Federal agencies are encouraged to arrange for joint use of antennas wherever possible.

H. The Commission will, in its review of proposals for antenna installations, be particularly concerned with the submitting agency's statement of need, justification of antenna size, and measures employed to minimize the visual impacts of the proposed installation. In cases in which it has previously approved site and building plans for facilities on which antennas are proposed, the Commission will review such proposals, on a case-by-case basis, as modifications to the previously approved site and building plans.

[FR Doc. 89-11282 Filed 5-10-89; 8:45 am]

BILLING CODE 7520-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on June 2, 1989, from 9:30 a.m.—5:30 p.m. in Room MO-7 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 2, 1989 from 9:30 a.m.—10:00 a.m. The topics for discussion will be policy issues.

The remaining porton of this meeting on June 2, 1989 from 10:00 a.m.—5:30 p.m. 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 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 pror to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

May 3, 1989

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-11272 Filed 5-10-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

In accordance with the Arctic Research and Policy Act, Pub. L. 98-373, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and Time: June 1, 1989, 9:30 a.m.

Place: National Science Foundation, Room 543 1800 G Street NW., Washington, DC.

Type of Meeting: Open, but part of the meeting will be closed for a discussion of agency budget initiatives.

Contact Person: Jerry Brown, Division of Polar Programs, Room 627, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-7817.

Purpose of Meeting: The Interagency Arctic Research Policy Committee was established by Pub. L. 98-373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, develop a national arctic research policy, prepare a single, integrated multi-agency budget request for arctic research, develop a plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

Agenda:

Open Session 9:30 a.m.

1. Status Reports on Arctic Social Sciences and Health Research
2. Other Business

Closed Session

Discussion of Agency Arctic Budget Initiatives.

Public Participation: Committee meetings are not designed as public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to five minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at that particular meeting. The texts of such statements shall not exceed five double-spaced typed pages each.

Charles E. Myers,

Division of Polar Programs.

[FR Doc. 89-11313 Filed 5-10-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 11, No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the fourth calendar quarter of 1988. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

For this reporting period, there were no abnormal occurrences at nuclear power plants licensed to operate. There was one abnormal occurrence under other NRC issued-licenses involving a medical therapy misadministration.

The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L. Street NW., (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Documents Rooms throughout the country.

Copies of the NUREG-0090, Vol. 11, No. 4 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-

0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, Springfield, VA 22161.

Dated at Rockville, MD this 5th day of May 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-11376 Filed 5-10-89; 8:45 am]

BILLING CODE 7590-01-M

Docket No. 50-206

Southern California Edison Co. and San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action: The proposed amendment is a request to provide both neutron and loose-parts monitoring of the reactor vessel internals in light of a recent finding that three of the bolts attaching the bottom of the thermal shield to the reactor vessel are broken. Neutron monitoring would provide information on vibration of the thermal shield. The amendment provides for reporting any exceedance of acceptance criteria and shutdown if the last flexure (upper thermal shield support device) is determined to have broken. The amendment also provides for a mid-cycle inspection of the thermal sheield.

The NRC staff has concluded that the monitoring program and mid-cycle inspection will provide adequate compensation for the degraded fasteners during the next operating cycle. The thermal shield attachment mechanism will be fully repaired at the end of the cycle, which coincides with the required 10-year inservice inspection.

The Need for the Proposed Action: The proposed amendment is required to provide for monitoring and inspecting the condition of the reactor vessel thermal shield.

Environmental Impacts of the Proposed Action: The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated. The NRC staff has evaluated the proposed amendment and has determined that operation with degraded fasteners is acceptable. If further degradation should occur the thermal shield could shift position but not in such a way as to cause fuel damage. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 2, 1989 (54 FR 8854). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action: Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 1, dated October 1973.

Agencies and Persons Consulted: The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 17, 1989, as supplemented March 21 and 23, and May 3, 1989. These are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 8th day of May 1989.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

FR Doc. 89-11453 Filed 5-10-89; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities for Materials; Transnuclear, Inc.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source materials, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows.

NRC Export License Applications

Name of applicant, Date of applicant, Date received, Application number	Material type	Total element	Total isotope	End use	Country of destination
	Material in Kilograms				
Transnuclear, Inc. 3/29/89 4/3/89 XSNM02444	93.45% Enriched Uranium	51.054	47.701	Fuel for BR-2 Reactor	Belgium.
Transnuclear, Inc. 3/28/89 4/3/89 XSNM02445	93.45% Enriched Uraniun	38.291	35.783	Fuel for HFR-Petten research reactor	Netherlands.
Transnuclear, Inc. 4/14/89 4/18/89 XSNM02448	93.35% Enriched Uranium	58.692	54.789	Fuel and target material for NRU reactor.	Canada.

Dated this third day of May 1989 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director, for International Security, Office of Governmental and Public Affairs.

[FR Doc. 89-11243 Filed 5-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-249; License No. DRP-25; EA 87-81]

Commonwealth Edison Co., Dresden Station, Unit 3; Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (licensee) is the holder of Operating License No. DRP-25 issued by the Nuclear Regulatory Commission (NRC/Commission) on March 2, 1971. The license authorizes the licensee to operate the Dresden Station, Unit 3, in accordance with the conditions specified therein.

II

A special safety inspection of the licensee's activities was conducted during the period May 19 through 23, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated April 29, 1988. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by letters dated June 28 and July 1, 1988. In its response, the licensee made a qualified admission to the violation but believes that the imposition of a civil penalty in this case is not consistent with the NRC's Modified Enforcement Policy. The licensee also requested that, if the NRC concluded that the violation occurred, the NRC staff reconsider its analysis of the mitigation/escalation factors, as set forth in the Modified Enforcement Policy (Generic Letter 88-07).

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that (1) the violation occurred, as stated, (2) the Modified Enforcement Policy has been properly applied, and (3) the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered,* That: The licensee pay a civil monetary penalty in the amount of One Hundred Fifty Thousand Dollars ($150,000) within 30 days of the date of this Order, by check draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies of the Assistant General Counsel for Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, and the NRC Resident Inspector, Dresden Station.

If a hearing is requested, the Commission will issue an Order designating the tme and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of the violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 3rd day of May 1989.

Appendix—Evaluation and Conclusion

On April 29, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for Dresden Unit 3 for a violation identified during an NRC inspection. Commonwealth Edison Company (CECo/licensee) responded to the Notice on June 28 and July 1, 1988. In its response, CECo admitted it was unable to demonstrate that the AMP splices were environmentally qualified based

on the results of testing conducted at CECo's initiative in December 1986. However, the licensee does not agree that documentation in its files as of December 6, 1986 was inadequate to demonstrate that the AMP splices were properly qualified in accordance with the DOR Guidelines by type testing and analysis. In addition, the licensee requests reduction of the civil penalty based on the consideration of the factors of identification and reporting and corrective actions. The violation is restated below, followed by a summary of the licensee's response, the NRC evaluation, and the conclusion.

1. Restatement of Violation

10 CFR 50.49(f) requires each item of electric equipment important to safety be qualified by testing and/or analysis.

10 CFR 59.49(k) specifies that requalification of electrical equipment important to safety is not required if the Commission has previously required qualification in accordance with "Guidelines for Evaluation of Environmental Qualification of Class IE Electrical Equipment in Operating Reactors," November 1979 (DOR Gudelines).

DOR Guidelines, section 5.2.2, states that type tests should only be considered valid for equipment identical in design and material construction to the test specimen and any deviations should be evaluated as part of the qualification documentation.

Contrary to the above, as of December 6, 1986, AMP nylon-insulated butt splices, used in numerous items of electrical equipment important to safety, were not properly environmentally qualified in accordance with DOR Guidelines by type testing. While a type test was done, the tested splices were not demonstrated to be identical to the installed AMP splices and this deviation was not evaluated as part of the documentation in the qualification file.

2. Summary of Licensee's Response

CECo admits it was unable to demonstrate that the AMP splices were environmentally qualified based on the results of testing conducted in December 1986, but does not agree that documentation in its files as of December 6, 1986 was inadequate to demonstrate qualification. CECo also contends that the imposition of the proposed civil penalty in this case is not consistent with the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Enforcement Policy) principally because the NRC staff's finding that Commonwealth Edison Company clearly should have known that the AMP splices were not qualified is in error and is largely based on "impermissible hindsight." The licensee also argues that the amount of any civil penalty imposed should be reduced. This is because the analysis in the NRC staff's April 29, 1988 letter of some of the mitigation/escalation factors set forth in the Modified Enforcement Policy is flawed by the improper use of hindsight, by a factual error relating to the length of time Dresden Unit 3 operated with the AMP splices, and by failure to give any credit to Commonwealth Edison Company for taking the initiative in testing the AMP splices. The licensee also questions the fairness of the NRC's Modified Enforcement Policy in not considering operability arguments when assessing the safety significance of EQ violations.

3. NRC Evaluation of Licensee's Response

a. Hindsight

In regard to hindsight, the licensee asks:

(1) *Did the NRC Staff Expect the AMP Splices to Fail the December 1986 Tests?* The NRC staff does not believe it relevant to consider whether it expected failures to occur during testing in establishing whether the licensee clearly should have known of the AMP splice deficiency. The NRC staff concludes that the facts of the AMP splice issue, as detailed below, establish that CECo clearly should have known of the splice qualification deficiencies.

As documented in the Region III March 24–25, 1986 inspection report (50–237/86006 and 50–249/86009), eighteen of three hundred Dresden Unit 2 splices were replaced in 1983 due to insulation embrittlement. In January 1985, further splice insulation degradation was observed in Unit 2 and in October 1985 all splices in Unit 2 were replaced because the embrittled insulation was cracking and "falling off" when the splices were moved. This inspection report stated that the NRC was concerned that the AMP splices may have a shorter qualified life than calculated by the licensee and that future failures in Unit 3 could occur during plant operation.

The intent of the March 24–25, 1986 limited inspection was to review the licensee's immediate corrective action in regard to the degraded AMP nylon splices in Unit 2. The inspectors identified EQ concerns and informed the licensee that a more detailed inspection would be performed during the upcoming NRC EQ team inspection in May 1986. The inspectors did not have any immediate safety concerns because (1) similar degradation had not yet been identified in Unit 3 and (2) the licensee insisted that the installed splices were in fact identical in material and construction to tested splices that had properly passed qualification tests, and that they could demonstrate through additional documentation that the AMP splices were qualified.

During the subsequent NRC team inspection in May 1986, the NRC staff concluded that similarity between the tested and installed butt splices was not established by the information in the licensee's qualification files. CECo maintained the splices were qualified by the GE F01 (R.M. Schuster, April 30, 1971) penetration qualification test. This test documentation indicated insulated splices were used in the penetration test performed under the DOR Guidelines and that the circuits functioned throughout the test. However, the GE FO1 qualification test did not describe the splices. The NRC staff's concern was that there was no documentation linking the splice tested by GE with those supplied with the FO1 penetrations and in use in Dresden Unit 3. CECo has indicated that information was obtained from GE indicating that nylon insulated butt splices were used in the test but this information was not included in the licensee's environmental qualification file. The documentation reviewed during the May 1986 NRC inspection did not support qualification of the AMP splices in that similarity could not be established. The violation which is the subject of the Notice was identified at this time and was unaffected by subsequent developments.

Unit 3 was not operating at the time and the licensee committed to corrective action prior to startup. In a letter dated June 12, 1986, CECo stated that additional information would be added to the EQ file to show qualification of these splices. The NRC letter dated September 8, 1986 transmitted NRC inspection report and acknowledged the commitment made by CECo in the June 12, 1986 letter. The NRC letter also stated that the additional information would be reviewed during a future inspection. The licensee's additional information was subsequently reviewed during an NRC inspection at Quad Cities Station in June 1987 where identical splices existed and the information was found to be inadequate. Had the NRC staff reviewed these analyses prior to the December 1986 tests, the NRC staff would have required the licensee to follow the requirements of Generic Letter 86–15.

In conclusion, a documented test and/or analysis was needed to determine if the AMP splices would perform as

intended during an accident. Based on the inadequate documentation in the licensee's files at the time of the NRC EQ site inspections, an environmental qualification violation occurred and the licensee's corrective actions were inadequate.

(2) *If the AMP Splices Had Passed the Tests, Would the NRC Staff Now be Proposing a $150,000 Civil Penalty?* If the AMP splices had passed the tests, the enforcement action proposed in the Notice would remain unchanged. The NRC's policy in the EQ area has been presented in Generic Letters (GL) 85–15 and 88–07. Both Generic Letters state that unqualified equipment means equipment for which there is not adequate documentation to establish that this equipment will perform its intended functions in the relevant environment. While in certain cases, the ability to quickly obtain documentation may result in a violation of reduced severity level, this provision does not apply to testing. The NRC's position provided in Generic Letter 88–07 is that the results of testing done after deficiencies are identified would not be considered. The NRC staff's position is that 10 CFR 50.49 required licensees to assure that electrical equipment important to safety is qualified for its application prior to the November 30, 1985 deadline. Sufficient documentation to assure qualification was required to be contained in the EQ files prior to the deadline. As such, testing conducted after the identification of deficiencies after the deadline has no bearing on whether a violation occurred.

For the case of Dresden Unit 3, the NRC staff contends that the AMP splices were not demonstrated to be qualified due to inadequate documentation in the EQ files. The NRC staff identified environmental qualification concerns in March 1986 and again in May 1986. Regardless of whether the AMP splices had passed the December 1986 tests, the licensee had not demonstrated the splices to be qualified prior to the November 30, 1985 EQ deadline or during or shortly thereafter the NRC inspections of March and May 1986. Any subsequent testing by the licensee, whether favorable or unfavorable, has no bearing on the application of the Modified Enforcement Policy. The NRC staff considers it appropriate to propose a civil penalty in this case based on the failure by the licensee to have adequate EQ documentation for AMP splices, a deficiency which the licensee clearly should have known existed as of November 30, 1985.

b. Application of the Clearly Should Have Known Test

The licensee argues that it was not reasonable for the NRC staff to conclude that it clearly should have known that its EQ documentation was inadequate prior to December 1986. The following considerations support the staff's findings.

(1) In January 1985, the licensee identified degraded nylon AMP splices in Dresden Unit 2. In September 1985, severe degradation was identified in the remaining Dresden Unit 2 nylon AMP splices and the splices were replaced with Raychem Heat Shrink Tubing (HST). The licensee clearly should have known these splices were unqualified since they had degraded significantly before reaching their qualified life. The case of the degradation of the splices in Unit 2 was attributed to a high temperature event in 1970 which consisted of a peak temperature, claimed by the licensee to be 320 degrees F, for less than one hour. Because the splices in Unit 3 had not been exposed to an event of this type, the licensee did not consider the degradation of Unit 2 splices as applicable to the Unit 3 splices. The event in Unit 2 alone should not have been considered by the licensee as an adequate basis for differentiating between the conditions in Unit 2 and 3. It was not a particularly severe event relative to the service conditions for which the splices were to be qualified. The licensee did not present analyses to determine if the event as in fact severe enough to have caused the observed difference in degradation and cause possible accelerated aging of these splices in Dresden Unit 2. Thus, the licensee did not present sufficient evidence to conclude that similar degradation would not occur under accident conditions in Unit 3.

The licensee's inspection of the Unit 3 splices did not reveal similar degradation. Dresden Unit 3 splices were not replaced prior to November 30, 1985. Instead, a surveillance (monitoring) program was established. However, it was inappropriate to rely on a monitoring program to provide assurance that, during an accident in which a harsh environment would exist including high temperature, radiation, and steam, these splices would function as intended. Monitoring for degradation would not likely have alerted licensee personnel to potential splice failures in that these failures would likely only occur during accident conditions and not during normal operations. The position stated in DOR Guidelines was intended to provide that surveillance and maintenance records be reviewed to identify and correct equipment exhibiting age related degradation, as an early indicator of a problem. This position was also based on the assumption that the equipment was properly qualified by tests or test and analysis. Therefore, the use of a surveillance program is irrelevant to the issue of whether the licensee "clearly should have known" of the deficiency. The degradation of these splices in Unit 2 served as prior notice that qualification deficiencies existed for these splices.

(2) Appendix C of the DOR Guidelines identifies nylon as being susceptible to radiation damage at a threshold dose as low as 10E5 rads. Nylon is further identified as a material that has a potential for significant aging within ten years under normal operating conditions. Therefore, it should have been concluded that the nylon splices could degrade under plant service and accident conditions. Notwithstanding the above, the NRC staff agrees with the licensee contention that the use of nylon is not prohibited. However, because the licensee sought to qualify the Dresden Station equipment in accordance with the DOR Guidelines, there was clear evidence that these splices using nylon material were potentially degradable and needed special attention to establish and maintain qualification. However, the qualification file was inadequate to demonstrate qualification.

The GE F01 penetration test report (R. M. Schuster, April 30, 1971) relied on by CECo to qualify the AMP nylon splices indicated that the splices were not exposed to radiation and did not test splices made by AMP. This matter was discussed in GE letter G–EBO–8–121 dated April 28, 1978. Therefore, the licensee, in accordance with the DOR Guidelines, had to provide separate radiation qualification for these splices. However, AMP test report (No. 110–11004, February 1982), relied on by the licensee to qualify the splices for radiation, did not document testing of AMP nylon splices. The report was in fact for Kynar, a dissimilar material. Thus, the licensee clearly did not have valid EQ documentation to qualify these splices and did not perform adequate reviews to resolve the inadequacy of these documents. In summary, the GE F01 Penetration test report and subsequent correspondence between GE and CECo indicated that GE had tested some kind of nylon splice for harsh temperature and pressure conditions and that it did pass the test. However, this test did not adequately qualify the nylon splice for an environment where

radiation and steam would be present at the same time. The licensee clearly should have known through prior EQ reviews that this test did not identify the formulation of the nylon tested and that the tests did not simulate the plant accident conditions of the Dresden Station. Clearly, the licensee did not have vendor supplied documentation in its EQ file that demonstrated that AMP splices were qualified.

In sum, a knowledgeable engineer familiar with EQ requirements and information available to the licensee clearly should have known prior to the November 30, 1985 deadline that the qualification file for the AMP splices was deficient.

The licensee argues it had other information on-site which established similarity. A GE Series 100 penetration test report, as described in GE letter G-EBO-2-031 dated February 9, 1982, was subsequently submitted by the licensee during the enforcement conference on June 5, 1987 and during the Region III Quad Cities Station EQ inspection of June 8-12, 1987 to substitute for the inadequate AMP (No. 110-11004) and GE (R. M. Schuster, April 1971) test reports. Documentation submitted by the licensee indicated that this report was in the licensee's files before November 30, 1985. The licensee's intent of using the GE Series 100 report was to address the qualification of the AMP splices for radiation. The NRC staff raised questions at that time regarding various references in this report. One such reference was a GE letter (GE-EBO-2-192, dated 9/7/82) that forwarded to the licensee an electrical penetration environmental information study, dated 8/27/82, conducted by GE for the Dresden and Quad Cities Stations. The list of components in this study identified shrinkable tubing and, under Note 2 listed as applicable to this item, indicated that the tubing was used as a "cover for insulated splice." The nylon splice vendors listed included AMP.

The additional information provided by the licensee failed to establish which kind of splice used in production was actually tested and it appeared that whichever splice had been tested had been protected from the harsh environment by the tubing (apparently intended to be installed on production penetration assembly splices as well). This information was confirmed in discussions with GE personnel in December 1986. Thus, the tested splices were not only protected from some environmental degradation during testing, but also were prevented from causing electrical faults under accident conditions by moisture intrusion or gross failure of their insulation. The splices installed in the F01 penetrations in Dresden Unit 3; however, were unprotected. This report was therefore not valid to demonstrate qualification of the splices for the postulated accident radiation exposure.

(4) The licensee argues that a previous NRC inspection in 1978 is additional information which supports its conclusion that it should not have clearly known of the splice qualification deficiencies. The licensee asserts that the 1978 inspection accepted the qualification of the AMP splices. The NRC staff agrees that the inspector in 1978 reached that conclusion. However, the qualification of the splices was accepted based on statements made in a GE letter dated April 28, 1978 and the fact that the test configuration was in accordance with the guidance of IE Circular 78-08. The test conditions did not include exposure to radiation and steam simultaneously, which was subsequently required by the DOR Guidelines (issued as an attachment to IE Bulletin 79-01B) to be either included during testing or a separate analysis performed (testing combined with analysis). Therefore, after issuance of the DOR Guidelines the licensee clearly should have known that the inspector's basis for acceptance of qualification was no longer necessarily valid.

Based on the above, the NRC staff concludes that the licensee clearly should have known the AMP splices were not qualified.

4. Licensee's Request for Consideration of Mitigation/Escalation Factors

The licensee asks the NRC staff to reconsider its analysis of the first and third mitigation/escalation factors which are addressed in the Modified Enforcement Policy. These factors were addressed in the NRC's April 29, 1988 letter to CECo. The first mitigation/escalation factor is for identification and prompt reporting. The licensee agrees that the NRC staff first identified the AMP splice issue and, in retrospect, admits it might have taken advantage of the identification of degrading splices in Dresden Unit 2 to repair or replace identical splices in Dresden Unit 3; however, the licensee does not believe these facts merit escalation of the base civil penalty because NRC and the licensee considered the deficiency to be a minor documentation problem until the test failure. The licensee contends that the NRC did not give credit for its testing efforts and prompt reporting of the test failures.

With regard to the third mitigation/escalation factor, corrective actions, the licensee contends it did not operate with unqualified splices for a period of six months as indicated in the NRC's April 29, 1988 letter and that the licensee took the corrective actions called for by the NRC staff (supplying additional documentation and analyses in accordance with the established schedule).

5. NRC Evaluation of Licensee's Response

In regard to the first factor, the NRC staff notes that CECo agrees that the AMP splice issue was identified by the NRC. In addition, CECo had numerous opportunities to identify and correct this problem since it was aware that splices in Dresden Unit 2 were seriously degraded and identical splices were installed in Dresden Unit 3. In view of the above arguments, the NRC staff concludes that there is no adequate basis for changing the NRC staff's position regarding the first factor and concludes 50 percent escalation of the base civil penalty based on this factor is appropriate. The licensee's arguments regarding the NRC staff's categorization of the AMP splice qualification deficiencies as a minor documentation problem and credit for the testing performed by the licensee are more appropriately considered under the factor of corrective actions.

In regard to the third factor of corrective actions, the NRC staff does not agree that the AMP splice qualification deficiencies were considered to be minor. Once the splice deficiencies were identified, rather than requiring an immediate shutdown, the NRC staff allowed the licensee some time to pursue the identification and collection of additional information which could prove qualification of the splices. Continued discussions with the NRC staff failed to demonstrate to the NRC staff that qualification had been shown. The NRC staff agrees that Dresden Unit 3 did not operate for six months with unqualified splices; however, it did operate for more than 100 days (August 24, 1986 to December 6, 1986) and the violation existed from November 30, 1985 (EQ deadline) until December 6, 1986, a period of more than a year. In addition, the NRC staff has concluded that the time expended in making an operability or qualification determination, the quality of the supporting analysis (prior to December 4-5, 1986), and the nature and extent of the licensee's effort to come into compliance were deficient and do not provide a basis for mitigation of the civil penalty. A careful review of the file should have revealed the deficient nature of the qualification file. The NRC

staff considers it inappropriate to either mitigate or escalate the base civil penalty in regard to this factor recognizing the licensee did shutdown operating units upon learning of the test failures, but also recognizing the extended period of time during which the plant operated with splices for which qualification was not demonstrated.

6. Licensee's Request for Consideration of Safety Significance

The licensee expressed its concern as to the fairness of the NRC's enforcement policy not to consider operability arguments in assessing the safety significance of an EQ violation.

7. NRC Evaluation of Licensee's Response

The Modified Enforcement Policy is based on the requirement that licensees were to establish a master list of equipment which identified all electrical equipment important to safety. Equipment on this list is required to be environmentally qualified. If a component is on this list, or should have been on the list, the component has safety significance (importance to safety). Consequently, the failure to demonstrate qualification for such a component has safety significance. The NRC staff believe that to further explore and assess the safety significance of the failure or potential degradation of components for which a significant qualification deficiency was found would not be productive and diverts attention away from the root cause of the EQ violation.

8. Conclusion

The NRC staff concludes the violation occurred as stated and no adequate basis has been provided for withdrawing the violation or reducing the amount of the proposed civil penalty. Therefore, the NRC concludes that a $150,000 civil penalty should be imposed.

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[Docket Nos. 50-254 and 50-265 Licenses Nos. DPR-29 and DPR-30 EA 87-82]

Commonwealth Edison Co.; Quad Cities, Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (licensee) is the holder of Operating Licenses No. DPR-29 and No. DPR-30 issued by the Nuclear Regulatory Commission (NRC or Commission) on October 1, 1971 and March 13, 1972, respectively. The licenses authorize the licensee to operate the Quad Cities Nuclear Power Station, Units 1 and 2, in accordance with the conditions specified therein.

II

Special safety inspections of the licensee's activities were conducted on December 9, 1986 and during the period June 8 through July 28, 1987. The results of the inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated October 20, 1988. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by two letters dated November 21, 1988 and an additional letter dated December 19, 1988. In its response, the licensee made a qualified admission that a violation of 10 CFR 50.49 requirements occurred, but argued that the imposition of a civil penalty in this case would not be consistent with the NRC's Modified Enforcement Policy because the licensee should not clearly have known of the violation. The licensee also requested that the NRC staff reconsider its analysis of the mitigation factors, as set forth in the Modified Enforcement Policy (Generic Letter 88-07). Finally, the licensee claimed that the proposed penalty is also inconsistent with the Modified Enforcement Policy because the NRC is penalizing Commonwealth Edison Company twice by issuing identical violations for Dresden and Quad Cities and the amount of the penalty is unfair because another licensee received a lower penalty for the same violation.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that (1) the violation occurred as stated, (2) the NRC has properly applied the "clearly should have known" test of the Modified Enforcement Policy, and (3) that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by 50% of the base civil penalty.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered*, That:

The licensee pay a civil monetary penalty in the amount of Seventy-Five Thousand Dollars ($75,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, 20555, with copies to the Assistant General Counsel for Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, and the NRC Resident Inspector, Quad Cities Nuclear Power Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, and

(b) Whether, on the basis of the violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 3rd day of May 1989.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusion

In its November 21, 1988, response to the October 20, 1988 Notice of Violation

and Proposed Imposition of Civil Penalty (Notice) for the Quad Cities Stations, Units 1 and 2, Commonwealth Edison Company (CECo) admits that it was unable to demonstrate that the AMP splices were environmentally qualified, based on the resutls of testing conducted at CECo initiative in December 1986. The licensee does not agree that the documentation in its files as of December 6, 1986, was so inadequate that it should have clearly known that the AMP splices were not properly qualified in accordance with the DOR Guidelines by type testing and analysis. The violation is restated below, followed by a summary of the licensee's response, the NRC's evaluation, and the conclusion.

1. Restatement of Violation

10 CFR 50.49(f) requires each item of electrical equipment important to safety to be environmentally qualified by testing and/or analysis.

10 CFR 50.49(k) specifies that requalification of electrical equipment important to safety is not required if the Commission has previously required qualification in accordance with "Guidelines for Evaluation of Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors," November 1979 (DOR Guidelines).

DOR Guidelines, Section 5.2.2, states that type tests should only be considered valid for equipment identical in design and material construction to the test specimen and any deviations should be evaluated as part of the qualification documentation.

Contrary to the above, from November 30, 1985 until December 6, 1986, AMP nylon-insulated butt splices, used in numerous items of electrical equipment important to safety, were not properly environmentally qualified in accordance with DOR Guidelines by type testing. While a type test was done, the tested splices were not demonstrated to be identical to the installed AMP splices and this deviation was not evaluated as part of the documentation in the qualification file.

2. Summary of Licensee's Response

CECo made a qualified admission that a violation of the requirements of 10 CFR 50.49 occurred, but CECo argued that the imposition of the proposed civil penalty in this case is not consistent with the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Enforcement Policy), principally because the NRC's staff's finding that CECo "clearly should have known" that the AMP splices were not qualified is largely based on impermissible hindsight. In addition, the licensee claimed that the proposed penalty is inconsistent with the Modified Enforcement Policy because the NRC is penalizing CECo twice by issuing identical violations for Dresden and Quad Cities; and that the amount of the penalty is unfair because Iowa Electric (Duane Arnold) received a lower penalty of $50,000 for the same violation. The licensee stated that in the alternative, the amount of the proposed civil penalty should be reduced. This is because the analysis in the NRC staff's October 20, 1988 letter of the four mitigation and escalation factors set forth in the Modified Enforcement Policy is flawed by the improper use of hindsight and by the failure to give any credit to CECo for its initiative in testing the AMP splices.

3. NRC Evaluation of Licensee' Response

a. Hindsight

In regard to hindsight, the licensee asks:

(1) *Did the NRC Staff Expect the AMP Splices to Fail the December 1986 Tests?*

The NRC staff finds that considering whether it expected failures to occur during testing is not relevant to establishing whether the licensee clearly should have known of the AMP splice deficiency. The NRC staff concludes that the facts of the AMP splice issue, as detailed below, establish that CECo clearly should have known of the splice qualification deficiencies.

As documented in the Region III March 24, 1986 inspection, eighteen of three hundred Dresden Unit 2 splices were replaced in 1983 due to insulation embrittlement. In January 1985, further splice insulation degradation was observed in Dresden Unit 2 and in October 1985, all splices in Dresden Unit 2 were replaced due to embrittled insulation cracking and "falling off" when the splices were moved. The NRC's March 24, 1986 Inspection Reports No. 50-237/86006(DRS) and No. 50-249/86009(DRS) stated that the NRC was concerned that the AMP splices might have a shorter qualified life than calculated by the licensee and that future failures in Unit 3 could occur during plant operation.

The intent of the March 24, 1986, limited inspection at Dresden was to review the licensee's immediate corrective action in regard to the degraded AMP nylon splices in Unit 2. The documentation in the licensee's files at that time was confusing and not auditable. The inspectors identified EQ concerns and informed the licensee that a more detailed inspection would be performed during the upcoming NRC EQ team inspection in May 1986. The inspectors did not have any immediate safety concerns because (1) no degradation had yet been identified in Unit 3; and (2) the licensee insisted that the installed splices were in fact identical in material and construction to the tested splices, and that they could demonstrate through additional documentation that the AMP splices were qualified.

During the NRC team inspection at Dresden in May 1986, the staff concluded that the tested splices were not sufficiently similar to the installed butt splices to qualify them. Unit 3 was not operating and the licensee committed to resolve the qualification issues prior to startup. Later the licensee informed the NRC that similarity analysis qualified the splices prior to plant startup. This corrective action was to be reviewed by the NRC during a future inspection, as stated in the cover letter of NRC Inspection Reports No. 50-237/86013 and 50-249/86015. The licensee's corrective action was subsequently reviewed as part of an NRC inspection at Quad Cities Station during the period June 8, through July 28, 1987 and was found to be inadequate. If the NRC had reviewed this corrective action prior to the December 1986 tests, the NRC would had required the licensee to follow the requirements of Generic Letter 86-15.

In conclusion, a documented test and any necessary analysis was needed to determine if the AMP splices would perform as intended during an accident. Based on the inadequate documentation in the licensee's files at the time of the NRC Dresden EQ site inspections and based on the observed degradation of the splices during 1983 through 1985 in Dresden Unit 2, the NRC staff concluded there were significant questions as to whether these splices were qualifed and that the licensee clearly should have recognized these questions.

(2) *If the AMP Splices Had Passed the Tests, Would the NRC Staff Now be Proposing a $150,000 Civil Penalty?*

If the AMP splices had passed the tests, the enforcement action proposed in the Notice would have been the same. The NRC's policy in the EQ area has been presented in Generic Letters (GL) 85-15 nd 88-07. Both GLs state that unqualified equipment means equipment for which there is not adequate documentation to establish that such equipment will perform its intended functions in the relevant environment. While in certain cases, the ability to quickly obtain documentation may result in a violation of reduced severity

levels, this provision does not apply to testing. The NRC's position provided in GL 88-07 is that the results of testing done after deficiencies are identified would not be considered. The NRC staff's position is that 10 CFR 50.49 required licensees to assure that electrical equipment important to safety was qualified for its application prior to the November 30, 1985 deadline. Sufficient documentation to assure qualification was required to be contained in the EQ file prior to the deadline. As such, testing conducted after identification of the deficiencies after the deadline has no bearing on whether a violation occurred.

The NRC identified this deficiency in March 1986 and again in May 1986. Even if the AMP splices had passed the December 1986 tests, the licensee had not demonstrated the splices to be qualified prior to the November 30, 1985 EQ deadline or during or shortly thereafter the NRC inspections of March and May 1986. Any subsequent testing or analysis whether demonstrating qualification or not does not affect the application of the Modified Enforcement Policy.

b. Application of the Clearly Should Have Known Test

The licensee argues that it is not reasonable to conclude that it clearly should have known that its EQ documentation was inadequate prior to December 1986. The following facts refute its argument.

(1) The licensee's response referenced previous NRC inspection findings (Inspection Report 50-254 and 50-265/78-25). The licensee asserted that those findings accepted the environmental qualification of AMP pre-insulated butt connectors (nylon window splices). While it is correct that the inspector reached that conclusion, the basis of his acceptance needs to be considered. The qualification of the splices was accepted based on statements made in a General Electric letter dated April 28, 1978 and the fact that the test configuration was in accordance with the guidance of IE Circular 78-08. However, that test configuration did not include exposure to radiation and steam environments simultaneously, which was subsequently required by the DOR Guidelines (issued as an attachment to IE Bulletin 79-01B) to be included either during testing or by performing a separate analysis (testing combined with analysis). Therefore, after issuance of the DOR Guidelines the licensee clearly should have recognized that the inspector's basis for acceptance of qualification was no longer necessarily valid.

(2) In January 1985, the licensee identified degraded nylon AMP splices in Dresden Unit 2. In September 1985, severe degradation was identified in all remaining Dresden Unit 2 nylon AMP splices, such that all the splices had to be replaced with Raychem Heat Shrink Tubing (HST). The licensee clearly should have known that qualification of these splices would need further review since they had degraded prior to their qualified life. Since the same splices were installed at Quad Cities the same questions should have been examined there as the NRC expects licensees to evaluate problems at one site for applicability at others. With respect to this argument, the discussion in the Appendix to the Order Imposing Civil Penalty for violations of 10 CFR 50.49 occurring at Dresden Station, Unit 3, issued this same date, is incorporated herein.

(3) The DOR Guidelines identify nylon as degradable, and as a material that has a potential for significant aging within ten years under normal operating conditions. The licensee qualified its equipment to DOR Guidelines in both Dresden and Quad Cities Stations, and clearly should have known that these splices were degradable and needed special attention during qualification. The GE F01 penetration test report (R. M. Schuster, April 30, 1971) on which CECo relied to qualify the AMP nylon splice for radiation did not test the splices for radiation and did not test splices made by AMP. This matter was discussed in GE letter G-EBO-8-121 dated April 28, 1978. The AMP test report (No. 110-11004, February 1982) presented by the licensee to qualify the splices for radiation did not test any AMP nylon splices. Thus, the licensee clearly did not have valid EQ documentation to qualify these splices and did not perform adequate reviews to resolve the inadequacy of these documents. The GO F01 penetration test report and subsequent correspondence between GE and CECo indicated that GE did test a kind of nylon splice and that these splices did pass the test; however, this test only qualified a nylon splice for an environment where radiation and steam were not present simultaneously. The licensee should have known this test did not identify the formulation of the nylon tested and that the tests did not simulate the plant conditions at Quad Cities Station. Clearly, the licensee did not have vendor supplied documentation in its EQ file that demonstrated that AMP splices were qualified.

(4) A GE Series 100 penetration test report, as described in GE letter G-EBO-2-031 was submitted by the licensee during the enforcement conference on June 5, 1987 and it was also discussed during the Region III Quad Cities EQ inspection of June 8-12, 1987. The licensee argued that the Series 100 report, which was in the licensee's files before November 30, 1985, adequately addressed the NRC staff's concerns about the earlier AMP (No. 110-11004) and GE (R.M. Schuster, April 1971) test reports relating to radiation qualification and therefore demonstrated the qualification of the installed splices. The licensee clearly should have known that the existence of the report in its files prior to November 30, 1985 did not demonstrate qualification of the installed splices. If prior to the deadline the licensee had adequately reviewed the references provided in the report, questions would have arisen concerning the adequacy of the report. One such reference was a GE letter (GE-EBO-2-192 dated 9/7/82) that forwarded to the licensee an electrical penetration environmental study, dated 8/27/82, conducted by GE for the Dresden and Quad Cities Stations. The list of components in this study identified shrinkable tubing and, under Note 2 listed as applicable to this item, indicated that the tubing was used as a "cover for insulated splice." The nylon splice vendors listed included AMP. It was not established which kind of splice used in production was actually tested and it appeared that the splice which had been tested had been protected from the harsh environment by the tubing (apparently intended to be installed on production penetration assembly splices as well). Thus, the tested splices were not only protected from some environmental degradation during testing, but also were prevented from causing electrical faults resulting from moisture intrusion or gross failure of their insulation under accident conditions. The splices installed in the penetrations in Quad Cities however, were unprotected.

Based on the above facts, the NRC staff concludes the licensee clearly should have known the AMP splices were unqualified.

c. CECo Penalized Twice for a Single Alleged Violation

The licensee argued that should the NRC staff conclude that CECo clearly should have known of the violation, a civil panalty should not be proposed for Quad Cities because the identical issue was cited at Dresden. In the licensee's view the assessment of two civil penalties for identical violations at two

separate facilities is inconsistent with the Modified EQ Enforcement Policy.

The following shows that CECo has not been penalized twice for a single alleged violation. Each CECo nuclear facility is separately licensed and is required to follow 10 CFR Part 50 regulations and the conditions of its license. Therefore, as a matter of law, a CECo facility would not be exempt from an escalated enforcement action simply because it could be shown that a similar or identical problem or violation had occurred at another CECo facility. That the Dresden and Quad Cities EQ programs were largely developed independently leads the NRC staff to conclude that rather than one mistake this was the same mistake made twice. The NRC staff acknowledges that the licensee does have a corporate EQ engineering staff but the EQ staffs at the individual plants along with their consultants (Sargent and Lundy at Dresden and Bechtel and WESTEC at Quad Cities) made independent EQ decisions relating to the qualification of individual components and equipment. Furthermore, the Modified Enforcement Policy permits separate enforcement actions for violations occurring at separate facilities, whether these violations are independent or not. The Modified Enforcement Policy does not suggest that licensees are not responsible for identical violations occurring at two separate facilities. In short, what the NRC found at the Dresden and Quad Cities facilities was not a single violation, but two separate violations.

Therefore, having reviewed all the above considerations, the NRC staff concludes that separate violations and proposed civil penalties are appropriate.

d. Proposed Civil Penalty Unfair Given the Civil Penalty Proposed in a Similar Case

The licensee claimed that the $150,000 proposed penalty is unfair, given that Iowa Electric received a proposed civil penalty of only $50,000 for the same violation. As with all enforcement actions, the nature of the particular violation merely establishes the severity level at which it will be considered. Once the severity level is determined, the escalation and mitigation factors must be applied to the base civil penalty. Thus, given the same violation under different circumstances it is probable that a different proposed civil penalty will result. Both the Quad Cities and the Duane Arnold enforcement actions were categorized as Category B violations under the Modified EQ Enforcement Policy. In the Quad Cities case, CECo was aware of the severe nylon AMP butt splice failures at Dresden Unit 2 early in January 1985 which resulted in the Dresden Unit 2 splices being replaced in October 1985. In spite of this awareness, CECo did not question its EQ testing program or replace splices at Quad Cities Units 1 and 2. Iowa Electric, however, was not aware of the Dresden Unit 2 1985 splice failures, and when alerted to the AMP test failures in December 1986, Iowa Electric immediately replaced all AMP splices inside and outside the drywell at Duane Arnold, including the AMP Kynar splices. (Kynar splices were later found to be also unqualified). Therefore, once Iowa Electric learned of the problem it was significantly more responsive to immediate safety concerns regarding its plant than CECo was when it first had reasonable indication of a problem.

4. Other Mitigation/Escalation Arguments

The licensee questioned the NRC's failure to give credit to CECo for the corrective actions taken, including taking the initiative in testing the AMP splices. The corrective actions mitigating factor, as defined in Generic Letter 88-07, places emphasis on (1) the time taken to make an operability or qualification determination; (2) the quality of any supporting analysis; and (3) the nature and extent of the licensee's efforts to come into compliance. The licensee's performance in the first two of these areas was unacceptable. Earlier in this Appendix the NRC staff established that CECo should reasonably have known of the problem at Quad Cities and acted to correct it based on the NRC's concerns at Dresden. Although the licensee did take the initiative in testing the AMP splices, this was not fully accomplished until more than a year after the EQ deadline for qualification. Moreover, CECo tested the AMP splices only in response to the NRC's questions about qualification of the splices. When the splices subsequently failed during testing, the corrective actions necessary following this self-disclosing event were obvious. Additionally, following the NRC inspection at Dresden, the licensee's efforts to come into compliance by supporting its analysis were found unacceptable and the NRC staff's concerns relating to the adequacy of the analysis were made known to the licensee at various times after the deadline.

The licensee incorporated into its answer to the Notice other arguments regarding the mitigation and escalation factors that it made in its answer to the Notice of Violation and Proposed Imposition of Civil Penalty that the NRC issued to the licensee for Violations at Dresden, Unit 3. With respect to these other arguments, such as the NRC considering his a minor documentation deficiency, the discussion in the Appendix to the Order Imposing Civil Penalty for Violations of 10 CFR 50.49 occurring at Dresden Unit 3, issued this same date, is incorporated herein. In summary, although the extent and nature of the licensee's efforts to come into compliance ultimately resulted in the problem being corrected, the NRC staff finds no basis for mitigation for corrective actions.

In reevaluating the application of the mitigation and escalation factors in this case, the NRC has determined that escalation for the failure to identify the violation at Quad Cities is not appropriate. While the licensee's staff at Quad Cities should reasonably have identified the AMP splice problem well before CECo's test made the problem self-evident, the NRC did not identify the AMP splice problem at Quad Cities. Accordingly, the NRC finds that neither escalation nor mitigation based on identification is warranted and the NRC's proposal to escalate the proposed civil penalty by 50% is withdrawn.

5. Conclusion

This violation occurred as stated, and an adequate basis for withdrawing the violation has not been provided. After reconsidering the escalation and mitigation factors, it has been concluded that the previous escalation of the civil penalty by 50% because the licensee failed to identify the violation was inappropriate. Consequently, the proposed civil penalty in the amount of $150,000 should be reduced by 50% and a $75,000 civil penalty should be imposed.

[FR Doc. 89-11317 Filed 5-10-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 115 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance to be implemented within 30 days of issuance.

The amendment consists of new Technical Specifications (TS) and revisions to existing Technical Specifications that provide limiting conditions for operation (LCO) and surveillance requirements in response to Generic Letter (GL) 83-37, as applicable to the Haddam Neck Plant. Technical Specifications have been provided for the following: (1) Post-accident Sampling, (2) Sampling and Analysis of Plant Effluents, (3) Containment Pressure Monitor, (4) Reactor Coolant System Vents, (5) Noble Gas Effluent, (6) Containment High-Range Radiation Monitor and (7) Instrumentation for Detection of Inadequate Core Cooling. GL 83-37 also addressed TS associated with the Long Term Auxiliary Feedwater Evaluation, Containment Water Level Monitor, Containment Hydrogen Monitor and Control Room Habitability Requirements. These items are being reviewed by other programs (TS upgrade and Integrated Safety Assessment Program).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 2, 1988 (53 FR 44263). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated July 1, 1988, as supplemented December 2, 1988 and March 1, 1988, (2) Amendment No. 115 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Russell Library, 123 Broad Street, Middletown, Connecticut.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 4th day of May 1989.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-11316 Filed 5-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Duke Power Company (licensee), for amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to the licensee for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina. Notice of Consideration of Issuance of these amendments was published in the **Federal Register** on June 18, 1986 (51 FR 22235).

The purpose of the licensee's amendment request was to revise a March 18, 1983, Confirmatory Order to reflect new implementation schedules for certain NUREG-0737 items based upon their actual implementation or replacement dates.

The NRC staff has reviewed the request and determined that since each of the items is now installed and currently operable, the proposed change would not serve a purpose commensurate with its associated resource expenditure. Accordingly, the staff concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated May 5, 1989.

By June 12, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Mr. A.V. Carr, Esquire, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 14, 1985, and (2) the Commission's letter to the licensee dated May 5, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 5th day of May 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-11314 Filed 5-10-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

New Rule 52, File No. 270-326.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission has submitted for OMB approval proposed Rule 52 under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) ("Act"). Public-utility subsidiary companies of registered holding companies would be allowed, pursuant to proposed Rule 52, to issue and sell certain securities without filing an application, as now required, if certain conditions are met. Within ten days after the issue or sale of any security exempt under proposed Rule 52, the

issuer or seller must file with the Commission a certificate of notification on Form U-6B-2 containing the information prescribed by that form. There are approximately 70 registered public-utility subsidiary companies that would be required to use Form-U-6B-2, with an estimated compliance time of thirty minutes per applicant. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Project 2335-040B) Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

May 3, 1989.

[FR Doc. 89-11372 Filed 5-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26785; File No. SR-MCC-89-01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Granting Accelerated Approval to Proposed Rule Change

On April 4, 1989, the Midwest Clearing Corporation ("MCC") filed with the Commission a proposed rule change under Section 19(b) of the Securities Exchange Act of 1934 ("Act"). As discussed below, the proposal provides for accelerated processing of over-the-counter ("OTC") trades. MCC requested accelerated approval of the proposal. Notice of the proposed rule change was published in the **Federal Register** on April 26, 1989, to solicit comments from interested persons.[1] No comments were received. This order approves the proposal on an accelerated basis.

I. Description of the Proposal

The proposed rule change consists of modifications to MCC's OTC Trade Comparison System. Specifically, the proposal would accelerate by one business day the processing of OTC trades.

Currently, clearing members are required to submit OTC trade data to MCC by 3:00 p.m. (c.s.t.)[2] on the business day following trade date ("T+1").[3] MCC issues trade reports reflecting trade data submitted by the clearing members and the results of the comparison process by 7:00 a.m. on T+2. Under the proposed new procedures, clearing members generally would be required to submit trade data by 4:45 p.m. on trade date. Trades submitted on T+1 or later would have to be submitted as "As-of" trades. MCC would report trade data to clearing members by 7:00 a.m. on T+1 and clearing members would have until 3:00 p.m. on T+1 to submit adjustments. MCC would issue the corresponding output by 7:00 a.m. on T+2.

II. Rationale

MCC believes that the proposed rule change is consistent with the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions. MCC states in its filing that the proposed OTC acceleration should significantly reduce clearing member financial exposure on potential problem trades by accelerating the trade resolution and reporting process by approximately one day.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The proposal, by shortening the comparison cycle for OTC trades, would reduce the risk exposure to investors and to MCC clearing members as well as contribute to the prompt and efficient clearance and settlement of securities transactions.

The Commission notes that the proposed rule change is similar to a proposed rule change filed with the Commission by the National Securities Clearing Corporation ("NSCC").[4] For the reasons discussed in the order approving the NSCC proposal,[5] the Commission believes this proposal will reduce the length of the comparison cycle for OTC trades and, more specifically, make MCC's comparison process for OTC trades: (1) Safer with regard to the risks of market price volatility, and (2) more efficient in terms of the time and expense involved in trade processing. Further, the proposal would help protect investors and other persons that safeguard investors' funds and facilitate their transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, so that MCC can implement the accelerated OTC processing at the same time NSCC's accelerated trade comparison procedures become effective. Notice of NSCC's proposal appeared in the **Federal Register** on March 8, 1989.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b) of the Act that the above-mentioned proposed rule change (File No. SR-MCC-89-01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 4, 1989.

[FR Doc. 89-11320 Filed 5-10-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 26740 (April 18, 1989), 54 FR 18059.

[2] All times referred to herein are Central Standard Time.

[3] MCC notes in its filing that the required cut-off time for submission of trade input is dependent upon the particular method of input (*e.g.*, manual submission, magnetic tape, terminal, etc.).

[4] *See* Securities Exchange Act Release No. 26525 (March 1, 1989), 54 FR 9958, publishing notice of a proposed NSCC rule change that would accelerate the comparison cycle for OTC and non-New York Stock Exchange trades and move up the trade resolution process by one day [Filed No. SR-NSCC-89-02].

[5] *See* Securities Exchange Act Release No. 26783 (May 4, 1989), approving File No. SR-NSCC-89-02.

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and to Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

May 5, 1988.

The Midwest Stock Exchange, Inc. ("MSE") on April 28, 1989, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 "(Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-4503	COMM	Cellular Communications. $1.00 Par Value.
7-4504	CMCSA	Comcast Corp. Cl A. $.01 Par Value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-4505	BBEC	Blockbuster Entertainment. $.10 Par Value.
7-4506	INGR	Intergraph Corp. $.10 Par Value.

In the case of BBEC, a replacement issue is being requested due to its recent listing on the New York Stock Exchange, thus rendering it ineligible for continued OTC/UTP on the MSE. In the case of INGR, a replacement issue is being requested as a result of extremely low volume.

Comments

Interested persons are invited to submit on or before May 26, 1989, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

Commentators also should address whether the requested withdrawal of UTP would be consistent with section 12(f)(4) of the Act. That section empowers the Commission to grant a request for withdrawal if, to do so, is necessary or appropriate in the public interest or for the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-11321 Filed 5-10-89; 8:45 am]

BILLING CODE 8010-01

DEPARTMENT OF STATE

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual meeting on Wednesday, June 21, 1989, at 9:30 a.m. in Conference Room 1205, Department of State Building, 2201 C Street NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council Program of Educational Assistance
  (a) Final Reports of 1987 Program and Progress Report on 1988 Program
  (b) Council's Efforts in Securing Contributions for 1989 Program
  (c) Progress Report of the Subcommittee to Increase the Participation of U.S. Corporations and Foundations in Council Programs
  (d) Meeting with the Directors of the Overseas Schools Regional Associations at the AAIE Conference in Orlando, Florida on February 27, 1989
  (e) Report on Establishing A Principals Training Center
II. Highlights of Carnegie Educational Mission to the Peoples Republic of China and Business Round Table Conference in Washington
III. Overseas Schools Fund Raising Drives and Activities of Overseas Schools Regional Associations
  (a) Report of the Subcommittee to Increase U.S. firms Participation in Local Activities of the American-sponsored Overseas Schools
IV. Council's Communication with U.S. Corporations and Foundations
V. Selection of Date of Council's Executive Committee Meeting

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas Schools Advisory Council, Department of State, Room 333, SA-1, Washington, DC 20522-0103 or telephone Ms. Joyce Bruce on area code 202-663-1603, prior to June 21. The public may participate in discussions at the Chairman's instructions.

Date: May 1, 1989.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 89-11343 Filed 5-10-89; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1282]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 pm on May 31, 1989, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 62th Session of the Council of the International Maritime Organization (IMO) which is scheduled for 5-9 June 1989 in London. In particular, the SHC will discuss the development of U.S. positions dealing with, inter alia, the following topics:

—Reports of the Major Committees
—Financial Matters
—Personnel Matters

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CI), 2100 Second Street, SW., Washington, DC 20593 or by calling: 202-267-2280.

Date: April 27, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-11344 Filed 5-10-89; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to

the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523

Type of Request: Regular submission

Title of Information Collection: 1989 Commercial and Industrial Survey: Customers of Municipal and Cooperative Distributors of TVA Power

Frequency of Use: On occasion

Type of Affected Public: Businesses or other for-profit and small businesses or organizations

Small Businesses or Organizations Affected: Yes

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 4,000

Estimated Total Annual Burden Hours: 1,333

Estimated Average Burden Hours Per Response: .33

Need For and Use of Information: The 1989 Commercial and Industrial Survey will provide information about the 384,000 commercial and industrial customers served by the municipal and cooperative distributors of TVA power. This information is required by numerous organizations within TVA for load forecasting and programming purposes.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-11345 Filed 5-10-89; 8:45 am]

BILLING CODE 8120-01-M

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, Tn 37401; (615) 751-2523

Type of Request: Regular submission

Title of Information Collection: Farmer Questionnaire—Vicinity of Nuclear Power Plants

Frequency of Use: On occasion

Type of Affected Public: Individuals or households, and farms

Small Businesses or Organizational Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 1200

Estimated Total Annual Burden Hours: 600

Estimated Average Burden Hours Per Response: 5

Need For and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-11346 Filed 5-10-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Traffic Airports; Allocation of Temporary Slots; Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to conduct a lottery to allocate temporary air carrier slots which have become available due to the nonoperation of certain permanent slots at the four high density traffic airports since March 1989. The temporary slots will be allocated only for the period that unused airports capacity exists and are subject to recall by the FAA on 7 days notice.

DATES: *Meeting:* The meeting will be held on Monday, May 22, 1989, beginning at 10:30 a.m.

Requests to participate: Notice of intent to participate must be received by 5:00 p.m., May 17, 1989.

ADDRESSES: The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue SW., Washington, DC.

Requests to participate in the lottery should be submitted to:

Office of the Chief Counsel, Slot Administration Office, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Requests to participate may also be transmitted by facsimile at (202) 267-5027; or by ARINC message to DCAYAXD, Attn: AGC-230. Requests to participate will not be accepted over the telephone.

FOR FURTHER INFORMATION CONTACT: Patricia Lane, Airspace and Air Traffic Law Branch, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the notice number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93-49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The rule established procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the High Density Rule, 14 CFR Part 93, Subpart K: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated slots will be distributed by lottery.

On March 3, 1989, Eastern Air Lines experienced a strike by its machinists. A large number of other employees honored the strike, requiring the carrier to substantially scale down its operations. On March 9, Eastern petitioned for protection of the U.S. Bankruptcy Court for reorganization under Chapter 11 of the Bankruptcy Code. As a result of the reduced schedule, Eastern is operating none of its slots at Kennedy International Airport and O'Hare International Airport and only some of its slots at LaGuardia and Washington National Airports. Under current slot regulations, Eastern may retain its allocated slots without operating them or temporarily transferring them to another carrier, to the extent that such operation is effectively precluded by a strike.

Allocation of Temporary Airport Capacity

Each slot not being operated by Eastern results in unused airport capacity and a reduction in potential air transportation services to the traveling public. In the interest of maintaining the most efficient use of the capacity of the four high density traffic airports and providing the maximum air service to the public under the circumstances, the Secretary of Transportation has directed a limited slot allocation to promote use of this temporary airport capacity.

Accordingly, the FAA will create temporary slots at each of the four high density airports to permit allocation of current unused airport capacity. The slots created will be temporary special slots generally corresponding to the slot times currently not used by Eastern. The temporary slots will be allocated in accordance with the standard lottery procedures set forth in FAR § 93.225 with the limited exceptions noted below under "Requests to Participate." FAA will recall each temporary slot if Eastern resumes operation or transfers a slot at the same time period as the temporary slot. Operation of a temporary slot must cease within 7 days after notification by the FAA that the slot is being recalled. The limited allocation and the 7-day recall will ensure that actual operations at high density airports do not exceed the limits specified in FAR § 93.123(a) even if Eastern resumes or transfers the slots to another carrier.

The temporary slots to be allocated are not the slots held by Eastern or any other carrier. This allocation does not affect the rights of any current slotholder to use or transfer its slots at any time in accordance with FAR Part 93, Subparts K and S.

The list of slots available for distribution by lottery will be available Friday, May 12, 1989. Slots not selected at the lottery or returned for nonoperation after the lottery may be allocated administratively under FAR § 93.226. An additional lottery may be held in the future if warranted by the number of temporary slots available and the demand for such slots.

Notice of Lottery

Time: Air carrier lottery: 10:30 a.m., May 22, 1989.

Place: Third Floor Auditorium, FAA Headquarters, 800 Independence Avenue SW., Washington, DC.

Requests to Participate: Special procedures will be in effect for requests to participate in the lottery, and the procedures contained in § 93.225(e) will not apply. All carriers, including carriers currently operating at the high density traffic airports, must notify the FAA of their intention to participate in the lottery. Incumbent carriers will not be included automatically in the lottery. Air carriers intending to participate will be included in the appropriate lottery for the airport upon written notification received by the FAA by 5:00 p.m. on May 17, 1989, of the operator's desire to participate.

Requests to participate may also be transmitted by facsimile to (202) 267-5027 or by ARINC message to DCAYAXD, Attn: AGC-230. Requests to participate will not be accepted over the telephone. Notifications of intent to participate in the lottery submitted by mail must be sent to the address listed above under "**ADDRESSES.**"

A list of the air carrier slots to be allocated will be prepared by the FAA and will be available upon request on May 12, 1989. Interested carriers should contact the FAA Slot Administration Office at (202) 267-3915 to request a list of available slots.

Lottery Procedures: With the exception of the notification procedure contained in § 93.225(e), slots will be allocated in accordance with the lottery procedures set forth in FAR § 93.225. The procedures for the lottery at each airport may be summarized as follows:

1. A random lottery will be held to determine the order of slot selection.

2. During the first selection sequence, 25 percent of the slots available at each airport but no fewer than two slots shall be reserved for selection by new entrant carriers.

3. Each carrier will make its selection in the order determined in the initial sequence lottery, except that only new entrant carriers will be permitted to make selections until the percentage of slots set aside for new entrants is selected (or all new entrants have completed their first-round selection). The normal sequence will resume at that time, beginning with the first incumbent carrier passed over during the new entrant selections.

4. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

5. Each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order.

Limitations on temporary slots: An allocation of airport capacity which will exist for an indefinite temporary period requires that the temporary slots allocated be recoverable on short notice and that the slots not be integrated into the permanent slot pool. Accordingly, the temporary slots allocated by this lottery are subject to the following special condition. To the extent consistent with the special restrictions below, the slots are also subject to all other conditions and limitations contained in FAR Part 93, Subparts K and S. Selection of a temporary slot in the lottery represents the selecting carrier's agreement to comply with all restrictions on the use and transfer of each such slot.

1. A slot obtained in the lottery and not used within 30 days from the date of the lottery shall be recalled by the FAA. The longer periods before operation permitted under FAR § 93.227(b) are not practical in view of the limited duration of these slots.

2. A carrier selecting a temporary slot in the lottery must notify the FAA Slot Administration Office of the intended start date for operation of the slot.

3. A slot obtained in the lottery may be recalled by the FAA on 7 days prior notification by the FAA to the carrier. Operation of the slot must cease within 7 days of the notification.

4. Slots obtained in this lottery may not be sold or traded, except on a one-for-one basis for other slots obtained in this lottery at the same airport.

5. The use-or-lose requirements set forth in 14 CFR Part 93.227(a) shall apply to each slot obtained in this lottery beginning on the first day the slot is operated. Use of the slot shall be reported in accordance with § 93.227(i).

6. Each slot placed in the lottery pool will be assigned a special withdrawal priority number. When recall of a temporary slot is necessary, FAA will withdraw slots at the appropriate time period in the order of the withdrawal priority numbers assigned. FAR

paragraph 93.223(f), which provides that slots will not be withdrawn from a carrier holding 8 or fewer slots, shall not apply to temporary slots allocated in this lottery.

Public Process

The meeting is open to the public and all interested persons are invited to attend.

Issued in Washington, DC on May 5, 1989.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 89-11278 Filed 5-5-89; 4:47 pm]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Elmira North-South Arterial, South Section City of Elmira, Town of Southport, Chemung County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project on the Elmira North-South Arterial, South Section, City of Elmira, Town of Southport, Chemung County, New York.

FOR FURTHER INFORMATION CONTACT: Frank H. Platt, District Engineer, Federal Highway Administration, Leo W. O'Brien Federal Building, Ninth Floor, Clinton Avenue and Pearl Street, Albany, New York 12207, Telephone (518) 472-2860.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation, will prepare a supplement to the final environmental impact statement (EIS) on a proposal to construct a portion of the Elmira North-South Arterial, South Section, in the City of Elmira and Town of Southport, Chemung County, New York. The original EIS for the arterial highway (FHWA-NYS-EIS-73-05F) was approved on October 25, 1974. The proposed extension to the arterial provides a transition from the existing divided four lane, limited access highway to a two-lane facility with provision for eventual expansion to four-lane divided highway. The extension connects the existing four-lane State Route 328 in the Town of Southport to the existing four-lane arterial center section at Pennsylvania Avenue in the City of Elmira. The extension is on new location through predominantly open land and abandoned railroad yards for a distance of 2.6 miles. The improvements in the arterial corridor are considered necessary to provide for economic development in the South Elmira, Southport area and to remove state highway traffic from a predominantly urban city street through Southport and Elmira.

The location for the arterial was approved. However, substantial changes in the state-of-the-art analysis of environmental issues and discussion of viable design alternatives in the arterial corridor warrant a detailed reanalysis of impacts within the corridor.

Alternatives under consideration are (1) the Null Alternative and (2) a combination of six design alternatives to determine the best location of the arterial in the Elmira area between South Main Street and Pennsylvania Avenue.

The project has been the subject of extensive previous coordination between interested agencies. A public information meeting has also been held to review project location and potential impacts in the neighborhood. A formal public hearing for the project is anticipated in the fall of 1989. Public notice will be given of the time and place of the hearing. The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Harold J. Brown,

Division Administrator, Albany, New York.

[FR Doc. 89-11348 Filed 5-10-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Ketchikan, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project. The project would be located within the boundary of the City and Borough of Ketchikan, Alaska.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administraiton, P.O. Box 021648, Juneau, AK 99802-1648 or; Nate Johnson, Project Environmental Coordinator, Alaska Department of Transportation and Public Facilities (ADOT&PF), P.O. Box 021467, Juneau, AK 99802-1467.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the ADOT&PF, will prepare an EIS on the proposed upgrading of the Ketchikan transportation system from Ward Cove to Deermont Street. Several alternatives will be investigated to meet the need for increased vehicular capacity determined during recent traffic studies.

The traffic studies and subsequent reconnaissance report defined the area of greatest congestion as North Tongass Highway and South Tongass Avenue to Bryant Street through the Central Business District. The ADOT&PF has identified preliminary alternatives for relieving this congestion. Proposed alternatives for the North Tongass Highway segment consist of variations of an upland route to supplement the existing North Tongass Highway. The proposed alternatives for the South Tongass Avenue-Bryant Street segment fall into the two categories of a new route traversing the uplands above the downtown area or a route using existing roads and streets as much as possible. This would include adding new lanes to Tongass Avenue. To date, thirteen proposed construction alternatives have been considered. Also, a proposed mass transit system and a "no build" alternative will be considered.

Federal, State, and local organizations, land owners, and the general public will be contacted beginning in May 1989, and continue to be invited to participate in project scoping and the development of the Draft Environmental Impact Statement (DEIS). Informational meetings to discuss the scope of the project, and a formal scoping Public Hearing will be held prior to the DEIS development. Any additional alternatives developed during the public scoping process will be addressed in the DEIS. A formal Public Hearing, following established Federal Highway Administration (FHWA) guidelines will be held after FHWA approval of the DEIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on May 3, 1989.

Robert E. Ruby,

Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 89-11347 Filed 5-10-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Performance Review Board; Departmental Offices

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership of the Departmental Offices Performance Review Board (PRB) and supersedes the list published in 53 FR 5681 dated February 25, 1988, in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB is to review senior executive employees' performance and make recommendations regarding performance ratings, performance awards and other personnel actions.

The names and titles of the PRB members are as follows:

David M. Nummy—Acting Assistant Secretary of the Treasury for Management (Acting Chairperson) and Deputy Assistant Secretary of the Treasury for Departmental Finance and Management

David W. Mullins—Assistant Secretary of the Treasury for Domestic Finance

Salvatore R. Martoche—Assistant Secretary of the Treasury for Enforcement

Edith E. Holiday—General Counsel

David C. Mulford—Assistant Secretary of the Treasury for International Affairs and Under Secretary (Designate)

Charles H. Dallara—Assistant Secretary of the Treasury for Policy Development and Assistant Secretary of the Treasury for International Affairs (Designate)

Gerald Murphy—Fiscal Assistant Secretary

John P. Simpson—Deputy Assistant Secretary of the Treasury (Regulatory, Tariff and Trade Enforcement)

Marcus W. Page—Deputy Fiscal Assistant Secretary

Charles Schotta—Deputy Assistant Secretary for Arabian Peninsular Affairs

William E. Barreda—Deputy Assistant Secretary for Trade and Investment Policy

Charles B. Respass—Deputy Assistant Secretary for Administration

Steven W. Broadbent—Deputy Assistant Secretary for Information Systems

John G. Wilkins—Senior Advisor (Economics)

John H. Auten—Director, Office of Financial Analysis

Ralph L. Bayrer—Director, Office of Synethetic Fuels Project

Robert C. Fauver—Director, Office of Industrial Nations and Global Analysis

Jon M. Gaaserud—Director, US Saudi Arabian Joint Commission Program Office

Thomas P. O'Malley—Director, Management Programs Directorate

Edwin A. Verburg—Director, Financial Services Directorate

Charlene J. Robinson—Director, Human Resources Directorate

G. Martin Wagner—Director, Office of Telecommunications Management

Thomas S. Neubig—Director, Office of Tax Analysis.

DATE: Memberships on the Performance Review Board are effective May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Larry G. Hicks, Executive Secretary, PRB, Room 1314, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone: (202) 566-5468. This notice does not meet the Department's criteria for significant regulations.

David M. Nummy,

Acting Assistant Secretary of the Treasury for Management.

[FR Doc. 89-11349 Filed 5-10-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans Affairs Wage Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Affairs Wage Committee for Fiscal Year 1988 has been issued.

The report summarize activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM, 133, Madison Building, Washington, DC 20540, and

Department of Veterans Affairs, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: April 27, 1989.

By Direction of the Secretary.

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-11281 Filed 5-10-89 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 90
Thursday, May 11, 1989

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).

COMMISSION ON CIVIL RIGHTS

May 9, 1989.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, May 19, 1989, 1:00 p.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of April Meeting
III. Announcements
IV. SAC Reports and Recharters
Selected Administration of Justice Issues Affecting Americans in Oklahoma
Nativism Rekindled: A Report on the Effort to Make English Colorado's Official Language
Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review
Nebraska SAC Recharter
V. Commission Subcommittee Reports
A. Asian Roundtable
B. Regional Forum
C. Set-aside Draft
D. Campus Tension
VI. Staff Director's Report
VII. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,
Solicitor.

[FR Doc. 89–11433 Filed 5–9–89; 10:05 am]

BILLING CODE 6335-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 16, 1989, 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, May 18, 1989, 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 1989–04
Vigo G. Nielsen, Jr., on behalf of Californians for Pete Wilson
Pete du Pont for President, Inc.—Request for Oral Presentation
Status of Presidential Audits
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. 89–11537 Filed 5–9–89; 3:47 p.m.]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 54, No. 90
Thursday, May 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-118]

Black Stem Rust

Correction

In proposed rule document 89-10208 beginning on page 18288 in the issue of Friday, April 28, 1989, make the following corrections:

On page 18289, in the second column, in the table, under "Proposed", the third entry should read "301.38-1".

On page 18292, in the third column, under **PART 301-DOMESTIC QUARANTINED NOTICES**, in the authority citation, in the third line, "351.2(c)" should read "371.2(c)".

§ 301.38-2 [Corrected]

On page 18293, in the third column, in § 301.38-2(b), in the list, the fifth entry should read "B. calliantha".

On the same page, in the same column, in § 301.38-2(b), in the list, the 33rd entry should read "B. linearifolia".

§ 301.38-3 [Corrected]

On page 18294, in the third column, in § 301.38-3, paragraph (b)(3) should read as follows:

(3)The state maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera **Berberis, Mahoberberis,** and **Mahonia**. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera **Berberis, Mahoberberis,** and **Mahonia**, and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery grows plants of **Berberis, Mahoberberis,** and **Mahonia** from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half mile of the nursery.[4]

§ 301.38-5 [Correctly designated]

On page 18295, in the second column, § 301.38-5 was incorrectly designated as § 301.385 and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 70470-9062]

Electronic Data Dissemination Policies and Guidelines

Correction

In notice document 89-10780 beginning on page 18920 in the issue of Wednesday, May 3, 1989, make the following correction:

On page 18922, in the first column, in the last full paragraph, in the third line, insert "that" after "and".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[DA 89-147]

Personal Radio Service; Amendment of Subpart C of Part 95 of the Commission's Rules Concerning Data Transmissions and Permissible Communications

Correction

In rule document 89-3973 beginning on page 8335 in the issue of Tuesday, February 28, 1989, make the following correction:

On page 8336, in the first column, in § 95.212(f), in the first line, "transmit" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Establishment of 1989 Aggregate Production Quota for Methaqualone

Correction

In notice document 89-9662 beginning on page 16419 in the issue of Monday, April 24, 1989, make the following correction:

On page 16420, in the first column, in the table, under "1988 Aggregate Production Quota (grams)", insert "2".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy

Correction

In proposed rule document 89-10190 beginning on page 18529 in the issue of Monday, May 1, 1989, make the following correction:

§ 120.501 [Corrected]

On page 18530, in the first column, in § 120.501(c), in the sixth line, "and" should read "the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 342, and 351

[Dept. of Treasury Circs. No. 653, Tenth Revision; Public Debt Series No. 3-67, 2nd Rev.; and No. 1-80, 2nd Rev.]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

Correction

In rule document 89-9459 beginning on page 15924 in the issue of Thursday, April 20, 1989, make the following corrections:

On page 15927, in the second table, in the entries for "Issue price", in the fifth column of figures, "$750.00" should read "$375.00"; in the sixth column of figures, "$75.00" should read "$750.00"; and in the seventh column of figures, "$75.00" should read "$7500.00".

BILLING CODE 1505-01-D

federal register

Thursday
May 11, 1989

Part II

Department of Education

34 CFR Part 250 et al.

Indian Education General Provisions and Discretionary Grants; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 250, 252, 253, 254, 255, 256, 257, and 258

RIN 1810-AA53

Indian Education General Provisions and Discretionary Grants

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Indian Education Act general provisions and the Indian Education discretionary grant programs to incorporate new provisions of the Indian Education Act of 1988. The regulations include amended definitions and requirements for grants under a new gifted and talented program. Regulations governing Indian-Controlled Schools—Establishment Grants have been deleted because the program is unfunded.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 255.31. Section 255.31 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Wright or Ms. Julia Lesceux, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177 (Mail Stop 6267), Washington, DC 20202. Telephone (202) 732-1938.

SUPPLEMENTARY INFORMATION: The Indian Education Act (The Act) was amended and reauthorized by Part C of Title V of Pub. L. 100-297 (Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988). The Act subsequently was amended by Pub. L. 100-427. These regulations incorporate technical amendments to the Act.

The discretionary grant programs include support to Indian-controlled schools for enrichment projects; planning, pilot, demonstration, and service projects to meet special educational needs of Indian students; educational personnel development projects; support for gifted and talented programs for Indian students; and projects for adult Indian education.

On November 16, 1988 the Secretary published a notice of proposed rulemaking for these programs in the **Federal Register** (53 FR 46404-46409).

The only differences between the NPRM and these final regulations are minor technical corrections.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, several commenters suggested changes to certain provisions of the Indian education regulations that were not the subject of the proposed rulemaking. The Department cannot issue final substantive changes to provisions that were not the subject of proposed rulemaking and, therefore, were not made open to the public for comment generally. For this reason, these comments are not addressed in the final regulations. However, the Department appreciates the suggestions and will consider them for future rulemaking on the provisions discussed.

Application Content Requirements

Comments: One commenter stated that former §§ 253.20, 254.20, 255.20, 256.20, 257.20 and 258.20 should be retained so that grantees and potential grantees can know the application content requirements prior to the availability of application packages. It was noted that application content requirements may not be limited to the requirements stipulated in the authorizing legislation and, therefore, potential applicants may not be able to anticipate the requirements. Potential applicants, however, often need to know, before application packages are available, what the applicant content requirements are in order to decide whether to apply for grants and to prepare for participation in the grant competition if application is to be made.

Discussion: The former §§ 253.20, 254.20, 255.20, 256.20, 257.20 and 258.20 were deleted in the NPRM because the information collection requirements in those sections are either statutory or based upon requirements contained in other applicable regulations which the Department has not proposed to delete. The application package does not contain requirements beyond those in the statute and other existing regulations. Therefore, the Secretary considers the inclusion of those requirements as separate sections in the regulations to be duplicative and unnecessary.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Other than the Indian-Controlled Schools—Enrichment Projects, the Gifted and Talented Program, and the Educational Personnel Development Program, the programs covered by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Exectuive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 250 and 252 Through 258

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers 84.061 Indian Education—Special Programs and Projects; 84.062 Indian Education—Adult Indian Education; and 84.072 Indian Education—Grants to Indian-Controlled Schools)

Dated: April 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary removes Part 252, adds a new Part 255 and amends Parts 250, 253, 254, 256, 257, and 258 of Title 34 of

the Code of Federal Regulations as follows:

PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

1. The authority citation for Part 250 is revised to read as follows:

Authority: 25 U.S.C. 2601–2651, unless otherwise noted.

2. Section 250.1 is revised to read as follows:

§ 250.1 What programs are governed by these regulations?

The regulations in this part apply to all programs conducted under the Indian Education Act except the Indian Fellowship Program (34 CFR Part 263). Programs governed by these regulations and their applicable program regulations are as follows:

(a) Formula Grants—Local Education Agencies (34 CFR Part 251).

(Authority: 25 U.S.C. 2601–2606)

(b) Indian-Controlled Schools—Enrichment Projects (34 CFR Part 252).

(Authority: 25 U.S.C. 2602(c))

(c) Educational Services for Indian Children (34 CFR Part 253).

(Authority: 25 U.S.C. 2621(a), (c))

(d) Planning, Pilot, and Demonstration Projects for Indian Children (34 CFR Part 254).

(Authority: 25 U.S.C. 2621(a), (b))

(e) Gifted and Talented Program (34 CFR Part 255).

(Authority: 25 U.S.C. 2624(c))

(f) Educational Personnel Development (34 CFR 256).

(Authority: 25 U.S.C. 2621(d), 2622)

(g) Educational Services for Indian Adults (34 CFR Part 257).

(Authority: 25 U.S.C. 2631(b))

(h) Planning, Pilot, and Demonstration Projects for Indian Adults (34 CFR Part 258).

(Authority: 25 U.S.C. 2631(a))

3. Section 250.3(e) is amended by removing "253" and adding, in its place, "255" and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2601–2651)

4. In § 250.4, paragraph (a) is amended by removing "Local educational agency (LEA) (except as used in 34 CFR Parts 257 and 258)"; by removing "(except as used in 34 CFR Parts 254, 255, and 256)" following "Secondary school"; and by removing "(except as used in 34 CFR Parts 251, 252, and 253)" following "State". Paragraph (b) is amended by revising the definitions of "Adult", "Adult education", "Indian" paragraph (1), "Local educational agency," and "Parent" paragraph (1), and adding new definitions of "Bureau school", "Bureau-funded school", "Gifted and talented students", and "Tribal school" in alphabetical order to read as follows:

§ 250.4 What definitions apply to these programs?

* * * * *

(b) * * *

"Adult" means any individual who is sixteen years old or older, or who is beyond the age of compulsory school attendance under State Law.

* * * * *

"Adult education" means instruction or services below college level for adults who are not enrolled in a secondary school and who do not have—

(1) The basic skills to enable them to function effectively in society; or

(2) A certificate of graduation from a school providing secondary education, and who have not achieved an equivalent level of education.

* * * * *

"Bureau school" means an elementary or secondary day or boarding school operated by the Bureau of Indian Affairs (BIA) of the Department of the Interior.

"Bureau-funded school" means a Bureau school or an elementary or secondary school that receives Pub. L. 93–638 (Indian Self-Determination and Education Assistance Act) contract funds or assistance under the Tribally Controlled Schools Act of 1988 from the Bureau of Indian Affairs.

* * * * *

"Gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to develop such capabilities fully.

* * * * *

"Indian" * * *

(1) A member (as defined by an Indian tribe, band, or other organized group) of such Indian tribe, band, or other organized group of Indians, including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

* * * * *

"Local educational agency" (LEA) means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary of secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(2) As used in 34 CFR Part 251 the term also includes tribal schools and Bureau schools. "Parent"—

(1) Includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent) other than by virtue of being a school administrator or official. Examples of individuals who may stand *in loco parentis* with respect to a child are—

* * * * *

"Tribal school" means any school operated by an Indian tribe, or an organization controlled or sanctioned by an Indian tribal government for the children of that tribe if the school either—

(1) Provides its students an educational program that meets the standards established by the Secretary of the Interior in accordance with the Indian Self-Determination and Education Assistance Act; or

(2) Is operated by that tribe or organization under a contract with the Department of the Interior in accordance with the Indian Self-Determination and Education Assistance Act.

5. The authority citation for § 250.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2651)

§ 250.5 [Amended]

6. In § 250.5, the authority citation for paragraph (b) is revised to read as follows:

(Authority: 25 U.S.C. 450 (b), (d), (e))

§ 250.2 [Amended]

7. The authority citation for § 250.20 is revised to read as follow:

(Authority: 25 U.S.C. 2601–2651

PART 252—[REMOVED]

8. Part 252 is removed.

PART 253—[REDESIGNATED AS PART 252]

9. Part 253 is amended by redesignating it as Part 252 and revising the authority citation to read as follows:

Authority: 25 U.S.C. 2602(c), unless otherwise noted.

§ 252.1 [Amended]

10. The authority citation for § 252.1 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.2 [Amended]

11. The authority citation for § 252.2 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.3 [Amended]

12. In Section 252.3 paragraph (b)(1)(iii) is amended by removing "and Tribal Schools or a grant under 34 CFR Part 252 (Indian-Controlled Schools—Establishment)", inserting a closing parenthesis after "Agencies", removing paragraph (b)(3), redesignating paragraph (b)(4) or (b)(3), and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.4 [Amended]

13. The authority citation for § 252.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2606, 2651)

§ 252.10 [Amended]

14. The authority citation for § 252.10 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.20 [Amended]

15. Section 252.20 is removed and Subpart C is reserved.

§ 252.30 [Amended]

16. In § 252.30, paragraph (a) is amended by removing "253.31" and adding, in its place, "252.31", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(c), 2601)

§ 252.31 [Amended]

17. Section 252.31 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2602(c), 2604)

PART 254—[REDESIGNATED AS PART 253]

18. Part 254 is redesignated as Part 253.

19. The authority citation for redesignated Part 253 is revised to read as follows:

Authority: 25 U.S.C. 2621(a), (c), unless otherwise noted.

§ 253.1 [Amended]

20. The authority citation for § 253.1 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a), (c))

21. Section 253.2 is amended by adding a new paragraph (f) and revising the authority citation to read as follows:

§ 253.2 Who is eligible for assistance under this program?

* * * * *

(f) Consortia of Indian tribes or Indian organizations, local educational agencies, and institutions of higher education for projects described in § 253.10(c)

(Authority: 25 U.S.C. 2621(c))

22. Section 253.3 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 253.3 What regulations apply to the program?

* * * * *

(b) The regulations in this Part 253.

(Authority: 25 U.S.C. 2621(a), (c))

§ 253.4 [Amended]

23. The authority citation for § 253.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a), (c))

24. Section 253.10 is amended by adding a new paragraph (c) and revising the authority citation to read as follows:

§ 253.10 What types of projects may be funded?

* * * * *

(c) Consortia of eligible applicants described in § 253.2(f) may receive grants to develop, improve, and implement programs to—

(1) Encourage Indian students to acquire a higher education; and

(2) Reduce the incidence of dropouts among Indian elementary and secondary school students.

(Authority: 25 U.S.C. 2621(a)(2), (c))

§ 253.20 [Amended]

25. Section 253.20 is removed and Subpart C is reserved.

§ 253.30 [Amended]

26. In § 253.30, paragraph (a) is amended by removing "254.32" and adding, in its place, "253.32", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621 (a), (c), (f)(1), (2))

§ 253.31 [Amended]

27. Section 253.31 is amended by removing "254.32" and adding, in its place, "253.32", removing the period and adding ", or from a consortium that includes an Indian tribe, Indian organization, or Indian institution of higher education." after the word "institution" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(f)(2)(B))

§ 253.32 [Amended]

28. Section 253.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (c), (f)(1), (2))

PART 255—[REDESIGNATED AS PART 254]

29. Part 255 is redesignated as Part 254.

30. The authority citation for redesignated Part 254 is revised to read as follows:

Authority: 25 U.S.C. 2621(a)(1), (b), unless otherwise noted.

§ 254.1 [Amended]

31. The authority citation for § 254.1 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a)(1), (b))

§ 254.2 [Amended]

32. The authority citation for § 254.2 is revised to read as follows:

(Authority: 25 U.S.C. 2621(b))

33. Section 254.3 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 254.3 What regulations apply to this program?

* * * * *

(b) The regulations in this Part 254.

(Authority: 25 U.S.C. 2621(a), (b))

§ 254.4 [Amended]

34. The authority citation for § 254.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a), (b))

§ 254.10 [Amended]

35. In § 254.10, paragraph (a)(2) is amended by removing "for one or more of the types of grants listed in 255.20(a)(2)" and adding, in its place, "separately for one or more planning grant, pilot grant, or demonstration grant." and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(a)(1), (b))

§ 254.20 [Removed]

36. Section 254.20 is removed and Subpart C is reserved.

§ 254.30 [Amended]

37. In § 254.30, paragraph (a) is amended by removing § 255.32, § 255.33, or § 255.34" and adding, in its place, "§§ 254.32, 254.33 or 254.34" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b))

§ 254.31 [Amended]

38. Section 254.31 is amended by removing "§ 255.32, § 255.33, or § 255.34"

from the undesignated introductory text and adding, in its place, §§ 254.32, 254.33, or 254.34", removing "255.10(d)" in paragraph (b) and adding, in its place, "254.10(d)", and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(f)(2)(B))

§ 254.32 [Amended]

39. Section 254.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b), (f)(1), (2))

§ 254.33 [Amended]

40. Section 254.33 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b), (f)(1), (2))

§ 254.34 [Amended]

39. Section 254.34 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b), (f)(1), (2))

42. A new Part 255 is added to read as follows:

PART 255—GIFTED AND TALENTED PROGRAM

Subpart A—General

Sec.
255.1 What is the Gifted and Talented Program?
255.2 Who is eligible for an award?
255.3 What regulations apply?
255.4 What definitions apply?
255.10 What activities may the Secretary fund?
255.11 Must the applicant or grantee coordinate activities with other entities?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

255.30 How does the Secretary evaluate an application?
255.31 What selection criteria does the Secretary use?
255.32 What other factors does the Secretary consider in selecting grantees?

Authority: 25 U.S.C. 2624(c), unless otherwise noted.

Subpart A—General

§ 255.1 What is the Gifted and Talented Program?

This program provides five grants to Bureau-funded schools for gifted and talented program research, development and dissemination.

(Authority: 25 U.S.C. 2624(c))

§ 255.2 Who is eligible for an award?

Bureau-funded schools are eligible for grants under this program.

(Authority: 25 U.S.C. 2624(c), 2651)

§ 255.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 255.

(Authority: 25 U.S.C. 2624(c))

§ 255.4 What definitions apply?

The definitions in 34 CFR 250.4 apply to this program.

(Authority: 25 U.S.C. 2624(c))

§ 255.10 What activities may the Secretary fund?

The Secretary may fund program research and development, the development and dissemination of curriculum materials, and the development and dissemination of teacher training materials regarding one or more of the following:

(a) Gifted and talented students.

(b) College preparatory studies (including programs for Indian students interested in teaching careers).

(c) Students with special culturally related academic needs, including social, lingual, and cultural needs.

(d) Mathematics and science education.

(Authority: 25 U.S.C. 2624(c))

§ 255.11 Must the applicant or grantee coordinate activities with other entities?

(a) The supervisor of a Bureau school shall undertake jointly its application for, or administration of, a grant under this part with the supervisor of the local school board.

(b) Each grantee will work cooperatively with other recipients of funds under section 5324 of the Indian Education Act as part of a national network.

(Authority: 25 U.S.C. 2624(c), (d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 255.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the applicable criteria in § 255.31.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 25 U.S.C. 2624(c))

§ 255.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points). The Secretary assesses the need for the proposed project, including—

(1) The soundness of the rationale for the project and the extent and severity among Indian children of the educational needs to be addressed;

(2) The extent to which the educational approach to be developed is likely to be successful in meeting the needs;

(3) The extent to which the applicant is knowledgeable about other projects that address similar needs or have tried similar approaches; and

(4) The likelihood that the project will serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points). The Secretary reviews the plan of operation to ensure that—

(1) The purpose of the project is consistent with the needs identified and the purpose of the funding program;

(2) The design of the project is of high quality;

(3) The objectives of the project—

(i) Relate to the purpose of the project;

(ii) Will provide clear and measurable indices of the project in progress in achieving its purpose; and

(iii) Are capable of being achieved within the project period;

(4) The activities are appropriate and should result in the accomplishment of the project objectives; and

(5) The plan of management is effective and ensures proper and efficient administration of the project.

(c) *Parental and community involvement.* (10 points). The Secretary determines whether parents of the children to be served and other members of the Indian community will be involved in the project, including the extent of their involvement in—

(1) Planning and developing the project; and

(2) Operating and evaluating the project.

(d) *Quality of key personnel.* (15 points). The Secretary reviews the key personnel the applicant plans to use on the project to ensure that—

(1) The project director has the experience and training needed for the position;

(2) Other key personnel have the experience and training needed for their positions in the project; and

(3) Sufficient time will be committed to the project by key personnel.

(e) *Budget and cost effectiveness.* (5 points). The Secretary reviews the budget to ensure that—

(1) The budget is adequate to support the project activities; and

(2) The costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews the evaluation plan to ensure that—

(1) The evaluation will measure the project's effectiveness in meeting each objective;

(2) The evaluation will measure the impact of the project on the children involved, if applicable;

(3) The instruments for collecting data and the methods for analyzing the data are appropriate;

(4) There is an appropriate timetable for collecting, analyzing, and reporting data;

(5) Procedures have been established for modification of the project, if necessary, as a result of periodic progress assessments; and

(6) Adequate provision has been made to cooperate with recipients of funds under section 5324 of the Indian Education Act in evaluating the project.

(g) *Dissemination.* (10 points). The Secretary reviews the plan for disseminating information about the project, including the results of the project and any materials developed by the project to ensure that—

(1) The dissemination plan is effective and and efficient;

(2) The materials disseminated are appropriate in terms of quality and utility;

(3) The method and techniques used by the project will be demonstrated;

(4) Schools interested in adapting or adopting the project's materials or methods will be assisted; and

(5) The findings of the project will be published at the local, State, or national level, and provision has been made to coordinate dissemination activities with recipients of funds under section 5324 of the Indian Education Act.

(h) *Adequacy of resources.* (5 points). The Secretary reviews the resources to be devoted to the project to ensure that—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 25 U.S.C. 2624(c), (d))

§ 255.32 What other factors does the Secretary consider in selecting grantees?

In addition to using the selection criteria in § 255.31, the Secretary selects projects that achieve a mixture of projects described in § 255.10 to ensure that students at all grade levels and students in all geographic areas of the country are able to participate in some projects funded under this program.

(Authority: 25 U.S.C. 2624(c), (d))

PART 256—EDUCATIONAL PERSONNEL DEVELOPMENT

43. The authority citation for Part 256 is revised to read as follows:

Authority: 25 U.S.C. 2621(d), 2622, unless otherwise noted.

44. Section 256.1 is amended by revising paragraphs (b)(1) and (b)(2) and the authority citation to read as follows:

§ 256.1 Educational Personnel Development.

* * * * *

(b) * * *

(1) The program authorized by section 5321(d) of the Indian Education Act and referred to in this part as the section 5321(d) Program; and

(2) The program authorized by section 5322 of the Indian Education Act and referred to in this part as the section 5322 Program.

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.2 [Amended]

45. In § 256.2, paragraph (a) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (b) is amended by removing "422" and adding, in its place, "5322", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.3 [Amended]

46. The authority citation for § 256.3 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.4 [Amended]

47. The authority citation for § 256.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.10 [Amended]

48. The authority citation for § 256.10 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

49. Section 256.20 is revised to read as follows:

§ 256.20 What provisions for participation must an applicant make?

Prior to the submission of an applicant under this Part, each applicant shall—

(a) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type that the program is intended to meet, make provision for the participation on an equitable basis of persons serving or preparing to serve these children as educational personnel or ancillary educational personnel; and

(b) Have provided for adequate participation by relevant tribal communities, including parents of Indian children, in planning and developing this project and have made provision for their participation in operating and evaluating the project.

(Authority: 25 U.S.C. 2621 (d), (f)(1), (2), 2622)

50. Section 256.30 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 256.30 How does the Secretary evaluate an application?

(a) The Secretary reviews and approves applications under the section 5321(d) Program separately from applications under the section 5322 Program.

* * * * *

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.31 [Amended]

51. In § 256.31, paragraph (b) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (c) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (d) is amended by removing "422" and adding, in its place, "5322", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621 (d) and (f)(2)(B), 2622)

§ 256.32 [Amended]

52. Section 256.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (d), (f)(1), (2), 2622)

53. A new § 256.33 is added to read as follows:

§ 256.33 What other factors does the Secretary consider in selecting grantees under the section 5321(d) program?

In addition to using the selection criteria in § 256.32, the Secretary considers the prior performance of a grantee under the section 5321(d) program in selecting grantees for new awards under the section 5321(d) program.

(Authority: 25 U.S.C. 2621(d)(4))

§ 256.40 [Amended]

54. The authority citation for § 256.40 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

55. A new § 256.41 is added to read as follows:

§ 256.41 What other conditions must a grantee meet?

Each grantee shall provide adequate information to participants about the intent of the training program.

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.50 [Amended]

56. The authority citation for § 256.50 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

PART 257—EDUCATIONAL SERVICES FOR INDIAN ADULTS

57. The authority citation for Part 257 is revised to read as follows:

Authority: 25 U.S.C. 2631, unless otherwise noted.

§ 257.1 [Amended]

58. The authority citation for § 257.1 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.2 [Amended]

59. The authority citation for § 257.2 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.3 [Amended]

60. The authority citation for § 257.3 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.4 [Amended]

61. The authority citation for § 257.4 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.10 [Amended]

62. The authority citation for § 257.10 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.20 [Removed]

63. Section 257.20 is removed and Subpart C is reserved.

§ 257.30 [Amended]

64. The authority citation for § 257.30 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.31 [Amended]

65. Section 257.31 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631 (b), (d))

PART 258—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

66. The authority citation for Part 258 is revised to read as follows:

Authority: 25 U.S.C. 2631(a), unless otherwise noted.

§ 258.1 [Amended]

67. The authority citation for § 258.1 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.2 [Amended]

68. The authority citation for § 258.2 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.3 [Amended]

69. The authority citation for § 258.3 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.4 [Amended]

70. The authority citation for § 258.4 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.10 [Amended]

71. In § 258.10, paragraph (a)(2) is amended by removing "for one or more of the types of grants listed in § 258.20(a)(1)" and adding, in its place, "separately for one or more planning grants, pilot grants, or demonstration grants." and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.20 [Removed]

72. Section 258.20 is removed and Subpart C is reserved.

§ 258.30 [Amended]

73. The authority citation for § 258.30 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.31 [Amended]

74. The authority citation for § 258.31 is revised to read as follows:

(Authority: 25 U.S.C. 2631(d)(3))

§ 258.32 [Amended]

75. The authority citation for § 258.32 is revised to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

§ 258.33 [Amended]

76. The authority citation for § 258.33 is revised to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

§ 258.34 [Amended]

77. The authority citation for § 258.34 is revised to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

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Thursday
May 11, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.

Federal Acquisition Regulation (FAR); Procurement Integrity; Interim Rule With Request for Comments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

[Federal Acquisition Circular 84-47]

Federal Acquisition Regulation (FAR); Procurement Integrity

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: Federal Acquisition Circular (FAC) 84-47 amends the Federal Acquisition Regulation (FAR) to implement Procurement Integrity, section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100-679.

DATES: *Effective Date:* May 16, 1989.

Comment date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 10, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-47.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-47.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6 of the OFPP Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, which has been codified as section 423, Title 41 of the United States Code.

The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information.

The Act also contains certification and disclosure provisions for both contractors and Government officials, imposes post-employment restrictions on Government officials and employees, and provides for criminal, civil, administrative, and contractual penalties for violations of the Act.

B. Determination To Issue an Interim Regulation

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 84-47 as an interim rule. This action is necessary to implement in the FAR Pub. L. 100-679. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

C. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule published in the **Federal Register** on March 27, 1989 (54 FR 12556) and stated that the proposed change to the FAR may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The impact is likely to occur because, in connection with contract awards and modifications in excess of $100,000, offerors will be required to gather and provide to the Government certain information regarding the activities of the offeror during the conduct of the procurement. A Final Regulatory Flexibility Analysis will be prepared for the final rule. Comments are invited on this interim rule. Comments from small entities concerning the affected FAR sections will be considered. Such comments must be submitted separately and cite 89-610 (FAC 84-47).

D. Paperwork Reduction Act

The information collection requirements in this interim rule have been approved for 1 year under OMB Control Number 9000-0103 pending review of the public comments by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. Any additional public comments concerning the information collection requirements should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

E. Public Comments

On March 27, 1989, a proposed rule was published in the **Federal Register** (54 FR 12556). In excess of 120 comments have been received in response to the proposed rule. Because of the time constraints to comply with the May 16, 1989, implementation date mandated by Pub. L. 100-679, we have taken into consideration as many comments as possible in the formulation of this interim rule. However, all comments will be fully considered in the formulation of the final rule.

Reconciliation of public comments: As a result of the public comments, significant revisions have been made to the implementing coverage. A discussion of some of the more significant issues and the rationale for the resultant coverage in this interim rule is provided below:

The proposed rule provided two methods to identify the beginning of the conduct of a Federal agency procurement. In the case of major systems, the rule provided that the program manager would publish in the Commerce Business Daily the date on which a procurement begins. For all other procurements, the contracting officer would identify in the solicitation, the date on which the procurement began. Commenters stated that the notification of when a procurement begins must be given prospectively for all procurements, regardless of dollar value. Other commenters questioned the need for and propriety of any notification, whether prospective or retroactive.

The prohibitions of the Act apply to every procurement conducted by Federal agencies regardless of dollar value. The types of procurements and the procedures for conducting procurements are as varied as the agencies that conduct them. Even within a particular agency, there is no single method of procurement and no single set of procedures for every procurement. Procurement consists of a myriad of activities and events that vary from agency to agency and even within an agency. Indeed, many events or activities occur at locations physically far away from and without the knowledge of the contracting officer who will ultimately be responsible for the procurement. From an administrative viewpoint, the burden, as some commenters noted, entailed in attempting to identify when a procurement begins is enormous. The vastly different types and nature of procurements conducted throughout the Federal Government make it impossible to identify one event that is common to all agencies, that constitutes the beginning of a procurement. Moreover, the arduous task of attempting to make this identification for every procurement inevitably will cause delays and

additional expenses because of those delays. The suggestion by some commenters that issuance of the solicitation constitutes the beginning of the conduct of a procurement satisfies neither the terms of the Act not its intent.

As at least one commenter noted, inherent in the authority to establish the date on which a procurement begins, whether prospectively or retroactively, is the opportunity for individuals who have knowingly violated the Act to absolve themselves from liability merely by establishing a date subsequent to that on which they engaged in prohibited conduct. Such a result is untenable, and undermines the very purpose of the statute.

These considerations must be weighed against the benefits, if any, to the public in receiving notification either prospectively or retroactively of the beginning of the conduct of a procurement. It is axiomatic that no person, at any time and regardless of whether a procurement has begun, should offer or solicit a gratuity or bribe, however couched. This conduct is illegal at any time.

Similarly, under existing regulations, it is improper to solicit or disclose information that a person knows or should know is proprietary or source selection information. To the extent that some commenters expressed concerns that the definition of "source selection information" in the proposed rule was overly broad and therefore may not have given sufficient notice as to the type of information that may not be solicited, obtained, or disclosed, the definition thereof has been changed substantially.

The interim rule limits what may constitute source selection information to two categories: that which is marked with the standard legend "SOURCE SELECTION INFORMATION—SEE 3.104" and a very narrow category of information, whether or not marked with the legend, that will jeopardize the integrity of successful completion of a procurement if it were disclosed. The interim rule provides further that notwithstanding that this later category of information shall constitute source selection information whether or not marked as such, all reasonable efforts must be made to so mark it. In addition, the interim rule also provides that if an individual has any doubt as to whether information is proprietary or source selection information, he should ask. Finally, in accordance with many of the comments, the interim rule provides that material that is subsequently marked as proprietary or source selection information that is properly in the possession of the Government or a competing contractor as a result of a prior disclosure that is not prohibited by the Act shall not be considered to have been solicited or obtained in violation of the Act.

With respect to the prohibition against offering or soliciting employment or business opportunities, the proposed rule established a duty to inquire, which remains unchanged in the interim rule. Thus, prior to engaging in a discussion of employment or business opportunities with a Government official or employee, contractor personnel should inquire as to whether that official or employee is a procurement official for a procurement for which the contractor is a competing contractor. The rule imposes a corresponding duty on Government officials and employees who wish to solicit employment from a potential competing contractor to ask whether that contractor is reasonably likely to become a competing contractor on any procurement for which that official or employee is a procurement official.

Given the nature of the conduct that is prohibited by the Act and the fact that the Act penalizes only knowing conduct, notification either prospective or after the fact, of the beginning of a procurement would not serve a particularly useful purpose and should not significantly affect the conduct of contractor or Government personnel.

Therefore, the requirement in the proposed rule to publish in the CBD a notice of when a procurement begins for a major system or elements thereof and the requirement to identify in the solicitation the date of which a procurement began for all other procurements has been deleted from the interim rule.

Many commenters expressed concern over the definition of source selection information, stating that it was overly broad and would result in a decrease in the amount of information that is made available to all competing contractors. Commenters also stated that much of the information contained in the listed documents, such as an acquisition plan, is not source selection information and should not be restricted. Other commenters took exception to labelling some documents by type and labelling other information or documents with a standard legend. Commenters believed that a standard legend for all source selection information would be more appropriate.

The definition of source selection information has been revised substantially in the interim rule. Source selection information is defined as information that is prepared or developed for use by the Government for a particular procurement. In addition, recognizing that marking some documents by type and others with a standard legend could cause confusion, as well as being overly burdensome, the interim rule requires that source selection information be marked with the standard legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104."

The interim rule also provides that certain specifically identified information is source selection information whether or not it is marked with the legend. This information, such as offerors' prices, relative rankings, and the results of technical evaluations, by its very nature, is clearly information that, if disclosed, will jeopardize the integrity or successful completion of a procurement. This is a very narrow category and is limited to only nine types of material. Although this information is source selection information whether or not it is marked as such, 3.104–5(b) provides that all reasonable efforts will be made by the Government to mark this information.

Most commenters also expressed concern over the provision in the proposed rule that included oral or written extracts in the definition of source selection information. The Act prohibits the knowing solicitation or receipt of source selection information. If an individual knows or should know that information is source selection information, the oral transmission or receipt of that information is no less prohibited than the written transmission or receipt of such information. Moreover, if an individual is uncertain as to whether information is source selection information, subsection 3.104–8 provides that the procurement official or competing contractor shall not be considered to have knowingly violated the Act if, before soliciting, obtaining, or disclosing the information the individual asks the appropriate party whether the information is proprietary or source selection information and is advised that it is not.

The majority of commenters stated that the penalties of the Act are so severe that the certification must include the "best knowledge and belief" standard. Use of this standard is consistent with the certifications in the Contract Disputes Act, the Truth in Negotiations Act, and the Department of Defense overhead cost certification. Accordingly, to address commenters' concerns, the interim rule includes the "best knowledge and belief" standard in the certificates.

Many commenters believed that the rule should include greater due process

procedures. The commenters stated that determinations to take action based upon receipt of information of a violation or possible violation should be made only by the head of the agency. Other commenters stated that procedures set out in the clause at 52.203-10, Remedies for Illegal or Improper Activity, should apply to subsection 3.104-11, Processing violations or possible violations.

The rule provides that any action that is taken must be pursuant to a determination by the head of the contracting activity, or his or her designee that there has been a violation of the Act. Moreover, the designee must be of flag, SES, or equivalent rank. Therefore, any action taken is taken only after careful review by senior level officials of the agency.

This rule does not abrogate existing remedies and due process procedures. Thus, in the case of action taken in the pre-award situation, the competing contractor may pursue existing remedies administratively or judicially in a bid protest format. Similarly, a decision to terminate a contract for default or to reduce a contractor's profit pursuant to the clause at 52.203-10 may be appealed in accordance with the Contract Disputes Act.

The clause at 52.203-10 provides a due process procedure wherein the contractor may present information and argument in opposition to the proposed profit or fee reduction. Moreover, the determination to reduce a contractor's profit or fee must be made by the head of the contracting activity or his or her designee, who must be of flag, SES, or equivalent rank.

Finally, the rule requires use of the formal procedures in FAR 3.700, prior to making a final decision to void or rescind a contract. This decision, moreover, may be made only by the head of the agency or his or her designee. These procedures provide for notice and an opportunity for a hearing at which witnesses may be presented and agency witnesses confronted. Thus, the regulation does not abrogate existing pre and post award remedies available to competing contractors.

Considerable comment was made of the fact that there should be one consistent, uniform regulation for all Government and contractor personnel. We agree that individuals should not be required to certify that they have no information of violations of the Act as implemented by agency regulations that may not be published and thus of which they may not be aware. Therefore, the certifications have been revised to delete the reference to agency supplements. However, a flat proscription of any agency supplementation is also not appropriate. There will be instances where agencies must supplement the FAR to satisfy unique agency needs. Indeed, both the Office of Federal Procurement Policy Act and the FAR currently recognize this fact and authorize agency supplementation where it is necessary to satisfy unique needs of an agency. However, with respect to this Act, to ensure that supplementation is kept to a minimum, FAR 3.104-1 has been revised to state that any agency supplementation of FAR 3.104 and any clauses required by FAR 3.104 must be approved by the Senior Procurement Executive of that agency, unless a higher level of approval is required by law for that agency.

A provision has also been added to clarify the liability of offerors for prior authorized possession of source selection information. Commenters were concerned that the rule made no provision to protect offerors in cases where the nature of the information in their possession has changed. FAR 3.104-5(i) has been added which states that source selection information that is properly in the possession of the competing contractor as a result of a prior disclosure that is not prohibited by the Act, shall not be considered to have been solicited or obtained in violation of the Act.

Several commenters suggested that the Government provide offerors the names of individuals who are authorized to receive source selection information because the statute prohibits disclosure of such information to any person other than a person authorized by the head of the agency or the contracting officer. Specifically, it was suggested that such a list be included in a Commerce Business Daily notice announcing the beginning of the procurement. It was determined not to include this list as a requirement in the interim rule since any list of authorized individuals would be constantly changing during the conduct of a procurement. Consequently, a list published at the beginning of the procurement would not provide the information these commenters believe would protect offerors against improper disclosure. However, this rule does include a provision at 3.104-8(d) which states that an offeror shall not be considered to have knowingly violated the Act if the offeror has made an inquiry in good faith regarding whether the information was source selection, and had been advised that it was not.

It was also suggested that the application of the rule to subcontractors be clarified. The suggestion has been adopted and FAR 3.104-9(b)(6) has been added which states that subcontractors of competing contractors are not required to submit certificates to the Government, but that nothing in the rule precludes a competing contractor from requesting certificates from its subcontractors.

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

Government procurement.

Dated: May 9, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

May 16, 1989.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-47 is effective May 16, 1989.

Pete A. Bryan,

Director of Cost Pricing and Finance, Office of Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-47 amends the Federal Acquisition Regulation (FAR) as specified below:

Item-Procurement Integrity

FAR 1.105 is revised, and 3.104 and 3.104-1 through 3.104-12, 4.802(e), 9.105-3(c), 9.106-3(b), 15.805-5(l) and (m), 37.207(f), 37.208, 43.106, and the provision and clauses at 52.203-8, 52.203-9, and 52.237-9 are added to implement the procurement integrity requirements of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). This rule prohibits the following activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement: (a) Soliciting or discussing post-Government employment; (b) offering or accepting a gratuity; and (c) soliciting or disclosing proprietary or source selection information. In addition, the rule provides for certification and disclosure provisions applicable to Government contractors and Government officials, imposes post employment restrictions on Government officials and employees, and provides for criminal, civil, contractual, and administrative penalties for violations of the Act.

Solicitations issued prior to May 16, 1989, for which award has not been made before May 16, 1989, shall be

amended to comply with 3.104. Modifications as defined in 3.104–4(e) that have not been executed by May 15, 1989, shall also be amended. Therefore, 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, a FAR segment and corresponding OMB Control Number to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
* * * *	*
3.104–9	9000–0103
* * * *	*
52.203–8	9000–0103
52.203–9	9000–0103
* * * *	*
52.237–9	9000–0103
* * * *	*

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.104 and sections 3.104–1 through 3.104–12 are added to read as follows:

Sec.
3.104 Procurement integrity.
3.104–1 General.
3.104–2 Applicability.
3.104–3 Statutory prohibitions.
3.104–4 Definitions.
3.104–5 Disclosure of proprietary and source selection information.
3.104–6 Restrictions on Government officials, employees, and consultants.
3.104–7 Identification of the beginning of the conduct of a Federal agency procurement.
3.104–8 Knowing violations—duty to inquire.
3.104–9 Certification requirements.
3.104–10 Solicitation provision and contract clauses.
3.104–11 Processing violations or possible violations.
3.104–12 Ethics programs training requirements.

3.104 Procurement integrity.

3.104–1 General.

Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (which hereinafter in this section of the FAR may be referred to as "the Act"). Agency supplementation of 3.104 and any clauses required by section 3.104 must be approved at a level not lower than the Senior Procurement Executive of the agency, unless a higher level of approval is required by law for that agency.

3.104–2 Applicability.

This section applies to certain activities and conduct occurring on or after May 16, 1989, related to the conduct of a Federal agency procurement for a contract or contract modification.

3.104–3 Statutory prohibitions.

As provided in subsections 27(a), (b), (c), and (e) of the Act, the following conduct is prohibited:

(a) *Prohibited conduct by competing contractors.* During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency;

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) *Prohibited conduct by procurement officials.* During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor;

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative agent, or consultant of any competing contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) *Disclosure to unauthorized persons.* During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(d) [Reserved]

(e) *Restrictions on government officials and employees.* No Government official or employee, civilian or military, who has participated personally and substantially in the conduct of any Federal agency procurement or who has personally reviewed and approved the award, modification, or extension of any contract for such procurement shall—

(1) Participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

(2) Participate personally and substantially on behalf of the competing contractor in the performance of such contract, during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

3.104–4 Definitions.

As used in this section—

(a)(1) "Competing contractor," with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.

(2) "Competing contractor" includes the incumbent contractor in the case of a modification.

(b) "Cost or pricing data" means that cost or pricing data, as defined in 15.801, which are submitted or made available by the competing contractor in support of the instant proposal.

(c)(1) "During the conduct of any Federal agency procurement of property or services" means the period beginning with the development, preparation, and issuance of a procurement solicitation, and concluding with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, selection of sources, and conduct of negotiations.

(2) Each contract award and each contract modification constitutes a separate procurement action, i.e., a separate period during which the prohibitions and the requirements of the Act apply.

(3) Activities and conduct that occurred before May 16, 1989, if any, are not violations of the Act.

(d) "Government official or employee" means the persons described in this paragraph (d) who are in such status on or after May 16, 1989—

(1) A member of the uniformed services as defined in section 101(3) of title 37, United States Code,

(2) A person who is appointed to a position in the Federal Government under title 5, United States Code, including a person under a temporary appointment; and

(3) A special Government employee as defined in section 202 of title 18, United States Code.

(e) "Modification" means the addition of new work to a contract, or the extension of a contract, which requires a justification and approval (see Subpart 6.3). It does not include: an option where all the terms of the option are set forth in the contract and all requirements for option exercise have been satisfied; change orders; administrative changes; or any other contract changes that are within the scope of the contract.

(f) "Money, gratuity, or other thing of value," except where expressly permitted by agency standards of conduct regulations, means any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits, including discounts, passes, and promotional vendor training, given or extended to or on behalf of Government personnel, their immediate families, or households, for which fair market value is not paid by the recipient or the Government.

(g) "Participated personally and substantially" means active and significant involvement of the individual in activities directly related to the procurement. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate "substantially" means that the employee's involvement must be of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. An employee whose responsibility is the review of a procurement solely for compliance with administrative procedures or budgetary considerations, and who reviews a document involved in the procurement for such a purpose, should not be regarded as having participated substantially in the procurement.

(h)(1) "Procurement official" means any civilian or military official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement.

(2) "Procurement official" includes any civilian or military official or employee of an agency who has participated personally and substantially in the following activities—

(i) Development of acquisition plans;

(ii) Development of specifications, statements of work, or purchase descriptions/requests;

(iii) Development of solicitation or contractual provisions;

(iv) Evaluation or selection of a contractor; or

(v) Negotiation or award of a contract or modification to a contract.

(3) For purposes of 3.104–4 (h)(1) and (h)(2), the term "employee of an agency" includes a contractor, subcontractor, consultant, expert, or advisor (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned.

(i) "Property" means supplies as defined at 2.101.

(j)(1) "Proprietary information" means—

(i) Information contained in a bid or proposal;

(ii) Cost or pricing data; or

(iii) Any other information submitted to the Government by a contractor and designated as proprietary, in accordance with law or regulation, by the contractor, the head of the agency, or the contracting officer.

(2) Proprietary information is information identified in 3.104–4(j)(1) (i) and (ii) that is submitted to the Government by a competing contractor, and is marked as proprietary in accordance with applicable law or regulation. Information described in 3.104–4(j)(1) is proprietary only if the cover page and each page, or portion thereof, that contains proprietary information is marked as proprietary.

(3) It does not include information—

(i) That is otherwise available without restrictions to the Government, a competing contractor, or the public;

(ii) Contained in bid documents following bid opening (also see 14.404–4); or

(iii) That the contracting officer determines to release in accordance with 3.104–5(e):

(k)(1) "Source selection information" means information determined by the head of the agency or the contracting officer to be information—

(i) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and

(ii) Which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure;

(2) "Source selection information" is information, including information stored in electronic, magnetic, audio or video formats, which is prepared or developed for use by the Government to conduct a particular procurement. It is limited to—

(i) Material marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104," including copies or extracts so marked, and any copies or extracts that the recipient knows or should know were made from material that was so marked; and

(ii) The following material, including copies or extracts thereof, whether or not marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104":

(A) Listings of offerors and prices.

(B) Listings of bidders prior to bid opening.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of competing proposals;

(F) Competitive range determinations.

(G) Rankings (not applicable to sealed bidding).

(H) Source selection board reports and evaluations.

(I) Source selection advisory board recommendations.

3.104-5 Disclosure of proprietary and source selection information.

(a) Proprietary and source selection information shall be protected from unauthorized disclosure in accordance with 14.401 and 15.411.

(b) Individuals responsible for preparing material that may include source selection information shall mark the cover page and each page that contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104". Although the material described in 3.104-4(k)(2)(ii) is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with this legend. In determining whether the information is source selection information, the originator shall consult with agency officials as appropriate.

(c) The head of the agency, or his or her designee, or the contracting officer, has the authority, in accordance with applicable agency regulations or procedures, to authorize persons or classes of persons, access to proprietary or source selection information when access is necessary to the conduct of the procurement. For release to other than Government employees, see 15.413-2. Persons or classes of persons granted access to proprietary or source selection information shall be listed in the contract file (see 3.104-9(f)).

(d) When propietary or source selection information is authorized to be released to Government activities outside the contracting activity responsible for the conduct of the procurement, when access is necessary to the conduct of the procurement, the head of the office receiving the information, or his or her designee, shall maintain a list of persons or classes of persons, who have been authorized access to the proprietary or source selection information. The list shall be forwarded to the contracting office responsible for the conduct of the procurement to be included in the contract file.

(e)(1) Except for subparagraph (e)(4) of this subsection, if the contracting officer believes that information marked as proprietary (see 3.104-4(j)) is not proprietary, the competing contractor affixing the marking shall be notified in writing and given a reasonable opportunity to justify the proprietary marking. If the competing contractor agrees that the material is not proprietary information, or does not respond in a reasonable time to the notice, the contracting officer may remove the propietary marking and the information may be released.

(2) After reviewing any justification submitted by the competing contractor, if the contracting officer determines that the proprietary marking is not justified, the contracting officer shall so notify the competing contractor in writing.

(3) Information marked by the competing contractor as proprietary shall not be released for a period of 10 business days from the issuance of the notice in 3.104-5(e)(1). Thereafter, the contracting officer may release the information.

(4) With respect ot technical data that are marked proprietary by a competing contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(f) Nothing in 3.104 prohibits competing contractors from disclosing or authorizing the Government to disclose their company specific proprietary information to any other persons where not otherwise prohibited by law.

(g) Nothing in 3.104 shall limit the Government's use, in accordance with any preexisting rights, of technical data that is marked proprietary by a competing contractor.

(h) A person who discloses proprietary or source selection information shall not be considered to have violated the disclosure prohibitions set forth herein unless that person knows, or should have known, such information is proprietary or source selection information, even though the information has not been marked as such.

(i) Source selection or proprietary information that is properly in the possession of the Government or a competing contractor as a result of a prior disclosure that is not prohibited by the Act shall not be considered to have been solicited or obtained, directly or indirectly, in violation of the Act.

(j) Nothing in 3.104 shall be construed to authorize the withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an Inspector General of a Federal agency except as otherwise authorized by law or regulation. Any such release which contains proprietary or source selection information shall clearly notify the recipient that the information or portions thereof are proprietary or source selection information, related to the conduct of a Federal agency procurement whose disclosure is restricted by section 27 of the Office of Federal Procurement Policy Act.

3.104-6 Restrictions on Government officials, employees, and consultants.

(a) During the conduct of a Federal agency procurement, subsection 27(b)(1) of the Act prohibits any individual who has become a procurement official from soliciting, discussing, or accepting, directly or indirectly, any promise of future employment or business opportunity with any officer, employee, representative, agent or consultant of a competing contractor. A Government official or employee who has become a procurement official cannot have his or her status as a procurement official changed for purposes of seeking employment with a competing contractor. The prohibition in subsection 27(b)(1) of the Act does not apply after a Government official or employee leaves Government service. Subsection 27(b)(1) of the Act also applies to consultants who have become procurement officials until such individual ceases to act on behalf of, or provide advice to, the procuring agency.

(b) Subsection 27(d)(4) of the Act provides that if a procurement official leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of $100,000, such official shall certify to the contracting officer that he or she understands the continuing obligation, during the conduct of the procurement, not to disclose proprietary or source selection information related to such agency procurement.

(c) Subsection 27(e)(1) of the Act prohibits a former Government official or employee who has participated personally and substantially in the conduct of a Federal agency procurement or has personally reviewed and approved the award or modification of any contract for such procurement from participating in any manner in negotiations as an officer, employee, representative, agent or consultant of a competing contractor leading to the award or modification of the contract for such procurement. This restriction not only includes representing the competing contractor in negotiations but also includes providing advice or information on negotiation strategies. For purposes of the restriction, negotiation strategy is the contractor's approach to the preparation and presentation of its offer and conduct of negotiations with the Government. The restriction does not apply to providing scientific, technical, or other advice that is unrelated to negotiation strategies. The restriction only applies when, the advice or information is provided to the competing contractor for the specific purpose of influencing negotiations

leading to the award or modification of the contract. This restriction lasts for 2 years from the date of the individual's last personal and substantial participation in the Federal agency procurement.

(d) Subsection 27(e)(2) of the Act prohibits a former Government official or employee who has participated personally and substantially in the conduct of a Federal agency procurement or who has personally reviewed and approved the award or modification of any contract for such procurement from participating personally and substantially on behalf of the competing contractor in performance of the contract. Generally, what constitutes personal and substantial participation on behalf of the competing contractor must be determined on a case-by-case basis. To participate "personally and substantially" requires the presence of both direct and significant involvement in performance of the specific contract. This restriction lasts for 2 years from the date of the last personal and substantial participation in the Federal agency procurement.

3.104-7 Identification of the beginning of the conduct of a Federal agency procurement.

The conduct of a Federal agency procurement begins when an authorized agency official determines that a specific agency need or requirement shall be satisfied by procurement. This shall be the earliest of identifiable specific action such as—

(a) Requirements computation at inventory control points;

(b) Publication of an advance synopsis of an R&D procurement;

(c) Convening of a formal acquisition strategy meeting;

(d) Development of an acquisition plan;

(e) Development of a purchase request;

(f) Development of a statement of work;

(g) Development of specifications specifically for the instant procurement; or

(h) Publication of the agency's intent to develop or acquire systems, subsystems, supplies, or services.

3.104-8 Knowing violations—duty to inquire.

(a) For some procurements, neither competing contractors nor all procurement officials will have notice as to when the conduct of a particular procurement has begun. However, certain conduct and activities that are prohibited by the Act would be inappropriate at any time. It is generally recognized that potential contractors should not offer, and agency officials should not solicit gratuities at any time. Similarly, potential contractors should not solicit, and agency personnel should not offer, proprietary or source selection information at any time. However, potential contractors may offer, and Government employees may solicit, employment except as prohibited by law. Contractors who wish to discuss employment opportunities with a possible procurement official should ask if that party is a procurement official for a procurement for which the contractor is a competing contractor before conducting any discussion related to employment. Similarly, procurement officials who wish to solicit employment from a potential competing contractor should ask whether the contractor is reasonably likely to become a competing contractor on any procurement for which the procurement official is responsible.

(b) Agency personnel shall be presumed to know the procurements for which they are procurement officials. Contractor personnel are presumed to know the procurement for which the organization they represent is reasonably likely to be competing. Individuals who do not, in fact, know whether they are procurement officials, or whether the organization they represent is a competing contractor, should defer any discussions regarding employment until these questions can be resolved by consulting appropriate parties within their respective organizations.

(c) A competing contractor shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(a)(1) of the Act (see 3.104-3(a)(1)) if the contractor has made an inquiry in good faith of the possible procurement official and has been advised that the individual is not a procurement official for any procurement for which the contractor is a competing contractor. Similarly, a procurement official shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(b)(1) of the Act (see 3.104-3(b)(1)) if the procurement official made inquiry in good faith of the potential contractor, and had been advised that the contractor would not be a competing contractor on a procurement under the responsibility of the procurement official.

(d) A competing contractor or procurement official shall not be considered to have knowingly violated the prohibitions in subsection 27(a)(3) or 27(b)(3) of the Act (see 3.104-3 (a)(3) and (b)(3)) if, before proprietary or source selection information was solicited, obtained, or disclosed, the contractor or procurement official—

(1) Had made an inquiry in good faith of the appropriate competing contractor or procurement official regarding whether information was proprietary or source selection information; and

(2) Had been advised by such official that the information was not proprietary or source selection information.

3.104-9 Certification requirements.

(a) *Applicability.* In accordance with subsection 27(d)(7)(A) of the Act, certification requirements set forth herein apply to contracts in excess of $100,000 awarded by a Federal agency on or after May 16, 1989, and to any contract modification in excess of $100,000 executed by a Federal agency on or after May 16, 1989, except as provided in 3.104-9(e).

(b) *Competing contractor certification.* (1) In accordance with subsection 27(d)(1) of the Act, an agency shall not award a contract for the procurement of property or services to any competing contractor, or agree to any modification of a contract, unless the officer or employee of such contractor responsible for the offer or bid for such contract, or the modification of such contract—

(i) Certifies in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (c), or (e) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Discloses to such contracting officer any and all such information and certifies in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certifies in writing to such contracting officer that each officer, employee, agent, representative, and consultant of such competing contractor who, on or after May 16, 1989, has participated personally and substantially in the preparation or submission of such bid or offer, or in such modification of such contract, as the case may be, has certified to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or

bid for any contract or the modification of such contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (c), or (e) of the Act (see 3.104-3), occurring on or after the effective date of the Act, as implemented in the FAR.

(2) The signed certification prescribed in 3.104-10 shall be submitted as follows:

(i) For sealed bids, by each bidder with bid submission.

(ii) For procurements using the two-step sealed bidding procedure (see Subpart 14.5), with submission to the Government of step two sealed bids.

(iii) For indefinite delivery-type contracts, if the estimated value of all orders to be placed under the contract is expected to exceed $100,000, from all bidders with bid submission.

(iv) For requests for proposals (RFP) or quotations (RFQ), by the successful offeror as close as practicable to, but in no event later than, contract award.

(v) For contract modifications in excess of $100,000, prior to execution.

(vi) For indefinite delivery-type contracts, if the estimated value of all orders to be placed under the contract is expected to exceed $100,000 from the successful offeror for other than sealed bids as close as practicable, but in no event later than, the date of contract award.

(vii) For letter contracts prior to award of the letter contract and prior to definitization of the letter contract.

(viii) For all other procurement actions, prior to award or execution.

(ix) The certificate required in 3.104-9(b)(2) (iv) through (viii) shall be submitted to the contracting officer within the time period specified by the contracting officer when requesting the certificate.

(3) In the absence of a solicitation, the signed certification shall be obtained prior to award of a contract or execution of a modification.

(4) The offeror may rely upon periodic certifications that must be obtained at least annually, supplemented by periodic training programs. These certifications shall be maintained by the contractor for 6 years from the date of each certification.

(5) Failure of an offeror to submit the required certificate shall render the offeror ineligible for award (see 9.104-1(g)).

(6) Subcontractors of the competing contractor are not required to submit the certificate required by subsection 27(d)(1) of the Act. However, nothing in 3.104 precludes a competing contractor from requesting certification from its subcontractors.

(c) *Contracting officer certifications.* (1) In accordance with subsection 27(d)(2) of the Act, a Federal agency may not award a contract for the procurement of property or services, or agree to any modification of any such contract, unless the contracting officer responsible for such procurement—

(i) Certifies in writing to the head of such agency that, to the best of his or her knowledge and belief, the contracting officer has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(2) Immediately prior to contract award or execution of a contract modification, the contracting officer shall certify as follows and maintain the completed certificate in the contract file:

Contracting Officer Certificate of Procurement Integrity

(i) I, [Name of contracting officer], hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of paragraphs (a), (b), (c), or (e) of section 27 of the Office of Federal Procurement Policy Act * (41 U.S.C. 423), as implemented in the FAR, occurring during the conduct of this procurement (*contract/modification number*).

(ii) Violations or possible violations: *Continue on plain bond paper if necessary, and label Contracting Officer Certificate of Procurement Integrity (Continuation Sheet), ENTER "NONE" IF NONE EXISTS.)*

_____

_____

_____

(Signature of contracting officer and date)

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of Certification)

(d) *Additional certifications.* (1) In accordance with subsection 27(d)(3) of the Act, any procurement official or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services, may be required—

(i) To certify in writing that, to the best of his or her knowledge and belief, such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for such contract or the modification of such contract has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104-3) as implemented in the FAR occurring during the procurement; or

(ii) To disclose any and all such information and to certify in writing that any and all such information has been disclosed.

(2) Additional certifications may be required only after receiving the approval of the Head of the Contracting Activity (HCA) or designee, so long as the designee is at least one level above the contracting officer and is of flag, SES, or equivalent rank.

(3) The procurement official or competing contractor shall be afforded a reasonable time to comply with the additional certification requirements.

(4) Failure to submit any additional certifications that may be required shall render the competing contractor ineligible for award (see 9.104-1(g)).

(e) *Exceptions.* Pursuant to subsection 27(d)(7)(B) of the Act, certification requirements set forth in 3.104-9 do not apply—

(1) When contracting with a foreign government or an international organization that is not required to be awarded using competitive procedures pursuant to section 303(c)(4) of the Federal Property and Administrative Services Act of 1949 or section 2304(c)(4) of Title 10, United States Code (see 6.302-4); or

(2) In an exceptional case, when the head of the agency concerned determines in writing that the certification requirement should be waived. This authority may not be delegated. The contracting officer shall submit the request for waiver in accordance with agency procedures. The request shall clearly identify the procurement or class of procurements and provide the rationale for the requested waiver. The decision of the agency head shall state the reasons for approving or disapproving the waiver. The agency head shall promptly notify Congress in writing of each waiver approved.

(f) *Recordkeeping requirements.* In accordance with subsection 27(d)(5) (A) and (B) of the Act, the contracting officer responsible for the award or modification of a contract shall maintain, as part of the contract file—

(1) All certifications made by procurement officials and competing contractors with regard to the action, as required by this subsection and 3.104-6(b); and

* Section 27 became effective on May 16, 1989.

(2) A record of all persons who have been authorized by the head of the agency or the contracting officer to have access to proprietary or source selection information regarding the procurement. When classes of persons have been authorized, this record shall identify the class of persons so authorized.

3.104-10 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.203-8, Requirement for Certificate of Procurement Integrity, in all solicitations where the resultant contract award is expected to exceed $100,000, unless a determination of inapplicability has been made pursuant to 3.104-9(e).

(b) The contracting officer shall insert the clause at 52.203-9, Requirement for Certificate of Procurement Integrity-Modification, in all solicitations and contracts in excess of $100,000, and modifications to contracts which do not already contain the clause when the modification is expected to exceed $100,000, unless a determination of inapplicability has been made pursuant to 3.104-9(e).

(c) The contracting officer shall insert the clause at 52.203-10, Remedies for Illegal or Improper Activity, in all solicitations and contracts expected to exceed the threshold in Part 13 (see 13.000), or modifications to contracts which do not already contain the clause when the modification is expected to exceed the threshold in 13.000.

3.104-11 Processing violations or possible violations.

(a) If any certification received by or signed by the contracting officer contains any information of a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104-3), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor. If the contracting officer concludes that there is no impact, the contracting officer shall report the violation accompanied by appropriate documentation supporting that conclusion to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer may immediately proceed with award, and the individual concurring with the award decision shall notify the HCA, or his or her designee, of a violation or possible violation. If the contracting officer determines that the violation or possible violation impacts the pending award, the contracting officer shall withhold award and promptly forward the certification and related information to the HCA or designee, so long as the designee is at least one level above the contracting officer and is of flag, SES, or equivalent rank.

(b) The HCA or his or her designee receiving a certification describing an actual or possible violation of subsections 27 (a), (b), (c), or (e) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as:

(1) Cause an investigation to be conducted.

(2) Refer the information disclosed to appropriate criminal investigative agencies.

(c) If the HCA or his or her designee receiving a certification determines that the prohibitions of section 27 of the Act have been violated, then the HCA or his or her designee may direct or recommend the contracting officer—

(1) If a contract has not been awarded, to—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or;

(iii) Take any other appropriate actions in the interest of the Government.

(2) If a contract or modification has been awarded, to—

(i) Seek applicable contractual remedies, including profit recapture as provided for at 52.203-10, Remedies for Illegal or Improper Activity;

(ii) Void or rescind the contract, in accordance with the procedures in 3.705; or

(3) Refer the matter to the agency suspension and debarment official.

(d) If the HCA or his or her designee receiving the certification of a violation or possible violation determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then he or she may authorize the contracting officer to award the contract after notification of the head of the agency in accordance with agency procedures.

§ 3.104-12 Ethics programs training requirements.

(a) Subsection 27(j) of the Act provides that the head of each Federal agency shall establish a procurement ethics program for its procurement officials. The program shall, at a minimum—

(1) Provide for the distribution of written explanations of subsection 27(b) of the Act to such procurement officials; and

(2) Require each such procurement official, as a condition of serving as a procurement official, to certify that he or she is familiar with the provisions of subsection 27(b) of the Act and will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act as implemented in the FAR.

(b) Consultants serving as procurement officials must also comply with the training requirements specified in 3.104-12(a) (see also 37.208).

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.802 is amended by adding paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are proprietary or source selection information identified in 3.104-4 shall be protected from disclosure to unauthorized persons (see 3.104-5).

PART 9—CONTRACTOR QUALIFICATIONS

5. Section 9.105-3 is amended by adding paragraph (c) to read as follows:

9.105-3 Disclosure of preaward information.

* * * * *

(c) Preaward survey information may contain proprietary and/or source selection information and should be marked with the appropriate legend and protected accordingly (see 3.104-4 (j) and (k)).

6. Section 9.106-3 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

9.106-3 Interagency preaward surveys.

* * * * *

(b) The surveying activity shall furnish with its report a list of all persons, or classes of persons, who have been provided access to the proprietary or source selection information (see 3.104-5(d)) at or by the surveying activity.

PART 15—CONTRACTING BY NEGOTIATION

* * * * *

7. Section 15.805-5 is amended by adding paragraphs (l) and (m) to read as follows:

15.805-5 Field pricing support.

* * * * *

(l) Field pricing reports, including audit and technical reports, may contain proprietary and/or source selection

information (see 3.104-4 (j) and (k)), and the cover page and all pages containing such information should be marked with the appropriate legend and protected accordingly.

(m) Activities submitting field pricing reports, including audit and technical reports, shall furnish with each report a list of all persons, or classes or persons, who have been provided access to the proprietary or source selection information (see 3.104-5(d)) at or by the activity.

PART 37—SERVICE CONTRACTING

8. Section 37.207 is amended by removing at the end of paragraph (d) the word "and"; by removing the period at the end of paragraph (e) and inserting in its place "; and"; and by adding paragraph (f) to read as follows:

37.207 Contracting officer responsibilities.

* * * * *

(f) Maintain the certifications required of contractor employees serving as Government procurement officials.

9. Section 37.208 is added to read as follows:

37.208 Contract clause.

The contracting officer shall insert the clause at 52.237-9, Procurement Integrity—Advisory and Assistance Services, in all solicitations and contracts for advisory and assistance services to be used in support of the conduct of a Federal agency procurement.

PART 43—CONTRACT MODIFICATIONS

43.107 [Redesignated from 43.106]

10. Section 43.106 is redesignated as 43.107 and a new section 43.106 is added to read as follows:

43.106 Procurement integrity—modifications.

No modification over $100,000 as defined at 3.104-4(e) may be executed without complying with the requirements of 3.104.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.203-8 is added to read as follows:

52.203-8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104-10(a), insert the following provision:

Requirement for Certificate of Procurement Integrity (May 1989)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer or bid and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (*solicitation number*).

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations of possible violations: (*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXISTS)*

_____

_____

_____

[Signature of the Officer or Employee Responsible for the Offer and date]

[Typed Name of the Officer or Employee Responsible for the Offer]

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c) The signed certification in paragraph (b) of this provision shall be executed and submitted as follows:

(1) If this is an invitation for bids (IFB), with bid submissions exceeding $100,000.

(2) If this is a procurement using the two-step sealed bidding procedure (see FAR Subpart 14.5), with bids exceeding $100,000, with submission to the Government of step-two sealed bids.

(3) If this is a request for proposal (RFP) or quotation (RFQ), by the successful offeror as close as practicable to, but in no event later than, the date of award of a contract exceeding $100,000.

(4) If this is an invitation for bids for an indefinite delivery-type contract, and if the estimated value of orders to be placed under the contract is expected to exceed $100,000, with the bid submission.

(5) If this is an RFQ or RFP for an indefinite delivery-type contract, and if the estimated value of orders expected to be placed under the contract is expected to exceed $100,000, by the successful offeror as close as practicable to, but in no event later than, the date of contract award.

(6) For letter contracts, prior to award of the letter contract and prior to definitization of the letter contracts.

(7) For other procurement actions in excess of $100,000, prior to award or execution as specified by the Contracting Officer.

(8) The certificate required by subparagraphs (c)(3) and (c)(5) through (c)(7) of this provision shall be submitted to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate.

(d) Pursuant to FAR 3.104-9(d), the offeror may be requested to execute additional certifications at the request of the Government.

(e) Failure of an offeror to submit the certification required by FAR 3.104-9(b) or any additional certifications pursuant to FAR 3.104-9(d) will render the offeror ineligible for contract award (see FAR 9.104-1(g)).

(f) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(g) In making the certification in subparagraph (b)(2) of this provision, the offeror may rely upon the certification by an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR, unless the offeror knows, or should have known, of reasons to the contrary. The offeror may rely upon periodic certifications that must be obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained by the contractor for 6 years from the date of execution.

(h) The certifications in paragraph (b) and (d) of this provision are a material representation of fact upon which reliance will be placed in awarding a contract.

(End of provision)

12. Section 52.203-9 is added to read as follows:

§ 52.203-9 Requirement for Certificate of Procurement Integrity—Modification.

As prescribed in 3.104-10(b), insert the following clause:

*Section 27 became effective on May 16, 1989.

Requirement for Certificate or Procurement Integrity—Modification (May 1989)

(a) *Definitions.* The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause, when requested by the contracting officer in connection with the execution of any modification of this contract. A contract modification may not be executed without the certification.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

Certificate of Procurement Integrity—Modification (May 1989)

(1) I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (c), or (e) of the Office of Federal Procurement Policy Act * (41 U.S.C. 423), (hereinafter referred to as the Act), as implemented in the FAR, occurring during the conduct of this procurement (*contract and modification number*).

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity—Modification (Continuation Sheet), ENTER NONE IF NONE EXISTS*

_____

_____

_____

[Signature of the Officer or Employee Responsible for the Modification Proposal and date]

[Typed Name of the Officer or Employee Responsible for the Modification Proposal]

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

* Section 27 became effective on May 16, 1989.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the Contractor may rely upon the certification by an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR, unless the Contractor knows, or should have known, of reasons to the contrary. The Contractor may rely upon periodic certifications that must be obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained by the Contractor for a period of 6 years from the date of execution.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

13. Section 52.203-10 is added to read as follows:

52.203-10 Remedies for illegal or improper activity.

As prescribed in 3.104-10(c) insert the following clause:

Remedies for Illegal or Improper Activity (May 1989)

(a) The Government, at its election, may reduce the price of a fixed-price-type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (c) of this clause if the head of the agency or his or her designee, determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the FAR. In the case of a contract modification the fee subject to reduction is the fee associated with the particular contract modification.

(b) Prior to making such a fee or profit reduction, the agency head or his or her designee shall provide to the Contractor a written notice of the action being considered and the basis therefor. The Contractor shall have a period determined by the agency head or his or her designee, but in no event less than 30 calendar days after receipt of such notice to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or his or her designee may, upon good cause shown, determine to reduce the contract or contract modification price or fee by an amount which is less than the amount determined under paragraph (c) of this clause.

(c) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) *For cost-plus-fixed-fee contracts,* the amount of the fee specified in the contract at the time of award;

(2) *For cost-plus-incentive-fee contracts,* the target fee specified in the contract at the time of award notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) *For cost-plus-award-fee contracts*—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 10 percent of the amount of each award fee otherwise payable to the contractor for each incentive period or at each award fee determination point.

(4) *For fixed-price-incentive contracts,* the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award;

(ii) When the contract provides for multiple deliverables, reduce the amount otherwise payable to the contractor upon each delivery and acceptance by an amount determined by the Contracting Officer to be the profit portion of each payable amount until the cumulative total of such reductions is equal to the initial target profit amount specified in the contract at the time of contract award;

(iii) In addition to any other withholdings, retentions or reserves, reduce the amount of progress payments otherwise payable in connection with each invoice or voucher properly submitted by the contractor for payment until the aggregate progress payments amounts so withheld equal the initial target profit established at the time of contract award; or

(iv) If the Government elects either (c)(4)(ii) or (iii) of this clause, at the time of total final price establishment, the price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the amount of initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price. Any progress payments amounts retained by the Government in (c)(4)(iii) of this clause shall be returned to the contractor, if appropriate.

(5) *For firm-fixed-price contract or contract modifications,* by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(d) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraphs (b) and (c) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract or modification for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

14. Section 52.237-9 is added to read as follows:

52.237-9 Procurement Integrity—Advisory and Assistance Services.

As prescribed in 37.208, insert the following clause:

Procurement Integrity—Advisory and Assistance Services (May 1989)

(a) *Definitions.* The definitions in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, at a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the FAR to such employees; and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsections 27 (a), (b), (c), or (e) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to FAR 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modification in excess of $100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

(End of clause)

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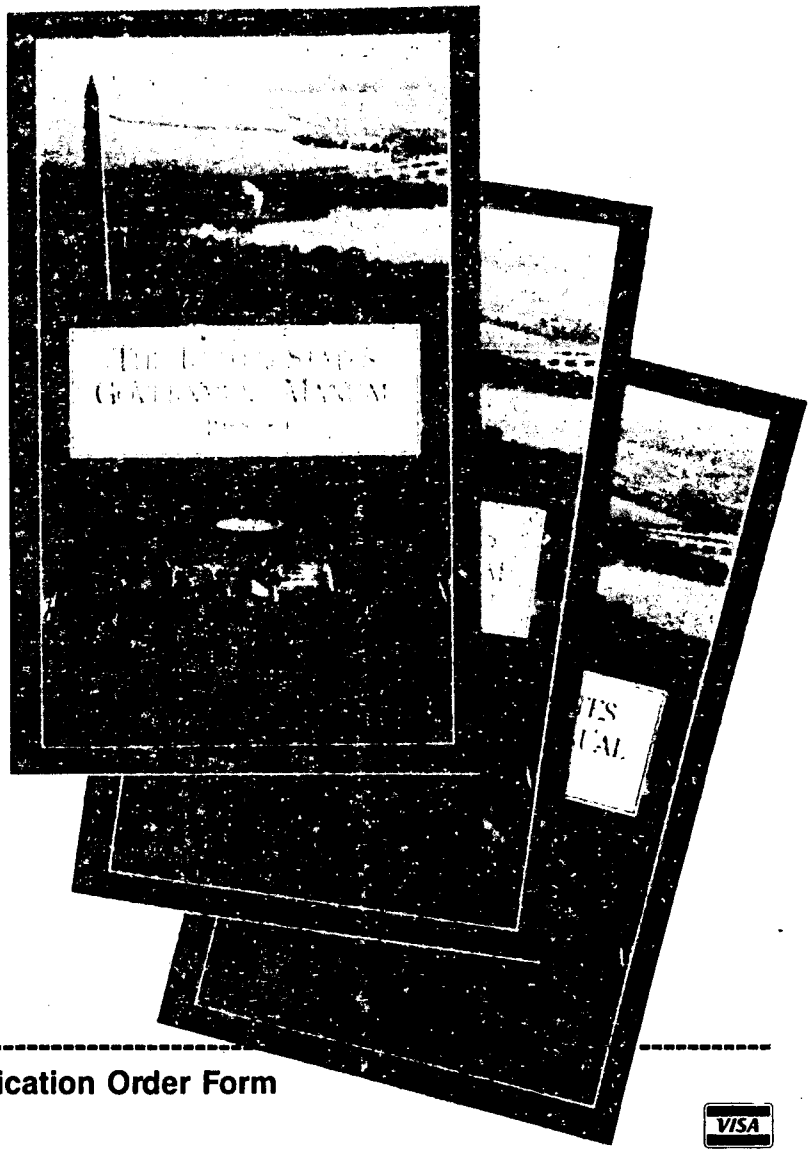

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